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REPORT FROM THE CONFERENCE ON THE LEGAL AND ETHICAL ASPECTS OF DISCIPLINARY LIABILITY OF JUDGES (BRATISLAVA, 15 NOVEMBER 2024) / Ema Mikulová, Marián Ruňanin

Mgr. Ema Mikulová
Comenius University Bratislava
Faculty of Law
Department of Theory of Law
and Philosophy of Law
Šafárikovo nám. 6
810 00 Bratislava; Slovakia
ema.mikulova@flaw.uniba.sk
ORCID: 0009-0009-1155-3122

Mgr. Marián Ruňanin
Comenius University Bratislava
Faculty of Law
Department of Theory of Law
and Philosophy of Law
Šafárikovo nám. 6
810 00 Bratislava; Slovakia
marian.runanin@flaw.uniba.sk
ORCID: 0009-0003-8989-0803

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Disciplinary liability, and especially that of judges, is becoming an increasingly relevant topic at the moment. It is receiving attention from various perspectives - be it constitutional, administrative, theoretical or historical. The increased interest of a wide range of persons in the subject has necessitated the need to hold an event that would provide a space for the exchange of knowledge across the aforementioned disciplines, but also across a wide variety of professions.

Therefore, we are pleased that on the 15th of November, 2024, a conference entitled "Legal and Ethical Aspects of Disciplinary Liability of Judges" was held at the Faculty of Law of Comenius University Bratislava (hereinafter also referred to as "**Faculty**") under the patronage of the Department of Theory of Law and Philosophy of

Law of the Faculty within the VEGA project No. 1/0579/23 - Legal and Ethical Aspects of Disciplinary Liability in the Rule of Law.

Active participants, as well as members of the plenary of the conference, included inspiring individuals from across the sectors of legal education, legal science and legal practice - law students, representatives of law faculties and faculties of public administration, representatives of the Supreme Court of the Slovak Republic, Supreme Administrative Court of the Slovak Republic, Ministry of Justice of the Slovak Republic, Office of the Public Defender of Rights, as well as representatives from the Bar, the notary profession, and the Institute of State and Law of the Slovak Academy of Sciences. The conference was held in four panels, with a rich discussion and exchange of knowledge, views and practical experiences with the plenary participants after the contributions of each panel.

The conference was opened by Prof. JUDr. Mgr. Martina Gajdošová, PhD., who after welcoming the honoured guests drew attention to the interdisciplinarity of the conference topic. In her introduction, she highlighted the current trends in the context of disciplinary liability of judges, such as the continuous legislative development, which led to the introduction of judicial self-government, the establishment of the Judicial Council, the presence of a lay element, and a new approach to ethical rules. She pointed out that disciplinary liability had traditionally been a non-public and internal matter, but since 1991 much of it had become an area of public interest. Thus, two directions are present – on one hand, the public's right to information, and on the other, the need for trust in the internal processes of the profession. Professor Gajdošová thus highlighted the emerging trends, along with a look back at previous periods, while also outlining the themes resonating in the scientific discourse as well as at the upcoming conference.

Following the opening speech, the first contribution from the first panel of the conference day was made by the Deputy President of the Supreme Court of the Slovak Republic, JUDr. Andrea Moravčíková, PhD., who in her contribution "Freedom of speech of a judge and its limits given by ethical rules" addressed the issue of freedom of speech of judges, which is inextricably linked to their integrity and compliance with ethical principles. She pointed out that the freedom of expression of judges is a natural part of their rights, but it comes with significant limits. Those limits primarily arise from the ethical rules which require judges to maintain a professional demeanour and conduct that does not undermine public trust in the judicial system. Dr. Moravčíková stressed that judicial integrity lies not only in professionalism but also in the ability to maintain dignity and neutrality in emotionally charged situations. She also discussed the importance of disciplinary proceedings, which act as a prevention against serious violations, noting that only cases brought before a disciplinary panel indicate that the boundaries of acceptable behaviour have been crossed. Judges' public expressions must therefore be carefully worded and should avoid moments that could be misinterpreted by the media or the public. Particular emphasis has been given to the opinions of the Judicial Council, which provide an authentic interpretation of the ethical rules and help judges to discern what is permissible in their expressions. Dr. Moravčíková also presented several specific cases from practice that illustrated situations where the line between freedom of expression and unethical behaviour was thin.

The second panellist was Mgr. Michal Novotný, judge of the Supreme Administrative Court of the Slovak Republic. In his contribution entitled "Overview of the Supreme Administrative Court of the Slovak republic in Disciplinary Matters", Mgr. Novotný analysed the position and functioning of the Supreme Administrative Court of the Slovak republic (hereinafter also referred to as the "SAC SR") in the context of disciplinary justice and the challenges it faces. He referred to the confirmed

constitutionality and legality of the establishment of the SAC SR and highlighted its compliance with European obligations. He criticised the shortcomings caused by the takeover of the agenda prior to the adoption of the procedural rules and drew attention to the need for legislative changes, in particular the planned amendment to the Disciplinary Procedure Code. He spoke of reducing the risk of abuse of the right to initiate proceedings and also addressed the issue of associate judges whose position could be jeopardised by the filing of a disciplinary motion. Lastly, he stressed that judges' legal opinions should not be the subject of disciplinary proceedings unless they are serious breaches, and he called for the need to take into account the material corrective in assessing their conduct.

Selected aspects of the exercise of the judicial profession also from the perspective of a scholar were presented in the contribution by Prof. JUDr. Juraj Vačok, PhD., judge of the Supreme Administrative Court of the Slovak Republic and member of the Department of Administrative and Environmental Law of the Faculty, who in his presentation "Disciplinary liability of judges from the perspective of a member of a disciplinary panel" dealt with key issues of disciplinary proceedings, such as the personal competence of disciplinary panels, the nature of proceedings, the composition of the panels and the finality of decisions. He stressed the importance of external scrutiny of the professions to prevent the sealing off of systems and the abuse of self-governance. Professor Vačok critically discussed the challenges judges face when working in two different legal regimes, cassation and disciplinary. He discussed the status of associate judges, highlighting their contribution but drawing attention to organisational and ethical challenges, including the risk of conflicts of interest. On the issue of single-level proceedings, he assessed two-level proceedings as meaningful in certain cases. He also stressed the need to deal with disciplinary motions systematically and called for the introduction of a material corrective in the process to ensure a more just assessment of judges' actions.

As the conference was conducted in a hybrid format, the second panel started with an online contribution "Judicial Ethics and Discipline in the Kingdom of Hungary" by Prof. Dr. Ivan Halász, DrSc., from the Faculty of Public Governance and International Studies of the Ludovika University of Public Service, which provided the conference participants with a historical perspective on the embedding of judicial ethics and disciplinary liability of judges, specifically in the period of Kingdom of Hungary. Professor Halász chronologically presented the sources in which the legal regulation of this area appeared, such as the rulers' decrees, statutory articles, and the Statute of the Free Royal City of Modra. The legislative activity of the 19th century in the form of statutory articles symbolically started with the March Laws, but the laws on the position of the judiciary came only in the later period, for which the professor also explained the context of the process of their adoption and the contemporary debates.

The paper entitled "International Protection of Judges under Disciplinary Prosecution" was presented by Prof. JUDr. Ján Svák, DrSc. from the Department of International Law and International Relations of the Faculty. He explained that the acceleration of the transnational protection of judges began in connection with the legislative reforms in the last decade, in particular due to concerns about the abusive interference of the legislative and executive powers in the independence of the judiciary. Judges thus began to turn to supranational institutions to provide them with protection. He pointed to the most important sources, both at the global level and at the regional level, including conventions and soft-law documents, as well as the case-law of the Court of Justice of the European Union and the European Court of Human Rights. More specifically, he also drew attention to the case law of the ECtHR concerning the problem

of abuse of disciplinary proceedings for other purposes, such as persecution of judges. Finally, he also highlighted the relevance of the Consultative Council of European Judges, as the ECtHR itself refers in its decisions to soft-law documents originating from its activities.

The last panellist of this part was a guest from the Czech Republic, JUDr. Maxim Tomoszek, Ph.D. from the Faculty of Law of Palacký University Olomouc. Dr. Tomoszek in his contribution entitled "For what and how should judges be disciplinarily liable?" emphasised the constitutional framework of judges' liability for the performance of their duties. At the same time, he highlighted the importance of the ethical framework of disciplinary liability, which has its relevance in the continuous verification of a judge's moral integrity. He recalled that the disciplinary liability of judges has a constitutional and ethical dimension, serves to protect values such as independence, impartiality and dignity, and continuously verifies their moral integrity. He pointed out the unsuitability of criminal law instruments in this area and stressed the need to assess the conduct of judges also according to professional ethics and the principles of proportionality. Sanctions should be a last resort when an impetus is needed to change behaviour, whereas disciplinary proceedings are themselves a form of evaluation of specific behaviour. Dr Tomoszek stressed the importance of the judicial oath as a declaration of ethical principles but noted that judges often fail to adhere to these principles. Disciplinary proceedings should examine whether a judge's conduct has been ethical, combining both professional and external perspectives to ensure objectivity and public trust.

The penultimate panel was started by Prof. JUDr. Soňa Košičiarová, PhD. from the Faculty of Law of Trnava University in Trnava, who in her presentation entitled "How (not) to use the provisions of the Criminal Code in assessing the disciplinary liability of a judge" analysed the use of the provisions of the first part of the Criminal Code in disciplinary liability of judges, as permitted by Section 4 of the Disciplinary Procedure Code. She emphasised that subsidiarity applies only to substantive aspects of the law and that analogy was excluded in procedural matters. The subsidiary application of the substantive provisions of the Criminal Code is, in her view, limited by the different nature of disciplinary matters. Professor Košičiarová mentioned that the Supreme Administrative Court of the Slovak Republic and the Judicial Council of the Slovak Republic most often use provisions relating to the temporal scope, the definition of intent or the principles of imposing penalties when imposing disciplinary liability. At the same time, she drew attention to the problem of insufficient assessment of the seriousness of a judge's conduct, which is linked to the limited legal framework.

Afterwards, Assoc. Prof. JUDr. Matej Horvat, PhD. from the Department of Administrative and Environmental Law of the Faculty in his contribution "Independent and impartial court in disciplinary proceedings" analysed the independence and impartiality of the disciplinary panels of the Supreme Administrative Court of the Slovak Republic in the context of Article 6 of the European Convention on Human Rights (hereinafter also referred to as "ECHR"). He stressed that the Disciplinary Procedure Code has a procedural character with elements of substantive provisions, but it is not a codifying legislation. He discussed the legal regulation of associate judges, for which doubts have been raised as to compliance with Article 6 ECHR, in particular in the case of the automatic termination of an associate judge's office following the filing of a disciplinary motion. Associate Professor Horvat presented the case-law of the European Court of Human Rights, in particular decisions dealing with issues of judicial independence. He drew attention to the need to preserve guarantees of independence, such as the exclusion of external pressures from the government or parties to a dispute, while also mentioning the issue

of the appointment of judges in Poland. In his conclusion, Associate Professor Horvat assessed that the disciplinary panels of the SAC SR meet the requirements of an independent court under Article 6 of the ECHR and did not identify any reason that would call their independence into question. However, he suggested considering a change in the legislation so that the termination of the office of an associate judge would not be automatically linked to the filing of a disciplinary motion, which would strengthen the stability and perception of the independence of the panels.

The last panellist of this part was a member of the Department of Theory of Law and Philosophy of Law at the Faculty, Assoc. Prof. JUDr. Branislav Fábry, PhD., who in his contribution entitled "Disinformation and Legal Professions" analysed the concept of disinformation and its risks for legal professions. He drew attention to the problematic definition of disinformation, which is often used without sufficient conceptual anchoring, thus allowing the very authors of the fight against disinformation to spread manipulative information. He criticised the fact that the term was becoming a tool for political battles and for discrediting opponents. Associate Professor Fábry pointed to historical examples of disinformation, such as the trials conducted by Cicero, the accusations of Pasteur or Semmelweis, stressing that this is a long-term phenomenon, not just a problem of the present. However, social media, the press and artificial intelligence, in his view, exacerbate this phenomenon by selectively reporting information. The legal profession, according to Fábry, faces the risk that the label "misinformation" will become emotionally charged and polarise disciplinary proceedings. He concluded by warning that the use of the term disinformation in legal practice requires caution to avoid its misuse to silence opponents and increase the polarisation of society.

The last panel consisted of PhD. students of the Department of Theory of Law and Philosophy of Law at the Faculty. Mgr. Marián Ruňanin's presentation entitled "Generative Artificial Intelligence in Courts" dealt with the issue of using artificial intelligence in courts, in particular programs such as ChatGPT and Gemini. He presented the results of an empirical survey, which showed that a small part of judges actively uses this tool, and a large part recognise the benefits of these tools. Mgr. Ruňanin pointed out the shortcomings of these models and the risks associated with their use and recommended that they should be limited at present.

The last presentation entitled "Weakening of the judicial element in the disciplinary liability of judges" was delivered by a PhD. student of the same department, Mgr. Ema Mikulová. She explained that the judicial element has been weakened as a result of legislative changes effective from 2021 in connection with the establishment of the Supreme Administrative Court of the Slovak Republic, primarily due to the loss of influence of judicial councils. Based on the comparative findings from the Czech Republic, as well as the current case law of the ECtHR, one can thus ask what form the judicial or non-judicial element should take in the future. However, she emphasised the need for an analysis of decisions in order to get a better understanding of how the non-judicial element operates in practice.

The endless debates that unfolded both during the official session and informal breaks, are proof that the topic of disciplinary liability of judges is relevant and lively. This subject continues to captivate the attention of both legal scholars and the practicing public. The organisers are grateful for the large turnout, even during the late hours of Friday evening, which showed unwavering enthusiasm and intellectual curiosity for the topic.

This conference has clearly tapped into a significant demand within the legal community for further examination of judicial liability. Ultimately, the ongoing examination of this topic is vital to the health of democratic societies. By ensuring that

the mechanisms are effective and resistant to abuse, judiciary's credibility and the broader system's stability can be reinforced. The robust participation and rich conversations during the conference are an encouraging sign that this event has not only contributed to the scholar discourse but also inspired ongoing inquiry in this topic. The insights and ideas exchanged here are set to serve as a foundation for continued exploration, potentially influencing policy frameworks and academic discourse alike. We hope that the momentum generated here will fuel continued efforts to address critical issues with the depth and rigor this topic deserves.

Collection of papers of the individual presenters will be published under the same title as the conference in early 2025.