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SUBJECTS OF DISCIPLINARY PROCEEDINGS AGAINST A JUDGE UNDER THE LAWS OF UKRAINE AND SPAIN: A COMPARATIVE LEGAL ANALYSIS

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Bzova L.G. Subjects of disciplinary proceedings against a judge under the legislation of Ukraine and Spain: comparative legal analysis.

Disciplinary liability of judges is one of the key mechanisms of holding judges accountable. States are called upon to regulate this area, balancing two main interests – the need to ensure functional mechanisms of judicial accountability and to ensure real independence of judges. The main international legal instruments on the disciplinary liability of judges stipulate that states shall provide clear rules for which judges may be disciplined, excluding disciplinary liability for minor offences and for the interpretation of laws and facts. Disciplinary proceedings should either be conducted by an independent body. A proper disciplinary mechanism that holds all public officials accountable for misconduct is an important element of a credible justice system. At the same time, judicial discipline must be carefully balanced with the principle of judicial independence as a cornerstone of the rule of law. A miscarriage of justice that harms fundamental human rights and freedoms is not sufficient to hold a judge accountable. It must be attributed to the judge as a result of his or her performance of his or her functions in bad faith or through gross negligence.

Judicial disciplinary responsibility is the control over the activities of judges and magistrates, a legal institution that exists in any state governed by the rule of law and benefits society and the state as a guarantor of the judiciary. Constitutional principles mean that violations and sanctions are predefined by law, so they can be imposed on judges and magistrates through a fair procedure and with all procedural guarantees. Beyond the substance of the institution, the Spanish and Ukrainian legal systems largely diverge in terms of infractions, sanctions and processing, despite some similarities in the administrative and judicial bodies involved. The accountability of judges and magistrates is considered a logical counterpoint to the independence of the judiciary, and in particular the irremovability of office. This article examines the accountability of judges and magistrates, both from an organic and a statutory perspective, as well as the irremovability of judges and its impact on the independence of the judiciary.

Key words: disciplinary liability, judge, judicial system, status of a judge, High Council of Justice, General Council of Judges, disciplinary proceedings.

Бзова Л.Г. Суб'єкти розгляду дисциплінарного провадження щодо судді відповідно до законодавства України та Іспанії: порівняльно-правовий аналіз.

Дисциплінарна відповідальність суддів є одним із ключових механізмів притягнення суддів до відповідальності. Держави покликані регулювати цю сферу, збалансовуючи два основні інтереси – необхідність забезпечити функціональні механізми підзвітності суддів та забезпечення реальної незалежності суддів. Основні міжнародні нормативно-правові акти щодо дисциплінарної відповідальності суддів передбачають, що держави передбачають чіткі норми, за які судді можуть бути притягнуті до дисциплінарної відповідальності, виключаючи дисциплінарну відповідальність за незначні порушення та як тлумачити закони і факти. Дисциплінарне провадження має здійснюватися або незалежним органом. Належний дисциплінарний механізм, який враховує відповідальність усіх державних службовців за неправомірну поведінку, є важливим елементом надійної системи правосуддя. У той же час, судова дисципліна має бути ретельно збалансована з принципом незалежності суду як наріжного каменю верховенства права. Для притягнення судді до відповідальності не достатньо суддівська помилка, яка завдає шкоди фундаментальним правам і свободам людини. Вона ставиться в провину судді внаслідок здійснення ним своїх функцій недобросовісно або через грубу недбалість.

Суддівська дисциплінарна відповідальність - це контроль за діяльністю суддів і магістратів, правовий інститут, який існує в будь-якій правовій державі і приносить користь суспільству і державі як гарант судової влади. Конституційні принципи означають, що порушення і санкції заздалегідь визначені законом, тому вони можуть бути накладені на суддів і магістратів за допомогою справедливої процедури і з усіма процесуальними гарантіями. Поза суттю інституту іспанська та українська правові системи здебільшого розходяться в плані порушень, санкцій та обробки, незважаючи на наявність певної схожості в адміністративних та судових органах, що беруть участь. Відповідальність суддів і магістратів вважається логічним контрапунктом незалежності судової влади, і, зокрема, незмінюваності посади. Ця стаття присвячена дослідженню відповідальності суддів і магістратів, як з органічної, так і нормативної точки зору, а також незмінюваності суддів та її впливу на незалежність судової системи.

Ключові слова: дисциплінарна відповідальність, суддя, судова система, статус судді, Вища рада правосуддя, Генеральна рада суддів, дисциплінарне провадження.

Problem statement. The object of study in this paper is a phenomenon which is of great interest to society given the crisis situation of recent years. The legal and social role of judges and magistrates as administrators and supervisors of justice serving the common interests of modern society is of utmost relevance for the ethical development of citizens. Since ancient times, the figure of the judge has served as a paradigm of behaviour, emphasising the dedication and honesty embodied in his work, establishing him as a standard.

Purpose of the study is a study of the procedural aspects of bringing a judge to disciplinary responsibility under the laws of Ukraine and Spain

The state of the study of the problem. In Ukraine, the following scholars have dealt with the procedure for bringing judges to disciplinary responsibility: V.V. Gordieiev, S.B. Rabinovych, O.Z. Khotynska-Nor and others. The implementation of disciplinary proceedings in Spain has been studied by Almagro Uceda E., Martínez Alarcón, María Luz and others.

Presentation of the main material. Traditionally, the accountability of judges and magistrates has been seen as a natural consequence of judicial independence and, in particular, the inherent security of tenure. In order for there to be an appropriate balance between the two, it is important that judicial accountability is effective when appropriate and that its requirement does not become a means of dominating political power. According to Martínez Alarcón, "the disciplinary moment for judges and magistrates can no longer aim at maintaining a structure of hierarchical and bureaucratic dependence that guarantees that the desires of the disciplinary authorities prevail over jurisdictional activity... but rather... it must aim at the equal and effective performance of the function at the service of the users of justice" [9]. In the same vein, "it is worth remembering that, according to consolidated and uniform case law, the inspection and disciplinary powers vested in the General Council of the Judiciary limit respect for the exclusivity of the jurisdictional function and, consequently, the governing bodies of the judiciary do not have the power to review the exercise of this jurisdictional power, which, according to the constitutional mandate, is exclusively vested in judges and magistrates" [3].

First of all, we must say that the disciplinary liability of judges and magistrates is regulated in the Basic Law of the Judiciary, specifically in its Book IV, Title III, Title III, which contains articles 414 to 427. Regarding this responsibility, the General Council of Judges is presented as an indispensable figure, since it ensures, from an institutional point of view, the true independence of judges, without cracking, superior to other previous periods in which the supervision and control of the disciplinary regime has been entrusted to the Ministry of Justice, which implies a certain danger regarding the potential use of the disciplinary instrument as a method of jurisdictional control [11].

This regulatory order was influenced by the amendment made by Organic Law 4/2013, of June 28, on the reform of the Judicial Council, which amends Basic Law 6/1985, of July 1, on the judiciary. The objective of this reform was that the disciplinary procedure did not remain fundamentally inquisitorial, since it could not fall on a single person the decision of the body to initiate the procedure or appoint an instructor so that he would later have the power to decide whether or not to impose sanctions.

The instrument used to prevent this was the creation of a new person, the Disciplinary Sanctions Promoter, who was entrusted with the duty of initiating and conducting proceedings, as well as drawing up charges as a guarantee of the principle of prosecution. He was instructed to check the violations committed and support the prosecution against a «highly experienced employee» of the judicial service [1]. The manager of disciplinary sanctions is appointed by the Plenary Session of the General Council of Judges, which consists of judges of the Supreme Court and persons who have been engaged in this profession for more than twenty-five years. His powers must coincide with the powers of the judge of the General Council of Justice who appointed him, and the first one was appointed in advance, as

established by Art. 606. In addition, the powers granted to him are set out in Art. 605, and consist of «receiving complaints about the functioning of the judiciary, receiving complaints, as well as initiating and investigating disciplinary proceedings and filing charges before the Disciplinary Commission».

Thus, we see that this person is given the power to direct the proceedings to a single position, although it is true that in exceptional cases he can expressly authorize, with sufficient justification, one of the Council's lawyers who assists him in the execution of specific instructions in a disciplinary case, provided that the person to whom it is delegated occupies a career as a judge, as required by Art. 607.3. Taking into account the general provisions governing this figure, it is reflected that its inaction can be corrected by the Standing Commission, which may, ex officio or at the request of a party, demand the violation of the disciplinary procedure, since there are two ways: an appeal can be filed with the Standing Commission, as reflected in Art. 608.1, against the decision taken by the Organizer of the Promotion, not to initiate disciplinary proceedings or to continue the submission of the one already initiated, thus, if the Standing Committee supports the appeal, the relevant disciplinary proceedings will be initiated or continued in accordance with Art. 608, paragraph 2. Another option is to authorize the Standing Committee ex officio to order the head of the disciplinary sanction to initiate or reopen disciplinary proceedings, as provided for in Art. 608 in its paragraph 3 provides.

According to this synopsis, the Disciplinary Commission is simply a «court», since it is responsible under Art. 604, paragraph 1, in order to «resolve disciplinary proceedings initiated for serious and very serious misconduct and impose, if necessary, appropriate sanctions on judges and magistrates», setting up their agreements as «challenged within one month by appeal to the Plenum», as provided for in Art. 604 in part 2. The Disciplinary Commission will be made up of the same individuals for the five years that each Council will last, with the aim of professionalizing the institution and, in addition, it reflects the proportional composition of the Plenum, since, on the one hand, three of its total members must be beaved by a group of «lawyers of recognized competence» [1].

For its part, since the Basic Law 4/2013 entered into force, the plenary session of the General Council was entrusted, among its powers, with «the resolution of those disciplinary proceedings in which the proposed sanction consists of dismissal from the judicial career», according to Art. 599.1.10º, in relation to Art. 604.1 in fine, as well as «resolution of appeals filed against agreements on the imposition of a disciplinary commission» under Art. 599.1.11º.

It should be critically noted that the inclusion of the Commissioner for Disciplinary Prosecution in the system of responsibility of judges entails a number of shortcomings in relation to the Standing Commission. We also consider it a concern that the provisions of the Basic Law on the Judiciary that relate to this issue have not been coordinated with the legal reforms carried out in recent years regarding the regulatory framework for disciplinary liability and, as far as we know, there is no legislative development to address the legal situation. However, to be truly critical and fair in our assessment, it should be noted that there is an attempt to solve the problem contained in the 7th transitional provision of Organic Law 4/2013, stating that «until the LOPJ is modified in disciplinary matters, all references that the latter make to the Authorized Instructors of Disciplinary Cases will be understood as references to the Organizer of Disciplinary Actions, as well as to the lawyers of the General Council of Justice, who help him»; Despite the good intentions shown by the legislator in this formulation, not all the shortcomings related to the poor adaptation of the legal provisions of the Basic Law on the Judiciary have been eliminated, which, to say the least, is alarming, given the extremely sensitive issue that we are considering from the point of view of the independence of judges[1].

The issue of disciplinary liability in the judiciary is not absolutely "necessarily repressive (...), but, on the contrary, constitutes an important and necessary component of the correct balance between independence and responsibility, namely social responsibility" [4]. The periodic evaluation of judges is an important tool for maintaining the integrity and efficiency of the judiciary. By providing a detailed and objective analysis of judges' performance, this process contributes to ensuring a high level of professionalism and accountability of magistrates. It helps to identify strengths and areas for improvement, thus creating opportunities for growth and improvement. In addition, evaluation contributes to strengthening public confidence in the justice system by demonstrating transparency and commitment to quality and fairness.

Disciplinary proceedings against a judge are a set and sequence of procedural actions of the High Council of Justice, the person (judge) being brought to disciplinary responsibility, the person who filed the complaint, and other participants in the disciplinary proceedings to consider and resolve the case in the area of official discipline, regulated by the law [5]. It is worth noting that disciplinary sanctions should be applied in accordance with the principle of proportionality. If an authorised entity has decided to impose a disciplinary sanction on a judge that prohibits the judge from administering justice in a particular court, such a judge shall be subject to temporary suspension from the administration of

justice from the moment the decision to impose the said disciplinary sanction is made. If a judge has any outstanding disciplinary sanctions, a more severe disciplinary sanction should be imposed on him or her. In addition, a judge who has an outstanding disciplinary sanction shall be deprived of the opportunity to participate in the competition for a judicial position.

O.Z. Khotynska-Nor points out that compared to previous periods of judicial reform, the current one is distinguished by the «severity» of the introduced changes in the field of regulatory regulation of bringing judges to disciplinary responsibility [5]. In particular, the logical, structural and systematic methods of analysis of certain provisions of the current Law No. 1402-VIII made it possible to conclude that the grounds for bringing judges to disciplinary responsibility are not exhaustive, as well as that most of them provide for the possibility of applying the most severe type of disciplinary sanction – a motion for the dismissal of a judge from office.

In accordance with Article 108 of the Law of Ukraine «On the Judiciary and the Status of Judges», disciplinary proceedings against a judge are carried out by the disciplinary chambers of the High Council of Justice in accordance with the procedure established by the Law of Ukraine «On the High Council of Justice», taking into account the requirements of this Law [9].

The Law of Ukraine of July 14, 2021 No. 1635-IX «On Amendments to Certain Legislative Acts of Ukraine Regarding the Procedure for Election (Appointment) to the Positions of Members of the High Council of Justice and the Activities of Disciplinary Inspectors of the High Council of Justice», which entered into force on August 5, 2021, significantly changed the procedure for conducting disciplinary proceedings against judges, provides for the establishment of a service of disciplinary inspectors of the High Council of Justice, to whom disciplinary complaints are distributed and who have become participants in the disciplinary case [7].

The disciplinary function of the HCJ has been restored since November 1, 2023. In connection with the entry into force on October 19, 2023 of the Law of Ukraine dated September 6, 2023 No. 3378-IX «On Amendments to the Law of Ukraine «On the Judiciary and the Status of Judges» and Certain Laws of Ukraine on Changing the Status and Procedure for the Formation of the Service of Disciplinary Inspectors of the High Council of Justice» and the enactment of the Law of Ukraine dated August 9, 2023 No. 3304-IX «On Amendments to Certain Laws of Ukraine on the Immediate Resumption of Consideration of Cases on Disciplinary Liability judges» on October 19, 2023, the High Council of Justice adopted Decision No. 997/0/15-23 on the resumption of the automated distribution of complaints among members of the HCJ regarding the disciplinary misconduct of a judge from November 1, 2023.

Paragraph 237 of Section III «Final and Transitional Provisions» of the Law of Ukraine «On the High Council of Justice» establishes that temporarily, until the day of the start of the work of the Disciplinary Inspectors Service of the High Council of Justice, the powers of the Disciplinary Inspector are exercised by a member of the Disciplinary Chamber (rapporteur) determined by the automated system for the distribution of cases. Such a rapporteur shall not participate in the voting of the Disciplinary Chamber when making a decision to bring a judge to disciplinary responsibility or to refuse to bring a judge to disciplinary responsibility.

In pursuance of the provisions of parts two, three, and four of Article 26 of the Law of Ukraine «On the High Council of Justice», the HCJ in 2023 determined the personal composition of three Disciplinary Chambers, today each of the three Disciplinary Chambers includes five members of the HCJ.

According to part three of Article 42 of the Law of Ukraine «On the High Council of Justice», disciplinary proceedings include:

1) preliminary inspection of a disciplinary complaint, study of materials to establish signs of a disciplinary offense committed by a judge, making a decision to leave a disciplinary complaint without consideration and return, refusal to open a disciplinary case or open a disciplinary case;

2) preparation of a disciplinary case for consideration, consideration of a disciplinary case and adoption of a decision on bringing a judge to disciplinary responsibility or on refusal to bring a judge to disciplinary responsibility;

3) consideration of a complaint against a decision to bring a judge to disciplinary liability or to refuse to bring a judge to disciplinary responsibility [8].

Returning to the disciplinary offences regulated by the legislation of the two states, we find that only 11 of them are approximately identical, the rest are formulated either more generally or more specifically. Some of the disciplinary deviations have caused various disputes and debates among practitioners and doctrine, leading to different arguments in favour of the view on whether açomin should be formulated in a general or limited way. Thus, with regard to the legal formulation of disciplinary offences of magistrates, the specialised literature argues that despite the fact that a limited list would reduce or eliminate subjectivity in the qualification of actions as disciplinary offences, it is believed that this provision has two drawbacks:

– firstly, there may be situations of actions that, although they do not bring a certain value, should not be considered as disciplinary offences, since they are not punishable by law;

– secondly, it may appear that certain actions that have a minor impact on labour relations, without legal or material significance, are subject to sanction only because they are on the restrictive list of the law [2].

Conclusions. Thus, the bodies authorised to conduct disciplinary proceedings against a judge in Ukraine are the High Council of Justice and in Spain - the General Council of Judges. They consider complaints against decisions to bring a judge to disciplinary responsibility; decide on the establishment of bodies to hear cases of disciplinary responsibility of judges. The general rule is that disciplinary offences should relate to the manner in which the professional activity is carried out, not to the legality of the judgement or ethical breaches. Only as an exception, disciplinary liability of judges is allowed for a certain degree of culpable violation of legal norms in the course of judicial activity, which requires careful regulation of this ground and great caution in its application

REFERENCES:

1. Almagro Uceda E. Responsabilidad de jueces y magistrados: aspectos disciplinarios y penales. URL: https://crea.ujaen.es/server/api/core/bitstreams/a58aeab3-0243-49f3-8222-3eed87280f63/content.
2. Baltag, D., Ghernaja G.-C. Răspunderea şi responsabilitatea juridică a judecătorilor în exercitarea justiţiei: Monografie. Chişinău: ULIM, 2012, p. 201-202.
3. Escribano Testaut, Pedro (2009), "La responsabilidad disciplinaria de los Jueces y Magistrados", La responsabilidad personal del juez, Estudios de Derecho Judicial, CGPJ, Madrid, p. 232.
4. Fernandes, João Marcelo Negreiros. Reflexões sobre a responsabilidade judicial no Estado de Direito contemporâneo. Revista Jus Navigandi, ISSN 1518-4862, Teresina, ano 17, n. 3279, 23 jun. 2012. URL: https://jus.com.br/artigos/22067.
5. Hordieiev V.V. Dystsyplinarna vidpovidalnist suddiv. Topical Issues of Procedural Law in Ukraine: Scientific monograph. Riga, Latvia: "Baltija Publishing", 2025.r. 301–332.
6. Khotynska-Nor O. Dystsyplinarna vidpovidalnist vs. nezalezhnist suddiv. *Pravo Ukrainy*. 2018. № 3. S. 110–122.
7. Law of Ukraine «On Amendments to Certain Legislative Acts of Ukraine Regarding the Procedure for Election (Appointment) of Members of the High Council of Justice and Activities of Disciplinary Inspectors of the High Council of Justice». The Official Bulletin of the Verkhovna Rada of Ukraine (BVR), 2021, № 38, Article 320. URL: https://zakon.rada.gov.ua/laws/show/1635-20#Text.
8. Law of Ukraine «On the High Council of Justice». *The Official Bulletin of the Verkhovna Rada of Ukraine (BVR),* № 7-8, Article 50 URL: https://zakon.rada.gov.ua/laws/show/1798-19#Text.
9. Law of Ukraine «On the Judiciary and the Status of Judges». *The Official Bulletin of the Verkhovna Rada of Ukraine (BVR),* 2016, №. 31, Article 54 URL: https://zakon.rada.gov.ua/laws/show/1402-19#Text.
10. Martínez Alarcón, María Luz (2004), La independencia judicial, Centro de Estudios Políticos y Constitucionales, Madrid, p. 345.
11. Organic Law 6/1985, of 1 July, on the Judiciary. URL: https://www.boe.es/eli/es/lo/1985/07/01/6/con.