JUDGES' DISCIPLINARY LIABILITY FOR APPARENT AND FLAGRANT CONTEMPT OF PROVISIONS OF LAW VERSUS PRINCIPLE OF JUDICIAL INDEPENDENCE

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1. INTRODUCTION

Disciplinary liability is defined as a characteristic legal institution of discipline and self-control of organisationally and legally selected social groups with regard to the specificity of the aims they pursue and conditions of their operation as well as the resulting need to differentiate requirements concerning professional and ethical standards laid down for those groups. The specificity of disciplinary liability is looked for in the nature of relations that this type of legal liability concerns. It is indicated that the basis for disciplinary liability is formed by the conviction that it is reasonable to leave some issues connected with the activity of a particular milieu for this group to deal with on its own. Disciplinary offences concern the infringement of some rules of conduct in a given milieu and the state enforces appropriate bodies of the group to deal with them. What supports that is the conviction that representatives of a given milieu know its specificity better and, as a result, can apply sanctions that will be more effective and efficient.[1]

In accordance with Article 107 § 1 of the Act of 27 July 2001: Law on the common courts system[2] (hereinafter LCCS), a disciplinary offence can constitute a company-related misdeed, including apparent and flagrant contempt of the provisions of law

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1 W. Kozielewicz, *Odpowiedzialność dyscyplinarna sędziów, prokuratorów, adwokatów, radców prawnych i notariuszy*, Warszawa 2016, pp. 13–14.

2 Consolidated text, Dz.U. 2018, item 23.

or infringement of the authority's dignity. The division, actually inseparable,[3] in spite of what is stated in literature,[4] is practically significant because of guarantees, indicating, at least in a general way, the scope of disciplinary liability. It is necessary to take into account that there is no principle of statutorily determined features in disciplinary law.[5] Inter alia due to that, the judicial decisions indicate that Article 107 § 1 LCCS constitutes a material basis for judges' disciplinary liability that contains general features of a disciplinary tort, which are determined in a disciplinary court's judgment and should be in the form of an unambiguous specification of the tort as a company-related misdeed or infringement of the authority's dignity, and a precise indication of the norms of a particular legal act infringed by a judge or a detailed description of his/her conduct that infringes the authority's dignity, respectively.[6]

The above-mentioned provision clearly indicates that apparent and flagrant contempt of the provisions of law in the course of proceedings conducted by a judge is one of the forms of a company-related misdeed.[7] It is assumed in case law that contempt of law is apparent in nature when it is easy to confirm (one can apply an adequate provision without a deeper analysis), does not raise any doubts and results directly from the wording of the provisions. On the other hand, flagrant contempt of law means one that should be recognised as significant, large-scale and resulting in serious consequences for the interests of parties to or other participants of the proceedings (or at least it jeopardises the rights and important interests of the parties to the proceedings) or constitutes a serious threat to the system of justice administration.[8] In the context of the latter concept, the emphasis is placed on

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[3] There are situations when an act committed by the accused judge can constitute a company-related offence and infringement of the authority's dignity at the same time, see e.g. the judgment of the Supreme Court-Disciplinary Court of 7 July 2004, SNO 26/04, OSNSD 2004 No. 2, item 36 and judgment of the Supreme Court-Disciplinary Court of 24 May 2011, SNO 19/11, OSNSD 2011, item 3.

[4] J. Sawiński, [in:] A. Górski (ed.), *Prawo o ustroju sądów powszechnych. Komentarz*, Warszawa 2013, p. 550.

[5] See A. Siuchniński, Sz. Krajnik, *Analiza porównawcza węzłowych zagadnień prawa i postępowania dyscyplinarnego w sprawach należących do kognicji Sądu Najwyższego*, OSNSD 2011, pp. 326–328; W. Kozielewicz, *Odpowiedzialność dyscyplinarna sędziów. Komentarz*, Warszawa 2005, p. 77.

[6] Judgment of the Supreme Court-Disciplinary Court of 23 January 2008, SNO 89/07, OSNSD 2008, item 2; also see judgments of the Supreme Court-Disciplinary Court: of 24 May 2011, SNO 19/11, OSNSD 2011, item 3; of the Supreme Court-Disciplinary Court of 18 July 2014, SNO 29/14, OSNSD 2014, item 45.

[7] This specific form of a company-related misdeed was exposed for the first time after the amendment to Article 80 of the Act of 20 June 1985: Law on the common courts system (consolidated text, Dz.U. 1994, No. 7, item 25), introduced by the Act of 15 May 1993 amending the Acts: Law on the common courts system, on Public Prosecution, on the Supreme Court, on the Constitutional Tribunal, on the National Council of the Judiciary and on the establishment of appellate courts (Dz.U. 1993, No. 47, item 213).

[8] Judgments of the Supreme Court-Disciplinary Court: of 28 October 2011, SNO 40/11, OSNSD 2011, item 49; of 27 June 2002, SNO 18/02, OSNSD 2002, No. 1–2, item 9; of 8 March 2018, SNO 3/18, LEX No. 2511520. A certain tip for the recognition of a feature of flagrant contempt of the law may be found in the cassation judgments of the Supreme Court, i.e. judgments in which flagrant contempt of the law was recognised and constituted grounds for cassation in accordance with Article 523 § 1 CPC. However, it should be remembered that not every case of flagrant contempt of the law is also apparent.

the negative consequences that result from the infringement of law. Thus, the loss of force or the correction of a wrong judgment as a result of an appeal can have impact on the occurrence of the reason for a judge's liability for a company-related misdeed.[9] It should be highlighted, however, that a judgment issued with flagrant infringement of law, to a smaller or bigger extent, will damage public opinion about the image of the system of justice administration and thus undermine its authority. Due to that, elimination of a judgment or its change in the course of the second-instance supervision can only sometimes limit negative consequences for the justice administration system but not eliminate them completely.

Judicial independence is one of the foundations of the right to a fair trial as well as the functioning of the court system at all as a separate power.[10] In accordance with Article 178 of the Constitution of the Republic of Poland, judges, within the exercise of their office, shall be independent and subject only to the Constitution and statutes. The Constitutional Tribunal case law indicates that judges, within the exercise of their office, are not independent of statute. Quite the opposite, statute determines their action unconditionally and, in fact, judges are subordinated to the entire system of the sources of law in force. It is assumed that judicial independence consists of: (a) impartiality in the relations with the parties to the proceedings; (b) independence of non-judicial bodies; (c) autonomy in the relations with authorities and other judicial bodies; (d) independence of social factors; and (e) a judge's internal independence.[11]

It is worth highlighting the dual nature of the principle of judicial independence. On the one hand, it guarantees a judge certain systemic and institutional comfort within the exercise of his office and, on the other hand, it imposes an obligation on him, which is expressed in an order not to fall under whatever influence of both the representatives of public authorities' bodies and parties to the proceedings.[12] The regime of disciplinary liability safeguards inter alia this obligation.

In a model approach, disciplinary proceedings constitute a guarantee of judicial independence. It is indicated in literature that: "disciplinary proceedings protect a judge against unreasonable accusations, which are unavoidable consequences of taking independent procedural decisions. Disciplinary liability prevents missing supervision of a judge. Court administration bodies cannot impose any penalties

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[9] It is indicated in case law that there is a lack of a flagrant level of contempt of the law, e.g. when a defective judgment in the form of order was issued but reservation was filed and the judgment did not enter into force; see judgment of the Supreme Court-Disciplinary Court of 28 October 2011, SNO 40/11, OSNSD 2011, item 49.

[10] For more on the issue of judicial independence, see: A. Łazarska, *Niezawisłość sędziowska w sprawowaniu urzędu*, [in:] R. Piotrowski (ed.), *Pozycja ustrojowa sędziego*, Warszawa 2015, p. 84 et seq.; Z. Witkowski (ed.) et al., *Prawo konstytucyjne*, Toruń 2006, pp. 509–510.

[11] See P. Wiliński, *Prawo do sędziego – bezstronnego i niezawisłego*, [in:] C. Kulesza (ed.), *System prawa karnego procesowego. Tom VI. Strony i inni uczestnicy postępowania karnego*, Warszawa 2016, p. 684, and judgments of the Constitutional Tribunal referred to therein: of 24 June 1998, K 3/98, OTK 1998, No. 4, item 52; of 14 April 1999, K 8/99, OTK 1999, No. 3, item 41; of 27 January 1999, K 1/98, OTK 1999, No. 1, item 3; compare judgment the Supreme Court-Disciplinary Court of 13 April 2015, SNO 13/15, OSNSD 2015, item 22.

[12] See W. Sanetra, *Kilka refleksji na temat niezawisłości sędziów*, [in:] R. Piotrowski (ed.), *Pozycja ustrojowa sędziego*, Warszawa 2015, p. 189.

whatsoever on a judge".[13] Apart from that, disciplinary liability constitutes a legal instrument the function of which is to properly shape a judge's attitude both in the professional sphere and in private life. That is why, the scope of disciplinary liability does not only cover the strictly professional sphere connected with the performance of professional duties but also the appropriate moral attitude, which is reflected in the resistance to the influence of others when making judgments and avoidance of conduct that might constitute threats to his/her independence and objectivity.[14]

The principle of judicial independence is strictly connected with the principle of a court's jurisdictional autonomy. A court's independence in the field of establishing facts and interpreting law, and next making judgments based on facts and law, ensures that a judge feels responsible for the issued judgment,[15] which also constitutes an axiological justification for disciplinary liability for apparent and flagrant contempt of the provisions of law. Obviously, a judge of a court of appeal cannot be held disciplinarily liable based on, e.g. the fact of making use of prejudicial questions (Article 441 Criminal Procedure Code, Article 390 Code of Civil Procedure), which will result in the limitation of the independence of the court asking such question in case a resolution is passed. Similarly, a prejudicial question addressed to the Court of Justice of the European Union (CJEU) does not constitute a disciplinary tort because Article 267 TFEU[16], which lays down such a right of national courts, is part of the national legal order in the same way as Article 193 of the Constitution of the Republic of Poland concerning prejudicial questions to the Constitutional Tribunal. The use of prejudicial questions alone is connected with interpretational doubts of a court adjudicating in a particular case that are under the protection of judicial independence even if a court or tribunal to which a question is addressed does not share them.

As it is mentioned in the theory of law, the expression of values constituting legal (systemic) axiology by the principles of law is connected with allotting them particular structural and functional significance. The former (structural) is associated with attributing the feature of hierarchical supremacy to principles. The latter (functional) includes the role of principles in legal reasoning that first establishes directions of the processes of law creation and next the processes of law interpretation and application. However, the above-mentioned fundamental features do not eliminate controversial issues that are sometimes also noticed in dogmatic-legal dimensions. It can concern, e.g. the principles of law operating the "more or less" scheme, the fact that they are challengeable, and the mechanism of weighing principles correlated or not with the principle of proportionality.[17] The principle of

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[13] W. Kozielewicz, *Odpowiedzialność dyscyplinarna sędziów. Komentarz*, *op. cit.*, p. 74; also see: L. Garlicki, *Polskie prawo konstytucyjne. Zarys wykładu*, Warszawa 2011, p. 348; B. Banaszak, *Prawo konstytucyjne*, Warszawa 2004, p. 670.

[14] See § § 9 and 10 *Zbiór Zasad Etyki Zawodowej Sędziów i Asesorów Sądowych*, adopted by a resolution of the National Council of the Judiciary of 13 January 2017, No. 25/2017.

[15] Resolution of 7 judges of the Supreme Court-Disciplinary Court of 11 October 2002, SNO 29/02, OSNSD 2002, item 36 and literature cited therein.

[16] Treaty on the Functioning of the European Union, Dz.U. 2004, No. 90, item 864/2.

[17] L. Leszczyński, *Zasady prawa – założenia podstawowe*, Studia Iuridica Lublinensia 2016, No. 1 (Vol. XXV), p. 13.

judicial independence, like other principles of law, does not have a clear scope of application. It is the assessment of the weight and significance of a given principle in a particular case that decides whether and to what extent it will be applied. Due to that, the principle of independence is binding, as Ronald Dworkin put it, following the more or less model, unlike in case of other standard legal principles that function following the either-or pattern.[18] This feature seems to be a basis for the issue of establishing the limits of judges' disciplinary liability, which constitutes one of the mechanisms protecting the principle of legalism.

As early as in the interwar period, it was indicated in literature that independence is not a synonym of irresponsibility and cannot justify a lazy or incompetent judge who is liable in accordance with the law on the common courts system.[19] The possibility of transferring, suspending and recalling a judge from office can occur only in situations prescribed in statute (Article 180 para. 2 Polish Constitution). The principle that a judge shall be non-removable is perceived as one of the fundamental guarantees of judicial independence.[20] Due to that, a properly developed model of disciplinary liability constitutes an inevitable component of non-removability of judges. Disciplinary proceedings should be a specific safety valve, a way to self-purification of the judiciary.[21] The catalogue of disciplinary penalties, especially the most severe ones, i.e. removal from office, transfer to another bench or removal from position (Article 109 § 1(3)–(5) LCCS) undoubtedly constitute measures considerably interfering in a judge's professional status. Because of that, their application should be close to the standards developed in criminal law as far as guarantees are concerned, which is safeguarded in particular by Article 128 LCCS, in accordance with which matters that are not regulated in Articles 107–127 LCCS should be dealt with in accordance with the provisions of the Criminal Procedure Code and the Criminal Code and take into account differences resulting from the nature of the disciplinary procedure.[22]

Apart from what type of law should be applied, it is not less important who applies it. The question about the limits of a judge's liability for a discussed company-related misdeed is connected with the model of disciplinary procedure, in particular the entitlements of bodies that do not belong to the judicial power. Indeed, it does not seem to be erroneous to state that the more independent of the executive power disciplinary proceedings are, the further the implementation of disciplinary law can reach; it can constitute a further reaching interference in the sphere of judicial independence without the infringement of that principle. The more independent a disciplinary court is and the greater guarantees of objectivity occur in

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[18] R. Dworkin, *The Model of Rules*, [in:] G. Hughes (ed.), *Law, Reason and Justice*, New York–London 1969, following: L. Morawski, *Zasady wykładni prawa*, Toruń 2014, pp. 132–133.

[19] S. Gołąb, *Organizacja sądów powszechnych*, Kraków 1938, p. 18. It is worth mentioning that in the course of negotiations concerning the Constitution of 1921, judicial independence was defined as "exemption of judges from whatever influence of external factors" (*ibid.*, p. 17).

[20] W. Skrzydło, *Konstytucja Rzeczypospolitej Polskiej. Komentarz do art. 180*, LEX 2013.

[21] G. Ławnikowicz, *Idea niezawisłości sędziowskiej w porządku prawnym i myśli prawniczej II Rzeczypospolitej*, Toruń 2009, p. 357.

[22] For more, see: A. Błachnio-Parzych, *Przepisy odsyłające systemowo. Wybrane zagadnienia*, Państwo i Prawo No. 1, 2003, pp. 43–54.

disciplinary proceedings, to a lesser extent the principle of judicial independence limits the scope of disciplinary bodies' cognition in the context of examination of the possibility of committing a company-related misdeed consisting in apparent and flagrant contempt of the provisions of law.

The amendments to the Law on the common courts system introduced by the Act of 8 December 2017 on the Supreme Court[23] and the Act of 20 July 2018 amending the Act: Law on the common courts system and some other acts[24] implemented a series of changes in the system of disciplinary bodies of justice administration and made them dependent on the Minister of Justice. It is not necessary to analyse all of the changes for the purpose of this paper. However, it is worth indicating the most significant ones that can have impact on disciplinary bodies' and disciplinary judges' independence. While in the former legal system in general all judges of a court of appeal were the first-instance disciplinary judges (with the exception of the "function holding judges") and a disciplinary bench members in a given disciplinary case were selected at random from all the judges of that group, as of 3 April 2018 the Minister of Justice, having consulted the National Council of the Judiciary of Poland, entrusts the duties of a judge of a disciplinary court (for a six-year term) operating within the court of appeal to a judge of a common court who has worked as a judge for at least ten years (Article 110a § § 1 and 3 LCCS). The Minister of Justice is also entitled to determine the number of judges in disciplinary courts within courts of appeal (Article 110c LCCS). Moreover, the Minister of Justice, not the National Council of the Judiciary as before, appoints a Disciplinary Representative of Common Courts Judges and his two Deputies for a four-year term (Article 112 § 3 LCCS), who can take over a case conducted by a disciplinary representative deputy of a district court as well as transfer a case to be conducted by this representative (Article 112a § 1a LCCS). Moreover, the Minister of Justice can appoint the Disciplinary Representative of the Ministry of Justice to conduct a particular case concerning a judge. The appointment of the Disciplinary Representative of the Ministry of Justice excludes another representative from taking action in a case. For the purpose of proceedings in a case concerning a disciplinary offence that matches the features of intentional offences prosecuted by Public Prosecution, the Disciplinary Representative of the Minister of Justice can also be appointed from among prosecutors nominated by the National Public Prosecutor (Article 112b § § 1 and 2 LCCS). Moreover, there is a new instrument that enables the Minister of Justice to interfere in a disciplinary case: it is an institution of objection to a representative's decision to refuse to initiate disciplinary proceedings. It means that there is an obligation to start disciplinary proceedings and the Minister of Justice's recommendations concerning the further course of disciplinary proceedings are binding for a disciplinary representative (Article 114 § 9 LCCS).

The adopted solutions increase considerably the influence of the executive power on the appointment of members of disciplinary bodies and the course of explanatory proceedings in disciplinary cases, which obviously does not create bet-

[23] Dz.U. 2018, item 5.
[24] Dz.U. 2018, item 1443.

ter conditions for objective hearing of a case by an impartial disciplinary court. To tell the truth, disciplinary cases are still heard within the structure of the judiciary, however, the competences of the Minister of Justice, especially those relating to the appointment of judges, must raise serious doubts as to independent functioning of disciplinary courts. As a result, this can lead to the so-called freezing effect among judges and misrepresent the protective function of disciplinary proceedings in relation to the principle of judicial independence.

2. IMPACT OF THE PRINCIPLE OF JUDICIAL INDEPENDENCE ON THE SCOPE OF DISCIPLINARY LIABILITY

According to an opinion expressed in literature, there is a characteristic justification of acting within the limits of judicial independence.[25] It seems, however, that judicial independence does not just lift disciplinary unlawfulness but limits the scope of disciplinary liability for a company-related misdeed in the form of apparent and flagrant contempt of the provisions of law at the level of the features of a disciplinary offence, i.e. a ban laid down in Article 107 § 1 LCCS, which is a condition for the recognition of this tort.[26]

The answer to the question where the borderline between the sphere of adjudication protected by judicial independence and the acts for which a judge should be held disciplinarily liable lies is an issue of fundamental significance. This is a task that disciplinary courts' judgments must deal with because, as it has already been mentioned above, the principle of statutory determination of a disciplinary offence is not binding in the Act: Law on the common courts system. According to the Constitutional Tribunal judgment of 27 February 2000, as far as disciplinary torts are concerned (unlike the types of offences determined in the Criminal Code), it is not possible to precisely classify prohibited acts. They are not statutorily determined because of objective inability to create a catalogue of conduct that jeopardises appropriate exercise of a company-related duties or the maintenance of professional dignity. Therefore, it is not possible to simply compare criminal and disciplinary proceedings within the aspect of guarantee-related norms. Disciplinary liability is connected with conduct that is in conflict with the rules of professional deontology, the authority and dignity of the profession, with acts violating the prestige of the profession. A disciplinary tort must be assessed not only from the normative point of view but also the professional, ethical and other ones.[27]

The content of Article 107 § 1 LCCS indicates that disciplinary liability for apparent and flagrant contempt of the provisions of law can concern, *lege non distinguente*, procedural as well as substantive law. At the same time, as it is indicated in case law, the interpretation of apparent and flagrant violation of the provisions of law

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[25] J.R. Kubiak, J. Kubiak, *Odpowiedzialność dyscyplinarna sędziów*, Przegląd Sądowy No. 4, 1994, p. 10.

[26] Compare W. Wolter, *Nauka o przestępstwie*, Warszawa 1973, p. 161.

[27] Judgment of the Constitutional Tribunal of 27 February 2000, K 22/00, Dz.U. No. 16, item 185.

should be carried out in a narrowing way. It results from the necessity to take into account the constitutional principle of judicial independence.[28]

Referring to the principle of judicial independence as a factor narrowing the scope of disciplinary liability seems to be clearer when the content of Article 107 LCCS is compared with Article 79 LCCS, pursuant to which a judge cannot refer to the principle of judicial independence and refuse to carry out orders within the scope of administrative activities if they belong to judicial duties based on statutory provisions as well as instructions concerning the efficiency of court proceedings; however, he/she can ask for the issue of an order in writing. This kind of a solution is approved of in case law and it is recognised as justified by the need to ensure efficient operation of courts.[29] It is emphasised, however, that administrative activities within the scope of judicial supervision cannot be extended to cover the sphere of adjudication or interpretation of the law,[30] although it is rightly emphasised in literature that the principle of judicial independence cannot be reconciled with administrative supervision of efficiency of proceedings.[31] Thus, if the legislator clearly excludes the admissibility of referring to the principle of judicial independence in Article 79 LCCS and does not make such a reservation in Article 107 LCCS, it means that judicial independence can constitute a circumstance limiting the scope of disciplinary liability.

There are no major controversies in case law over admissibility of disciplinary liability for apparent and flagrant contempt of the provisions of law that is not strictly connected with adjudication. Cases of violation of procedural norms meet with relatively common disciplinary response. Most often it concerns conduct consisting in lengthiness of proceedings or failure to meet deadlines for developing the justification of a judgment (Article 423 § 1 Criminal Procedure Code and Article 329 Code of Civil Procedure).[32]

A company-related offence can also include failure to fulfil an obligation to be acquainted with case files, which results in the adoption of erroneous factual assumptions in a given case and flagrant contempt of procedural law. It is possible, e.g. to recognise that it is a tort to groundlessly apply the mode prescribed in Article 335 Criminal Procedure Code (CPC) and accept a motion to issue a judgment without hearing as a result of the lack of thorough examination of the case files containing a psychiatric expert opinion indicating that the accused was insane at the moment of crime commission, which excluded admissibility of the application

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[28] Judgment of the Supreme Court-Disciplinary Court of 29 June 2015, SNO 39/15, OSNSD 2015, item 47.

[29] Judgment of the Supreme Court-Disciplinary Court of 7 September 2010, SNO 35/10, OSNSD 2010, item 46 (concerning an order of the head of department to hear the case by a substitute for a judge who got sick).

[30] See judgment of the Supreme Court-Disciplinary Court of 19 May 2004, SNO 19/04, OSNSD 2004 No. 1, item 23.

[31] For more, see: A. Łazarska, *Granice nadzoru administracyjnego w kontekście poleceń służbowych wydawanych sędziemu przez prezesa sądu co do liczby spraw wyznaczanych miesięcznie na wokandy. Glosa do wyroku SN z dnia 26 lutego 2015 r., SNO 3/15*, KRS 2015/3/8-12.

[32] For more, see T. Ereciński, J. Gudowski (ed.), J. Iwulski, P*rawo o ustroju sądów powszechnych. Ustawa o Krajowej Radzie Sądownictwa. Komentarz*, Warszawa 2009, p. 467 et seq.

of the mode prescribed in Article 335 CPC and Article 343 CPC.[33] Similarly, the issue of a judgment in the form of an order can be a disciplinary tort in a situation when the case files indicate there are justified doubts concerning sanity of the accused or the counsel for the defence is a judge's wife, or in case of interpleader concerning objects subject to forfeiture, or when a court referred a case to the first-instance court to reinitiate the evidence-related proceedings because evidence collected does not allow univocal recognition of the guilt and perpetration of the accused.[34]

It is also admissible to hold a judge disciplinarily liable in particularly serious cases of contempt of the law resulting from its apparently and flagrantly erroneous interpretation. As it is indicated in case law, "a judge's right to his own independent interpretation of provisions does not provide him with grounds to arbitrarily develop the content of the provisions interpreted and does not free him from afterthought in case he recognises that the interpretation he has applied departs from the uniform interpretation provided by the Supreme Court and, moreover, it is not approved of in the course of the second-instance supervision".[35] It is also not eligible to reduce a judge's duties to reading unambiguous provisions expressed in a colloquial language. As the Supreme Court emphasised in one of its judgments, "it should be obvious to every lawyer that phrases used in system-related statute on the violation of or compliance with the law concern the norms reproduced from the provisions and take into account the adopted methods of interpretation and the output of court practice, especially the judgments of the Supreme Court, which is obliged to safeguard interpretation and application of the law, and take into account a judge's obligation to get acquainted with at least the basic doctrinal works such as handbooks, commentaries and scientific articles".[36]

Disciplinary liability for the infringement of the provisions of law strictly connected with adjudication, especially the norms of substantive law, raises most controversies. The judgment of the Supreme Court-Disciplinary Court of 7 November 2013[37] states that the interpretation of Article 107 § 1 LCCS and the concept of apparent and flagrant contempt of the provisions of law therein must be carried out in conformity with the Constitution, thus without the infringement of the principle of judicial independence. It does not mean that a judge is "independent" of the provisions of law but it must be taken into account that the essence of the exercise of a judge's office consists in the interpretation and application of law in the course of which errors can be made. This especially concerns the essence of the exercise of a judge's office alone, which consists in adjudicating. A judge trammelled by disciplinary liability for errors made in the course of issuing judgments, especially

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[33] See judgment of the Supreme Court-Disciplinary Court of 25 February 2009, SNO 4/09, OSNSD 2009, item 3.

[34] See judgment of the Supreme Court-Disciplinary Court of 8 March 2018, SNO 3/18, LEX No. 2511520.

[35] Judgment of the Supreme Court-Disciplinary Court of 13 April 2015, SNO 13/15, OSNSD 2015, item 22.

[36] Judgment of the Supreme Court-Disciplinary Court of 12 July 2007, SNO 17/07, OSNSD 2007, item 58.

[37] SNO 31/13, OSNSD 2013, item 42.

in case of indefinite features of the offence (apparent and flagrant contempt of the provisions of law) could not be independent.

The disciplinary judgments of the Supreme Court repeatedly indicated admissibility of a judge's error, which in general shall not result in liability for a tort under Article 107 § 1 LCCS. The judgment of the Supreme Court-Disciplinary Court of 29 June 2015 emphasises that "a judge excessively trammelled by the threat of disciplinary liability would not be fully independent. (…) A judge can be held disciplinarily liable for errors in independent adjudication only exceptionally: solely for apparent and flagrant violation of the law that is obvious immediately and for everyone without going into details of the case and the need to analyse the factual and legal state".[38] At the same time, the judgment highlights that "a disciplinary offence consisting in apparent and flagrant contempt of the provisions of law can concern only the provisions that are not connected with adjudication itself but aim to ensure appropriate and efficient course of proceedings."[39]

The resolution of seven judges of the Supreme Court-Disciplinary Court of 11 October 2002[40] supports the approval of the specific right to errors, which was derived from the right to a judge's own independent interpretation of the law resulting from the principle of jurisdictional independence. Attention is drawn therein that procedural provisions determine the method and mode of eliminating legal errors made by judges in the course of adjudicating. The second-instance supervision makes it possible to correct inappropriate and sometimes even erroneous judgments either by quashing them or by introducing adequate corrections. It is clearly seen from this perspective that there is a need to treat disciplinary liability as *ultima ratio* among the instruments that are aimed at ensuring appropriate functioning of administration of justice. Due to that, it seems justified to assume that disciplinary liability is not be possible in case the consequences of apparent and flagrant contempt of the provisions of law can be eliminated in the course of appeal-related supervision or in the course of extraordinary appellate measures. Within this scope, the principle of judicial independence limits disciplinary liability, e.g. based on a criminal procedure through the prism of relative appellate reasons (Article 438 CPC) and grounds for cassation (Article 523 CPC).

Moreover, it is not possible to recognise commission of a disciplinary tort in situations when there is a scope of a court's free decision in the area of examining the occurrence of positive and negative conditions for the application of a particular norm that constitutes grounds for issuing a procedural decision. The Supreme Court judgment of 7 November 2013[41] draws attention to the fact that there is a circumstance when a court's decision expressed in the form of a judgment depends on

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[38] SNO 39/15, OSNSD 2015, item 47; also see the Supreme Court-Disciplinary Court judgments cited therein: of 29 October 2003, SNO 48/03, OSNSD 2003, item 60 and of 7 May 2008, SNO 45/08, OSNSD 2008, item 11.

[39] *Ibid*.

[40] SNO 29/02, OSNSD 2002, item 36.

[41] SNO 31/13, OSNSD 2013, item 42. The case concerned the institution of exclusion of a matter for separate hearing. In accordance with Article 34 § 3 CPC, it can take place when there are circumstances hampering joint hearing of cases, which undoubtedly constitutes grounds for assessment characteristic of a broad scope of a court's discretion.

factors that are based on assessment, which are against the recognition of the occurrence of a disciplinary offence consisting in apparent and flagrant contempt of the provisions of law. Quite the opposite, the interpretation of the concept of "apparent and flagrant contempt of the provisions of law" would constitute limitation of judicial independence. Approving of that opinion, one should notice that what justifies it is first of all the fact that in case of application of the provisions granting a court a broad scope of discretion, except for special cases of intentional violation of the law, there will be no obvious reasons for the recognition of the contempt of law.

The dominating stance in the judicature is one according to which a disciplinary offence consisting in apparent and flagrant contempt of the provisions of law can in general result from the infringement of the procedural provisions, which are not directly connected with adjudication as such. A different approach to the issue would be difficult to reconcile with Article 178 para. 1 Constitution under which judges, within the exercise of their office, shall be independent and subject only to the Constitution and statutes.[42] The constitutional law doctrine emphasises that judicial independence means, inter alia, that a judge cannot be held liable at all for the content of judgments he/she issues but, at the same time, it is highlighted that independence is limited by a judge's submission to the Constitution and statutes.[43] Therefore, although there is a principle of a judge's non-liability for a company-related misdeed consisting in contempt of the provisions of law that are not connected with adjudication alone, exceptions to the rule cannot be excluded. It seems that they concern situations in which a judge infringes the obligation to be subject to the Constitution and statutes in such a way that the principle of judicial independence does not protect him/her any longer.

Due to that, the opinion expressed in the Supreme Court-Disciplinary Court judgment of 16 June 2016,[44] in which it is emphasised that judicial independence unconditionally protects the sphere of adjudication (sentencing), seems to be too categorical. Not all adjudicating benches of the Supreme Court-Disciplinary Court have approved of this stance. For example, in the judgment of 18 April 2013,[45] it is highlighted that judicial independence should protect a judge against internal influence and attempts to affect the freedom of adjudication as well as ensure his/her independence in the process of establishing, analysing and assessing facts, and interpreting the law and applying it adequately to the established factual state. It is noticed, however, that all those aspects of judge's activities first of all must be implemented and next occur within the limits of the law in force. In case of

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[42] See judgment of the Supreme Court-Disciplinary Court of 13 December 2013, SNO 35/13, OSNSD 2013, item 46 and judgments referred to therein: resolution of 7 judges of the Supreme Court-Disciplinary Court of 11 October 2002, SNO 29/02, OSNSD 2002, item 36; judgments of the Supreme Court: of 29 October 2003, SNO 48/03, OSNSD 2003, item 60; of 29 June 2007, SNO 39/07, OSNSD 2007, item 56; of 27 June 2008, SNO 50/08, OSNSD 2008, item 64; of 7 May 2008, SNO 45/08, OSNSD 2008, item 11; of 17 June 2008, SNO 48/08, OSNSD 2008, item 14; of 15 November 2012, SNO 46/12, OSNSD 2012, item 42; and of 7 November 2013, SNO 31/13, OSNSD 2013, item 42; and the decision of the Supreme Court of 26 April 2005, SNO 18/05, OSNSD 2005, item 8.

[43] L. Garlicki, *Polskie prawo konstytucyjne*, *op. cit.*, p. 345.

[44] SNO 21/16, OSNSD 2016, item 31.

[45] SNO 6/13, OSNSD 2013, item 20.

exceeding the limits, not only "intervention" within the second-instance supervision is admissible but also disciplinary liability is possible, provided that the infringement of law by a judge at the same time also matches two criteria laid down in Article 107 § 1 LCCS, i.e. is apparent in nature and is flagrant. Because of that, the Supreme Court-Disciplinary Court adopted a stance in accordance with which covering the whole area of substantive law application with the principle of judicial independence would lead to a situation in which even intentional infringement of the provisions of that category would be unpunished, which forcibly convinces that such a conception should not be approved of.

The exercise of professional duties by a judge cannot go beyond the sphere of the empire attributed to the judiciary. It is indicated in case law that: "undoubtedly, interpretation remains within the sphere of normative phenomena, however, the function of interpretation cannot be transformed into a legislative function. In addition, an act of law interpretation performed by a judge cannot be only in conformity with his conscience. The right to creative interpretation undoubtedly does not constitute grounds for a judge to arbitrarily develop the content of provisions. A judge has the right and duty to identify the content of provisions but taking into account both basic principles of the law and well-known methods of interpretation, and those limits cannot be exceeded. Article 7 Constitution lays down the principle of legalism, i.e. the rule that the organs of public authority shall function on the basis of, and within the limits of, the law. The norm is also addressed to courts".[46]

It seems that in case of contempt of the provisions strictly connected with adjudication, where disciplinary liability is clearly in conflict with the principle of judicial independence, its scope would be close to the catalogue of conduct that would imply the need to hold a judge criminally liable for the offence of misuse of powers or failure to fulfil duties. There is a thesis approved of in literature, based on the interpretation of Article 231 CC and expressed in the resolution of the Supreme Court-Disciplinary Court of 18 November 2014,[47] pursuant to which the assessment of social harmfulness of an act taking into account both the subjective and objective aspects should be the criterion of delimiting a judge's disciplinary and criminal liability.[48] Due to the possibility of holding a judge criminally and disciplinarily liable for the same act, it is worth mentioning that the bottom level of social harmfulness setting the limit on recognising unlawfulness of an act should not constitute the limit being a condition for holding a judge disciplinarily liable at the same time. Thus, in any case, it should be considered whether the substantive content of an act, assessed through the prism of its quantifiers laid down in Article 115 § 2 CC, will justify – provided that an adequate assessment is made from the point of view of corporate harmfulness – the recognition of a disciplinary tort in the form of apparent and flagrant contempt of

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[46] Judgment of the Supreme Court-Disciplinary Court of 13 April 2015, SNO 13/15, OSNSD 2015, item 22.

[47] SNO 54/14, OSNSD 2014, item 63.

[48] See A. Barczak-Opustil, M. Iwański, [in:] W. Wróbel, A. Zoll (eds), *Kodeks karny. Część szczególna. Tom II. Część II. Komentarz do art. 212–277d*, Warszawa 2017, thesis 12 to Article 231; E.M. Guzik-Makaruk, E.W. Pływaczewski, [in:] M. Filar (ed.), *Kodeks karny. Komentarz*, Warszawa 2016, thesis 11 to Article 231 CC.

the provisions of law strictly connected with adjudication, thus especially the provisions of substantive law constituting defective judgment or omission of adjudicating in spite of the obligation existing in the light of the substantive provisions in force.

Discussing the framework of disciplinary liability, it is also worth taking into account a special approach to the substantive content of a disciplinary offence, which is defined as corporate harmfulness. To tell the truth, the term does not fit judges who, due to their office, do not make a corporation but, undoubtedly, emphasising harmfulness for the judicial corps focuses on assessment of the negative content of an act from the point of view of justice administration exercised by judges. As it is indicated in case law, the so-called corporate harmfulness that is a feature of a company-related misdeed laid down in Article 107 § 1 LCCS means social harmfulness within the meaning of criminal law supplemented by elements of harmfulness measured towards a professional milieu in which a judge operates, taking into account the protection of justice administration authority, the image of courts and judicial power as well as particular judges exercising it. The size of that harmfulness is also shaped by subjective factors concerning the accused, the size of damage, the method and circumstances of an act perpetration, and the type and significance of the rules infringed.[49] Thus, the difference between social harmfulness of an act in accordance with the Criminal Code and corporate harmfulness consists in the fact that the negative content of an act assessed within the regime of disciplinary liability should refer its objective measures to the interest of justice administration, e.g. which interest of justice administration a given act damages (its authority, court's prestige, efficiency of proceedings, etc.) and how significant the interest is for justice administration, to what extent it infringes or jeopardises it, and what the significance of the infringed judge's obligations is from the point of view of justice administration.

It seems that the high level of the negative content of an act can constitute a criterion indicating a need to initiate disciplinary proceedings against a judge and to abandon the protection resulting from the principle of judicial independence. It is obvious that it can only be an auxiliary criterion because it is not possible *in genere* to express a definite level of quantifiers of "corporate" harmfulness that would determine the need to initiate disciplinary proceedings and conclude them with a valid judgment issued by a disciplinary court recognising the commission of a disciplinary tort under Article 107 § 1 LCCS.

If holding a judge liable for the infringement of the provisions strictly connected with adjudication is controversial, the issue of a judge's liability for contempt of substantive law, belonging to this category of norms, containing norms that constitute grounds for adjudicating in a case, is even more controversial. The judgment of the Supreme Court-Disciplinary Court of 15 November 2012 reminds that: "a disciplinary offence defined in Article 107 § 1 LCCS consisting in apparent and flagrant contempt of the law can be committed by a judge only within the scope of court proceedings. In general, it can only consist in the infringement of such procedural provisions that are not connected with adjudication and are only aimed at ensuring efficient course

[49] Judgment of the Supreme Court-Disciplinary Court of 20 July 2011, SNO 31/11, OSNSD 2011, item 4.

of proceedings. It is so because the inclusion of the infringement of other provisions, especially substantive ones, in Article 107 § 1 LCCS cannot be in general reconciled with the principle of judicial independence".[50] However, as it has already been stated above, such an opinion seems to be too far-reaching. First of all, it is not justified in the light of the wording of Article 107 § 1 LCCS, where the legislator does not limit the scope of disciplinary liability for apparent and flagrant contempt of the provisions of law only to procedural provisions. Moreover, the Supreme Court-Disciplinary Court also drew attention to that in its judgment of 18 April 2013.[51]

Obviously, a broad scope of disciplinary liability for the infringement of substantive law would violate judicial independence, especially in view of the assessment-related nature of the criteria for establishing the level of apparent and flagrant infringement of the law. Apart from that, it would undermine the role of disciplinary proceedings, which in the relations within the judiciary, like in case of criminal law, should constitute *ultima ratio* instead of other instruments that are to ensure appropriate administration of justice, mainly standard and extraordinary appellate measures, which can lead to the correction of a defective judgment.

This is why, it is understandable that the recognition of a judge as guilty of apparent and flagrant contempt of the provisions of substantive law is rare and consists in extraordinary cases of intentional infringement of the law (in particular, the so-called judicial anarchy) or acts committed unintentionally but absolutely unambiguous, e.g. a case in which a judge sentences the accused for the offence under Article 178a § 1 CC but does not rule a penal measure in the form of a ban on driving motor vehicles, which is obligatory in the light of Article 42 § 2 CC.[52] It seems that one cannot exclude holding a judge disciplinarily liable for ruling a penalty, a penal measure, a compensatory measure or a security that is not prescribed in statute, especially if that offence results in the occurrence of absolute appellate grounds (Article 439 § 1(5) CPC) and damage to the authority of justice administration. Other cases are also mentioned in literature, e.g. the issue of a judgment without legal grounds whatsoever, flagrant infringement of the provisions of substantive and procedural law leading to depriving a party of the right to defence, and of course deprivation of liberty (arrest, temporary detention) that is factually groundless or not based on legal grounds.[53]

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[50] SNO 46/12, OSNSD 2012, item 42; also see: decision of the Supreme Court-Disciplinary Court of 26 April 2005, SNO 18/05, OSNSD 2005, item 8, and judgment of the Supreme Court-Disciplinary Court of 13 September 2011, SNO 34/11, OSNSD 2011, item 43 referred to therein.

[51] SNO 6/13, OSNSD 2013, item 20. In the case in which the judgment was issued, the unintentional company-related offence attributed to a judge consisted in giving permission to come to a court agreement in alimony proceedings between a defendant and minor plaintiffs represented by their mother, although the circumstances of the case indicated that the act was in conflict with the law and aimed at evading the law, which created a threat of hampering the enforcement of claims by entities that were the defendant's creditors (contempt of the provisions of Article 223 § 2 CCP in conjunction with Article 203 § 4 CCP and Article 135 § 1 Family and Guardianship Code).

[52] See judgment of the Supreme Court-Disciplinary Court of 3 February 2003, SNO 61/02, OSNSD 2003, No. 1, item 23.

[53] J.R. Kubiak, J. Kubiak, *Odpowiedzialność dyscyplinarna*, *op. cit.*, p. 11. There is another separate issue related to the matter, which can cause practical problems in the field of disciplinary

3. CONCLUSIONS

In the situation when the rule of law and order in a state and the separation of powers are endangered or have just been re-established, it is necessary to strengthen their guarantees; thus, the development of mechanisms ensuring judicial independence should also be more significant than in the states that have a stable legal system within the framework of the above-mentioned constitutional principles. It seems that *de lege lata* the statement concerning the occurrence of a threat to judicial independence is not groundless because it is connected with the already introduced or planned changes in the common courts system, including the Act on the Supreme Court, and the growing importance of populism in the public debate, which not only translates to penal populism as it happened before but also starts affecting the systemic sphere.

Such tendencies justify a more restrictive approach to the guarantees of the principle of judicial independence and, thus, a broader influence of that principle on the scope of a judge's disciplinary liability. In this context, it is worth quoting Ewa Łętowska's thought: "If we look at the contemporary legislations, crammed with various guarantees of judicial independence, actually concerning all spheres of the exercise of this office, we continually think that if they are necessary (and nobody negates it), it means that judicial independence is in fact fragile: for sure, it is constantly endangered from all sides and exposed to pressure. It is really meaningful".[54] In the light of this comment, it seems to be striking that there is a lack of a specific regulation demarcating the scope of disciplinary liability for apparent and flagrant contempt of the provisions of law from the sphere of conduct that is protected by the principle of judicial independence. Probably, it results from the fact that holding a judge disciplinarily liable used to be exercised within the framework of the judiciary structure,[55] which because of its nature was a direct addressee of the guarantees of judicial independence in the field of disciplinary substantive law. The disciplinary courts' entry into this sphere, as the presented case

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liability for a company-related offence. It concerns the fact that a court's adjudication is made collectively, which because of the secrecy of discussion makes it impossible to establish the course of voting, which could be considered to be apparent and flagrant infringement of the provisions of law. Due to that, it is rightly indicated in case law that "an offence consisting in participation in the issuing of a judgment, even a procedural one, by a court adjudicating collectively cannot be attributed to a judge because disciplinary liability is individual in nature (a judge is liable only for a tort he/she commits), a discussion is subject to full secrecy and an outvoted judge is not obliged to report a dissenting opinion" (judgment of the Supreme Court-Disciplinary Court of 7 November 2013, SNO 31/13, OSNSD 2013, item 42). In the judgment of the Supreme Court-Disciplinary Court of 13 December 2013 (SNO 35/13, OSNSD 2013, item 46) it was emphasised that as a rule a disciplinary offence consisting only in the participation in a procedural action undertaken by a court adjudicating collectively cannot be attributed to a judge. The only exceptions to the rule may concern the so-called judicial anarchy.

[54] E. Łętowska, *Dekalog dobrego sędziego*, Krajowa Rada Sądownictwa No. 1, 2016, p. 5.

[55] In the first instance at the appellate level, in the second instance by the Supreme Court-Disciplinary Court composed of all judges where a judge of the Criminal Chamber of the Supreme Court always presided over the adjudicating bench.

law shows, took place in extraordinary situations and constituted interference at the most and not the infringement of the principle of judicial independence.

The current regulation of disciplinary liability of judges laid down in Chapter II Section II LCCS has been considerably modified recently and extended the competence of the Minister of Justice, which constitutes only an element of far-reaching changes in the court system. The changes not only can undermine the protective function of disciplinary proceedings towards judicial independence but they can also constitute a real threat to it, especially because of instrumental use of the entitlements of the Minister of Justice. The problem forces us to attentively examine the issue of a borderline between a company-related misdeeds, which can be grounds for a judge's disciplinary liability, and a judge's actions connected with adjudication, which remain under the protection of the principle of judicial independence, although they are appropriate in the light of relevant norms.

The analysis of the judgments of the Supreme Court-Disciplinary Court indicates that it is not fully uniform. While there are no doubts concerning the recognition of the cases of the judicial anarchy and apparent and flagrant contempt of the provisions of law not strictly connected with adjudication as disciplinary torts, there is no agreement on the opinion that disciplinary liability should be applied to unintentional infringement of the provisions that constitute grounds for procedural decisions, especially the judgments bearing the merits of the matter. Regardless of the above-highlighted threats, in extraordinary situations it is also necessary to approve of the recognition of contempt of the provisions strictly connected with adjudication, including the norms of substantive law, as a disciplinary offence. Although judicial independence is indeed an interest of significant importance for justice administration, it would mean little if a judge infringing the law remained unpunished.[56] What would independent courts mean if judgments issued were unjust? It leads to a conclusion that in particularly justified circumstances of especially flagrant infringement of legal norms, not only intentional but also unintentional contempt of the law, it is admissible to use the mechanism of disciplinary liability of judges. In order to make it efficient, its application cannot be limited only to procedural provisions because those are norms substantive in nature and they constitute the main basis for the development of human rights and freedoms and, thus, also this area should be subject to disciplinary protection. It cannot be the case that an extremely incompetent judge uses the principle of judicial independence to avoid disciplinary liability. The argument of the principle of judicial independence cannot limit liability prescribed in Article 107 § 1 LCCS to such an extent.

The requirement that contempt of the law should be flagrant and apparent, to tell the truth, constitutes an unclear but possible to determine borderline between errors that should be just corrected in the course of the second-instance supervision or in the mode of extraordinary appellate measures and such errors for which a judge should be held professionally liable. In the context of the condition of appar-

[56] A judicial reproach (Article 40 LCCS) is a clearly admissible response to contempt of the law strictly connected with adjudication. Three reproaches result in the lengthening of a period necessary to be awarded higher remuneration (Article 91a § 6 in conjunction with § 3 LCCS).

ent infringement of the law, it is worth indicating the need to examine whether we deal with *lex clara*,[57] especially when it concerns the norms that are obligatory or where there is a lack of whatever decision-making discretion. It seems that apparentness will also occur in a situation in which a procedural decision is deprived of whatever legal grounds. As far as the criterion for a flagrant level of contempt of the law is concerned, it is necessary to consider whether, in the light of the consequences of an act, it is justified to interfere in the sphere that is subject to the principle of judicial independence, which might take the form of a repeatable rule in such or very similar situations. The assessment should be based on the principle of proportionality, also taking into account the necessity of such adjudication for the interest of administration of justice and the parties to proceedings, especially in view of a possible reversal of the legal consequences of a judge's defective procedural decision.

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[57] See L. Morawski, *Zasady wykładni prawa*, *op. cit.*, pp. 57–58.

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JUDGES' DISCIPLINARY LIABILITY FOR APPARENT AND FLAGRANT CONTEMPT OF PROVISIONS OF LAW VERSUS PRINCIPLE OF JUDICIAL INDEPENDENCE

Summary

The article aims to present the issue of the limits of a judge's disciplinary liability for a company-related misdeed in the form of apparent and flagrant contempt of the provisions of law limited by the principle of judicial independence. Due to the fact that the principle of statutory determination of an act is not applicable in disciplinary law, the sphere is shaped by disciplinary case law, in particular by the judgments of the Supreme Court-Disciplinary Court, which are thoroughly analysed. This makes it possible to indicate tendencies occurring in case law and develop the author's own stance taking into account the latest amendments to the Act: Law on the common courts system, which can be translated into the need to increase the protection of judicial independence and a more restrictive approach to the use of the instrument of disciplinary liability towards judges who commit apparent and flagrant contempt of the provisions of law in the sphere of adjudication.

Keywords: disciplinary liability, judicial independence, company-related misdeed, apparent and flagrant contempt of the provisions of law, disciplinary courts

ODPOWIEDZIALNOŚĆ DYSCYPLINARNA SĘDZIEGO ZA OCZYWISTĄ I RAŻĄCĄ OBRAZĘ PRZEPISÓW PRAWA A ZASADA NIEZAWISŁOŚCI SĘDZIOWSKIEJ

Streszczenie

Przedmiotem niniejszego artykułu jest przedstawienie problematyki granic odpowiedzialności dyscyplinarnej sędziego za przewinienie służbowe w postaci oczywistej i rażącej obrazy przepisów prawa limitowanych przez zasadę niezawisłości sędziowskiej. Ze względu na nieobowiązywanie w prawie dyscyplinarnym zasady ustawowej określoności czynu sfera ta kształtowana jest przez orzecznictwo dyscyplinarne, w szczególności judykaty Sądu Najwyższego-Sądu Dyscyplinarnego, które zostały poddane szczegółowej analizie. Pozwoliło to na wskazanie tendencji występujących w orzecznictwie oraz wypracowanie własnego stanowiska, uwzględniającego także najnowsze zmiany w ustawie Prawo o ustroju sądów powszechnych, przekładające się na potrzebę wzmożenia ochrony niezawisłości sędziowskiej, a tym samym bardziej restrykcyjnego podejścia do operowania instrumentem odpowiedzialności dyscyplinarnej wobec sędziów dopuszczających się oczywistej i rażącej obrazy przepisów prawa w sferze orzeczniczej.

Słowa kluczowe: odpowiedzialność dyscyplinarna, niezawisłość sędziowska, przewinienie służbowe, oczywista i rażąca obraza przepisów prawa, sądownictwo dyscyplinarne

RESPONSABILIDAD DISCIPLINARIA DE JUEZ POR VIOLACIÓN DESLUMBRADORA Y EVIDENTE DE PRECEPTOS DE LA LEY Y EL PRINCIPIO DE INDEPENDENCIA DE JUECES

Resumen

El artículo presenta la problemática de límites de la responsabilidad disciplinaria de juez por infracción profesional en forma de violación deslumbradora y evidente de preceptos de la ley que son impuestos por el principio de independencia de jueces. Debido a que en el derecho disciplinario no se aplica el principio de determinación legal de hecho, esta cuestión viene regulada por la jurisprudencia disciplinaria, en particular por la jurisprudencia del Tribunal Supremo-Tribunal Disciplinario que queda detalladamente analizada, lo que permite indicar la tendencia existente en la jurisprudencia y presentar su propia postura que comprende también las últimas modificaciones en la ley Derecho de régimen de tribunales comunes. Estas modificaciones indican que es necesario potenciar la protección de independencia de jueces y adoptar actitud restrictiva de uso de herramienta de responsabilidad disciplinaria de jueces que violan de forma deslumbradora y evidente los preceptos de la ley en procedimientos.

Palabras claves: responsabilidad disciplinaria, independencia de jueces, infracción profesional, violación deslumbradora y evidente de preceptos de la ley, jurisdicción disciplinaria

ДИСЦИПЛИНАРНАЯ ОТВЕТСТВЕННОСТЬ СУДЬИ ЗА ОЧЕВИДНОЕ И ВОПИЮЩЕЕ НАРУШЕНИЕ ЗАКОНА В СРАВНЕНИИ С ПРИНЦИПОМ НЕЗАВИСИМОСТИ СУДЕЙ

Резюме

Предметом этой статьи является представление вопроса о границах дисциплинарной ответственности судьи за должностные проступки в форме очевидного и вопиющего нарушения правовых положений, ограниченных принципом независимости судей. В связи с тем, что в дисциплинарном законе не действует принцип нормативной специфики деяния, эта сфера определяется дисциплинарными постановлениями, в частности решениями Верховного суда – Дисциплинарного суда, которые были подвергнуты детальному анализу, что позволило выявить тенденции в судебной практике и выработать собственную позицию, учитывающую также последние изменения в Законе о системе общих судов, что выражается в необходимости усилить защиту независимости судей и, следовательно, более ограничительного подхода к применению инструмента дисциплинарной ответственности в отношении судей, которые совершают очевидные и вопиющие нарушения правовых норм в области юриспруденции.

Ключевые слова: дисциплинарная ответственность, судебная независимость, должностной проступок, очевидное и вопиющее нарушение закона, дисциплинарное судебное присутствие

DIE DISZIPLINARISCHE HAFTUNG EINES RICHTERS FÜR EINE OFFENSICHTLICHE STRAFTAT GEGEN DAS GESETZ UND DEN GRUNDSATZ DER RICHTERLICHEN UNABHÄNGIGKEIT

Zusammenfassung

Gegenstand dieses Verfahrens ist die Darstellung der Grenzen der Disziplinarhaftung eines Richters für Fehlverhalten in Form einer offensichtlichen Überschreitung von Rechtsvorschriften, die durch den Grundsatz der richterlichen Unabhängigkeit begrenzt sind. Aufgrund der Tatsache, dass der gesetzliche Grundsatz der Besonderheit des Gesetzes im Disziplinarrecht nicht in Kraft ist, wird dieser Bereich durch Disziplinarentscheidungen, insbesondere die Richter des Obersten Disziplinargerichtshofs geprägt, die einer eingehenden Analyse unterzogen wurden, die es ermöglichte, Trends in der Rechtsprechung aufzuzeigen und eine eigene Position zu entwickeln, auch unter Berücksichtigung der neuesten Änderungen im Gesetz über das System der Gerichte, die sich in der Notwendigkeit niederschlagen, den Schutz der Unabhängigkeit der Gerichte und damit einen restriktiveren Ansatz bei der Anwendung des Instruments der Disziplinarhaftung gegenüber Richtern zu stärken, die offensichtliche Verstöße gegen das in der Gerichtsbarkeit geltende Recht begehen.

Schlüsselwörter: Disziplinarhaftung, richterliche Unabhängigkeit, Fehlverhalten, offensichtliche Straftat gegen das Gesetz, Disziplinargericht

RESPONSABILITÉ DISCIPLINAIRE D'UN JUGE POUR UNE INFRACTION MANIFESTE ET FLAGRANTE À LA LOI ET LE PRINCIPE DE L'INDÉPENDANCE DU JUGE

Résumé

L'objet de cet article est de présenter la question des limites de la responsabilité disciplinaire d'un juge pour faute professionnelle, sous la forme d'une violation évidente et flagrante des dispositions légales limitées par le principe de l'indépendance du juge. En raison du fait que le principe de la spécificité de l'acte, prévu par la loi, n'est pas applicable en droit disciplinaire, ce domaine est régi par des décisions disciplinaires, en particulier les décisions de la Cour suprême-Tribunal disciplinaire, qui ont fait l'objet d'une analyse détaillée, qui a permis d'indiquer les tendances de la jurisprudence et de développer sa propre position, en tenant également compte des dernières modifications apportées à la loi sur le système des tribunaux de droit commun, traduisant la nécessité de renforcer la protection de l'indépendance judiciaire et, partant, d'adopter une approche plus restrictive du fonctionnement de l'instrument de responsabilité disciplinaire à l'égard des juges qui commettent des violations évidentes et flagrantes des dispositions de la loi dans le domaine de la jurisprudence.

Mots-clés: responsabilité disciplinaire, indépendance du juge, faute professionnelle, violation manifeste et flagrante de dispositions légales, juridiction disciplinaire

LA RESPONSABILITÀ DISCIPLINARE DEL GIUDICE PER EVIDENTE E GRAVE VIOLAZIONE DELLE NORME DI LEGGE E IL PRINCIPIO DELL'INDIPENDENZA DEI GIUDICI

Sintesi

Oggetto del presente elaborato è la presentazione della problematica dei confini della responsabilità disciplinare del giudice per inadempimento professionale sotto forma di evidente e grave violazione delle norme di legge, limitati dal principio dell'indipendenza dei giudici. A motivo della mancata applicazione nel diritto disciplinare del principio di legalità del reato, tale ambito viene conformato dalla giurisprudenza disciplinare, in particolare dalle sentenze della sezione disciplinare della Corte Suprema, che sono state sottoposte ad analisi dettagliata, il che ha permesso di indicare la tendenza presente nella giurisprudenza e di elaborare una posizione propria, che considera anche l'ultima riforma della Legge sull'organizzazione dei tribunali ordinari, che si traduce nella necessità di rafforzare la tutela dell'indipendenza dei giudici, e quindi di un approccio più restrittivo all'utilizzo dello strumento della responsabilità disciplinare nei confronti dei giudici che hanno commesso un'evidente e grave violazione delle norme di legge nell'ambito giurisprudenziale.

Parole chiave: responsabilità disciplinare, indipendenza dei giudici, inadempimento professionale, evidente e grave violazione delle norme di legge, giustizia disciplinare

Cytuj jako:

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