

INDEPENDENCE THROUGH ACCOUNTABILITY

MONITORING AND REVIEW OF JUDICIAL ACCOUNTABILITY
IN NORTH MACEDONIA

INDEPENDENCE THROUGH ACCOUNTABILITY

MONITORING AND REVIEW OF JUDICIAL ACCOUNTABILITY IN
NORTH MACEDONIA

Skopje, 2025

Publisher:

Coalition of civil associations "All for Fair Trials" - Skopje

For the publisher:

Darko Avramovski - executive director of the Coalition All for Fair Trials

Editor:

Darko Avramovski

Final analysis authors:

Denis Preshova, PhD

Ivana Petkovska

Darko Avramovski

Case review authors:

Denis Preshova, PhD

Gordan Kalajdziev, PhD

Milka Rakochevikj, PhD

Boban Misoski, PhD

Translation:

Gala Kovachevikj

Printing:

Grafohartija

Circulation:

100

CIP - Каталогизација во публикација

Национална и универзитетска библиотека "Св. Климент Охридски", Скопје

347.962.6:005.584.1(497.7)(047.31)

НЕЗАВИСНОСТ преку отчетност : следење и проверка на судската одговорност во Северна Македонија / [автори на анализа Денис Прешова, Ивана Петковска, Дарко Аврамовски ; уредник Дарко Аврамовски]. - Скопје : Коалиција на здруженија на граѓани "Сите за правично судење", 2025. - 127 стр. : илустр. ; 25 см

Останати автори: Гордан Калаџијев, Бобан Мисоски, Милка Ракочевик. - Содржи и: Анекси

ISBN 978-608-4552-63-5

1. Прешова, Денис [автор] 2. Петковска, Ивана [автор] 3. Аврамовски, Дарко [автор] [уредник] 4. Калаџијев, Гордан [автор] 5. Мисоски, Бобан [автор] 6. Ракочевик, Милка [автор]

а) Судии -- Одговорност -- Мониторинг -- Македонија -- Истражувања

COBISS.MK-ID 66131461

TABLE OF CONTENT

INTRODUCTION	1
METHODOLOGY	2
LEGAL FRAMEWORK GOVERNING THE PROCEDURE FOR ESTABLISHING THE ACCOUNTABILITY OF A JUDGE OR COURT PRESIDENT	3
Grounds for Establishing Accountability	3
Procedure for Establishing Accountability	4
GENERAL DATA	5
Function and level at which the violation was committed	5
Submitter of the request for establishing judicial accountability	6
Outcome of the procedure	7
Appeal of the decision	8
Duration of the proceedings	9
FORMAL ASPECTS OF THE PROCEEDINGS FOR ESTABLISHING ACCOUNTABILITY OF A JUDGE/PRESIDENT OF A COURT	11
Formal elements of the decisions and their individualization	11
Publicity and transparency	12
Compliance with deadlines and the principle of urgency	13
Questions regarding statute of limitations	13
SUBSTANTIVE ASPECTS OF THE PROCEEDINGS FOR ESTABLISHING ACCOUNTABILITY OF A JUDGE/PRESIDENT OF A COURT	15
Legal qualification and individualization of the violation	15
Establishing accountability of the judge or president of the court	15
Distinction between the functions of judge and president of the court	17
Principle of proportionality and determination of sanction	18
Right to an Effective Legal Remedy	20
CONCLUSIONS	22
RECOMMENDATIONS	23
 ANEX	 24
01 CASE NOTE: DISMISSAL OF JUDGE S.I.	25
Introduction	25
Facts of the case	25
Decision(s) and arguments (ratio decidendi)	25
Critical review and analysis	26
Conclusion	29
02 CASE NOTE: DISMISSAL OF JUDGE S.T.	30
Introduction	30
Facts of the case	30

Decision(s) and arguments (ratio decidendi)	30
Critical review and analysis	31
Conclusion	34
03 CASE NOTE: IMPOSING A DISCIPLINARY MEASURE ON JUDGE I.I.	35
Introduction	35
Facts of the case	35
Decision(s) and arguments (ratio decidendi)	35
Critical review and analysis	36
Conclusion	39
04 CASE NOTE: DISMISSAL OF JUDGE S.L.	40
Introduction	40
Facts of the case	40
Decision(s) and arguments (ratio decidendi)	41
Critical review and analysis	42
Conclusion	45
05 CASE NOTE: IMPOSING A DISCIPLINARY MEASURE ON JUDGE S.J.	46
Introduction	46
Facts of the case	46
Decision(s) and arguments (ratio decidendi)	47
Critical review and analysis	47
Conclusion	49
06 CASE NOTE: IMPOSING A DISCIPLINARY MEASURE ON JUDGE E.B.	50
Introduction	50
Facts of the case	50
Decision(s) and arguments (ratio decidendi)	50
Critical review and analysis	52
Conclusion	55
07 CASE NOTE: IMPOSING A DISCIPLINARY MEASURE ON JUDGES KJ.M. and E.A.	56
Introduction	56
Facts of the case	56
Decision(s) and arguments (ratio decidendi)	57
Critical review and analysis	59
Conclusion	62
08 CASE NOTE: IMPOSING A DISCIPLINARY MEASURE ON JUDGE V.D.	63
Introduction	63
Facts of the case	63
Decision(s) and arguments (ratio decidendi)	63
Critical review and analysis	64
Conclusion	66

09 CASE NOTE: DISMISSAL OF JUDGE G.B.	67
Introduction	67
Facts of the case	67
Decision(s) and arguments (ratio decidendi)	68
Critical review and analysis	68
Conclusion	71
10 CASE NOTE: IMPOSING A DISCIPLINARY MEASURE ON JUDGE A.A.	72
Introduction	72
Facts of the case	72
Decision(s) and arguments (ratio decidendi)	73
Critical review and analysis	74
Conclusion	77
11 CASE NOTE: DISMISSAL OF JUDGE Z.M.	78
Introduction	78
Facts of the case	78
Decision(s) and arguments (ratio decidendi)	79
Critical review and analysis	80
Conclusion	85
12 CASE NOTE: DISMISSAL OF JUDGE S.Z.	86
Introduction	86
Facts of the case	86
Decision(s) and arguments (ratio decidendi)	87
Critical review and analysis	88
Conclusion	94
13 CASE NOTE: DISMISSAL OF JUDGE D.M.	95
Introduction	95
Facts of the case	95
Decision(s) and arguments (ratio decidendi)	95
Critical review and analysis	96
Conclusion	98
14 CASE NOTE: IMPOSING A DISCIPLINARY MEASURE ON JUDGE R.Gj.	99
Introduction	99
Facts of the case	99
Decision(s) and arguments (ratio decidendi)	100
Critical review and analysis	100
Conclusion	103
15 CASE NOTE: DISMISSAL OF JUDGE S.R.	104
Introduction	104
Facts of the case	104
Decision(s) and arguments (ratio decidendi)	105

Critical review and analysis	105
Conclusion	110
16 CASE NOTE: DISMISSAL OF JUDGE N.M.	111
Introduction	111
Facts of the case	111
Decision(s) and arguments (ratio decidendi)	111
Critical review and analysis	112
Conclusion	114
17 CASE NOTE: IMPOSING A DISCIPLINARY MEASURE ON JUDGE Sh.D.	115
Introduction	115
Facts of the case	115
Critical review and analysis	116
Conclusion	118
18 CASE NOTE: DISMISSAL OF JUDGE V.P.	119
Introduction	119
Facts of the case	119
Decision(s) and arguments (ratio decidendi)	120
Critical review and analysis	120
Conclusion	124

INTRODUCTION

The Judicial Council of the Republic of North Macedonia is an independent and autonomous body that ensures and guarantees the independence of the judiciary in the Republic of North Macedonia. Pursuant to its constitutional authority, the Judicial Council of North Macedonia conducts the selection and promotion of judges in North Macedonia, monitors and evaluates their performance, and ultimately determines their accountability in the exercise of their judicial functions. Given that, under the Law on the Judicial Council, the proceedings for establishing the accountability of a judge or a court president are confidential and that this part of the Council's sessions is closed to the public, it has unfortunately been considered impossible thus far to evaluate the Council's performance in this area of its competence. In this segment, the Judicial Council only publishes anonymized decisions after they become final. However, there has never been public discussion, particularly about the procedural aspects, such as how the Council conducts these proceedings and how adequately its decisions are reasoned and supported by evidence.

In 2019, a new Law on the Judicial Council of the Republic of North Macedonia¹ was adopted, aiming to improve the legal framework for regulating various aspects of the competence and functioning of the Judicial Council. Among other issues, significant attention was given to, and changes were made regarding, the procedure for establishing the accountability of judges and court presidents. In addition to the new Law on the Judicial Council, substantial amendments were made to the Law on Courts², which included revisions to the legal grounds for establishing the accountability of judges and court presidents. One of the primary reasons for such fundamental legislative changes was the particularly contentious circumstances surrounding both the manner in which proceedings for establishing judicial accountability were conducted and how decisions were rendered in these proceedings. This was especially relevant in light of judgments of the European Court of Human Rights against the state, which found violations of judges' rights in proceedings before the Judicial Council.

On the other hand, research indicates that judges largely lack confidence in the procedures for the selection, promotion, and accountability of judges. For instance, 57% of judges do not believe that the disciplinary proceedings initiated by the Judicial Council are conducted objectively.³ However, while the focus of reform processes and independent research has been on potential political influences in the selection and promotion of judges, it seems that accountability proceedings, except for individual cases of significant public interest, have generally remained outside the attention of both the public and the professional community. The veil of secrecy surrounding these types of proceedings appears to have contributed to this being the first analysis of its kind. Moreover, it has been observed that this secrecy has fostered a certain level of complacency within the Judicial Council, as it is presumed that such confidentiality shields their decisions from critical review and analysis.

Nevertheless, even five years after the adoption of the reforms, no systemic analysis has been conducted to evaluate how the new legal framework is applied in practice and whether there have been improvements in the transparency, reasoning, fairness, and consistency of disciplinary decisions. Such an analysis would determine whether the fundamental objectives behind the legislative amendments have been achieved. This analysis represents the first attempt to provide such an insight by reviewing 20 final decisions on disciplinary accountability adopted by the Judicial Council from the entry into force of the legislative amendments in 2019 to the end of 2024.

¹ Law on the Judicial Council of the Republic of North Macedonia, Official Gazette No. 102/2019 and 51/2023

² Law on Courts, Official Gazette No. 58/2006, 62/2006, 35/2008, 61/2008, 118/2008, 16/2009, 150/2010, 39/2012, 83/2018, 198/2018, 96/2019

³ Assessment of Corruption Risks in the Judiciary in North Macedonia; OSCE Mission to Skopje, State Commission for Prevention of Corruption, Association of Judges of the Republic of North Macedonia, Association of Public Prosecutors of the Republic of North Macedonia; Skopje, June 2023, available at: <https://www.osce.org/files/f/documents/7/9/545932.pdf>

METHODOLOGY

The Coalition "All for Fair Trials" conducted this research with a team of experts, including university law professors specializing in constitutional law, civil procedural law, and criminal procedural law. The primary method underlying this analysis is the qualitative review and analysis of twenty final decisions concerning judicial accountability adopted by the Judicial Council during the period from 2019 to 2024. This timeframe was selected due to the entry into force of the new legal framework, specifically the new Law on the Judicial Council and the amendments to the Law on Courts, which regulate the procedure and grounds for establishing judicial accountability. In light of this, the research encompassed all 20 final decisions concerning judicial accountability within the specified period.

Each case was analysed based on the available documentation, provided with the support of the Judicial Council, which includes:

- The decision after the conducted hearing, establishing the accountability of the judge or court president.
- The decision on appeal (if an appeal was submitted) rendered by the Appeals Council of the Supreme Court.
- The second decision of the Judicial Council, in cases where the Appeals Council found the appeal to be well-founded and returned the case for reconsideration.
- Additional elements, such as the clarity and accessibility of the documents, the duration of the proceedings, and publicly available information regarding the submitter of the request, the judge subject to the proceedings, as well as the case and the judge's conduct under review.

The analysis was conducted by reviewing each case through several key questions, including:

- Whether the proceedings were conducted in accordance with established deadlines, procedural rules, and the principle of fair and adversarial proceedings.
- Whether the decisions contained legal reasoning, with particular attention to the arguments of the submitter of the request and the judge, subject to the proceedings.
- Whether reasoning was provided for the application of relevant grounds for accountability, including factual arguments for the merit of the request and the severity of the violation.
- Whether the principle of proportionality was applied, specifically whether the sanctions were proportionate to the gravity of the established violation and consistent with the Judicial Council's established practice in similar cases.
- Whether a standardized approach exists in similar cases and whether the proceedings and decisions are legally predictable and consistent.
- Whether reference to and adherence to the standards of the European Court of Human Rights.

Through these questions, each case was reviewed individually, and all findings were recorded in dedicated case notes, appended as an annex to this analysis. These notes also form the basis for a systematic analysis of the Judicial Council's handling of the cases, which served as the foundation for drawing conclusions and recommendations regarding the overall efficiency and fairness of judicial accountability proceedings. In assessing the cases, the analysis also considered opinions and reports from international bodies such as the European Union, the Venice Commission of the Council of Europe, and relevant case law of the European Court of Human Rights (ECtHR). This analysis will proceed by addressing the key findings, shortcomings, and dilemmas identified during the research in the majority of cases. It will conclude with recommendations and proposals for improving the identified issues.

LEGAL FRAMEWORK GOVERNING THE PROCEDURE FOR ESTABLISHING THE ACCOUNTABILITY OF A JUDGE OR COURT PRESIDENT

GROUNDINGS FOR ESTABLISHING ACCOUNTABILITY

The Law on Courts prescribes the legal grounds for establishing the accountability of judges and court presidents, as well as the disciplinary measures that may be imposed on them. Therefore, according to Article 74, a judge may be dismissed from judicial office due to unprofessional and negligent performance of the function or due to a more serious disciplinary violation if the violation was committed intentionally or through obvious negligence on the part of the judge without justified reasons and if the violation caused serious consequences, which are set as cumulative conditions for dismissal. Article 75 of the same Law regulates the more serious disciplinary violations that a judge may commit while performing the judicial function. These are:

- A severe violation of public order and peace and other serious forms of misconduct that damage the reputation of the court and his/her dignity,
- Gross influence and interference in the performance of judicial functions by another judge,
- Refusal to submit a declaration of assets and interests in accordance with the law, or if the information contained in the declaration is significantly false, or,
- An apparent violation of the recusal rules in situations where the judge knew or should have known about the existence of a ground for recusal as prescribed by law.

Article 76 of the Law on Courts specifies the actions that which represent "unprofessional and negligent performance of judicial functions." These actions include:

- Two consecutive negative evaluations of (non-)performance, where the judge fails to meet work criteria due to their own fault and without justified reasons, in accordance with the procedure prescribed by the Law on the Judicial Council;
- A final judicial conviction for a criminal offense that is a direct result of actions performed within the scope of judicial duties, for which a sanction of less than an unconditional prison sentence of six months has been imposed;
- Unauthorized disclosure of classified information or revealing data related to court cases, thereby violating the obligation of confidentiality of proceedings, especially when the public is excluded;
- Delaying proceedings without justified reason, through non-fulfilment of official duties, such as inadequate management of procedural actions in cases or a complete failure to schedule hearings;
- Failing to act on a case, resulting in the statute of limitations for criminal prosecution or the execution of a sanction;
- Taking a case for handling that has not been assigned through the Automated Court Case Management Information System (ACMIS);
- Intentionally and unjustifiably committing a gross professional error, provided that a different interpretation of law or facts alone cannot constitute grounds for disciplinary liability.

The Law on Courts, in Article 77, also prescribes milder forms of disciplinary violations for which proceedings can be initiated to establish judicial accountability, such as:

- Minor violations of public order and peace or other minor forms of misconduct that damage the reputation of the court and his/her dignity,
- Using one's position and the reputation of the court to pursue personal interests,
- Failure to fulfil mentoring duties,
- Violations of rules regarding absence from work,
- Non-attendance at mandatory training sessions, or
- Failure to wear judicial robes during court sessions.

This legal framework, while not immune to criticism, establishes relatively predictable and defined grounds for establishing the accountability of a judge or court president. It also tightens the conditions under which the most severe measure - dismissal of a judge or court president can be imposed. These amendments aim to reduce the high number of dismissals of judges compared to the European average and encourage the application of other disciplinary measures to ensure more consistent control of judges' work by the Judicial Council, while minimizing the potential for abuse of these procedures.

PROCEDURE FOR ESTABLISHING ACCOUNTABILITY

The Law on the Judicial Council of the Republic of North Macedonia governs the procedure for establishing the accountability of a judge or court president, while the Law on Courts regulates the legal grounds for judicial accountability and the disciplinary measures that may be imposed by the Judicial Council. According to the law, the procedure for establishing judicial accountability must be initiated within six months from the date of becoming aware of the violation, but no later than three years from the date the violation occurred. The procedure is urgent and confidential, conducted without public access unless the judge against whom the request is filed explicitly requests otherwise. Once the request, along with the supporting evidence, is submitted to the Judicial Council, the Council must convene a session to form a Commission of Rapporteurs through a random draw. This Commission consists of three members: two from among the members elected by judges and one from among the members elected by the Assembly of the Republic of North Macedonia. The Commission's initial mandate is to prepare a Report for Establishing the Factual Situation, based on which the Council decides whether to terminate the procedure or proceed further. If the Council decides to continue the procedure, the Commission must proceed with the case and forward the request and evidence to the judge against whom the procedure is being conducted. This allows the judge to respond to the request and propose evidence in their defense.

Article 66 of the Law on the Judicial Council stipulates that the Commission shall schedule a hearing within seven days from the date of receipt of the response to the request submitted by the judge or the president of the court. Furthermore, at the hearing, all evidence from both parties in the procedure shall be presented, after which the Commission is obliged to prepare a Report on the Established Facts, which shall be submitted to the Council within three months from the day of receipt of the request. The Council shall schedule a hearing based on the submitted Report from the Commission of Rapporteurs, and following the hearing, it shall decide on the accountability of the judge.

The Judicial Council may adopt a decision on dismissal of the judge due to a serious disciplinary violation rendering the judge unworthy to perform the judicial function as prescribed by law, or due to unprofessional and negligent performance of the judicial function. In this context, if the Judicial Council establishes accountability on the part of a certain judge but does not adopt a decision on dismissal, it may impose one of the following disciplinary measures: public reprimand, written warning, or salary reduction in the amount of 15% to 30% of the judge's monthly salary for a duration of one to six months. If the Judicial Council adopts a decision to dismiss the judge from the judicial function, such decision must be adopted by at least 8 votes. If the Council does not adopt such a decision, it shall subsequently decide whether a disciplinary measure shall be imposed on the judge. Such a decision must be adopted by at least 7 votes, starting with a vote from the most severe toward the least severe disciplinary measure.

Against the decision of the Judicial Council, the judge has the right to file an appeal to the Appeals Council at the Supreme Court of the Republic of North Macedonia, which is composed of nine members: three judges of the Supreme Court of the Republic of North Macedonia, one judge from each of the appellate courts, and two judges from the court from which the judge under proceedings originates. The members are elected publicly by a system of drawing lots at a general session of the Supreme Court of the Republic of North Macedonia or at a session of all judges of the respective court, no later than 10 days from the date of receipt of the appeal. The Appeals Council is competent to confirm or annul the decision of the Judicial Council in the case of a serious violation of the provisions governing the procedure for establishing the accountability of a judge or president of a court. If the decision is annulled, the Judicial Council shall repeat the procedure, and the decision adopted in the repeated procedure shall be final. Therefore, in accordance with Article 72, paragraph 6 of the Law on the Judicial Council, no appeal or lawsuit is permitted against the second decision of the Judicial Council.

This legal framework for disciplinary proceedings can be considered relatively sound, with the exception of the dilemma currently under review before the European Court of Human Rights - namely, whether judges truly have access to an effective legal remedy and judicial protection in these proceedings, given that no appeal or lawsuit may be filed against the final decision of the Judicial Council. The legal framework regarding the accountability of judges and presidents of courts has been the subject of analysis in several opinions of the Venice Commission, particularly beginning in 2015,⁴ and most notably in its opinions on the amendments to the Law on Courts from 2019⁵ and the new Law on the Judicial Council, also from 2019.⁶ These most recent opinions provided a generally positive assessment of the legal provisions, both in terms of clarifying the grounds for accountability and regarding procedural aspects. The majority of the few remarks and recommendations were incorporated into the final texts of the respective laws, thereby aligning them with international standards. Interestingly, perhaps the most controversial aspect of the procedure- the finality of the Judicial Council's decision after a single appeal, against which no further appeal or lawsuit may be filed - was not the subject of analysis or commentary by the Venice Commission. In any case, we must unfortunately conclude that the greater problem again lies in the implementation of the Law in the daily work of the Judicial Council, while the legal framework itself can be assessed as appropriate.

GENERAL DATA

In the period from 2019 to mid-2024, in the cases that were subject to analysis, the Judicial Council adopted final decisions in 20 cases for establishing disciplinary accountability of judges or presidents of courts. What must be emphasized at the outset is that all decisions were submitted in anonymized form, despite the fact that these were proceedings concluded with final decisions. As a result, it was not possible to determine a large number of demographic data about the judges, nor data about the courts in which the event that triggered the accountability proceedings occurred. It was also observed that some of the cases lacked certain information, such as data on the initiator of the proceedings, the date of submission, the date of the hearing, and even the legal provision on which the accountability was established.

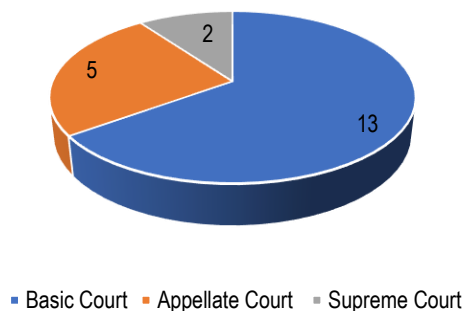
FUNCTION AND LEVEL AT WHICH THE VIOLATION WAS COMMITTED

Of these cases, 13 relate to judges or presidents of courts who acted at the first-instance level, 6 acted at the second-instance level, while 1 case concerns a judge who served as a judge of the Supreme Court. In terms of function, 15 cases were initiated against judges, while 5 relate to presidents of courts.

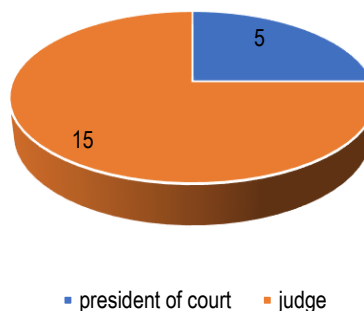
⁴ Venice Commission, CDL-AD(2015)042, Opinion on the Laws on Disciplinary Liability and the Evaluation of the Work of Judges, 21 December 2015; Venice Commission, CDL-AD(2017)033, Opinion on the Draft Law on the Termination of the Council for the Establishment of Facts and the Initiation of Proceedings for Determination of Accountability of Judges, the Draft Law Amending the Law on the Judicial Council, and the Draft Law Amending the Law on Witness Protection, 11 December 2017; Venice Commission, CDL-AD(2018)022, Opinion on the Law Amending the Law on the Judicial Council and the Law Amending the Law on Courts, 22 October 2018.

⁵ Venice Commission, CDL-AD(2018)033, Opinion on the Draft Law Amending the Law on Courts, 17 December 2018.

⁶ Venice Commission, CDL-AD(2019)008, Opinion on the Draft Law on the Judicial Council, 18 March 2019.



Level at which the judge acted



Function

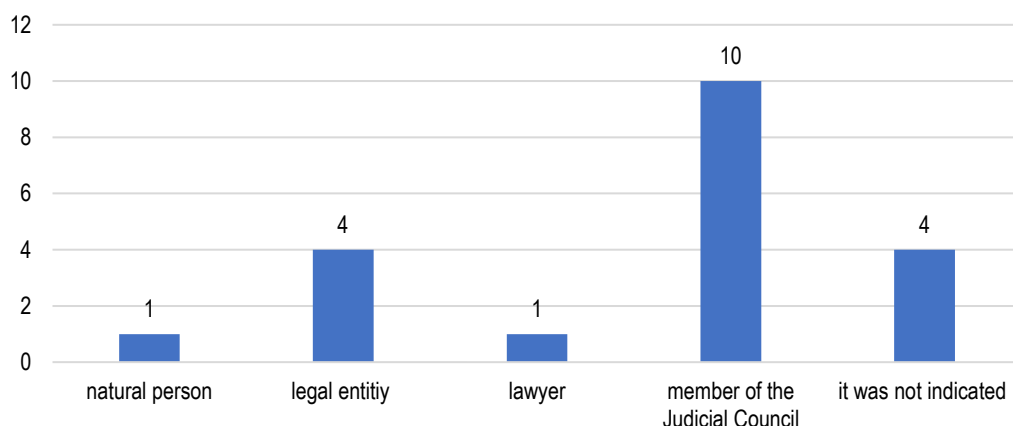
This distribution of data indicates a higher concentration of disciplinary proceedings at the lower levels of the judiciary, primarily in the basic courts. Considering the size of the sample, that is, the fact that the majority of judges are first-instance judges, as well as the fact that higher levels do not handle such a volume of cases, nor are they in regular and prolonged contact with the parties, it is expected that the largest number of accountability proceedings would concern the lower levels. However, the potential influence of resources, as well as the generally established practices for establishing accountability, must also be taken into account. Thus, the larger workload of first-instance judges, especially in urgent proceedings, may increase the likelihood of error in their work, followed by the lack of resources for proper case management and effective internal control. Finally, it cannot be disregarded that these very factors also represent a risk for the occurrence of corruption, as well as the existence of an anticipated degree of political and institutional protection for judges at higher levels.

When it comes to presidents of courts, it is noticeable that there is a disproportionately high number of initiated disciplinary proceedings against them, considering their overall representation in the judiciary in relation to regular judges. Although this involves a relatively small sample, which does not allow for general conclusions, certain factors may contribute to such distribution. First of all, the administrative function performed by court presidents exposes them to increased risks of being involved in these proceedings, since irregularities in court management are more easily identified and documented, and the opportunities for influencing processes are significantly greater. Additionally, according to existing research, court presidents have been identified as the second most common channel through which attempts to influence judges are made, with 42% of surveyed judges stating that they had faced this type of pressure from a court president or a judge of higher rank.⁷

SUBMITTER OF THE REQUEST FOR ESTABLISHING JUDICIAL ACCOUNTABILITY

When it comes to the submitter of the request for establishing accountability of a judge or president of a court, it can be observed that such initiatives are predominantly submitted by members of the Judicial Council. In half of the analysed cases, the initiator of the procedure is a member of the Judicial Council, in 4 cases the initiative originates from a legal entity, while one procedure was initiated at the request of a natural person, and one by a lawyer. For the remaining 4 cases, there is no data on the initiator of the procedure.

⁷ Assessment of Corruption Risks in the Judiciary in North Macedonia; OSCE Mission to Skopje, State Commission for Prevention of Corruption, Association of Judges of the Republic of North Macedonia, Association of Public Prosecutors of the Republic of North Macedonia; Skopje, June 2023.

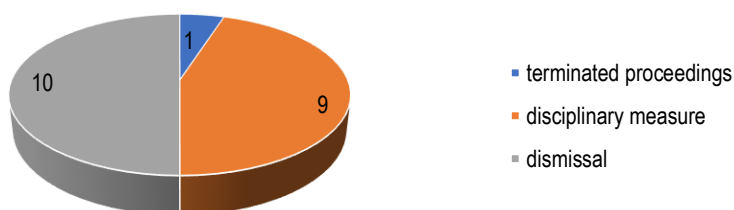


Number of cases categorized by the submitter of the request

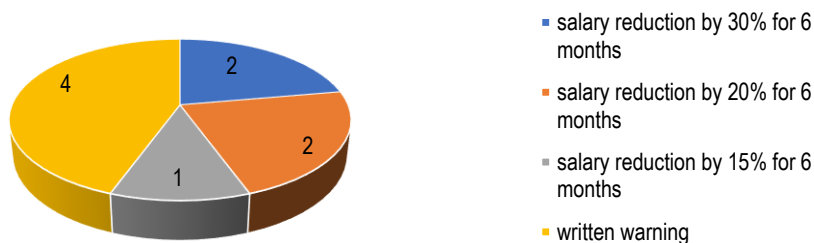
This distribution points to several systemic and practical issues. On one hand, the active role of the members of the Judicial Council in initiating proceedings can be assessed positively, as it indicates internal initiative and a sense of responsibility for maintaining the integrity of the judiciary because the Judicial Council receives over 200 complaints from citizens about the work of judges and courts annually. On the other hand, such dominance of internally initiated proceedings may also indicate that there is a significant institutional barrier for external actors, such as citizens, legal entities, lawyers, and others, to initiate a procedure that would ensure effective and substantive consideration of their requests to initiate accountability proceedings, which could undermine the perception of openness, accessibility, and transparency of the disciplinary system. Additionally, the lack of proceedings initiated based on requests submitted by citizens and lawyers may also be the result of a lack of information, unclear rules for initiating proceedings, or distrust in the system. On the other hand, the fact that for 4 cases no data is documented regarding the initiator of the procedure indicates insufficient administrative diligence and transparency in record-keeping, which is another element that undermines the principle of transparency and accountability.

OUTCOME OF THE PROCEDURE

The outcome of the analysed 20 disciplinary cases shows that in one case the procedure was discontinued, while in the remaining 19 cases disciplinary sanctions of varying severity were imposed. Of these, in 10 cases judges were dismissed from performing the judicial function, which represents the most severe measure provided by law. In 5 cases, the disciplinary measure of salary reduction was imposed, specifically: for two judges a 30% reduction for a duration of 6 months, for another two judges a 20% reduction also for 6 months, and for one judge a 15% reduction for the same period. The remaining 4 judges were issued a written warning as the mildest form of sanction.



Adopted decision

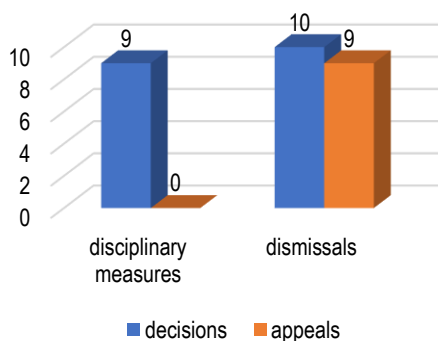


Imposed disciplinary measure

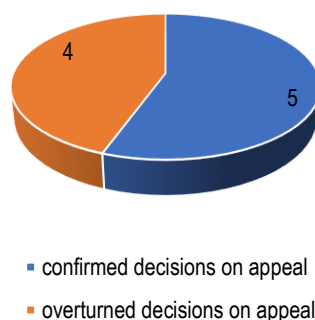
This distribution of sanctions indicates that the Judicial Council applies the most severe disciplinary measures in a significant number of cases, which raises questions regarding proportionality and the possible inconsistency and unpredictability in the imposition of sanctions, especially when clear and detailed reasoning is not provided in the decisions explaining how the severity of the violation was determined and why the specific sanction was imposed.

APPEAL OF THE DECISION

A particularly significant and concerning fact that must not go unnoticed is that, in all cases in which a disciplinary measure was imposed, none of the judges filed an appeal with the Appeals Council at the Supreme Court of the Republic of North Macedonia. This fact raises serious questions as to whether the judges are genuinely satisfied with the imposed sanctions, or whether their failure to exercise the right of appeal is the result of informal agreements with the Judicial Council. In other words, it is possible that certain judges accepted a more lenient disciplinary measure in order to avoid dismissal, with the failure to file an appeal being part of such an informal arrangement. Although there is no direct evidence for such a claim, the absence of appeals by all sanctioned judges is sufficiently indicative to raise the question of transparency and credibility of the proceedings. In this regard, it should also be considered that these data may indicate a lack of trust among judges in the second-instance decision-making mechanism, or may reflect a perception among judges that the appeals procedure is merely formal and without real effect. Given the seriousness of the matter, such findings point to the necessary need for further research and public debate in order to strengthen the accountability and consistency of the disciplinary system.



Filed appeals by type of decision



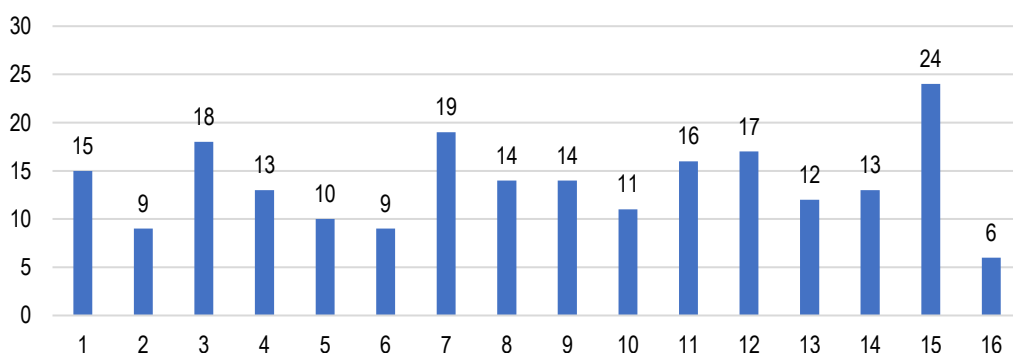
Decision on appeal

When it comes to proceedings that concluded with dismissal from the judicial function, a different approach by judges regarding the use of the right to appeal can be observed. Out of a total of 10 dismissed judges, only one did not file an appeal, while the remaining nine appealed the decisions to the Appeals Council at the Supreme Court of the Republic of North Macedonia. The decisions of the Judicial Council were upheld in

five cases, whereby the judges' appeals were rejected as ill-founded. In the remaining four cases, the Council annulled the decision of the Judicial Council and returned the cases for reconsideration. However, despite the fact that the second-instance body identified shortcomings in part of the proceedings, upon repeated review the Judicial Council, in all four cases, adopted the same decision as the first time - dismissal of the judge. This fact raises additional questions regarding how the Judicial Council analyses the remarks from the second-instance body and whether, during the repeated decision-making process, the grounds for annulling the initial decision are truly addressed. At the same time, these findings suggest a possible tendency toward formal implementation of the repeated procedure without a substantive review of the factual and legal grounds.

DURATION OF THE PROCEEDINGS

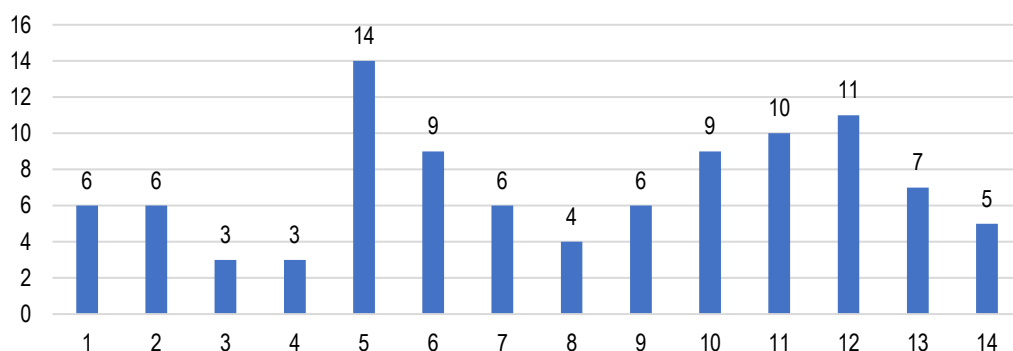
Although Article 61, paragraph 2 of the Law on the Judicial Council clearly stipulates that proceedings for establishing the accountability of a judge are urgent and of a confidential nature, the analysis of the specific cases indicates that the Judicial Council does not consistently apply the principle of urgency. According to the objective to be achieved under the legal framework, urgency should mean the swift and efficient conduct of the proceedings in order to minimize the possibility of negative impact on the independence and autonomy of judges. However, the data obtained from the analysed cases reveal significant deviations from this standard at both extremes.



Total duration of the procedure expressed in months

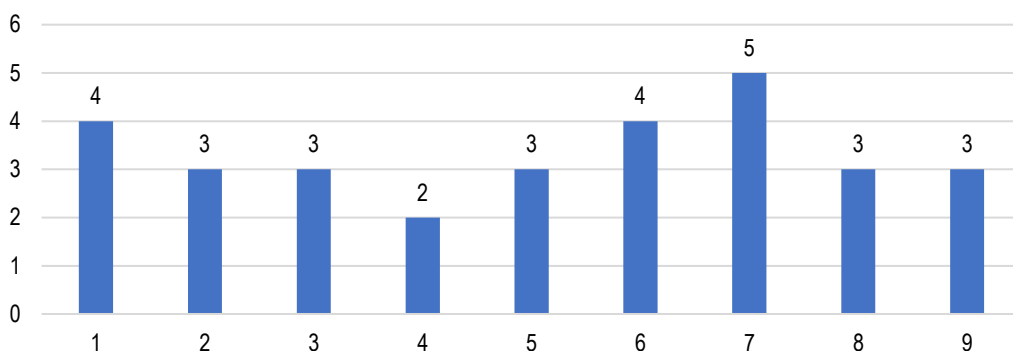
The shortest proceeding, conducted against the President of the Supreme Court, lasted only 2 months and 10 days, while the longest proceeding lasted a full 2 years. The average duration of the proceedings amounts to 1 year and 2 months, which significantly exceeds what can be considered a reasonable period for an urgent procedure. This situation leaves room for serious doubts regarding consistency, efficiency, and potential influence on the processes, as the fact that some cases are resolved within a few months, while others are prolonged for years, indicates insufficient institutional capacity or a selective approach in handling cases.

Particularly concerning is the fact that the Judicial Council has shown it has the capacity to act swiftly but applies it selectively. The most striking example is the case against Judge V.D., where the Commission of Rapporteurs took nearly 11 months only to establish whether the request was timely and properly submitted, which is in direct contradiction with Article 63, paragraph 8 of the Law on the Judicial Council. According to this article, once a decision is made that the procedure should continue, the Commission is obliged to prepare a Report on the Established Facts within 3 months from the date of receipt of the request. The same violation was noted in other cases as well, such as the one against Judge D.M., where the report was prepared only after 11 months had passed since the receipt of the request.



Elapsed time from submission of the request to scheduling of the hearing expressed in months

With such violations of the legally prescribed deadlines, the Judicial Council not only compromises the principle of urgency, but also directly endangers the individual independence of the judge. Particularly concerning is the observation that the majority of delays occur precisely in the proceedings before the Judicial Council itself, whereas the appeal procedure appears to be conducted within a relatively predictable and expected time frame.



Duration of the appeal procedure expressed in months

In any case, taking into account the total duration of the proceedings, it can be concluded that the prolongation of disciplinary proceedings places the judge in a state of uncertainty and vulnerability, which may affect their free judicial conviction and professional conduct during the course of the proceedings. Precisely for these reasons, the legislator incorporated the principle of urgency, in order to prevent situations where the prolonged duration of proceedings becomes a tool of pressure rather than an instrument of accountability. Therefore, it is essential that the Judicial Council not only formally complies with the legal deadlines, but also consistently applies the obligation to act urgently, efficiently, and impartially.

FORMAL ASPECTS OF THE PROCEEDINGS FOR ESTABLISHING ACCOUNTABILITY OF A JUDGE/PRESIDENT OF A COURT

In the analysed 20 proceedings for establishing accountability, serious formal deficiencies were identified in the acts adopted by the Judicial Council and the Appeals Council at the Supreme Court of the Republic of North Macedonia, as well as general shortcomings in terms of the conduct of the proceedings. The inconsistencies relate to the assessments and substantive elements, such as the structure and content of the decisions, and further to the transparency and completeness of the information they are required to contain in accordance with the law.

FORMAL ELEMENTS OF THE DECISIONS AND THEIR INDIVIDUALIZATION

Perhaps the most significant issue identified in this research is that the decisions of the Judicial Council follow the same abstract and generic structure as those concerning the election and promotion of judges. As a result, it is extremely difficult to conduct a substantive analysis, and such types of decisions may only contribute to increased distrust from both the public and judges in these processes. Thus, the lack of individualization in the decisions of the Judicial Council goes so far that, in the operative part of 4 decisions, only the legal basis for the type and amount of the imposed sanction is stated, without specifying the legal basis for the committed disciplinary violation. This makes the link between the judge's specific conduct and the rendered decision, including the type and amount of the sanction, extremely unclear. Consequently, when reading and analysing these decisions of the Judicial Council, it is not possible to determine which actions undertaken by the judge the Council considered to constitute a disciplinary violation and according to which legal basis.

Furthermore, in three cases, no information is included regarding the course of the proceedings, the evidence presented, or the establishment of the factual situation, which raises serious doubts about the transparency and professionalism in the adoption of those decisions. Such an approach by the highest self-governing body of the judiciary in resolving extremely important and sensitive issues also casts a shadow over the overall conduct of the Council, suggesting the existence of corrupt motives that may explain such deviations in part of the decisions. According to Article 71 of the Law on the Judicial Council, the decision must contain an introduction, operative part, reasoning, and legal instruction, which means it must include a reasoning section stating the facts and evidence on which the decision is based, as well as the legal provisions on which it relies. Although the disciplinary proceeding is of a confidential nature, this obligation to provide reasoning is part of the principle of fairness and effectiveness of the procedure.

In addition to the complete absence of information regarding the legal basis for the adoption of the decision, as well as the decisive facts for establishing disciplinary accountability in several cases, it must be noted that, unfortunately, in the remaining decisions that do contain such information, it is still presented in a highly abstract, general, and unclear manner. In this regard, the reasoning of the Council's decision does not appear to reflect the logical process that led to the decision but instead seems to be an attempt to justify a conclusion that had already been reached without deliberation or discussion. Such decisions negatively affect the development of the Council's practice, legal scholarship and culture, as well as public trust in the judiciary. Moreover, they directly contradict the positions and guidance of the European Court of Human Rights concerning the elements that must be included in the reasoning of a decision that determines the rights and obligations of any individual. In this context, the ECtHR in the judgment *Volkov v. Ukraine* indicated that disciplinary proceedings against judges fall within the scope of Article 6 of the ECHR, which entails an obligation for the authority to adopt a reasoned decision that enables the judge to understand the reason for the sanction and to challenge it.⁸

In this regard, it must once again be emphasized that the publication of reasoned decisions is an important instrument for building public trust, especially in disciplinary proceedings against judges, where the public has a legitimate interest in knowing how the Judicial Council decides on serious matters and why a

⁸ Oleksandr Volkov v. Ukraine, no. 21722/11, 2013

particular decision was made. In addition, the absence of detailed reasoning regarding the factual situation, as well as the legal basis of the decision, limits the judge's ability to understand the arguments of the Judicial Council and to submit an effective appeal, thereby calling into question the right to effective legal remedy.

PUBLICITY AND TRANSPARENCY

Another procedural issue that has been observed is the absence of information regarding the submitter of the request for establishing accountability. Thus, in four cases, the submitter of the request initiating the procedure is not indicated at all, and in the remaining decisions, this information is anonymized, including the anonymization of members of the Judicial Council who acted as initiators of the procedure. Such a practice is problematic because it is not in accordance with the provisions on personal data protection, which apply exclusively to the judge or president of the court against whom the procedure is conducted. The anonymity of officials acting in an official capacity undermines public oversight of their actions, as it gives the impression that the anonymization serves to protect the members of the Judicial Council who initiated the procedure. In this regard, it must be taken into account that the members of the Judicial Council, as public office holders, are publicly listed on the Council's website and are followed by the public during the Council's sessions. Moreover, pursuant to Article 61, paragraph 2 of the Law on the Judicial Council, the procedure for establishing accountability is of a confidential nature and is conducted without public presence and with respect for the reputation and dignity of the judge or president of the court, taking care to protect their personal data in accordance with the regulations on personal data protection. Considering that the decisions in proceedings for establishing accountability of a judge or president of a court are to be published once they become final, and bearing in mind that the procedure is already concluded with final effect - meaning the reputation of the judge is no longer protected, especially if the judge has been dismissed - the decisions can and should be publicly disclosed without anonymizing the name and surname of the judge subject to the procedure, as well as the court before which the judge acted when the violation occurred, for the purpose of strengthening the transparency and accountability of the Council.

From the perspective of procedural deficiencies, it is also observed that, in addition to not indicating the submitter of the request, it has been established that the members of the Commission of Rapporteurs composed of members of the Judicial Council and tasked with preparing the Report on the Established Facts, are not disclosed either. Namely, the Law on the Judicial Council regulates the composition of the Commission by stipulating that it is formed by drawing lots and is composed of two members from among the judges and one member from among those elected by the Assembly of the Republic of North Macedonia. In this context, what is concerning is that the absence of this information from the case files cannot be attributed to technical errors in drafting the decisions, because the Judicial Council also excludes the public during the formation of this Commission at its sessions, despite the fact that the Law explicitly states that the confidentiality of the procedure serves solely to protect the reputation of the judge against whom the request for establishing accountability has been submitted. For this reason, the Judicial Council must begin to apply the Law literally, as well as the principles of public, transparent, and accountable work, and the formation of the Commission of Rapporteurs should be carried out publicly during a session, and the composition of the Commission of Rapporteurs should also be stated in the decision.

When it comes to the decision for establishing the accountability of a judge, according to the Law on the Judicial Council, it is adopted with at least 8 votes for dismissal of the judge, and at least 7 votes for the imposition of a disciplinary measure. Unfortunately, we cannot comment on the voting majority with which these 20 decisions were adopted, because in none of the decisions of the Judicial Council is stated how many members of the Council voted "in favor" and how many "against," that is, the data on the majority with which the decision was adopted is missing. This information is indeed important in order to conduct an analysis of whether these decisions are adopted unanimously or with the minimum required majority, which may contribute to a more accurate analysis of the credibility and transparency of the proceedings. Moreover, the lack of this data inevitably hinders public oversight and control over the work of the Council, while also preventing insight into any differing views and approaches among the members of the Council. Hence, the need arises to foresee a legal possibility for members of the Judicial Council to submit dissenting opinions in these proceedings, in order to allow space for reasoning different views from the adopted decision.

Finally, from the review of the formal elements that a decision must contain, it is observed that in several decisions of the Judicial Council, particularly those imposing a disciplinary measure, the legal instruction is missing. This means that the judge was not informed of the right to appeal the decision of the Judicial Council. Although it is true that judges are legal professionals who are expected to have solid legal knowledge, every decision must nevertheless be prepared in accordance with all its formal and substantive elements in order to be complete, transparent, and in compliance with legal standards. What is even more important is that, if the cumulative effect of these deficiencies is analysed, the effectiveness of the legal remedy available to judges in these situations is seriously called into question. Precisely due to the lack of a clearly defined legal basis for establishing accountability in the decisions, the absence of clear and individualized arguments regarding the committed violation, its severity and the harm caused, the lack of legal instruction, and similar issues, the possibility of challenging the decision on the basis of specific flaws in reasoning or logic is largely obstructed. This means that, on the other hand, the state will face a serious challenge in any potential court proceedings before the ECtHR, where it will be required to defend decisions that contain little to no concrete and clear reasoning in support of the operative part.

COMPLIANCE WITH DEADLINES AND THE PRINCIPLE OF URGENCY

In several cases, significant exceedances of the legally prescribed deadlines have been established, particularly regarding the preparation of the report by the Commission of Rapporteurs, which, according to the Law, must be completed within 3 months. In a number of cases, this deadline was exceeded, the most explicit being the case against Judge V.D., where it took as long as 11 months merely to determine whether the request was complete and timely. This constitutes a flagrant violation of Article 63, paragraph 8 of the Law on the Judicial Council, as well as of all established good practices for the urgent and prompt resolution of such cases. As previously mentioned, the average duration of these proceedings exceeds one year, with the majority of that time lost precisely in the preliminary phases of the procedure.

If this is followed by the fact that in most of the cases there was a complete absence of information on the actions undertaken, the evidence presented, and the key issues relevant to the decision, as well as the lack of any information in the annual reports of the Judicial Council regarding potential problems and difficulties in conducting disciplinary proceedings that may affect their duration, any attempt to determine the reason for delays and prolongation in the proceedings would inevitably fail. Such delays directly compromise the principle of urgency and increase the risk of influence on the independence of judges, while also contributing to the possibility that these proceedings can easily be turned into a tool for exerting lawful pressure on judges. Additionally, the lack of information, combined with the sensitivity of the proceedings and the already existing distrust in the judiciary, creates space for various speculations that fill the vacuum resulting from the Council's inertia. Hence, it is expected that the majority of judges believe these proceedings are not conducted fairly and justly, and therefore do not have confidence that disciplinary proceedings genuinely serve the purpose for which they were introduced.⁹

QUESTIONS REGARDING STATUTE OF LIMITATIONS

Closely related to the lack of arguments and legal elements in the decisions, as well as to the disregard for the principle of urgency and the statutory deadlines for conducting proceedings, is the neglect of claims related to the statute of limitations. Although it was previously noted that the data in the analysed cases is incomplete, it can still be observed that in nearly half of the appeals against the decisions, judges pointed out that the requests were submitted after the expiration of the subjective deadline for submission. Despite these claims, in most cases, neither the Judicial Council nor the Appeals Council addressed them as issues raised by the parties. According to the case law of the European Court of Human Rights, such conduct is seriously problematic, as the ECtHR interprets Article 6 of the ECHR as obliging domestic tribunals to examine all relevant and substantive arguments raised by the parties and to provide appropriate reasoning in their decisions

⁹ Assessment of Corruption Risks in the Judiciary in North Macedonia; OSCE Mission to Skopje, State Commission for Prevention of Corruption, Association of Judges of the Republic of North Macedonia, Association of Public Prosecutors of the Republic of North Macedonia; Skopje, June 2023.

addressing each of these arguments.¹⁰ This standard is part of the right to a fair trial and aims to ensure transparency and predictability of judicial decisions.

In those cases where the claims regarding the statute of limitations for submitting the request to initiate proceedings were addressed, the arguments are rather arbitrary and do not take into account all relevant circumstances. For example, in the case of Judge S.L., although the request was submitted after exceeding the six-month deadline, the Council still considered it timely, referring to the Decree for Proclamation of a State of Emergency. However, it took into account the date of adoption of the Decree with the force of law, which again raises questions about the accuracy of the interpretation.¹¹

Interestingly, in this case, the Judicial Council does not address these claims, but rather it is the Appeals Council at the Supreme Court that does so. Nevertheless, the arguments provided only partially address the issue. The Appeals Council considers that the deadline was not exceeded because the Decree for Proclamation of a State of Emergency also suspended all deadlines for initiating and undertaking actions in judicial proceedings. What is problematic in this regard is, first, the fact that the date of the violation, the date of submission of the request, and the entry into force of the Decree extending the deadlines were not taken into account. In other words, the violation occurred on 05.09.2019, the request was submitted eight months later, on 17.06.2020, while the Decree was adopted on 30.03.2020. In this sense, if one considers the date of 30.03.2020, when this Decree with the force of law was published in the Official Gazette, it still follows that the subjective deadline for submitting the request had already expired. Accordingly, the last day for submitting the request would have been 05.03.2020, or 25 days before the Decree was adopted and published. In other words, although the Decree suspends the application of deadlines, it cannot apply retroactively to a deadline that had already expired.

On the other hand, it is problematic that this reasoning introduces a logic according to which the proceedings conducted before the Judicial Council are treated as judicial proceedings, although they do not possess the characteristics of judicial proceedings with all the necessary guarantees and levels of decision-making, nor is the procedure regulated by a law adopted by a qualified majority. In both cases, this constitutes inadequate reasoning in support of the conclusion. Accordingly, taking into account the fact that in the remaining decisions there is a complete absence of reference to the claims regarding the statute of limitations, questions arise concerning the transparency and legitimacy of the disciplinary proceedings, as well as the appropriate degree of legal predictability and legal certainty for the judges affected by these proceedings.

¹⁰ Ruiz Torija v. Spain no. 18390/91, 1994, Hiro Balani v. Spain no. 18064/91, 1994, Van de Hurk v. Netherlands, no. 16034/90, 1994, Boldea v. Romania no. 19997/02, 2007.

¹¹ Decree with the Force of Law for the Proclamation of a State of Emergency in the Republic of North Macedonia, Official Gazette No. 84/2020

SUBSTANTIVE ASPECTS OF THE PROCEEDINGS FOR ESTABLISHING ACCOUNTABILITY OF A JUDGE/PRESIDENT OF A COURT

The substantive aspects of the proceedings for establishing accountability represent the essential basis for assessing the quality and legality of disciplinary decisions. They encompass the analysis of the types of violations established by the Judicial Council, the manner of their legal qualification, the degree of proportionality between the committed violation and the imposed sanction, as well as the influence of potential external factors in the decision-making process. In contrast to formal deficiencies, which most often concern the decision-making procedure, substantive aspects reflect the capacity of the Judicial Council to ensure objective and consistent establishment of facts and their proper interpretation in accordance with the legal framework. The analysis of these aspects is particularly important, as they directly affect legal certainty and trust in the disciplinary procedure as a mechanism for maintaining the integrity of the judiciary.

LEGAL QUALIFICATION AND INDIVIDUALIZATION OF THE VIOLATION

Article 74 of the Law on Courts sets out the grounds on which a judge may be dismissed from judicial office, specifically due to a serious disciplinary violation that renders the judge unworthy of performing the judicial function as prescribed by law, and due to unprofessional and negligent performance of the judicial function under conditions established by law. Under these grounds, a judge may be dismissed if the violation was committed with intent or with evident negligence through the judge's fault without justified reasons, and if the violation caused serious consequences. The same article, in paragraph 4, provides that for a less severe form of violation, a disciplinary measure may be imposed on the judge, which clearly indicates that the Judicial Council must observe the principle of proportionality between the violation and the sanction that may be imposed on the judge. From the analysed cases, it is evident that the Judicial Council faces difficulties in arguing and reasoning the actions undertaken by the judge when interpreting the law in this part. It is often found in the Council's decisions that there is no connection between the actions taken by the judge and the grounds for accountability - in the sense that it is unclear which arguments the Judicial Council used to determine that the actions undertaken by the judge fall within the legal basis for establishing accountability.

In the analysed disciplinary cases, the grounds most frequently cited for establishing disciplinary accountability are almost identically the violations defined in Articles 75 and 76 of the Law on Courts, namely serious disciplinary violation, or unprofessional and negligent performance of the judicial function. However, from the review of the specific decisions of the Judicial Council, it appears that these legal categories are often applied at an abstract level, without providing detailed arguments as to how the specific conduct of the judge meets the legal elements of unprofessional or negligent behaviour.

In this regard, in certain cases, the Judicial Council refers to general formulations such as "violation of the reputation of the judiciary," "violation of obligations under the Law on Courts," or merely states in abstract terms that "through their conduct the judge acted unprofessionally and negligently," without specifying which concrete actions, omissions, or circumstances are considered to fulfil the legal criteria for accountability. Additionally, in some cases, a clear link is missing between the established facts and the legal basis for the violation, creating the impression that the qualification of the violation was done formally, without substantive analysis.

ESTABLISHING ACCOUNTABILITY OF THE JUDGE OR PRESIDENT OF THE COURT

Enabled by abstract reasoning and the avoidance of individualization in decisions, entirely contradictory actions by the Judicial Council have also been observed in identical, even mutually related situations, without any explanation from the Council for deviating from established practice.

Specifically, in the period 2021/2022, the Judicial Council adopted a decision to dismiss Judges Z.M. and S.Z. from judicial office, as Judge Z.M., in the capacity of acting president of the court, failed to recuse Judge S.Z. from handling court cases in which the legal representative of one of the parties was a law firm employing

a person in close blood relation to the judge. In its decisions, the Council emphasized that such conduct creates doubt about impartiality, undermines the reputation of the judiciary, and compromises the fairness of the proceedings:

„There is an objective doubt as to the impartiality of the judge due to the relationship of judge and son – attorney in a law firm acting as legal representative in a case before that judge. The doubt regarding impartiality objectively arises from the closeness of the family relationship, the natural parental concern for the well-being of one’s child...“

As evident from the Council's reasoning, a standard is established according to which judges who preside over cases in which a party or the legal representative of a party is a person in close family relation to the judge, are obliged to recuse themselves due to the objective doubt regarding impartiality that inevitably arises from the close family relationship. However, in nearly the same period, the Judicial Council opened a case against another judge (N.G.), who, as president of the same court, not only established the practice of non-recusal of judges but also issued a general decision which effectively legitimized such conduct.¹² This decision explicitly stated that the circumstance whereby attorneys from law firms employing individuals who are in blood relation with the judges appear as legal representatives in cases before the Appellate Court in Shtip does not constitute a legal ground for the recusal of judges, due to the extremely small number of employed judges in the court, which poses a risk to the functioning of the court. Nevertheless, in 2023, the Judicial Council discontinued the disciplinary proceeding, stating that the president of the court did not commit a disciplinary violation.

„The conduct of the judge of the Supreme Court of the Republic of North Macedonia at that time, acting as president of the Appellate Court in Shtip, does not constitute grounds for doubt as to impartiality or unlawfulness in the adoption of decisions. This is because, in one case, the decision was rendered in favour of the opposing party, and not the party represented by the attorney whose office employed the daughter of the judge who participated in the decision as a member of the trial panel, while the other case involved a matter of low value. Furthermore, there is no evidence clearly and unequivocally indicating that the trial panels acted with bias.

In that sense, through his conduct as president of the court, the judge did not cause harm to the submitter of the request and therefore did not commit a violation under Article 74, paragraph 1, item 2 of the Law on Courts by exceeding or breaching legal powers within the meaning of Article 79, paragraph 1, item 1 of the same law, which cannot be classified as exceeding or breaching legal powers.“

Although the Council concluded that there were no grounds for disciplinary accountability of N.G. due to the absence of intent or because, in one of the cases, the judgment was rendered in favour of the opposing party, such a decision contradicts the decisions concerning Z.M. and S.Z., who were dismissed for the same issue — failure to recuse a judge in a case involving a representative - law firm in which a close relative of the judge was employed. What is particularly striking in this regard is the fact that the judge who issued the general decision and established the practice of non-recusal in the specific cases is, according to the Judicial Council, not to be held accountable, while the president of the court who continued to act in accordance with that decision was dismissed from judicial office. This is especially notable given that, when deciding on the accountability of the acting court president Z.M., the Judicial Council took into account the fact that the conduct in question was part of a practice established by his predecessor:

„The consequences of the conduct of Judge S.Z., as mentioned above in the decision, relate to the impact on the formation of a negative perception of the judiciary, the reputation of the court and the judges, the impartiality in the court’s conduct, and the fairness in deciding on the rights of the parties. This is especially relevant considering the fact that the judges relied on the prior practice established by the former president of the court...“

This contrast is further emphasized by the fact that all decisions were adopted in the period from April 2022 to July 2023, without significant changes in the composition of the Council, which further highlights the

¹² SU no. 192/19; 19.02.2019.

inconsistency and potential selectivity in the application of disciplinary standards. It should also be noted that Judge N.G. acted as president of the Appeals Council at the Supreme Court of the Republic of North Macedonia precisely in the appeals submitted by Judge Z.M., who was dismissed for following the established practice set by his predecessor, N.G. In this proceeding, the Appeals Council adopted a decision to uphold the appeal, annul the initial decision of the Judicial Council, and return the case for reconsideration.

DISTINCTION BETWEEN THE FUNCTIONS OF JUDGE AND PRESIDENT OF THE COURT

Within the substantive aspects related to establishing the accountability of a judge, attention should also be given to the question of whether accountability may be established for violations committed in the capacity of court president, even after the term as president has ended. This question arose due to the differing practice of the Judicial Council in cases against two former court presidents, who committed the violations during the exercise of their mandate as president of the court. In the first decision, the Judicial Council determined, according to the authors of this analysis, quite correctly that there is no obstacle for a judge to bear accountability for a disciplinary violation committed during the exercise of the mandate as president of the court, as was the case with Judge S.R.

The judge's claim that proceedings for accountability may only be conducted against a current court president, and not against someone who no longer holds that position based on the provisions of Article 61 and Article 62 of the Law on the Judicial Council of the Republic of North Macedonia, since at the time of submission of the request the individual was no longer serving in that capacity was not accepted by the Council. The reason given was that the proceedings in the specific case concern violations committed by the judge during the period in which he served as acting president of the Basic Court S.1 S., and that such a violation constitutes grounds for the accountability of the judge under conditions established by law.

This decision is to be welcomed, as the possibility to initiate proceedings for establishing the accountability of a judge even after the expiration of their mandate as president of the court is important for ensuring oversight and responsibility in the exercise of that function. In this regard, it should also be considered that the mandates of court presidents are limited in duration, and violations may not always be discovered, nor disciplinary proceedings completed, while the judge is still serving as court president. Therefore, decisions of the Judicial Council establishing the accountability of judges after the expiration of their mandate as president, or after being appointed to a higher court, should serve as a basis for good practice. Otherwise, it would allow for the potential avoidance of accountability by judges for actions undertaken in their capacity as court presidents, especially when taking into account the deadlines for submitting requests to establish accountability and the time required by the Judicial Council to conduct the full procedure. On the other hand, it should also be taken into account that court presidents often adjudicate in specific cases as presiding judges, and if a violation renders them unworthy to perform one function, then this should be appropriately grounded and reasoned in law, in accordance with the specific circumstances of the case.

Unfortunately, in the very next such case against Judge N.G., in which accountability was sought for actions undertaken while serving as president of the court, the Council reversed its previous position and adopted a decision to discontinue the proceedings for establishing accountability. Although the proceedings were also discontinued on other grounds, it is important to note that the Council's reasoning on this particular issue was:

„In this case, the actions cited in the request were committed by the judge during the period when he was serving as court president, while the request was submitted after he was no longer president of the court and had already been appointed to a higher court.“

Hence, it can be observed that even regarding this legal issue, there is a case of diametrically opposed actions, reasoning, and argumentation by the Judicial Council, adopted within a relatively short time frame and by an identical composition of the Council, without providing the decisive arguments justifying the Council's departure from established practice. As a result, public perception may arise that such inconsistency is due to corruption and arbitrary conduct by the Council. This manner of establishing accountability and qualifying

disciplinary violations is contrary to the fundamental principles of fairness and legal certainty as set out in Article 6 of the European Convention on Human Rights, as well as to the case law of the European Court of Human Rights, according to which courts must provide reasoning that clearly explains the factual and legal basis of the decision, especially in cases involving measures that affect the professional status and reputation of a judge. For this reason, the Judicial Council must ensure clearer and more specific indication of the legal grounds for the violation and their connection to the concrete actions of the judge, in order to guarantee legal certainty and the possibility of effective remedy in appellate proceedings.

PRINCIPLE OF PROPORTIONALITY AND DETERMINATION OF SANCTION

In this section, it must once again be emphasized that all decisions of the Judicial Council are insufficiently reasoned, lack consistency, and are often abstract and not individualized to the specific case or to the judge against whom the measure is imposed or who has been dismissed from judicial office. In the majority of the reasoning found in the Judicial Council's decisions, nearly identical abstract and generic sentences appear repeatedly, without being properly substantiated or adequately argued. Thus, in almost all decisions involving the determination of a disciplinary sanction, paragraph 3 of Article 78 of the Law on Courts is cited merely in abstract terms:

In establishing disciplinary accountability and determining the disciplinary sanction, consideration was given to the severity of the violation, the degree of accountability, the circumstances under which the violation was committed, as well as the consequences of the violation. Additionally, the intention of the Law on the Judicial Council of the Republic of North Macedonia from 2019 to provide for a gradation of sanctions through the imposition of disciplinary measures, as opposed to dismissal was also taken into account.

However, given the lack of detailed reasoning in the decisions, such an approach creates the impression that the Judicial Council prepares its decisions in a templated manner, without engaging in a substantive examination of the individual circumstances of the specific case that are relevant for the imposition of an appropriate disciplinary measure. Apart from the formal reference to the principle of proportionality, there is no substantive analysis or assessment of the relationship between the severity of the violation and the type of sanction imposed. Additionally, even this formal invocation of proportionality appears only in decisions where a more lenient disciplinary measure is imposed instead of dismissal. This fact creates the impression that the Judicial Council treats dismissal as the standard and automatic measure whenever a disciplinary proceeding is initiated, and that the principle of proportionality is used merely as a tool to justify an outcome other than dismissal.

The first aspect of this problem is that it is extremely difficult to discern how the Judicial Council determined the damage and how it linked that damage to the conduct of the judge. In addition to the lack of appropriate arguments in this regard, it can be observed that there are cases in which the Judicial Council rendered a decision imposing a disciplinary measure, namely a reduction of the judge's monthly salary by 15% to 30%, depending on the case, even though it had established that the committed violation had caused damage to the Budget of the Republic of North Macedonia. On the other hand, the Judicial Council dismissed a judge from judicial office due to harm caused to the reputation of the judiciary - harm which was determined in a rather abstract manner and without a direct connection between the judge's conduct and the damage caused. Although protecting the reputation of the judiciary is a particularly important objective of the Judicial Council, especially in a period when public trust is at a very low level, such reputational damage must be clearly established. Otherwise, it creates the impression of exaggeration, namely that the judge's conduct is being held responsible for the overall low level of public trust in the judiciary. Conversely, in cases where there is clear damage to the Budget of the Republic of North Macedonia due to the statute of limitations lapsing on court cases, which results both in the state being obligated to cover the costs of proceedings and in obstructing the collection of damages caused by a criminal offense, the Judicial Council does not address these circumstances at all.

The second problematic aspect concerning the application of the principle of proportionality is the lack of consistency in the imposition of disciplinary sanctions for similar or identical violations. In some cases, for relatively more serious disciplinary offenses such as: significant delays in proceedings, non-compliance with

deadlines, or actions that affect the fairness of the proceedings, more lenient sanctions are imposed, such as a written warning or salary reduction. In other cases, however, for similar or even less severe violations, the Judicial Council imposes the most severe sanction: dismissal from office.

One of the most notable examples is that among the analyzed cases, there are two concerning an identical violation - negligent handling of a case or undue delays in proceedings that contributed to the expiry of the statute of limitations for criminal prosecution. In these cases, although the Judicial Council established responsibility for both judges, G.B. and E.B., it imposed different sanctions: one judge was dismissed, while the other received a disciplinary sanction in the form of a 20% salary reduction for a period of six months. What is even more striking in these cases is that, in the case of the dismissed judge, it is stated that the judge failed to take all available measures to prevent the expiration of the statute of limitations, even though actions had been undertaken in the case. On the other hand, in the case of the judge who received a disciplinary sanction, an intention to contribute to the expiration of the statute of limitations was established. Considering that both cases involved high-profile criminal proceedings against former high-ranking officials who caused damage to the state budget of the Republic of North Macedonia, it is surprising that the Judicial Council did not take this specific circumstance into account when determining the sanction. These arguments are included only in the dismissal decision and only in relation to the costs the state would have to compensate the accused. Such dissimilarity in sanctioning cannot be justified without a precise and detailed explanation demonstrating that all relevant circumstances were taken into consideration, such as the gravity of the violation, the judge's previous conduct, and any mitigating or aggravating factors.

The deviation in the determination of sanctions is also evident in cases related to failure to act in accordance with the rules on recusal. In these cases, in addition to the two judges who were dismissed, the Council also established responsibility for two other judges, but this time imposed a more lenient disciplinary measure. Thus, in the case concerning judge S.J., based on the same legal ground and similar circumstances as in the case of judge S.Z., a decision was adopted imposing a disciplinary sanction of a 20% salary reduction for a period of six months. In part of the reasoning of the Judicial Council's decision, it is stated that:

„...the Council took into account the fact that in the cases in which the judge acted - given that the motions for recusal were rejected and the legal representative in the proceedings was an attorney who employed the judge's daughter - the judge remained impartial and unaffected by pressure or external influence, whether direct or indirect, from any party or for any reason. Evidence of this is found in the decisions in which the appeals were dismissed...”

In this case, the Judicial Council highlighted as a mitigating circumstance the established practice of rejecting requests for recusal in identical situations, and referred to the general decision issued by the previous president of the court. This reasoning is completely inconsistent with that provided in the case against Judges S.Z. and Z.M., where it was stated that a previously established practice of conduct in these situations could not be considered a mitigating circumstance.

Under similar circumstances, in the procedure for establishing the accountability of Judge Sh.D. from the Supreme Court of the Republic of North Macedonia, the Judicial Council imposed the mildest disciplinary sanction- a written warning. This procedure was initiated because the judge violated the rules on recusal by acting as the president of the panel of the Supreme Court of the Republic of North Macedonia, which ruled on a request for protection of the right to a trial within a reasonable time in a case where the judge had previously participated as a lawyer for one of the parties. First, it is important to emphasize that according to the Law on Civil Procedure, this situation constitutes an absolute ground for recusal, where recusal is required by law, in contrast to the previously discussed cases involving relative grounds for recusal, which require an additional determination of whether a conflict of interest exists.¹³ The main reasoning for imposing the mildest disciplinary measure is that:

„According to the Council's assessment, the stated circumstances—the actions taken and the rectified violation provide grounds in the specific case for the judge's conduct to be considered a

¹³ Article 64, Law on Civil Procedure, Official Gazette No. 79/2005, 110/2008, 83/2009, 116/2010, 124/2015

disciplinary offense for which disciplinary accountability is determined and a disciplinary measure - a written warning is imposed. This is due to the fact that, in the Council's view, the judge committed the violation without intent, but with evident negligence and without justified reasons."

Having this in mind, it can be observed that the practice lacks uniformity, and that certain circumstances are interpreted arbitrarily, often from a single, and not infrequently differing, perspective in each case where identical factors may be treated as mitigating, aggravating, or entirely omitted. As a result, such an inconsistent approach creates the impression of subjectivity, selectivity, or even undue influence in the decision-making process, which seriously undermines trust in the disciplinary system. This lack of proportionality is in direct contradiction to the principle of fairness and legal certainty, which is a fundamental principle of the rule of law, as well as to the standards of the European Court of Human Rights as articulated in cases such as **Oleksandr Volkov v. Ukraine**, where the ECtHR emphasizes that disciplinary sanctions must be proportionate to the committed offense and that courts must provide clear and reasoned justifications for such sanctions.

RIGHT TO AN EFFECTIVE LEGAL REMEDY

Without delving into the ongoing debate as to whether the established system meets the requirements of an effective legal remedy and judicial protection of rights under the Constitution and the European Convention on Human Rights, the aim of this research in this aspect is to examine the functional efficiency of this body and to determine whether it faces similar issues as the Judicial Council in disciplinary proceedings against judges.

First and foremost, it is important to raise questions regarding the composition of the Appeals Council, as in the reviewed cases, specifically in the case involving Judge Z.M. - the President of the Appeals Council is Judge N.G. from the Supreme Court of the Republic of North Macedonia. The Judicial Council had previously dismissed the proceedings for establishing accountability against this same judge, reasoning that the judge had acted lawfully in issuing the so-called general decision on the (non-)recusal of judges. This decision, in fact, plays a pivotal role in the dismissal of judges Z.M. and S.Z., as it effectively constitutes the basis upon which those judges acted. However, even though there are indeed relevant grounds for annulling the initial decision of the Judicial Council regarding the dismissal of Judge Z.M., these circumstances still raise doubts as to whether the decision was genuinely impartial and correct.

Furthermore, in the Appeals Council in the case concerning Judge S.Z., one of the sitting members is Judge S.J., who was herself subject to a disciplinary sanction - a salary reduction of 20% for the same actions involving the issue of judicial recusal. It is particularly problematic that this judge is listed in the introduction of the decision as a member of the panel deciding on the appeal, and is also mentioned in the reasoning section as part of the established facts. From this, we may conclude that there is a real need to strengthen the judges' awareness regarding their role and actions, in order to dispel any doubts concerning possible influence or biased conduct.

When it comes to the decisions of this Council, unfortunately, it must once again be concluded that there is a lack of consistency in its decision-making. While this manner of issuing decisions may partly stem from the fact that the Appeals Council is composed through a random draw for each individual case, such a method cannot fully justify the unpredictability of the decisions being rendered. The clear inconsistency in the Council's conduct is particularly evident in the interpretation of Article 72, paragraph 4 of the Law on the Judicial Council, especially in terms of what is understood by and constitutes a gross violation of the provisions governing the procedure for establishing accountability of a judge or court president.

In this regard, the Council has interpreted this provision differently, thereby also defining its own jurisdiction inconsistently across various cases. In certain cases, the gross violation of procedural provisions was reduced to narrowly defined procedural issues, thus providing grounds for easily dismissing or disregarding the majority of appeal arguments. In others, the Council expanded its interpretation accordingly and addressed aspects related to the level of reasoning and substantiation of the decision with arguments, especially on issues concerning the fulfillment of the cumulative conditions for dismissal or the determination of sanctions through the non-application of the principle of proportionality when assessing whether a gross procedural violation had truly occurred.

As a result of this, in the case concerning Judge S.L., the Appeals Council stated that the decision of the Judicial Council was clear and comprehensible, containing a description of the actions taken by the judge, which were qualified as conduct that seriously undermined the reputation and trust in the judicial office. However, in this decision, the Council provided no arguments to support such a conclusion. In contrast, in the case concerning Judge Z.M., the Appeals Council annulled the decision of the Judicial Council precisely due to lack of clarity and insufficient reasoning. The Council pointed out that the decision simultaneously stated two grounds for the violation, namely that it was committed either with intent or with evident negligence without justified reasons and that it caused serious consequences, but these grounds were neither clearly distinguished nor substantiated.

It is evident that the interpretation of what constitutes a "gross procedural violation" can vary from case to case, which further reinforces the perception of unpredictability and subjectivity in disciplinary proceedings. In this context, an amendment to the Law on the Judicial Council may be necessary, particularly with respect to regulating the appellate procedure. This should be done in light of the case law of the European Court of Human Rights, especially regarding the provision of an effective legal remedy and appropriate judicial protection.

CONCLUSIONS

The analysis of cases concerning the establishing of judicial accountability within this research allows us to draw informed conclusions based on concrete data and case studies, rather than relying solely on general perceptions or individual instances. Perhaps the most important conclusion is the reaffirmation that the fundamental shortcomings are not rooted in the legal framework governing the accountability of judges and court presidents, but rather in its practical application - application which, at times, significantly deviates from the legal provisions to the point of fully compromising the purpose and intent of those provisions. While certain ambiguities or legislative gaps will inevitably exist, it is of crucial importance that there is sufficient knowledge and capacity to ensure their proper application. Regrettably and with considerable concern, we must conclude that not a single one of the 20 analyzed cases could be identified as an example of good practice in disciplinary proceedings.

Deficiencies and weaknesses are evident throughout all stages of the proceedings, both in terms of the application of substantive provisions and the procedural rules governing the procedure for determining the accountability of judges. This points to serious systemic shortcomings and inadequate practical implementation, which, to a large extent, cannot be attributed to a lack of resources, flaws in the legal framework, or insufficient argumentative capacity.

One example of this is the fact that in many cases, decisions are insufficiently reasoned and lack individualization, with a failure to clearly link the established facts to the specific legal basis. In some decisions, the operative part includes only the legal provision that determines the type of sanction, but not the legal basis for the violation itself, rendering the decision unclear and ineffective.

This is further compounded by the fact that both the Judicial Council and the Appeals Council frequently fail to substantively examine the arguments raised in the defense of the judges - an issue particularly evident with regard to claims of statute of limitations, which represents perhaps the most explicit contradiction with the case law of the European Court of Human Rights concerning the right to a fair trial.

A particularly problematic aspect is the observed inconsistency in decision-making, where identical or similar factual situations are resolved with contradictory conclusions. This is especially evident in the cases involving judges from the Appellate Court in Shtip, where, for identical or similar actions by judges, different sanctions were imposed, ranging from the termination of proceedings to the most severe measure: dismissal from office. Unfortunately, these are not isolated examples; other cases also demonstrate that identical circumstances have resulted in varying sanctions, spanning from the mildest - written warning to the harshest - dismissal.

Furthermore, the proceedings often last significantly longer than prescribed, which negatively impacts the right to judicial independence and impartiality. There have been cases where the Commission of Rapporteurs exceeded the statutory deadline for preparing a report on the established situation without facing any consequences for the delay. On the other hand, there is also a notable disparity in the duration required to resolve proceedings, ranging from 3 months to as long as 2 years.

There have also been shortcomings observed in terms of transparency and public access to these proceedings. Namely, the Judicial Council does not publish some key information, such as the composition of the Commission of Rapporteurs, the identity of the submitters of the request, or the number of votes by which the decision was adopted. This lack of disclosure reduces transparency and undermines public trust in the institution. If judicial accountability is merely the other side of the coin of judicial independence, then there is indeed reason for concern about the manner in which the pursuit of establishing an independent yet accountable judiciary is being understood. A flawed understanding of judicial accountability inevitably compromises judicial independence. Therefore, the following section outlines recommendations aimed at improving the functioning of the Judicial Council in proceedings for establishing judicial accountability.

RECOMMENDATIONS

Given the frequent shortcomings observed in the decisions of the Judicial Council, it is necessary to strengthen the capacities of both the members of the Judicial Council and its professional service in preparing these decisions. In this regard, it is essential to ensure clear and detailed reasoning in the decisions, specifying the factual actions, their legal qualification, and the connection with the imposed sanction. It is especially important to address and substantiate all arguments presented by the parties and to introduce the practice of referencing previous decisions of the Council, as well as relevant case law of the European Court of Human Rights.

It is also necessary to enhance the transparency and accountability of the Judicial Council in handling these proceedings. First, it should be noted that not all decisions of the Council regarding disciplinary measures or dismissals of judges are publicly available on its official website. Additionally, in the future, the Judicial Council should be required to publish information regarding the submitter of the request for establishing accountability of a judge or court president, the composition of the Commission of Rapporteurs, and the voting record of the Council members through which the decision was adopted. Such measures would contribute to public oversight and improve the accountability of the Council.

In the future, the Judicial Council should devote attention to and improve the reasoning of its decisions. The justifications provided in the decisions are unclear, contradictory, and often consist of generic and abstract statements that are not individualized in relation to the actions of the specific judge. Therefore, it is necessary to draft decisions that are thoroughly and well-argued in support of the conclusions reached. In this regard, it is necessary to develop internal guidelines or appropriate by-laws that will ensure consistent application of legal criteria and objective consideration of all relevant matters. It is especially important to provide uniform interpretation of several key elements, such as gross procedural violation, caused damage, evident negligence, and the like.

In addition to this, when determining sanctions, the Judicial Council should apply the principle of proportionality as a substantive analysis, and not merely in a formal manner. This means that clear reasoning must be provided when a more severe sanction, such as dismissal, is imposed, and that convincing arguments must be presented regarding the gravity of the caused damage and the proportionality of the imposed sanction in relation to the damage and all other circumstances.

In this regard, it is also necessary to organize training sessions for the members of the Judicial Council and the Appeals Council in order to improve their knowledge of the application of substantive and procedural law, as well as of the standards of the European Court of Human Rights.

In the future, the Judicial Council should demonstrate greater efficiency in its proceedings, particularly with regard to the duration of these procedures. As provided by law, such proceedings are of urgent nature, and therefore, the Council must complete them promptly and efficiently. In this regard, the statutory deadlines for action must be respected, and when those deadlines are exceeded, the reasons for such delays should be clearly explained. Consideration should also be given to introducing sanctions for unjustified postponement of proceedings.

In addition, it is necessary to ensure adequate and effective judicial protection before the courts, especially since it turns out that the appeal before the Appeals Council was not an effective and efficient remedy.

ANEX

01 CASE NOTE: DISMISSAL OF JUDGE S.I.

INTRODUCTION

This analysis focuses on the decisions of the Judicial Council of the Republic of North Macedonia regarding the dismissal of Judge S.I., a judge of the Basic Court B., who was presiding over a civil case, specifically a non-contentious proceeding. The judge was dismissed from judicial office due to unprofessional and negligent conduct. This case represents the first civil matter case addressed by the Judicial Council under the new provisions of the amended Law on Courts (LC) of 17.05.2019, particularly regarding the determination of judicial accountability, and the new Law on the Judicial Council of the Republic of North Macedonia (LJC) of 22.05.2019, which is currently in force. In this context, it serves as the first indicator of whether the previous practices of the Judicial Council concerning judicial accountability, which were frequently criticized, will be altered following the adoption of the new legal framework.

FACTS OF THE CASE

In this particular case, the judge presided over a non-contentious matter involving the certification of a lifelong support agreement. The request to establish the judicial accountability, filed under No. 08-18/3 on 17.06.2019, was submitted on the grounds that, according to the submitter of the request, the Judge S.I. acted unprofessionally and negligently in performing judicial duties while handling the case related to the certification of the lifelong support agreement. In the request it was indicated that the judge deliberately and unjustifiably committed a gross professional error. Specifically, during the certification of the agreement, the judge failed to obtain a property title certificate from the Real Estate Agency to determine whether the property in question belonged to the recipient of the support and whether the recipient had the right to dispose of the property. Therefore with the certification of the agreement, the judge acted contrary to the provisions of the Law on Obligations (LO) governing the certification of such agreements.

Acting upon the submitted request, the Judicial Council of the Republic of North Macedonia, at its session held on 01.07.2019, established a Commission of Rapporteurs, which prepared a report on the established factual situation. This report was deliberated by the Judicial Council at its session held on 26.09.2019, where it was decided to continue the proceedings. Within the framework of the proceedings before the Commission of Rapporteurs, all actions prescribed by the Law on the Judicial Council for this stage of the process of determining a judicial accountability were sequentially undertaken, such as: delivering the request and evidence to the judge personally; obtaining the judge's written response to the request; collecting data and evidence relevant to the determination of the circumstances related to the request; and holding a hearing before the Commission of Rapporteurs. Following the submission of the report of the Commission of Rapporteurs on the findings related to the request, the Judicial Council of the Republic of North Macedonia, at its session held on 10.02.2020, adopted Decision OSZh No. 10-51/1, whereby Judge S.I. was dismissed from judicial office. This decision was appealed by the judge. The Appeals Council of the Supreme Court of the Republic of North Macedonia (Appeals Council), acting on the case, with Decision No. 2/2020 dated 12.06.2020, upheld the judge's appeal, annulled the decision of the Judicial Council of the Republic of North Macedonia, and returned the case for reconsideration. In the repeated proceedings, the Judicial Council again undertook the prescribed actions in accordance with the LJC and, at its session held on 15.10.2020, issued a decision to dismiss Judge S.I. from the judicial office.

DECISION(S) AND ARGUMENTS (RATIO DECIDENDI)

In the specific case concerning the dismissal of Judge S.I., the Judicial Council made decisions on two occasions, as the Appeals Council upheld the appeal and annulled the Council's initial decision. In the repeated proceedings, the Judicial Council once again issued a decision for dismissal. Below is a summary of the key legal arguments in each of these decisions. In its initial decision, the Decision to dismiss Judge S.I. dated 10.02.2020, the Judicial Council of the Republic of North Macedonia decided to dismiss the judge for unprofessional and negligent performance of judicial duties (Article 74, paragraph 1, item 2 of the Law on Courts) due to the deliberate and unjustified commission of a gross professional error (Article 76, paragraph 1, item 7 of

the Law on Courts). In making this decision, the Judicial Council largely accepted the claims of the submitter of the request and dismissed Judge S.I. for committing a gross professional error during the certification of a lifelong support agreement, citing the following reasons: the agreement was certified before the decision of the Basic Court B., which declared the proposal for the deprivation of the legal capacity of the recipient of the support as withdrawn, became final and enforceable; on the date of the certification, the property title describing the relevant real estate, owned by the recipient of the support, still included a note indicating that proceedings for the deprivation of legal capacity were underway for the recipient of the support; contrary to the provisions of the Law on Obligations, the judge accepted witnesses for the agreement who were acquainted only with the provider of the support, not with both parties involved; the judge accepted an expert opinion on the mental state and capacity of the recipient of the support to understand the significance of the agreement from a professional in an inappropriate field, proposed by one of the parties to the agreement.

The Appeals Council of the Supreme Court of the Republic of North Macedonia, acting upon the appeal filed by Judge S.I., upheld the appeal, annulled the decision of the Judicial Council dated 18.02.2020, and returned the case for reconsideration. The Appeals Council accepted as valid the appellant's claims regarding significant violations of the legal provisions governing the procedure for determining a judicial accountability. Specifically, the Judicial Council, when issuing the dismissal decision, failed to consider the conditions that, under the Law on Courts, must be cumulatively fulfilled to classify a judge's actions as unprofessional and negligent conduct. Pursuant to Article 74, paragraph 3 of the Law on Courts, a judge may be dismissed if the violation is committed intentionally or with manifest negligence attributable to the judge, without justified reasons, and if the violation has caused severe consequences. Additionally, the Appeals Council noted that the Judicial Council's decision was insufficiently clear and lacked adequate reasoning, which calls into question its correctness and legality. According to the Appeals Council, the circumstances considered decisive by the Judicial Council in reaching the dismissal decision were insufficient to conclude that the judge committed a gross professional error in their conduct.

In the repeated procedure, the Judicial Council of RNM, on 15.10.2020, partially adhering to the positions of the Appeals Council, issued a Decision to dismiss Judge S.I. for unprofessional and negligent performance of judicial duties due to a violation committed intentionally or with manifest negligence by the judge, without justified reasons, which caused severe consequences (Article 74, paragraph 1, item 2 in conjunction with Article 74, paragraph 3 of the Law on Courts). As grounds for unprofessional and negligent performance of judicial duties, the Judicial Council of RNM referred to the intentional and unjustified commission of a gross professional error (Article 76, paragraph 1, item 7 of the Law on Courts). Remaining entirely consistent with the reasoning in the previously issued decision regarding the circumstances leading to the judge's dismissal, the Judicial Council of RNM, in its dismissal decision dated 15.10.2020, concluded that the actions of Judge S.I. resulted in harmful consequences. Specifically, the recipient of the support endured psychological and economic abuse from the provider of the support during the period following the certification of the contract. Furthermore, to support its decision, the Judicial Council emphasized that, after the certification of the lifelong support agreement, the legal capacity of the recipient of the support was partially revoked, and the lifelong support agreement was annulled by a final court decision.

CRITICAL REVIEW AND ANALYSIS

In this section of the analysis, based on the available documents and decisions, certain questions and aspects of the procedure will be examined and addressed from both formal and substantive perspectives, which have been identified as contentious and problematic in the decision-making process regarding the dismissal of Judge S.I. The analysis will begin with a critical review of the formal aspects of the procedure related to: the timeliness of the submitted request; the temporal applicability of the substantive law; and the absence of information on the method of decision-making processes within the Council. Subsequently, the analysis will turn to substantive issues, focusing on the insufficient reasoning in the Judicial Council's decisions, particularly concerning the decisive facts and the fulfillment of the legal conditions and grounds for the judge's dismissal.

Timeliness of the submitted request

According to Article 61, paragraph 1 of the LJC, the procedure for determining the accountability of a judge or court president must be initiated within six months from the date the violation was discovered, but no later than three years from the date the violation was committed. Article 28 of the Rules of Procedure of the Judicial Council, dated 25.12.2019 - which was in effect at the time the request was submitted and throughout the entire procedure, clearly stipulates that the procedure for determining the accountability of a judge or court president is considered initiated on the date the request is received. If the request is submitted by registered mail, the procedure is considered initiated on the date the request is received by the Council.

In light of the aforementioned provisions and considering the judge's claims made during the proceedings before the Judicial Council, as well as in the appeal submitted to the Appeals Council regarding the untimeliness of the request, a valid question arises whether the request was submitted on time? This is especially relevant given that the request was submitted on 17.06.2019, while the lifelong support agreement was certified in the presence of the requester during proceedings before Judge S.I. on 12.12.2018. From the stated dates, and taking into account the six-month statutory deadline, it could be argued that the request was submitted four days after the expiration of the legally defined period. On this issue, as evident from both decisions of the Judicial Council as well as the decision of the Appeals Council, neither instance, apart from the Judicial Council's conclusion that the request was timely, addresses the judge's claims. This is notable since the admissibility of the procedure depends on this condition.

Temporal applicability of the substantive law

The next issue concerns the claims made by Judge S.I. in the appeal regarding the temporal applicability of the Law on Courts, specifically the amendments of 17.05.2019, in relation to the violation for which accountability is being sought. In this context, neither the Judicial Council nor the Appeals Council addresses the legitimate dilemma arising from the judge's claims about whether the provisions of the Law on Courts in effect at the time of the violation should be applied, or those in effect at the time the proceedings for determining the judicial accountability were conducted before the Judicial Council, in light of the amendments to the LC from 17.05.2019, especially concerning termination, dismissal, and grounds for liability. Specifically, the Judicial Council in both of its decisions does not specify which version of the LC it is using to determine accountability, as it only quotes the new text of the provisions without mentioning the Official Gazette in which the corresponding law and its amendments were published. Moreover, the Appeals Council in its decision does not address this dilemma, even though it is the first appeal point raised by the judge. This leaves open the question of whether the Judicial Council takes into consideration the temporal validity of the laws it applies and what standards it follows and adheres to concerning this issue, or which legal grounds it uses to determine the accountability of a judge.

Method of decision-making by the Judicial Council

In analyzing the decisions of the Judicial Council, the issue was raised regarding the method of decision-making of the Council in relation to the legal provision regulating the decision-making procedure, specifically the provision of Article 69, paragraph 3 of the Law on the Judicial Council, which stipulates that the decision to dismiss a judge is made with at least eight votes from the total number of members with voting rights. From the decisions of the Judicial Council, it can be concluded that the Council does not indicate the majority with which the respective decision was made, or the number of votes cast in favor of the decision. In no legal or procedural provision is it stipulated that this data should be confidential or not published, and for this reason, it is unclear why this information is absent from the Judicial Council's decisions, especially since it could reflect the differing opinions and views of the 13 members with voting rights. Furthermore, Article 39 of the LJC provides that when the Council makes a decision and excludes the public from the session, the voting must still be public if a decision is being made. On the other hand, the LJC does not regulate the majority needed in the nine-member Appeals Council, so it is not surprising that the Appeals Council does not mention this information in its decision.

Insufficient reasoning of the decisions of the Judicial Council in terms of the decisive facts and fulfillment of legal conditions and reasons for the dismissal of the judge

Judge S.I. was dismissed due to unprofessional and negligent performance of the judicial function (Article 74, paragraph 1 of the LC), specifically due to intentional and unjustifiable gross professional error, having in mind that a differing interpretation of the law and facts cannot serve as grounds for determining the judge's accountability (Article 76, paragraph 1, item 7 of the LC). Only after the indication from the Appeals Council did the Judicial Council, in its second dismissal decision, refer to the cumulative conditions that the LC provides for the dismissal of a judge (Article 74, paragraph 3 of the LC), specifically that the violation was committed intentionally or with obvious negligence by the judge without justified reasons, and that the violation caused severe consequences. This provision ensures that judges will not be easily dismissed as was the case under previous legal provisions, where the grounds for accountability were broadly defined without additional conditions, resulting in serious criticisms of the state due to the large number of dismissals. Furthermore, the provision in Article 74, paragraph 4 of the LC clearly points to the need for a proportional or commensurate determination of the severity of the specific violations and, consequently, the sanction or measure that should follow. Precisely for these reasons, and especially when it comes to the dismissal of a judge, the Judicial Council is obliged to provide a convincing explanation that leaves no doubt regarding the correctness of their decision. Unfortunately, in this particular case, it is evident that the Judicial Council offers a very brief and unconvincing explanation of the reasons and grounds for dismissing the judge, which raises the legitimate question of whether the judge's dismissal is well-founded and sufficiently supported.

In this regard, when it comes to the first decision of the Judicial Council from 10.02.2020, it can be noted that the Council does not delve into the argumentation of the legal grounds for the dismissal of the judge nor does it provide reasoned explanations for making such a decision. An analysis of the decision shows that the Judicial Council only offers a review of the individual phases of the procedure for determining the judge's accountability before the Judicial Council and a review of the factual situation related to the specific case that Judge S.I. handled, without providing any explanation regarding the legally established conditions that must be cumulatively fulfilled in order to make a decision to dismiss the judge. The Judicial Council not only fails to provide an adequate explanation, but it does not refer to or even mention these conditions at all, and in its decision, it only refers to the provisions of the LC on the basis of which the judge is dismissed, without citing the content of these provisions. The Appeals Council, in its decision which annulled the Judicial Council's decision, also subject to criticism for insufficient reasoning, nonetheless properly calls on the Judicial Council to rule on the fulfillment of the cumulative conditions for the dismissal of a judge. However, the Appeals Council makes an omission in its reasoning by stating that the judge cannot be held accountable due to differing interpretations of the law and facts, even though in this particular case, it concerns the non-application of a clear imperative norm which leaves no room for interpretation. The Judicial Council, in its second decision, does not address this issue and fails to respond to the arguments of the Appeals Council, even though they represent a key element of the violation, which is particularly emphasized in the Appeals Council's decision.

The Judicial Council's decision to dismiss the judge in the retrial still suffers from the same shortcomings as the initial decision, despite providing a more detailed description and consideration of the facts, as well as taking into account the guidance from the Appeals Council regarding the legal conditions for dismissing a judge that must be cumulatively fulfilled. However, taking these into account does not necessarily mean that the Judicial Council acted upon them, as it again fails to provide reasoning outlining the causes for their cumulative fulfillment. For example, the Judicial Council only attempts to establish the judge's intent in committing the professional errors, without addressing whether there were any justifiable reasons for such actions. Perhaps the greatest shortcoming in the reasoning of the Judicial Council's decision in this context is that it is entirely unconvincing with regard to the alleged severe consequences resulting from the errors. The Judicial Council refers to subsequent court decisions regarding the partial removal of the legal capacity of the recipient of the support, a temporary measure against the provider of the support for family violence protection, as well as the judgment to annul the lifelong support agreement. It is stated that the provider of the support caused economic harm to the recipient by misusing their financial resources during the period of support.

Additionally, regarding the third condition that must be cumulatively fulfilled in order to establish the judicial accountability, namely that the violation caused severe consequences (Article 74 paragraph 3 of the LC), the Judicial Council, in its repeated decision, fails to establish a direct connection between the damage caused and the violation committed by the judge during the disputed certification of the lifelong support agreement. Specifically, the question arises whether, even with the most conscientious actions from the judge, the damage to the recipient of the support could have been avoided. It is clear that such an outcome was certainly possible, and for this reason, it cannot be directly linked to the violations that serve as the basis for establishing the judge's accountability in the proceedings before the Council. On the other hand, can we speak of severe consequences from the lifelong support agreement that was later annulled in the corresponding judicial process due to the existence of new circumstances, such as the removal of legal capacity, which were not present or known at the time of the disputed certification of the lifelong support agreement? Given the presence of such obvious dilemmas, it is reasonable to raise the question and doubt about the legitimacy of the dismissal in light of the unconvincing and superficial reasoning, if such reasoning can be considered at all, in the two decisions of the Judicial Council. Considering that the amendments to the Law on Courts from 2019 regarding the judicial accountability were clearly designed to make the dismissal of judges more difficult and to ensure that it is a measure only to be applied in truly exceptional situations, the entire procedure leaves room for the assertion that the judge did indeed commit a violation in this case, but the question remains whether it can be considered a sufficient basis for dismissal. We believe that, in accordance with the principle of proportionality, which was not even mentioned throughout the entire process, it might have been more appropriate to impose a disciplinary measure, given that these were indeed obvious violations and errors committed by the judge in the certification of this agreement. We believe it is indisputable that Judge S.I. committed professional errors, some of which can be qualified as serious, considering that the certification of the lifelong support agreement occurred while there was a note in the real estate register about an ongoing procedure to remove the legal capacity, in which, although the proposal for initiating the procedure was withdrawn, the court's decision to suspend the procedure had not yet become final, and that, contrary to legal provisions, individuals who did not know the recipient of the support were accepted as witnesses in the certification procedure. Furthermore, the seriousness of the lifelong support agreement itself could be considered an aggravating factor, given the special status and significance attached to this type of contract. However, particularly considering that the harmful consequences directly resulting from the established professional errors are not clearly defined, we believe it is reasonable to dispute the decision to dismiss the judge rather than imposing a disciplinary measure.

CONCLUSION

The case of Judge S.I.'s dismissal is the first civil law case for determining judicial accountability under the new and existing legal framework of 2019. Despite expectations that the legal framework would help overcome the shortcomings in the existing practice of the Judicial Council in this context, substantial flaws in the procedure can still be observed in this case. Namely, the Judicial Council, in this case, continued with insufficiently reasoned decisions regarding the fulfillment of conditions and the grounds for the judge's dismissal. In practice, the new legal provisions on judicial accountability, especially regarding dismissal, have not been effectively applied in the Judicial Council's decisions, which again highlights the fact that reforms cannot be reduced to legislative changes alone; they must be reflected adequately in practice.

02 CASE NOTE: DISMISSAL OF JUDGE S.T.

INTRODUCTION

The subject of this analysis is the decision of the Judicial Council of the Republic of North Macedonia regarding the determination of unprofessional and negligent performance of judicial duties. The case involves Judge S.T., a judge of the Basic Court in Sh., who was found responsible for negligent and unprofessional conduct due to delays in proceedings in which he acted as a judge. A distinctive feature of this case is that, at the time the Judicial Council of the Republic of North Macedonia issued its decision determining unprofessional and negligent performance of judicial duties, a prior decision had already been made by the Judicial Council declaring the termination of his judicial function due to the fulfilment of conditions for retirement.

FACTS OF THE CASE

According to the allegations in the request for determining the accountability of Judge S.T., submitted by M.S., a member of the Judicial Council, and registered under No. 10-54/1 on 8 April 2021, the request was filed because, during his tenure as a judge at the Basic Court in Sh., from 11 December 2018 to 25 March 2021, he acted contrary to the provisions of the Law on Civil Procedure and the Court Rules of Procedure. Specifically, in some of the cases he handled, he failed to schedule hearings within the legally prescribed deadlines, while in others where hearings were postponed, he did not set new dates for their continuation (there are 62 registered cases, referenced in the request). Additionally, for a certain number of cases assigned to him through the ACMIS system, the Judge S.T. accepted them only after a significant delay, while some were not accepted at all. Consequently, according to the submitter of the request, this conduct amounted to unprofessional and negligent performance of judicial duties, constituting a violation due to apparent negligence attributable to the judge.

Acting upon the submitted request, the Commission of Rapporteurs established by the Judicial Council of the Republic of North Macedonia prepared a report on the established factual situation. The Judicial Council deliberated on this report at its session held on 07.06.2021, where it decided to continue the proceedings.

Within the framework of the proceedings before the Commission of Rapporteurs, all actions prescribed by the Law on the Judicial Council (LJC) for this stage of the process to determine a judge's accountability were carried out sequentially. These included: delivering the request and evidence to the judge personally; obtaining the judge's written response to the request; collecting data and evidence relevant to the determination of circumstances related to the request; and holding a hearing before the Commission of Rapporteurs. Following the submission of the report of the Commission of Rapporteurs on the findings related to the request, the Judicial Council of the Republic of North Macedonia, at its session held on 07.04.2022, decided to establish that Judge S.T. had performed judicial duties in an unprofessional and negligent manner, taking into account the fact that the judge had already retired at the time of the decision.

As part of his defense during the proceedings before the Judicial Council of the Republic of North Macedonia, Judge S.T. invoked the lack of passive legitimacy, arguing that accountability proceedings are conducted solely against active judges. The only exception, as provided under Article 68, paragraph 5 of the LJC, allows the proceedings to continue against an individual who has lost their status as a judge, but only in cases where the judge themselves has requested the termination of their judicial function during the accountability proceedings.

The decision of the Judicial Council of the RNM was appealed by the judge. The Appeals Council at the Supreme Court of the Republic of North Macedonia (Appeals Council), deliberating on the case, issued Decision No. OSZh 4/2022 on 19.09.2022, rejecting the judge's appeal as ill-founded and upholding the decision of the Judicial Council.

DECISION(S) AND ARGUMENTS (RATIO DECIDENDI)

The decision to determine unprofessional and negligent performance of judicial duties by the Judge S.T., who was a judge at the Basic Court in Sh., was rendered by the Judicial Council of the Republic of North

Macedonia due to a violation under Article 76, paragraph 1, item 4 in conjunction with Article 74, paragraph 1, item 2, and paragraph 3, item 1 of the Law on Courts. The violation pertained to the judge's unjustified failure to schedule hearings in cases assigned to him or otherwise prolonging proceedings (Article 76, paragraph 1, item 4 of the Law on Courts). In reaching this decision, the Judicial Council accepted the claims made by the submitter of the request and given that Judge S.T. was already retired, the Council did not issue a decision for dismissal but instead issued a decision determining unprofessional and negligent performance of judicial duties.

In the reasoning for its decision, the Judicial Council stated that Judge S.T. negligently and unprofessionally performed his judicial duties by failing to schedule preparatory hearings and main hearings within the legally prescribed deadlines in multiple cases, thereby acting contrary to the provisions of the Law on Civil Procedure (LCP) and the Court Rules of Procedure. Furthermore, in numerous cases where hearings were adjourned or postponed, the judge failed to immediately set a continuation date, violating the provisions of the LCP and the Court Rules of Procedure. Additionally, for certain cases assigned to him via the ACMIS system, he accepted them after an unjustified delay, or in some instances, failed to accept them altogether. This conduct violated the provisions of the Court Rules of Procedure and the Law on Case Management in Courts.

The Appeals Council at the Supreme Court of the Republic of North Macedonia, acting on the appeal submitted by Judge S.T., dismissed the appeal as ill-founded and upheld the decision of the Judicial Council. The Appeals Council found the appellant's claims of procedural violations during the accountability proceedings to be without merit, specifically the alleged misapplication of Article 68, paragraph 5 of the Law on the Judicial Council, which stipulates that if a judge or court president against whom accountability proceedings have been initiated submits a request to terminate their judicial function during the course of the proceedings, the Judicial Council shall acknowledge the termination of judicial function and continue the proceedings until a final decision is made. This decision then becomes part of the judicial record of the judge or court president. The Appeals Council reasoned that, in this case, the fact that the judge had submitted a request for termination of judicial function after previously extending his judicial mandate on two occasions following the fulfilment of conditions for retirement under the applicable legal provisions of the Labor Law at that time, could be interpreted within the scope of Article 68, paragraph 5 of the LJC.

CRITICAL REVIEW AND ANALYSIS

In this section, based on the available documents and decisions, certain issues and aspects of the procedure for establishing the accountability of Judge S.T. will be analyzed, focusing on both the formal and substantive elements of the procedure. Specifically, the analysis will address the following aspects: insufficient reasoning in the Judicial Council's decision regarding the decisive facts, the fulfilment of legal conditions, and the reasons for dismissing the judge; procedural aspects of conducting accountability proceedings against a judge whose judicial function has terminated in the meantime; and the decision-making process of the Council.

Insufficient Reasoning in the Judicial Council's Decision Regarding the Decisive Facts and Fulfillment of Legal Conditions and Reasons for Dismissing the Judge

Under the Law on the Courts (LC), unprofessional and negligent performance of judicial duties is defined as unsatisfactory expertise or negligence by the judge that affects the quality and timeliness of their work. This includes, among other things, cases where a judge, without justified reasons, fails to schedule hearings for cases assigned to them or otherwise delays proceedings (Article 76, paragraph 1, item 4 of the LC). Regarding Judge S.T., the Judicial Council determined unprofessional and negligent performance of judicial duties precisely for this reason, in connection with Article 74, paragraph 1, item 2 of the LC, which provides that a judge shall be dismissed from judicial function for unprofessional and negligent performance of judicial duties under conditions established by law, and in connection with Article 74, paragraph 3, item 1 of the LC, which provides that a judge shall be dismissed under the grounds established by law if the violation was committed intentionally or due to obvious negligence by the judge without justified reasons. The Judicial Council, in the operative part of its decision, does not refer at all to item 2 of Article 74, paragraph 3 of the LC, which stipulates that such a violation must result in severe consequences.

According to Article 74 of LC, a judge shall be dismissed from judicial function if the following conditions are cumulatively met: 1) a serious disciplinary violation has been committed, rendering the judge unfit to perform judicial duties, or unprofessional and negligent performance of judicial duties; 2) the violation was committed intentionally or through evident negligence by the judge without justified reasons; and 3) the violation caused severe consequences.

In this context, what appears problematic regarding the decision under review is the fact that, although the Law on the Courts requires the cumulative fulfilment of the conditions set forth in Article 74 for a judge to be dismissed, the Judicial Council of the RNM dissects these conditions and neither in the operative part of its decision nor in its reasoning does it refer to the third condition, which pertains to the severe consequences caused by the violation - a condition that must be met to establish that the judge is responsible for unprofessional and negligent conduct. This is considered as an omission by the Judicial Council in rendering such a decision, especially given that the Council itself, in both the operative part and the reasoning of its decision, explicitly references Article 74 paragraph 3, which enumerates the cumulative conditions for dismissal, but only addresses one condition from item 1 - namely, that the violation was committed intentionally or through evident negligence by the judge without justified reasons. Such an omission in the decision-making process is problematic because, in situations where the law insists on the cumulative fulfilment of certain prerequisites, the Judicial Council not only fails to address these prerequisites but also completely neglects to mention them in its decision. In proceedings such as those for determining a judicial accountability, which carry significant weight concerning the nature of the work being adjudicated and the consequences arising from it, it is imperative that clearly established legal rules are strictly adhered to, leaving no room for improvisation or a superficial approach to decision-making.

Additionally, it can be observed that the Council does not delve into the legal grounds for the dismissal of the judge, nor does it provide reasoned justifications for making such a decision. The decision gives an overview of certain stages of the procedure for determining the judge's accountability before the Judicial Council and a review of the established factual situation, without adequately arguing and explaining the individual legal grounds or conditions under which it is concluded that accountability for unprofessional and negligent conduct should be determined. In this regard, not only are the severe consequences of the violation not mentioned and explained, but the question of the judge's fault is also not addressed - whether the violation was committed intentionally or through evident negligence, and how this was determined during the procedure. Furthermore, while the Judicial Council implies the initiation of a dismissal procedure, it fails to mention the principle of proportionality, nor does it explain why this principle was not applied in the specific procedure.

Based on the presented factual situation regarding the judge's conduct in the specific cases, it is indisputable that his actions contain elements of negligent and unprofessional conduct, which fall under one of the reasons for which a judge can be dismissed, namely neglect and delay of procedures in cases he handles without justifiable reasons, by failing to schedule hearings or otherwise unnecessarily prolonging the proceedings. However, even though it is evident that the judge acted unprofessionally and negligently over a certain period of time, this does not grant the Judicial Council the right to take a superficial approach regarding the reasoning of the decision. The decision must be reasoned, and the Judicial Council is obligated to provide justification for all legal conditions that must be cumulatively met in order to make a decision to dismiss the judge or establish unprofessional and negligent conduct, as in this case, especially when the Council refers to a legal basis concerning dismissal.

Conducting proceedings to determine the accountability of a judge whose judicial function has terminated in the meantime

In the specific case, the proceedings to determine the accountability of Judge S.T. were initiated at a time when he was still actively performing his judicial duties. During the proceedings to determine accountability, the Judicial Council issued Decision No. 02-1146/13 of 30 August 2021, which established the termination of the judicial function of Judge S.T. due to fulfilling the requirements for retirement, effective from 26.08.2021. It is precisely this circumstance that was raised by Judge S.T. during the proceedings before the Judicial Council, who argued that from that moment, he no longer had passive legitimacy and that the proceedings against him could not continue since he was already a retired judge. In this regard, it is important to point out that the Judicial

Council did not address this issue in its decision, even though it was initially raised during the discussion, while only the Appeals Council addressed it following the appeal submitted by Judge S.T. Specifically concerning is the fact that the Appeals Council ventured into determining the facts related to the termination of the function and the passive legitimacy, while the Judicial Council did not address these issues at all, as the appeal was rejected and the decision of the Judicial Council was upheld.

The Law on the Judicial Council provides the possibility that if, during the proceedings to determine the accountability of a judge, the judge against whom the proceedings have been initiated submits a request for the termination of their judicial function, the Council will acknowledge the termination of the judicial function and will continue the proceedings until a final decision is reached (Article 68, paragraph 5). The main purpose of this legal provision is to prevent the evasion of accountability through the termination of the function, for example, by submitting a resignation during the proceedings, and to address all consequences arising from such accountability, such as the inability to engage in legal practice for a certain period after the determination of unprofessional and negligent work by the judge. Moreover, the provision does not apply to situations where the judge has met the conditions for retirement as a basis for the termination of their judicial function, because in such cases, the Judicial Council *sua sponte* determines the termination of the judicial function. Specifically, Article 73 of the LJC stipulates that the Judicial Council, no later than ten days from the day it becomes aware of one of the situations provided by law where a judge's function terminates, including meeting the requirements for retirement, will determine the termination of the judicial function, thereby terminating the judge's right to a salary (paragraph 2 of Article 73). In the case of fulfilling the conditions for retirement, the judge does not submit a separate request for the termination of their function as a judge.

The question arises here as to whether, in the specific case, Article 68, paragraph 5 of the LJC could have been applied, allowing the Judicial Council to continue with the proceedings.

Considering the provision of Article 68, paragraph 5 of the LJC, it follows that proceedings to determine the accountability of a judge can only be initiated against a judge who is actively performing their judicial function at the moment. If the judge themselves requests the termination of their judicial function, the Council will acknowledge the termination of the function and will continue with the proceedings until a decision is reached.

Although the judge, during the proceedings, raised an objection regarding the lack of passive legitimacy, due to the fact that his function terminated during the course of the proceedings as a result of meeting the requirements for retirement, and consequently, the proceedings to determine his accountability should have been stopped, in this particular case, we believe that this is not the relevant circumstance and that the Judicial Council acted correctly. However, it is problematic that the Council did not provide reasoning when it applied the provision of Article 68, paragraph 5 of the LJC. Namely, Judge S.T., even before the initiation of the proceedings to determine his accountability, had already met the conditions for retirement and should have been retired. However, at his request, in accordance with the applicable legal provisions at that time, his judicial mandate was extended twice. During the proceedings for determination of accountability as a judge, he informed the Judicial Council in writing that as of 03.08.2021, he met the conditions for retirement and requested the Judicial Council at the next session to adopt a decision acknowledging the termination of his judicial function. The Judicial Council presumably treated this notification from Judge S.T. as a request for termination of judicial function and applied Article 68, paragraph 5 of the LJC, given that according to the then valid Article 104 of the Labor Law, the judge had the option to extend his judicial mandate for another year. Considering that Judge S.T. had already met the conditions for retirement and his judicial mandate was extended solely at his request, we believe that in this case, the specific circumstances cannot be classified under Article 73, paragraph 1, item 3 in conjunction with paragraph 2 of the same article of the LC, and consequently, the application of Article 68, paragraph 5 of the LJC is possible. However, the observation and concern remain regarding the actions of the Judicial Council and the Appeals Council in (non)establishing these facts, which could be of crucial importance for the conduct of the proceedings as a procedural prerequisite, impacting its legality.

The Decision-Making Process of the Council

In analysing the decision of the Judicial Council, the issue of the decision-making process of the Council once again arises, particularly in relation to the legal provision that regulates the decision-making procedure,

specifically the provision in Article 69, paragraph 3 of the LJC, which stipulates that a decision to dismiss a judge must be made with at least eight votes from the total number of members with voting rights. Unlike the dismissal and disciplinary measures, this legal provision does not specify the majority required to establish a violation or accountability in circumstances such as those in the case of Judge S.T., in which unprofessional and negligent performance of judicial duties was determined. As can be seen from this decision of the Judicial Council, it can be concluded that the Council does not indicate what majority was required to adopt the corresponding decision, nor how many votes were cast in favour of the decision. No legal or procedural provision specifies that this information is confidential or should not be published, and therefore it is unclear why such data is missing from the Judicial Council's decisions, especially since it may reflect the different views and opinions of the 13 members with voting rights. Furthermore, Article 39 of the LJC provides that when the Council makes a decision to exclude the public from the session, the voting itself must still be public. On the other hand, the LJC does not regulate the majority required within the nine-member Appeals Council, so it is not surprising that the Appeals Council does not highlight this information in its decision.

CONCLUSION

The specific case of determining unprofessional and negligent performance of judicial duties in relation to Judge S.T. is distinctive because accountability was determined for a judge who, during the proceedings before the Judicial Council, had already retired. In different circumstances, in such a case, the decision of the Judicial Council would have been to dismiss the judge. Although, based on the presented factual situation regarding Judge S.T.'s performance, it is evident that his conduct was unprofessional and negligent, the Judicial Council in this case should have provided sufficiently reasoned justifications for both the fulfilment of the conditions and the grounds for determining unprofessional and negligent judicial conduct, as well as for the procedural prerequisites related to passive legitimacy. As with other analyzed cases, it is impossible not to notice that the Judicial Council continues the trend of issuing decisions that are insufficiently reasoned and substantiated.

03 CASE NOTE: IMPOSING A DISCIPLINARY MEASURE ON JUDGE I.I.

INTRODUCTION

This analysis provides an overview and critical assessment of the decision of the Judicial Council of the Republic of North Macedonia regarding the imposition of a disciplinary measure – a written warning – to Judge I.I., a judge at the Basic Court G. The judicial accountability was established for actions taken in a case in which the Basic Court G. did not have jurisdiction due to the exclusive territorial jurisdiction of another court for the handling and decision-making on a request for determining a measure for securing claims (determining a temporary measure), in which Judge I.I. was involved.

FACTS OF THE CASE

In this specific case, the request for determining accountability, registered under number 10-6/1 from 12.01.2022, was submitted against Judge I.I., a judge at the Basic Court G. The request refers to Articles 74 paragraph 3, item 1 in conjunction with item 2 and article 76 paragraph 6 of the Law on Courts in relation to determining the accountability of the judge. According to the allegations in the request, Judge I.I., when handling a request for the issuance of a temporary measure as a means of securing claims, issued a temporary measure with intent or obvious negligence, through his own fault and without justified reasons, in order to favour the interests of a specific group of legal and natural persons, to the obvious detriment of creditors of a legal entity in bankruptcy. The submitter of the request claims that the judge made a gross professional error when he adopted the request for the temporary measure, as his decision contained a completely unclear and incomprehensible reasoning to the point of being unprofessional, and therefore, did not deserve to continue holding the judicial office. Additionally, the request points out that the judge made significant errors in conducting the proceedings, as the Basic Court G. was not competent to handle the case, considering that another court had exclusive territorial jurisdiction due to the fact that the request for securing claims was filed against a legal entity undergoing bankruptcy proceedings, and the bankruptcy proceedings were being managed by the Basic Civil Court S.

Following the submitted request, the Judicial Council of the Republic of North Macedonia, at the meeting held on 04.07.2023, discussed the report of the Commission of Rapporteurs regarding the established factual situation. In the analyzed decision, there is no information on whether the actions prescribed by the Law on Judicial Council (LJC) were sequentially taken within the procedure before the Commission of Rapporteurs regarding this part of the procedure for determining the accountability of the judge, given that the explanation of the decision does not provide any information on the course of the procedure. After discussing the report of the Commission of Rapporteurs regarding the established factual situation, the Judicial Council determined that the judge had committed a violation under Article 74 paragraph 3, item 1 in conjunction with item 2 and article 76 paragraph 6 of the Law on Courts (LC) and sanctioned the judge by imposing a disciplinary measure in the form of a written warning. No appeal was filed against the decision of the Judicial Council.

DECISION(S) AND ARGUMENTS (RATIO DECIDENDI)

In the decision regarding the determination of accountability for Judge I.I., the Judicial Council of the Republic of North Macedonia accepted the claims of the submitter of the request for a disciplinary responsibility, as the judge committed an error of procedural nature. Specifically, while acting on a request to determine a temporary measure, the judge took action on three occasions. First, the judge issued a decision in which he accepted the request and determined a temporary measure. This decision, after an appeal was filed, was annulled, and the case was remanded for reconsideration, with instructions for the first-instance court to declare itself as lacking jurisdiction and refer the case to the court with territorial jurisdiction. Upon reconsideration, the judge issued a decision in which he lifted the temporary measure, declared himself as lacking subject-matter jurisdiction, and forwarded the case with all the documentation to the Administrative Court, as the court with subject-matter jurisdiction to handle the request for a temporary measure. An appeal was filed against this decision, and the decision was annulled in the part regarding the court's (non)jurisdiction. Upon reconsideration, the judge, following the instructions of the appellate court, issued a decision in which he declared the lack of territorial jurisdiction to act on the request for a temporary measure and forwarded the case with all the

documentation to the Basic Civil Court in S. as the court with both subject-matter and territorial jurisdiction. This decision was also appealed, but the appellate court rejected the appeal as ill-founded and upheld the first-instance decision.

According to the assessment of the Judicial Council, in this specific case, the actions of Judge I.I., based on the fact that he followed the instructions of the higher court, i.e., took actions to rectify the violations and thus overcame the situation, should be considered a disciplinary violation for which a written warning should be imposed. The Judicial Council supports this position by stating in the reasoning of its decision that the decision made by the judge in this specific case did not result in harmful consequences and that, in this particular case, there was no intentional action or violation committed with intent, nor did the judge's actions lead to serious consequences.

In support of its decision to impose a disciplinary measure instead of dismissing the judge, the Judicial Council stated that, in its deliberations, it considered the gravity of the violation, the degree of accountability, the circumstances under which the violation occurred, and the conduct of the judge. According to the Judicial Council, in this particular case, the issue pertains to an oversight by the judge. In this regard, the Judicial Council believes that the imposed disciplinary measure - a written warning, will achieve the purpose of educational influence on the judge, encouraging increased accountability in performing professional duties, a more thorough approach, and greater responsibility in the judicial conduct, all aimed at preventing such violations in the future.

CRITICAL REVIEW AND ANALYSIS

As part of this section of the analysis, and based on the available case files, the arguments of the Judicial Council, and the content of the analyzed decision, certain problematic issues and aspects of the procedure for determining the accountability of Judge I. I. will be highlighted. These issues primarily concern the legal basis for the judge's actions and accountability, the lack of transparency in the phases and actions within the procedure, and the inadequately written and brief reasoning, particularly regarding the mild approach to the judge's accountability and the imposed disciplinary measure.

Issues Related to the Legal Basis of the Proceedings and the Accountability

An analysis of the content of the Judicial Council's decision reveals that it is poorly drafted. Specifically, even in the operative part of the decision, there is an evident issue, which persists throughout the reasoning: the Judicial Council, in determining accountability and imposing the disciplinary measure, referred to provisions of the Law on Courts that either do not exist or are not applicable in the specific case. In the operative part of the decision, the Judicial Council stated that the written warning was issued for a violation under Article 74 paragraph 3, item 1 in conjunction with item 2 and article 76 paragraph 6 of the Law on Courts.

According to Article 74 paragraph 3, item 1 and 2, a judge may be dismissed from judicial office based on the grounds outlined in paragraph 1 of the same article if the violation was committed intentionally or with gross negligence by the judge, without justified reasons (paragraph 1), and if the violation caused serious consequences (paragraph 2). In this context, it is unclear why the Judicial Council refers to Article 74 paragraph 3, which pertains to the cumulative conditions for dismissal, given that in this case, the mildest disciplinary measure was imposed. Therefore, it would have been more appropriate for the Judicial Council to invoke Article 74 paragraph 4, which regulates the possibility of imposing a disciplinary measure in cases of lesser violations. Consequently, the Judicial Council relied on an incorrect legal basis when determining the judge's accountability and imposing the disciplinary measure.

Additionally, Article 76 paragraph 6 of the Law on Courts, which the Judicial Council references, does not exist. Article 76 addresses the issue of unprofessional and negligent performance of judicial duties and consists of three paragraphs. If the Judicial Council intended to refer to item 6 of paragraph 1 of Article 76 of the Law on Courts - suggesting that Judge I.I.'s unprofessional and negligent actions fall under taking on a case not assigned to them through the automated court case management system - considering the nature of the violation committed by the judge in this specific case, this provision is absolutely inapplicable. If the Judicial Council were

to invoke unprofessional and negligent conduct, the more relevant provision for this case would be Article 76 paragraph 1, item 7, which pertains to a gross professional error.

Precisely because of these shortcomings, it is deemed unacceptable for the Judicial Council to reference legal provisions in its decisions that are inapplicable to the specific case or provisions that do not exist in the law. In this regard, Article 74 paragraph 3 of the Law on Courts regulates the cumulative conditions that must be met for a judge to be dismissed from performing judicial duties - a provision that is inapplicable in the current case, as it involves the imposition of a more lenient disciplinary measure. On the other hand, as previously mentioned, the provision cited by the Judicial Council in the operative part of its decision, namely Article 76 paragraph 6 of the Law on Courts, does not exist, which constitutes a serious oversight by the Judicial Council in its decision-making process.

Lack of Clarity Regarding the Phases and Actions in the Procedure

The decision of the Judicial Council does not provide any information about the submitter of the request for determining accountability, nor does it present an overview of the process undertaken to establish the accountability of Judge I.I. Unlike other analyzed decisions on determining judges' accountability, which include a detailed review of all phases of the procedure before the Judicial Council, in this case, the reasoning of the decision does not address any specific actions taken as procedural activities mandated by the Law on the Judicial Council of the Republic of North Macedonia in the conduct of this procedure. In this regard, the reasoning of the decision includes only information about the receipt of the request (its registration number and date) and the date of the session where the Judicial Council discussed the report on the established facts prepared by the Commission of Rapporteurs.

There is no information about the submitter of the request, or the evidence presented during the deliberations, which served as the basis for establishing the factual situation and reaching the decision. Additionally, the decision lacks details about the voting process by the members of the Judicial Council or a legal remedy for the judge, such as a notice of their right to appeal the Judicial Council's decision.

The (In)Adequacy of the Reasoning and Mild Approach in Sanctioning

In the specific case, the Judicial Council establishes the accountability of Judge I.I. but concludes that his actions and the violation he committed are not of a nature or intensity warranting the strictest sanction, namely dismissal, even though such a measure was requested in the submitted request for determining the judge's accountability. The Judicial Council considers that the judge committed a procedural violation, that no harm or severe consequences occurred, as the judge acted in accordance with the higher court's instructions, thereby rectifying the situation he initially caused. For these reasons, the Judicial Council believes it is sufficient to impose only a written warning as the mildest disciplinary measure, considering it will achieve the desired educative effect on the judge. According to the Judicial Council, no intent or deliberate violation was detected in the judge's conduct. Furthermore, the Council characterizes the judge's actions in this specific case as an oversight.

The Judicial Council provides an exceptionally sparse justification, marked by multiple inconsistencies and ambiguities. Specifically, regarding the nature and severity of the violation committed by Judge I.I. and the corresponding disciplinary measure imposed, we find that the Judicial Council fails to provide adequate reasons and arguments to justify its relatively mild approach in sanctioning the judge.

Under the provisions of the Law on Civil Procedure, the court, upon receiving the initial submission, is obligated to assess ex officio whether it has jurisdiction to proceed and in which composition it is competent to act. When discussing the jurisdiction of a court in a civil procedure, the court's jurisdiction is considered a general, positive, and absolute procedural prerequisite on which the permissibility of the procedure depends. The court must always ensure, ex officio, that it has the jurisdiction to act. In the specific case, the proceedings were initiated upon a request for issuance of a temporary measure, where the debtor was a legal entity in bankruptcy. This fact was known to the judge, considering it was explicitly stated in the request for issuance of the temporary measure.

According to Article 56 of the Law on Civil Procedure, for adjudicating disputes arising during or in connection with judicial or administrative enforcement proceedings, or during or in connection with bankruptcy proceedings, the court with exclusive territorial jurisdiction is the court within whose jurisdiction the court conducting the enforcement or bankruptcy proceedings is located, or the court within whose jurisdiction the administrative enforcement is being conducted. This provision is imperative in nature, establishing the jurisdictional attraction of the court conducting the bankruptcy proceedings. It prescribes the exclusive territorial jurisdiction of the court overseeing the bankruptcy proceedings for all disputes arising during and in connection with those proceedings.

In this particular case, the judge disregarded the provision of the Law on Civil Procedure and proceeded with the request for issuance of a temporary measure. Acting on the request, the first-instance court, through Judge I.I., accepted the submitted request and issued the temporary measure, even though it was not territorially competent to do so. After the annulment of this decision, the first-instance court revoked the temporary measure and declared itself as not having jurisdiction over the matter, referring the case to the Administrative Court. After an appeal on this decision, Judge I.I. finally made the correct decision on the third attempt, declaring the court territorially incompetent and referring the case to the competent territorial court. In this way, the judge clearly delayed the proceedings.

The Judicial Council considers the conduct of Judge I.I. as an oversight. In our opinion, such conduct by the judge cannot be regarded as an oversight, but rather as a clear lack of knowledge of the legal provisions under which he regularly operates as a judge in the civil field. Specifically, it cannot be considered an oversight when the judge fails to apply a mandatory provision that is clearly regulated and determines the jurisdiction of the court, especially given the fact that the judge made incorrect and unlawful decisions on two occasions, even going so far as to declare himself as lacking subject-matter jurisdiction and forwarded the case to the Administrative Court for further proceedings. This conduct by the judge can only be classified as unprofessional and a clear lack of legal knowledge, particularly considering the fact that it concerns an issue that determines the permissibility of the procedure.

Based on the aforementioned, it can be confidently asserted that such a lack of legal knowledge constitutes an aggravating circumstance in this case. The Judicial Council solely enumerated mitigating circumstances while entirely disregarding any aggravating ones. Specifically, in its brief reasoning, the Council focused only on the fact that the judge did not have intent to commit the violation, completely overlooking the evident fact that the situation involved clear negligence on the judge's part—a basis or condition also stipulated in Article 74, paragraph 3, item 1, and which resulted in a gross professional error as defined under Article 76, paragraph 1, item 7. On the other hand, the Council insisted that no harm or consequences resulted, ignoring the delay in the proceedings as a harmful consequence. Furthermore, it completely neglected the allegation presented in the request to initiate proceedings, which alleges that the judge acted in this manner to protect the interests of a private entity that is a debtor in the proceedings. In fact, examining this claim could suggest that the violation committed by the judge may have been intentional. Unfortunately, the Judicial Council did not address this matter at all, instead it reached rather superficial and arbitrary conclusions that are unsupported by arguments and evidence. In fact, the brevity of the reasoning leaves room for doubt regarding the motives behind such conduct by the Judicial Council and the relatively lenient approach taken in determining the sanction or measure.

For these reasons, we believe that the sanction imposed by the Judicial Council should have been stricter, given that, in this particular case, the judge demonstrated a clear lack of knowledge regarding procedural law. This is especially evident when, upon reconsideration, the judge declared a lack of jurisdiction and referred the case to the Administrative Court, which has no jurisdiction to act in such cases. Under the provisions of the Law on Courts, the judge's actions should have been classified as negligent and unprofessional, indicating unsatisfactory competence that affects the quality of their work, and such actions should have been characterized as an unjustified gross professional error.

CONCLUSION

The analysis of the Judicial Council's decision to determine the accountability and impose the disciplinary measure - a written warning to the Judge I. I. of the Basic Court G., revealed that the Judicial Council, in determining the accountability of judges and making decisions in this regard, failed in individual cases to appropriately qualify the violation committed by the judge. Furthermore, it did not impose a sanction proportional to the nature and severity of the violation. Additionally, in this case, the Judicial Council made a serious error both in its decision-making and in drafting the decision, as it incorrectly referenced legal provisions to support its reasoning - provisions that were inapplicable in this particular case or did not exist. Such actions raise concerns about whether the Judicial Council adopted a serious and responsible approach in conducting proceedings to establish judicial accountability and making decisions in this context.

04 CASE NOTE: DISMISSAL OF JUDGE S.L.

INTRODUCTION

Within the scope of this analysis, the decision of the Judicial Council of the Republic of North Macedonia to dismiss Judge S.L. from the Basic Court in S. will be analyzed. Alongside the decision of the Judicial Council, the subsequent proceedings are reviewed through an analysis of the submitted appeal and the decision of the Appeals Council at the Supreme Court of the Republic of North Macedonia. The case pertains to the dismissal of a judge handling criminal matters, related to the sanctioning of a lawyer for expressing opinions on social media regarding the judge's performance. The proceedings are conducted in accordance with the provisions of the new Law on the Judicial Council from 2019.

FACTS OF THE CASE

In the specific case, Judge S.L. of the Basic Criminal Court in S. was dismissed from judicial office for unprofessional and negligent performance of judicial duties, pursuant to Article 74, paragraph 1, item 2 of the Law on Courts, in connection with Article 74, paragraph 3, items 1 and 2 of the same law. The dismissal was based on actions taken by Judge S.L. on 05.09.2019, while presiding over case no. 9 K.no.1232/19 at the Basic Criminal Court in S. She issued a decision, K.no.1232/19 dated 05.09.2019, imposing a monetary fine of 2,000 EUR on lawyer A.A., who is actually the submitter of the request for initiating proceedings to determine the judge's accountability. At the time of the decision, A.A. was no longer engaged as the defense attorney in the case, having been dismissed by the defendant, E.M., on 04.09.2019, at 3:20 PM, in accordance with Article 371, paragraph 4 of the Law on Criminal Procedure (LCP), and replaced by another attorney. The judge issued the fine outside the main hearing on 05.09.2019, penalizing the lawyer for allegedly insulting the court under Article 88, paragraph 1 of the LCP. The insult was based on a Facebook post published by A.A. on 04.09.2019, at 8:01 PM, in which he wrote: "SWAROVSKI S.L. BOTTOM OF A JUDGE. IMMEDIATE DISMISSAL." The decision was subsequently overturned upon appeal by A.A. through Decision KS-Kr.no.1454/19, dated 19.11.2019, issued by the Criminal Council of the Basic Criminal Court in S. Following this, Judge S.L. initiated a civil case, which concluded in her favour as the plaintiff. The court upheld her claim, establishing that the Facebook post constituted insult.

The Judicial Council of the Republic of North Macedonia, at its session on 22.06.2020, adopted Decision No. 10-73/2 on 24.06.2020, which established a Commission of Rapporteurs. According to Article 63, paragraph 7 of the Law on the Judicial Council of the Republic of North Macedonia, the Commission of Rapporteurs submitted a Notification to the Council regarding the established factual situation, No. 10-73/4 of 13.10.2020, in which it was determined that the request was timely, complete, and not manifestly ill-founded. As a result, the Council, at its session on 03.11.2020, adopted a Decision No. 10-73/5 of 09.11.2020 to continue the procedure. By letter No. 10-73/6 of 09.11.2020, the Commission of Rapporteurs forwarded the Request for initiating proceedings to determine accountability, along with the attached evidence, to Judge S.L. In submission No. 10-73/7 of 18.11.2020, the Judge S.L. provided a written response to the request for determining accountability submitted against her.

The Commission of Rapporteurs scheduled a hearing for 16.12.2020, which was postponed due to the justified absence of the submitter of the request. A hearing was held on 09.02.2021, in the presence of the judge and the submitter of the request, during which the parties were heard, and evidence was presented. Based on the presented evidence and the claims made, the Commission prepared and submitted to the Council a Report on the established situation regarding the request, No. 10-30/3 of 22.02.2021. The Judicial Council, at its session held on 11.03.2021, discussed the Commission's Report, during which it upheld the request and assessed that the conduct of Judge S.L. in this particular case was negligent and unprofessional, with an overstep of official position and authority.

Using the right to appeal, Judge S.L. on 14.04.2021, submitted a timely appeal to the Appeals Council at the Supreme Court of the Republic of North Macedonia, challenging the decision made by the Judicial Council on the following grounds:

A) Gross violation of the provisions regarding the accountability of judges as regulated in the Law on the Judicial Council of the Republic of North Macedonia, specifically:

- 1) Untimeliness in the proceedings;
- 2) Violation of the provisions of Article 63, paragraph 4 of the Law on the Judicial Council of the Republic of North Macedonia, as the request is manifestly ill-founded, or concerns facts that have already been examined by a higher court in proceedings based on legal remedy;
- 3) Gross violation in the proceedings of the Council, which acted differently twice for two identical requests for dismissal;
- 4) Lack of legal grounds for dismissal;
- 5) The Council erroneously and without evidence attempted to justify that a violation was committed, which caused serious consequences;

B) Violation of the right to a fair trial under Article 6 of the ECHR.

The Appeals Council at the Supreme Court of the Republic of North Macedonia, deciding on the appeal of S.L. against the decision of the Judicial Council, number 10-30/9 from 19.03.2021, pursuant to Article 72 of the Law on the Judicial Council of the Republic of North Macedonia, held a session on 01.07.2021, and issued a Decision numbered OSZh no. 6/2021, whereby S.L.'s appeal was rejected as ill-founded, and the Decision of the Judicial Council, number 10-30/9 from 19.03.2021, was upheld.

DECISION(S) AND ARGUMENTS (RATIO DECIDENDI)

In the analyzed case, two decisions were made. Specifically, the Decision of the Judicial Council of the Republic of North Macedonia and the Decision of the Appeals Council at the Supreme Court of the Republic of North Macedonia. In the Decision of the Judicial Council of the Republic of North Macedonia, the Council fully accepted the submitter's request, namely, the removal of S.L. from judicial office due to unprofessional and negligent performance of the judicial function, in accordance with Article 74, paragraph 1, item 2 of the Law on Courts, in conjunction with Article 74, paragraph 3, items 1 and 2 of the same law. Thus, S.L. was removed from the judicial function. Specifically, on 05.09.2019, Judge S.L. made a decision in which she fined the submitter of the request A.A. with a monetary fine of 2,000 EUR (equivalent to 122,990.00 MKD) due to a Facebook status posted on 04.09.2019, at 8:01 PM, which she deemed to be insulting, even though, the day before, she had noted in the minutes that the submitter of the request was no longer the defense attorney of the defendant in the case at hand, thus requesting from the court president to assign a defense attorney ex officio. By decision 03 Su.no.10/19-398 of 04.09.2019, G.K., an attorney from S., was appointed as the ex officio defense attorney, and the statement from the defendant was accepted, which read, "I revoke the powers of attorney of A.A. and appoint attorney I.B. from T." This was clearly noted in the minutes of the main hearing on 04.09.2019, which led to the removal of the appointed ex officio defense attorney.

It follows that the judge unquestionably knew and accepted the fact that the submitter of the request was no longer a participant in the specific proceeding. Nevertheless, the next day, on 05.09.2019, exceeding her legal authority as a judge, she imposed a monetary fine for a Facebook status. As a holder of a public office and an elected judge, she was obligated to maintain a fair balance between personal emotions and lawful conduct in the proceeding, respecting the individual's rights, including the right to freedom of expression, and taking into account the public interest in ensuring the integrity of the judiciary.

Through the aforementioned actions, the judge overstepped her legal authority, moral, and ethical obligations, failing to establish a balance between private interests and the public interest. Specifically, by issuing the decision to impose a fine on the submitter of the request, she disregarded the margin of appreciation between her subjective sense of "insult" and the penalty imposed on the submitter of the request and this demonstrated behavior that restricted the individual's freedom of expression, undermining the essence of the right itself. Furthermore, the fine imposed on the individual was not directed toward a legitimate aim, and there was no proportionality between the goal she sought to achieve - disciplining a citizen for expressing a personal opinion on Facebook - and the means used, namely, issuing a fine of 2,000 EUR.

Regarding the harmful consequence, the question of harm is subjective since it is not solely a matter of financial impact on the citizen but also the importance of the specific decision for the reputation of the judiciary as a principled question - how a judge should act within the authority granted by law and the harm inflicted on public trust in the judiciary. Consequently, the fact that the submitter of the request did not suffer financial harm due to the annulled decision is irrelevant, as the judge's actions raise questions of principles that are significant and impact the respect for citizens' rights. This creates a potential systemic issue affecting matters of public interest, namely public trust in the judicial system. Finally, the Judicial Council determined that in the specific case, the judge is the *dominus litis* (master of the proceedings) within the case but not beyond it. A clear conflict of interest existed where the judge's personal values outweighed the professionalism and impartiality that should prevail. The judge should not have allowed personal feelings, emotions, and convictions triggered by the Facebook post to take precedence over professionalism, justice, and legality. Instead, she was expected to resolve, not exacerbate, tensions, and to promote public trust in the courts within the legal framework through legally prescribed instruments: reporting to the Bar Association and initiating a civil lawsuit, which she subsequently pursued.

The Appeals Council of the Supreme Court of the Republic of North Macedonia fully addressed the appellant's allegations and found them to be ill-founded, thereby upholding the decision of the Judicial Council. Regarding some of the appellant's claims, specifically the allegation concerning the severity or disproportionality of the imposed sanction – the dismissal of the judge for unprofessional and negligent conduct - the Appeals Council stated that it lacks the legal authority to decide on such matters. According to the provisions of Article 72 of the Law on the Judicial Council of the Republic of North Macedonia, the Appeals Council's jurisdiction is limited to assessing the legality of the procedure conducted by the Judicial Council. The Appeals Council of the Supreme Court of the Republic of North Macedonia determined that there were no violations of procedural legality in the case and, therefore, upheld the decision of the Judicial Council of the Republic of North Macedonia.

CRITICAL REVIEW AND ANALYSIS

Within this section, a critical review of the entire procedure will be conducted, analysing it from both a formal and substantive perspective. Specifically, the procedural grounds for conducting the proceedings will be examined, as well as the substantive aspect, namely whether the decision of the Council was adequately substantiated and reasoned. In this context, all available decisions and submissions will be analyzed, including the decision of the Judicial Council, the judge's appeal, and the decision of the Appeals Council of the Supreme Court of the Republic of North Macedonia regarding the submitted appeal.

Formal Elements and Procedural Aspects: Timeliness and Admissibility

Regarding the assessment of the timeliness of the submitted request, it can be concluded that, pursuant to Article 61, paragraph 1 of the Law on the Judicial Council, the procedure for determining the accountability of a judge is initiated within six months from the date of becoming aware of the committed violation, but no later than three years from the date of the violation.

In accordance with the specified deadlines, and as evident from the judge's submitted appeal, it can be concluded that the Judicial Council briefly stated, without providing a more detailed explanation, that the request was timely. However, if the dates of the submitted request and the date of the judge's violation are considered, it can be stated that more than six months had elapsed—specifically, over eight months since the date of the violation, or more than six months from the date of the Criminal Council's decision annulling the decision imposing a penalty on the attorney. In the specific case, we believe that the submitter of the request can only use the subjective deadline, that is, the moment of becoming aware of the violation, because in this case, the violation consisted of the decision to impose penalty on the attorney, which was personally delivered to the submitter of the request, thus fulfilling the condition of the submitter's personal awareness of the violation. Furthermore, in such cases, the interpretation of this preclusive deadline should align with the interpretation of deadlines according to procedural laws (Law on Criminal Procedure and Law on Civil Procedure), where the deadline for submitting is six months from the date of learning about the violation, which is an exclusively subjective deadline, and then it becomes objective with an additional period of three years, in order to ensure certainty regarding the deadline, or in other words, to prevent the individual whose rights are violated from

manipulating the exercise of the right to legal protection indefinitely. Based on this, it follows that the application is untimely.

However, the Judicial Council in its decision stated that the request was timely and that the proceedings for assessing the accountability of the judge was initiated. It was precisely this passage of the time interval that the dismissed judge used as a ground for appeal against the decision of the Judicial Council of the Republic of North Macedonia. Only later, within the decision of the Appeals Council of the Supreme Court, did we receive the arguments for evaluating the timeliness of the application. Namely, the Appeals Council of the Supreme Court of North Macedonia argued that despite the passage of a longer time than the legally prescribed six-month deadline for submitting the request, it was considered timely, referring to the Regulation with the force of law of the Government on deadlines in judicial procedures during the state of emergency and the operations of courts and public prosecutors' offices, enacted as a result of the declaration of a state of emergency by the President of the Republic of North Macedonia (Official Gazette of the Republic of North Macedonia No. 84/2020) due to the global COVID-19 pandemic. According to this, the Appeals Council stated that during this period, deadlines for submitting requests for judicial accountability under Article 61 of the Law on the Judicial Council were not running. However, if we look at the date of 30.03.2020, when this Regulation with the force of law was published in the Official Gazette, it again follows that the subjective deadline for submitting the request had expired, meaning that more than six months had passed from the date of the violation to the date of submission of the request. On the other hand, if we literally analyse the wording of Article 1 of the Regulation with the force of law of the Government, namely, "The statutory and preclusive deadlines for filing a lawsuit in civil proceedings, private prosecution in criminal proceedings, a proposal for criminal prosecution, a proposal for initiating non-litigation proceedings, submitting a request for enforcement, securing claims, filing a lawsuit for initiating an administrative dispute, initiating proceedings before the Constitutional Court, or initiating and conducting any other judicial procedure, cease to run when this regulation enters into force, until the cessation of the state of emergency," it seems that once again there is a lack of a specific additional explanation for the decisions of the Councils. This is because in the part of the provision of Article 1 of the Government Regulation, the deadlines for submitting a request for the determination of judicial accountability before the Judicial Council under Article 61 were not explicitly mentioned. Thus, in the decision of the Judicial Council, as well as in the decision of the Appeals Council of the Supreme Court, the arguments regarding whether the procedure for the dismissal of a judge is considered as "any other judicial procedure" were missing. According to the nature and character of the Judicial Council, as a self-governing body of the judiciary, and the fact that it does not function as a court nor does it have judicial authority, but rather deals with administrative or managerial procedures, it has an administrative, not a judicial, character. Furthermore, according to Article 98, the judicial power is exercised by courts, which are established by law passed with a qualified two-thirds majority, and the procedures before them are also regulated by laws passed with a qualified two-thirds majority. Considering that the entire procedure for determining accountability, including the Appeals Council at the Supreme Court of North Macedonia, is regulated by the Law on the Judicial Council, which is passed with a relative majority, it then becomes clear that the Regulation with the force of law of the Government cannot be applied by interpreting the phrase "other judicial procedure" to include the proceedings before the Judicial Council and the Appeals Council.

As a matter of fact, in these cases, it seems that the members of the Councils who made the decisions lacked arguments to defend their position. This is because, despite the fact that the Regulation does not explicitly list the procedures for determining the accountability of judges, which are essentially administrative, they are conducted according to the principles of fair procedure. Perhaps because of this, or due to the manner in which the procedure for determining the accountability of judges is conducted, which, in its form and substance, resembles a judicial procedure and follows the principles of fair procedure, the members of the councils may have incorrectly believed that this procedure was also covered by the Regulation with the force of law of the Government. However, even if we were to accept this incorrect position, the deadline for submitting the request would still be outside the legal deadline of six months from the date of becoming aware of the violation.

Regarding the assessment of admissibility, it is undoubtedly clear that both the Judicial Council and the Appeals Council acted correctly in accepting the request with regard to the assessment of admissibility, as the submitter of the request in this case is the individual directly affected by the judge's violation.

In terms of assessing the completeness of the request, it can be observed from the appeal that there was a previously submitted initiative for assessing the judge's conduct concerning the same violation, which was dismissed by the Judicial Council as incomplete. In this regard, the conclusion of the Appeals Council that there was no violation of the principle *ne bis in idem* is correct, as in the first case, the Council only made a formal decision, without addressing the merits of the case. However, it remains unexplained whether this was indeed the same or identical submission, without additional evidence. Unfortunately, based on the available data, we were unable to verify the credibility of this claim, so, accordingly, we accept the legalistic position of the Appeals Council.

Substantive elements and aspects: Inadequacy of the reasoning and grounds for dismissal

According to the Law on Courts, precise grounds are provided for determining the disciplinary accountability of judges and for their unprofessional and negligent conduct, which serves as the basis for imposing disciplinary measures and their dismissal. In relation to the previous legal provisions, with the latest amendments to this law, there has been a further clarification of the grounds, i.e., the criteria for the disciplinary accountability of judges, as well as clarification of the actions of judges that are characterized as unprofessional and negligent conduct. This has made it easier for the members of the Judicial Council to make and justify their decisions to a greater extent.

However, in this specific case, it seems that the Judicial Council took the more difficult path in justifying its decision for the judge's dismissal, without applying or citing Article 76, paragraph 1, item 7 of the Law on Courts, which states that intentional and unjustified gross professional errors constitute unprofessional and negligent conduct in service.

We believe that in its reasoning, the Judicial Council provided certain arguments to establish the subjective accountability of the judge for the violation of criminal procedure, specifically regarding the penalizing of an attorney who, at that time, was neither a legal representative nor a participant in the procedure. The Council tried to argue that the lack of actual harm to the submitter of the request, considering that the judge's decision was later annulled by the Criminal Council, thus the attorney did not suffer any material harm, does not mean the absence of damage to the reputation of the judiciary in general from such actions by judges in these specific cases.

The Judicial Council had a difficult task when assessing the judge's behavior and determining that the violation was committed due to the judge's fault, without justifiable reasons, and that this behavior led to serious consequences, as defined in paragraph 3 of Article 74 of the Law on Courts. This legal imprecision and the use of overly broad terms result in a situation where the outcome is practically immeasurable when arguing what constitutes a serious consequence and whether, in this specific case, the judge's behavior was prompted by a reaction to the behavior of the submitter of the request, thus leading to a serious consequence.

It seems that in this specific reasoning, the Judicial Council provides more effective arguments regarding the assessment of the judge's behavior, particularly in relation to the requirement for the judge to demonstrate calmness and impartiality, rejection of intentional attacks on an individual, and similar shortcomings that led the judge to commit a serious and intentional violation of procedural norms. However, unfortunately, the second part of the cumulative conditions in paragraph 3 of Article 74 of the Law on Courts, namely the "serious consequences," seems to have been disproportionately emphasized by the Judicial Council. Thus, the analogy between the judge's specific behavior in the analyzed case and the erosion of trust in the judiciary seems distant. According to this logic, every first-instance court decision that is overturned or modified by a higher court would point to a disruption or harmful consequence for the reputation of the court. On the other hand, operating with vague terms such as "serious consequence," which are not further defined in the law, is expected to cause issues in practical application, especially if the Judicial Council itself does not establish criteria through its practice.

Precisely for these reasons, the decision of the Judicial Council appears somewhat overly strict, especially given the absence of specific material damage to the injured party—the submitter of the request. On

the other hand, it seems that such incidents among participants in criminal proceedings, followed by their public lamentation in the media, do indeed merit condemnation, as they undeniably contribute to unfavourable public perceptions of the judiciary. In this regard and considering the role of the submitter of the request, it seems that the Judicial Council, despite its extensive arguments on the role and conduct of the court in judicial proceedings, may have set the premise too broadly by attributing severe consequences solely to the behavior of the dismissed judge. The Judicial Council fails to address the proportionality of the imposed strictest possible sanction in relation to the legitimate aim being protected - the reputation of the judiciary. Furthermore, the alleged damage to the judiciary's reputation as a harmful consequence is neither clearly established nor sufficiently substantiated, and it might even be overstated.

We believe that, in this specific case, the absence of application of the legal provision from item 7, paragraph 1, Article 76 of the Law on Courts in the decision of the Judicial Council seems to reinforce the perception of an overly strict approach by the Judicial Council toward the dismissed judge. However, if the Council's position is to enhance the quality and professionalism of judges, thereby adopting a stricter position on their errors to boost public trust in the judiciary, this position should be explicitly stated, well-argued, and thus acceptable to the general public.

To more effectively defend this position, the Council should demonstrate consistency in its future practice of evaluating judges' performance while striving for amendments to legal provisions to ensure their further clarification and refinement.

Shortcomings in the decision of the Appeals Council

Regarding the assessment of the appeals procedure, we can conclude that the Appeals Council addressed the grounds of appeal, except for the lack of explanation regarding the timeliness of the request. In this regard, in the absence of additional arguments, as previously mentioned, we may accept the Council's position on the treatment of the raised dilemma concerning non bis in idem, cited as an appeal ground by the appellant.

Although Judge S.L.'s appeal spans over 20 pages and contains numerous claims and arguments centred around alleged gross procedural violations and breaches of the ECHR and other international instruments ratified by the Parliament, the Appeals Council's decision is exceptionally brief and fails to address some serious grounds for appeal. Specifically, the Appeals Council does not comment on the application of the principle of proportionality and the appropriateness of the sanction, nor does it engage with international standards, especially those derived from ECtHR jurisprudence. Notably, the Appeals Council justifies this approach by citing Article 72 of the Law on the Judicial Council, which explicitly states that it cannot review or modify imposed sanctions. However, this does not preclude the Council from assessing the adequacy of the reasoning behind those sanctions. Consequently, the Appeals Council surprisingly dismisses the other appeal grounds with undue ease, stating that they "are not influential for a different decision."

CONCLUSION

Regarding the analyzed case, we can conclude that the Judicial Council is improving its approach toward better reasoning of its decisions. Unfortunately, there is still a tendency, particularly with seemingly straightforward issues such as the assessment of timeliness, for members of both the Judicial Council and the Appeals Council not to burden themselves with more extensive explanations. This occurs despite such issues, as evident in this specific case, being of crucial importance to the outcome of the proceedings. The normative shortcomings of the current legal framework, especially regarding the criteria for judicial accountability, generate ambiguity in the practical application of the Judicial Council's strictness in decision-making. This also reflects institutional weaknesses and the lack of secondary legislation that could fill these gaps and specify norms through practical application. Such measures are necessary to provide a certain degree of flexibility in the interpretation and application of legal provisions.

05 CASE NOTE: IMPOSING A DISCIPLINARY MEASURE ON JUDGE S.J.

INTRODUCTION

The subject of this analysis is the decision of the Judicial Council of the Republic of North Macedonia to impose a disciplinary measure on Judge S. J., a judge of the Appellate Court in Sh., due to violations committed during the performance of judicial duties at the same court. This case is one of a series of three or four cases related to recusal issues within the same court, the Appellate Court in Sh. In this regard, it is advisable to read this analysis in conjunction with the other two analyses concerning S. Z. and Z. M. The particular relevance of this case lies in the fact that it is the only one in which a disciplinary measure was imposed, whereas in the other two cases, the judges were dismissed from their judicial positions.

FACTS OF THE CASE

In this specific case, the submitter of the request for determining accountability, registered under No. 10-44/1 on 18.03.2022, was submitted against two judges: Judge S. J., a judge of the Appellate Court in Sh., and Judge Z. M., also a judge of the Appellate Court in Sh. The request to determine accountability for Judge S. J. was submitted due to a clear violation of recusal rules in situations where the judge knew or should have known of the existence of reasons for recusal. Specifically, the judge acted on an appeal in two instances as the reporting judge and ruled in a case where one of the parties was represented by a law firm in which the judge's daughter was employed. Contrary to the provisions of the Law on Civil Procedure regarding judicial recusal, the judge deliberately failed to inform the then-acting president of the court, Judge Z. M., about circumstances casting doubt on the judge's impartiality and a conflict of interest, which warranted the judge's recusal. This conduct resulted in severe consequences, including the violation of the right to a fair trial by an impartial court and the erosion of public trust in the judiciary, as such cases open the possibility for corruption, with familial ties potentially influencing judicial decisions and consequently, the judge's actions damaged the judiciary's reputation. By behaving in this manner, the judge committed a serious disciplinary violation, rendering her unfit to serve in a judicial capacity.

Regarding Judge Z. M., who was serving as the Acting President of the Appellate Court in Sh. during that period, the request was submitted because he overstepped and violated his legal powers by deliberately deciding not to recuse Judge S. J. against whom a recusal request had been submitted by the plaintiff in the specific case. This decision was made despite his knowledge of circumstances that cast doubt on the judge's impartiality and created a conflict of interest, especially since the decision in this case was in favour of a party represented by the law firm where the judge's daughter was employed. After receiving the request, the Judicial Council of the Republic of North Macedonia, during the session held on 07.04.2022, formed a Commission of Rapporteurs that prepared a report on the established factual situation. The report on the established facts from the Commission of Rapporteurs was submitted to the Council on 12.05.2022. Following this report, the Judicial Council discussed the matter at the session held on 08.06.2022 and decided to continue the procedure.

During the procedure before the Commission of Rapporteurs, the submitter of the request withdrew the request for determining accountability against Judge Z. M. because, in the meantime, he had been removed by the Judicial Council of the Republic of North Macedonia in another procedure that was ongoing against him. In the framework of the procedure before the Commission of Rapporteurs, the actions foreseen by the Law on the Judicial Council in this part of the procedure for determining judicial accountability were sequentially undertaken, including: delivering the request and evidence to the judge personally; delivering a written response to the request by the judge; and holding a hearing before the Commission of Rapporteurs. After the actions were carried out, the Commission of Rapporteurs prepared a report on the established situation, based on which the Judicial Council deliberated during the session held on 11.01.2023, and issued a decision imposing a disciplinary measure on Judge S. J., a judge at the Appellate Court Sh. The measure was a salary reduction of 20% of the monthly salary of a judge, to last for 6 months, due to violations committed during her tenure as a judge at the Appellate Court Sh.

No appeal was filed against the decision of the Judicial Council of the Republic of North Macedonia.

DECISION(S) AND ARGUMENTS (RATIO DECIDENDI)

In deciding on the accountability of Judge S. J., the Judicial Council of the Republic of North Macedonia accepted the allegations of the submitter of the request regarding the disciplinary violation, as it was clear that the judge had violated the rules for recusal in situations where the judge knew or should have known about the existence of grounds for recusal, as prescribed by law, in this particular case, the Law on Civil Procedure. The Judicial Council also addressed Judge S. J.'s argument in the response to the request for determining accountability, in which the judge stated that the request was untimely because the subjective deadline of 6 months from the date of discovering the violation had not been respected. However, the Judicial Council did not accept this argument, as it believed that the request was filed within the appropriate timeframe, considering that the subjective deadline was observed. This was because the request was submitted within six months from the moment the submitter of the request, in this case a member of the Judicial Council, became aware of the violation.

Based on the evidence presented during the proceedings, the Judicial Council determined that Judge S. J., contrary to the provisions of the Law on Civil Procedure regarding the recusal of a judge, failed to inform the Acting President of the Court on two occasions, after an appeal was filed, that there were circumstances that cast doubt on her impartiality and that a conflict of interest existed, which warranted her recusal. As a result, this led to consequences manifesting as a violation of the right to a fair trial, a violation of the right to be tried by an impartial court, and the creation of public distrust in the judiciary. This conduct resulted in a disciplinary violation due to the clear breach of the rules for recusal. In support of its decision to impose a disciplinary measure rather than dismissal, the Judicial Council of the Republic of North Macedonia referred to the intention of the 2019 Law on the Judicial Council of the Republic of North Macedonia, which aims to grade disciplinary actions through the imposition of disciplinary measures, rather than dismissal, taking into account that in the specific case, the violation committed, according to the assessment of the Judicial Council of the Republic of Macedonia, was committed by Judge S. J. without intent but with obvious negligence and without justified reasons. The Judicial Council believed that the imposed disciplinary measure would fulfil its purpose and will have an educational effect on the judge, aiming to increase her accountability in performing her duties and ensuring a more thorough and responsible approach, particularly with regard to the grounds for recusal, in order to prevent such violations in the future.

CRITICAL REVIEW AND ANALYSIS

The decision to determine accountability and impose a disciplinary measure initially gives the impression of being a correct and just ruling, seemingly not requiring significant critical reflection or analysis. However, this is merely a first impression, especially given that this case is part of a series of three or four cases involving nearly identical factual circumstances and legal issues. Consequently, this decision is marked by certain shortcomings and inconsistencies, which will be the focus of this section of the analysis. This part of the analysis will examine the problematic substantive aspects related to the lack of reasoning, particularly concerning the determination of the disciplinary measure. In this regard, the inconsistency between this decision and the other two related cases emerges as a fundamental issue. Before delving into the substantive aspects, the analysis will begin with a brief examination of the legal basis for imposing the disciplinary measure and a short commentary on the procedural aspect regarding the timeliness of the request.

Formal aspects: Legal Basis and Timeliness of the Request

In the operative part of the Judicial Council's Decision, only the legal basis for the imposed disciplinary measure is mentioned - Article 78, paragraph 1, item 3 - without specifying the particular violation committed that warranted the disciplinary measure. Specifically, this concerns a serious disciplinary violation under Article 75, paragraph 1, item 4, involving the apparent breach of recusal rules, which is mentioned only in the reasoning section of the Decision. This Decision is not an isolated case but rather a further confirmation of the established practice of inconsistency and frequent shortcomings in the formulation of the operative parts of corresponding decisions. Additionally, this issue is compounded by the frequent omission of information about the submitter of the request that initiated the proceedings for the determination of the judge's accountability, which is also evident

in this Decision. On the other hand, despite frequent shortcomings and established practices, this Decision diverges in that it adequately addresses a procedural aspect related to the timeliness of the request for determining judicial accountability. Unlike numerous other decisions where the Judicial Council typically does not address this issue when it is raised during proceedings, this case is an exception. Therefore, it is important to highlight this positive aspect of the Decision, as it clearly distinguishes the point from which the subjective time limit begins to run. Specifically, it states that the time limit starts from the moment the submitter of the request, in this case, the member of the Judicial Council, became aware of the violation, rather than from the moment the complaint, which was assigned to another member of the Judicial Council, was submitted.

Finally, from this formal aspect, it is noteworthy to again highlight the absence of any information about the voting of the Judicial Council members during the adoption of this Decision, as well as the fact that the Decision does not include any legal instructions regarding the use of legal remedies against it. It may be mere coincidence that, despite the shortcomings outlined below, the judge did not file an appeal against the decision for imposing a disciplinary measure.

Substantive aspects: Inadequacy of the Reasoning Regarding the Imposition of the Sanction

The reasoning of the Judicial Council's Decision to impose a disciplinary measure on Judge S.J. is characterized by two main shortcomings. The first concerns the brevity of the arguments presented in support of the imposed measure and internal contradictions within the reasoning. The second shortcoming is the complete inconsistency with previous decisions (for judges S.Z. and Z.M.) made by the Judicial Council, which are related to the same factual issue and the same court.

Firstly, it can be noted that in the reasoning of the Judicial Council's decision, the starting basis is the examination of the fulfilment of the cumulative conditions from Article 74 of the Law on Courts for the possible dismissal of the judge. In this regard, the Judicial Council draws certain conclusions without providing appropriate arguments. From the reasoning of the decision, it is unclear what is the specific violation that occurred in the context of breaching the recusal rules, a violation that, in principle, should have been evident. It is not clear whether the judge is held accountable for failing to inform the president of the court about circumstances that could compromise her impartiality, even though the very same circumstances were dismissed as legal grounds for recusal by the previous president's "General Decision." Is it possible that the issue arose due to a lack of transparency regarding the recusal request, given that the judge did not submit a statement confirming the existence of these circumstances? Or perhaps it is due to the fact that the acting president of the court followed the established practice of the previous president and rejected the recusal request? These are too many open and unanswered questions left out in the reasoning for something that should represent an obvious violation of the recusal rules. It must be taken into account that, according to the Law on Civil Procedure, this is a relative ground for recusal, one on which recusal requests have been consistently submitted, and which, in the recent period, have been rejected in light of the "general decision" of the previous president of the court, which denies that the specific circumstances can be grounds for recusal.

More specifically, it is determined that the judge did not commit the violation intentionally, but rather with obvious negligence, without any justified reasons. For such a claim, the Judicial Council fails to provide adequate evidence or arguments. Furthermore, although it is initially determined that the violation committed by the judge resulted in a violation of the right to a fair trial by an impartial court, thus undermining trust in the judiciary, it is immediately stated that the judge, through her actions and failure to recuse herself, actually remained impartial. This conclusion is based on the outcome of the proceedings in which she committed the violation, because with the decisions in the adoption of which she participated, the appeals were actually being rejected. One could argue that using the outcome of the court procedure as an argument in a case related to the violation of the recusal rules is quite problematic and should never be the sole argument in such situations, which is unfortunately the case here. Perhaps the most problematic aspect of this reasoning is the determination of the sanction and the disregard for the principle of proportionality, which should guide the relationship between the violation and the imposed sanction or disciplinary measure, even though the Judicial Council refers to it. The Judicial Council makes an attempt, essentially unsuccessful, to highlight the circumstances, especially the mitigating ones, and the purpose that should be achieved with the disciplinary measure in the educational effect

on the judge. Specifically, the Judicial Council considers the conclusion that the violation resulted from obvious negligence to be a mitigating factor, even though this condition could serve as grounds for dismissal and should not be treated as a mitigating circumstance. Furthermore, the focus is placed exclusively on the mitigating circumstances while completely ignoring the possible damage that might have occurred as a result of the judge's actions, relying solely on the outcome of the case. At the same time, there is no consideration of the impression left by the judge's actions and the doubts regarding impartiality that arise, particularly regarding the failure to recuse herself, as seen in other cases with similar circumstances. On the other hand, the fact that Article 64 of the Law on Civil Procedure provides for a relative basis or reason for recusal is entirely overlooked. Finally, the reasoning does not address the question of whether a milder sanction could also serve as an educational measure, especially given the claim that the violation was due to negligence and no harm was caused since the judge remained impartial in her actions and decisions.

Secondly, and perhaps most importantly, the Judicial Council does not follow its previous practice, as an identical violation led to the dismissal of a judge (S.Z.) and the acting president of the court (Z.M.), nor does it provide an explanation of why and for what reasons it departs from this previous practice. Inconsistencies are noted in how certain circumstances are suddenly considered as mitigating, something that was not the case in earlier decisions. Specifically, in this case, the statement made by the judge regarding the existence of circumstances that may call into question her impartiality, after a request for recusal was submitted by a party in the procedure, is considered a mitigating factor that played a decisive role in imposing a disciplinary measure instead of dismissal, as was the case in the other two cases, despite the identical factual situation. The Judicial Council especially highlights the previous behavior of the judge in relation to recusal requests that had been submitted by the judge in identical situations, with the first reference being made to the fact that Decision SU. No. 192/19, dated 19.02.2019, issued by the previous president of the court, N.G., had a general character in the sense of a general rejection of the existing circumstances as legal grounds for the recusal of judges. Additionally, unlike in the past, the Judicial Council considers the outcome of the proceedings before the judge, namely the decisions that did not favour the lawyer from the law firm where the judge's daughter was employed, as a mitigating circumstance, and based on that concludes that the judge remained impartial.

Interestingly, and at the same time worthy to be mentioned again, is the fact that the previous president of the Court of Appeals in Štip, N.G., who issued the "General Decision" denying that the indicated circumstances were sufficient, relative grounds for the recusal of judges, particularly from the civil department, was never held accountable for that decision. The Judicial Council rejected the request (No. 10-97/1 from 15.09.2022) to initiate proceedings to determine his accountability, with a Decision made on 04.07.2023, by which the procedure for determining accountability was stopped. Namely, this fact points to the complete inconsistency in the actions of the Judicial Council in a situation where, precisely due to the actions of N.G. as the president of the court and the issuing of the "General Decision," which itself represents a violation of the provisions of the Law on Civil Procedure, since this law does not allow for such a decision but mandates decision-making on a case by case basis, two judges, S.Z. and Z.M., were dismissed, while in the case of Judge S.J., the almost most severe disciplinary measure was imposed.

CONCLUSION

The case for determining the accountability of Judge S.J. is the final case in a series of cases related to the Court of Appeals in Štip, particularly those concerning the rules of recusal for judges in civil proceedings. Therefore, this analysis should be read in conjunction with those for Judges S.Z. and Acting President Z.M. The specific decision may initially appear to be legally sound and well-reasoned. However, this is only the first impression, as certain deficiencies and shortcomings can be observed upon closer inspection, both from a formal and substantive perspective. In terms of the quality and adequacy of the reasoning, there is a noticeable absence of appropriate arguments and evident internal contradictions that leave numerous questions unanswered. Yet, the most concerning aspect of this decision by the Judicial Council is its inconsistency and contradiction with previous practices regarding nearly identical facts and the same court, where two judges were dismissed, all under conditions of an identical legal framework. Such actions by the Judicial Council leave ample room for doubt about the correctness of its procedures, raising concerns about potential influences on the council when determining the accountability of judges.

06 CASE NOTE: IMPOSING A DISCIPLINARY MEASURE ON JUDGE E.B.

INTRODUCTION

This analysis examines the decision of the Judicial Council of the Republic of North Macedonia, which imposes a disciplinary measure on Judge E.B. from the Appellate Court in S. In this case, there is only one decision, specifically the decision to impose the disciplinary measure, after which the judge did not use the other legally prescribed rights to appeal the decision. The case pertains to the application of a disciplinary measure against a judge for unprofessional and negligent performance of judicial duties, due to the judge's actions as a reporting judge in two cases, where, without justifiable reasons, he delayed proceedings in cases that were of high public interest. The proceedings were conducted in accordance with the provisions of the new Law on the Judicial Council from 2019.

FACTS OF THE CASE

In this specific case, the Judicial Council determined that Judge E.B. performed his judicial duties unprofessionally and negligently by acting as the reporting judge in cases KOKZh-70/2020 and KOKZh-81/21 of the Appellate Court in S. The judge unjustifiably delayed proceedings in these cases, despite the fact that they were urgent, involved detention, and were of high public interest. Regarding case KOKZh-70/2020, publicly known as "T...", which was assigned to the judge via the ACMIS system on 24.09.2020, it was determined that the judge performed his duties unprofessionally and negligently by unjustifiably delaying the proceedings. The judge allowed an unreasonably long period of seven months to elapse from the conclusion of the public hearing on 02.09.2021, until the announcement of the decision on 08.04.2022. Additionally, the judge further delayed the proceedings by allowing a much longer period than the legally prescribed timeframe to pass between the adoption and announcement of the decision on 08.04.2022, and its written preparation on 27.12.2022. With the described actions, Judge E.B., in his capacity as the reporting judge in the case KOKZh-70/20 of the Appellate Court in S., acted contrary to the provisions of Article 407 paragraph 1 and Article 438 paragraph 2 of the Law on Criminal Procedure, as well as Article 176 paragraphs 4 and 5 and Article 182 paragraph 2 and 3 of the Court Rules of Procedure.

Regarding case KOKZh-81/21, publicly known as "T...-T...", which case was assigned to the judge via the ACMIS system on 08.10.2021, the judge, acting as the reporting judge, performed his judicial duties unprofessionally and negligently because without providing justified reasons, the judge allowed an unreasonably long period of almost nine months (two days short) to pass from the public hearing on 07.03.2022, to the date of the decision and its announcement by the Trial Chamber on 05.12.2022. With these actions, Judge E.B. acted contrary to the provisions of Article 438 paragraph 2 of the Law on Criminal Procedure, as well as Article 176 paragraphs 4 and 5 and Article 182 paragraphs 2 and 3 of the Court Rules of Procedure. According to the allegations in the request, the violation committed during the handling of these cases and within the described timeframes constitutes unprofessional and negligent performance of judicial duties, as defined under Article 76 paragraph 1, item 4 of the Law on Courts ("Official Gazette of the Republic of Macedonia" No. 58/2006, 35/2008, 150/2010, 83/2018, 198/2018, and "Official Gazette of the Republic of North Macedonia" No. 96/2019).

DECISION(S) AND ARGUMENTS (RATIO DECIDENDI)

In the analyzed case, only one decision was made: the Decision by the Judicial Council of the Republic of North Macedonia, imposing a disciplinary measure on the judge. This measure consists of a 20% reduction in the judge's monthly salary for a duration of six (6) months.

In the Decision of the Judicial Council of the Republic of North Macedonia, it is stated that following the conducted procedure for determining the accountability of Judge E.B. and the preparation of a report on the established situation, the Judicial Council of the Republic of North Macedonia, at its session held on 23.11. 2023, discussed the report of the Commission of Rapporteurs and it concluded that Judge E.B., acting as a reporting judge on cases KOKZh-70/2020 and KOKZh.81/21 of the Appellate Court in S., had delayed proceedings in the mentioned cases, failing to complete them within the deadlines established by the Law on Criminal Procedure.

Specifically, in handling the case KOKZh -70/2020, publicly known as "T...", formed upon appeals submitted by the Basic Public Prosecutor's Office for Prosecuting Organized Crime and Corruption, as well as by the defendants V.T., S.B., J.N.D., Gj.T., V.D., K.P., Z.K., A.A., I.B., Lj.S., J.J., J.I., A.S., D.Gj., R.J., M.M.C., S. and J.M., A.Sh., O.S., N.D., and the legal entities B.T. DOOEL B. and P. s - T. AD B., against the judgment of the Basic Criminal Court S., KOK.30/2017, which case the judge received through the ACMIS system on 24.09.2020, the judge unjustifiably delayed the proceedings by allowing an unreasonably long period to pass i.e. seven months from the conclusion of the public hearing on 02.09.2021, until the decision was announced on 08.04.2022. While handling the mentioned case, the judge further delayed the proceedings by allowing an excessively long period to elapse beyond the legally prescribed deadline between the decision's adoption and announcement on 08.04.2022, and its written preparation on 27.12.2022. While handling the case KOKZh.81/21, publicly known as "T...-T...", formed upon appeals submitted by the Basic Public Prosecutor's Office for Prosecuting Organized Crime and Corruption, as well as by the defendants N.B., G.G., V.V., N.N., S.M., G.J., and T.J., filed personally and through their legal representatives, against the judgments of the Basic Criminal Court S., KOK.47/2017 and KOK.39/2018 dated 26.02.2021, which the judge received through the ACMIS system on 08.10.2021, the judge, acting as a reporting judge, unjustifiably allowed an unreasonably long period of almost nine months (short by two days) to pass between the date of the public hearing (07.03.2022) and the decision's adoption and announcement by the Trial Chamber (05.12.2022). From the discussion on the report, the Council determined that a significant factor was the unreasonable delay between the conclusion of the public hearings in the cases and the announcement of the decisions, as well as the delay between the adoption and announcement of the decision and its written preparation in the case KOKZh.70/21.

In this context, as mitigating circumstances for the judge, the Council found the following: the complexity of the cases, the fact that the cases were handled during the pandemic period, the lack of judges in the court—particularly the small number of criminal judges at the Appellate Court in S. compared to the large caseload, the fact that the judge had also handled a larger number of other complex cases assigned through the ACMIS system, problems with coordination and scheduling meetings between the members of the Trial Chamber due to the fact that the members of the Trial Chamber themselves were handling a large number of complex cases, the volume of the cases (first-instance judgments of 100 pages each and huge amounts of evidence) which required a longer period to review, the review of the case by the other members of the Trial Chamber, the need to address every appeal claim comprehensively, the judge's involvement in other Trial Chambers of three or five judges, his participation in the Criminal Council, the position of Deputy President of the Court held since June 2020, being part of the Commission for the Entrance Examination at the Academy for Judges and Public Prosecutors where the judge had a very high degree of engagement, participation in the commission for the evaluation of judges from the Appellate Court in S., preparing over 145 decisions for urgent cases, more than a third of which were related to organized crime and corruption, handling other cases where decisions were made in Trial Chambers that exceeded the number of 450 cases, issuing decisions as deputy president, confirmed decisions referred by the judge, by the Supreme Court of the Republic of North Macedonia (only one annulled decision in 2020 and 2023, and two annulled decisions in 2021 and 2022), and the positive evaluations the judge received for his performance in the previous period. The Council concluded that these circumstances had influenced and hindered the judge in promptly handling the aforementioned cases in which he was the reporting judge.

When deciding, the Council did not find aggravating circumstances that could have influenced the judge's actions in the specific cases. Accordingly, the Council concluded that the mentioned circumstances provide sufficient grounds for the imposition of a disciplinary measure – fine, which would fulfil the purpose of the measure by having a corrective effect on the judge against whom the procedure for determining accountability was conducted, in the direction of increasing his accountability in performing work tasks in the future, adopting a more thorough approach to cases, and greater accountability in his actions, primarily concerning deadlines, all in order to prevent the occurrence of such violations in the future. In the specific case, the Council, in the reasoning of its decision, also stated that it took into account the intent of the Law on the Judicial Council of the Republic of North Macedonia from 2019, regarding the gradation of sanctions through the imposition of disciplinary measures, as opposed to dismissal.

CRITICAL REVIEW AND ANALYSIS

In this section, a critical review of the entire procedure will be performed, analysing it both from a formal and substantive perspective. This means that the procedural grounds for initiating the procedure will be examined, as well as the substantive aspect, i.e., whether the Council's decision is adequately supported and reasoned.

Formal Elements and Aspects of the Procedure: Timeliness and Admissibility

Regarding the assessment of the timeliness of the submitted request, it can be concluded that according to Article 61, paragraph 1 of the Law on the Judicial Council, the procedure for determining a judge's accountability is initiated within six months from the day the violation is discovered, but no later than three years from the day the violation occurred. In the decision made by the Judicial Council, this issue is not addressed at all, but considering the facts of the case and the date when this decision was made, we can conclude that the procedure was carried out within the legally prescribed timeframes, specifically within both the subjective and objective legal deadlines.

On the other hand, the decision does not specify which member of the Judicial Council, according to their legal powers, as authorized submitter of the request initiated the procedure for determining the judge's accountability. However, given that the submitter of the request is a member of the Judicial Council, we can conclude that the proposal is admissible, even though we believe that the exact details regarding the submitter of the request for determining the judge's accountability, as well as the date when the request was submitted, should have been specified.

From a formal perspective, certain deficiencies can be noted in the written drafting of the decision by the Judicial Council, which create the impression of insufficient seriousness in the technical preparation of legal acts. Specifically, the operative part of the decision only states the legal basis for the type and amount of the fine imposed, but does not mention the legal basis for the disciplinary violation, which is the basis for imposing the disciplinary sanction or measure. In addition, the published decision by the Judicial Council also lacks other formal elements, such as information on how the Judicial Council proceeded, when the procedure was initiated, which members participated in the Commission of Rapporteurs, what the course of the discussion was, whether and which evidence was presented, with what majority the decision was adopted, as well as the absence of legal instructions for the right of appeal and the missing signature of the President of the Judicial Council on the decision.

These deficiencies from formal perspective, raise the question of whether the analyzed decision is incomplete and has several formal shortcomings, which could imply substantive deficiencies for the subsequent steps in the procedure, or if this is simply a special abbreviated copy of the decision made available to the public. In any case, it seems that the analyzed decision has serious formal deficiencies, which form the basis for these remarks. Therefore, we believe that in the future, if such partial decisions are made available to the public by the Judicial Council as a means of public transparency and accountability, it should be clearly stated that these are public information summaries and not the full decision. However, regarding the numerous formal deficiencies, we believe that it would be best, and at the same time simplest, for the future, to publish the original decision made by the Judicial Council of the Republic of North Macedonia to the public. This would truly achieve the goal of strengthening trust in the work of the Judicial Council by enabling public insight and accountability of its work. Otherwise, if the specific case concerns an authentic decision and not a transcript or shortened version of it, it is surprising how the Judicial Council could prepare such an act with so many formal deficiencies.

Substantive Aspects: Inadequacy of the Reasoning and the Basis for Accountability

What can immediately be noticed in the decision that is the subject of this analysis is that it is a decision with an extremely brief explanation, even though it concerns a case involving delays in two matters of high public interest, for which a special working group was formed to review the specific court. The decision is written on less than five pages, and despite the evident formal shortcomings, the substantive shortcomings are also clearly

visible, particularly the inadequate reasoning and the ambiguities related to the legal basis for accountability. According to the Law on Courts, there are precise grounds which are provided for determining the disciplinary accountability of judges, including for unprofessional and negligent conduct, which serve as the basis for the imposition of disciplinary measures and their dismissal. In relation to the previous legal texts, the most recent amendments to this Law have further clarified these grounds, i.e., the criteria for disciplinary accountability of judges, as well as the actions of judges that are characterized as unprofessional and negligent conduct.

In the specific case, the Judicial Council, in its decision to impose the most severe disciplinary measure - reducing the judge's salary by 20% for a period of 6 (six) months, fails to specify the exact basis for the imposition of this sanction or the precise nature of the violation committed by the judge. Only the words "due to violations committed during the performance of the judge's duties..." are mentioned. According to the most recent amendments to the Law on Courts, the grounds for determining judicial accountability have been further clarified, with a clear gradation and distinction of the violations. Therefore, it is puzzling that the members of the Judicial Council, in their decision, do not explicitly cite the legal basis for the violation but merely mention it at the end of the reasoning. These grounds, which are stipulated in the Law on Courts, serve as the basis for determining the accountability of judges. Additionally, the submitted request for accountability essentially demands the dismissal of the judge in accordance with Article 74, paragraph 1, item 2 of the Law on Courts, which states that a judge may be dismissed from office for unprofessional and negligent performance of their judicial duties under conditions established by law. This immediately raises the question of why the Judicial Council did not address the specific grounds and allegations in the request, nor did it refer to paragraph 4, which allows for the imposition of a disciplinary measure in cases of a less severe form of violation, as the Judicial Council had found in this case. Simply put, the reasoning does not clearly show how the Judicial Council shifted from the request for dismissal to a disciplinary violation, and therefore it is surprising that the members of the Judicial Council did not provide further arguments to support their position regarding the decision to establish disciplinary accountability and apply a disciplinary sanction.

Moreover, the decision does not address the fulfilment of the cumulative conditions for dismissal under Article 74 of the Law on Courts. Instead, it immediately justifies the judge's behavior, specifically the delays in proceedings, by presenting only the mitigating circumstances in order to impose a disciplinary measure rather than dismissal. Additionally, the Judicial Council does not examine the proportionality or appropriateness of the violation, the resulting consequences, and the potential sanction. Instead, it merely mentions the gradation of sanctions, using the words from Article 78, paragraph 3, giving the impression that the sole goal is to avoid possible dismissal of the judge. It is particularly indicative that the Judicial Council only refers to the specific violation - unprofessional and negligent conduct under Article 76, paragraph 1, item 4 of the Law on Courts - at the very end of its reasoning, without ever explicitly stating that the violation occurred because the judge "failed to schedule hearings in the cases assigned to him without justified reasons or otherwise delayed the proceedings."

More specifically, according to the provisions of the Law on Courts, in paragraph 3 of Article 74, it states that a judge may be dismissed from their judicial function for unprofessional and negligent performance of their duties if the violation is committed with intent or gross negligence, without justified reasons, and if the violation caused severe consequences. Given the fact that in this specific case, the judge involved did not commit the unprofessional and negligent conduct in just one isolated instance, but rather exhibited the same conduct in two consecutive criminal cases that, due to the criminal activities of the defendants, are of a similar nature—namely, cases characterized as detention and urgent cases, and of high public interest - this further confirms that the judge acted with clear negligence, and it can even be argued that the actions were intentional. Unfortunately, these arguments are not presented in the reasoning of the Judicial Council's decision. The Judicial Council justifies its decision not to dismiss the judge in this specific case by claiming that the judge had justified reasons for the delay in making decisions. The justification is based on the judge's involvement in numerous additional activities aside from their primary judicial duties, such as serving as the vice president of the court and being a member of the Commission for the Entrance Exam at the Academy for Judges and Public Prosecutors. However, such arguments can also be interpreted differently. Namely, instead of being considered a mitigating circumstance, these factors can easily be interpreted as an aggravating circumstance, because despite the large volume of work with cases, the absence of members in the Trial Chambers at the Appellate Court, and finally the complexity of the cases, as stated in the reasoning of the decision of the Judicial Council, Judge E.B. took

on additional activities that significantly took away the already limited time he had to dedicate to handling the specific cases. The fact that the members of the Judicial Council evaluated the circumstances of the case too leniently is also reflected in the fact that, despite the small number of judges at the Appellate Court, as well as the relatively equal workload, the court has been rated as efficient in its annual reports. On the other hand, there has been no similar pattern of conduct, namely delays, by other judges in the same court.

Furthermore, the Judicial Council, in the reasoning of its decision, states that the judge in both cases violated the imperative norm of Article 438 of the Law on Criminal Procedure, which states that the court "must deliver its decision with the case files to the first instance court no later than 45 days, or in more complex cases, within 60 days from the day it received the case files from the public prosecutor." Accordingly, and considering the fact that these are "urgent, detention, and cases of high public interest," it seems that the delay in the proceedings, which is four times longer than the legally prescribed period, necessarily represents a deliberate approach by the court, which inevitably results in damage, at the very least affecting the detained person, whose second most important constitutionally guaranteed right – the right to liberty - is being restricted, right after the right to life! Additionally, such conduct and evident delay directly affect the potential statute of limitations of the cases, especially considering these are high-profile cases of public interest, which may lead to the conclusion that the reputation of the judiciary and the perception that justice is being served is being undermined.

All these arguments should and could have been taken into account by the members of the Judicial Council, but in this particular case, they decided to be lenient. Even the high profile of the criminal activity, the urgency of the proceedings, the seriousness of the offenses in the specific cases, as well as the high public interest in the outcome of the particular cases in which the judge was involved, were not sufficient for the members of the Judicial Council to correlate this behavior with the potential damage caused by such passive conduct, i.e., the failure to act by the judge in the analyzed cases. In fact, the very absence of an elaboration on these facts in the decision of the Judicial Council is a decisive argument for the members of the Judicial Council in justifying their decision not to apply the most severe measure – dismissal, which was, after all, the reason the procedure for the judge's accountability was initiated. More specifically, the Judicial Council only cites the provision from Article 78, paragraph 3, in order to justify the imposition of a disciplinary measure, rather than opting for the dismissal measure, according to which provision, when imposing a disciplinary measure, "the seriousness of the violation, the degree of accountability, the circumstances under which the violation was committed, the behavior of the judge, the consequences of the violation, and any previously imposed disciplinary measures" must be taken into account. But instead of elaborating on all these elements and grounds, the Judicial Council only refers to the mitigating circumstances and concludes that the remaining elements have been taken into account.

Instead of this, the members of the Judicial Council provide vague arguments interpreting the legislator's intention in the Law on Courts, in the direction of gradation of the sanctions, i.e., giving priority to the application of disciplinary measures over the measure of dismissal of judges, without taking into account their own practice of dismissing judges. On this occasion, we believe that this interpretation of the legal provisions is incorrect for the simple reason that in the Law on Courts, the legislator's intention is not to grade sanctions, as grading sanctions has been a legal matter since the inception of the first Law on Courts. On the contrary, with the recent amendments to the Law on Courts, the legislator's intention is precisely to establish more effective and transparent criteria for the Judicial Council's actions when applying measures for the proper execution of judicial duties. Of course, the arguments given in the analyses of other decisions of the Judicial Council, in the direction of the absence of developed sub-legal criteria for evaluating the work of judges, which would ease the work of the members of the Judicial Council of the Republic of North Macedonia, also exist in this case. However, we believe that in this specific case, it seems that precisely the absence of this additional development of legal criteria in sub-legal acts works in favour of the members of the Judicial Council, who in this case seem to have applied the principle in *dubio pro reo*, thus deciding in favour of the judge against whom the procedure was conducted. The unclear reasoning of the arguments supporting the decision of the Judicial Council in this specific case seems to justify the thesis that in this case the members appear to be hesitant about the strength of their arguments, and they merely "throw them" into the reasoning of their decision, without fully explaining their positions through a comprehensive, multi-layered analysis of the cited arguments, which, as mentioned above, could be interpreted differently.

Report of the Working Group of the Judicial Council for Four Cases

The Judicial Council, following the public disclosure by the media regarding the prolonged handling of the two mentioned cases by the judge who is the subject of this procedure, formed a working group that conducted an inspection of four cases, two of which are the subject of the procedure for determining the accountability of Judge E.B. This was done through a visit to the Appellate Court in S. and a special report was prepared, which was adopted at the 427th session of the Judicial Council held on 11.01.2023. It was precisely this report that was the reason for submitting a request to initiate the procedure for determining the accountability of Judge E.B., while during this specific session of the Judicial Council, certain findings were pointed out that cannot be observed in the reasoning of the decision that established the accountability of the judge. It remains entirely unclear how the decision does not mention this report at all, especially considering that it contains an extremely poor explanation which lacks clear arguments, evidence, and data, while on the other hand, the report obviously contains detailed data and insights into the specific issues related to the cases. Although it is a report that is not part of the procedure for determining the accountability of the judge, the data and conclusions presented in it should not have been ignored, especially since it is highly likely that one of the members of this working group is the one that submitted the request for determining accountability, a fact that, unfortunately, is not mentioned in the decision.

CONCLUSION

Regarding the analyzed case, we can conclude that the Judicial Council lacks adequate reasoning for its decisions. Unfortunately, in this specific decision, a serious nomotechnical, i.e., formal shortcoming has been identified in the preparation of the decision. The analyzed decision is vague, incomplete, and therefore flawed. However, it seems that the only satisfaction with the outcome of the procedure for the judge against whom the procedure was conducted results in the actual existence of this decision of the Judicial Council of the Republic of Macedonia in the legal reality.

07 CASE NOTE: IMPOSING A DISCIPLINARY MEASURE ON JUDGES KJ.M. AND E.A.

INTRODUCTION

This analysis examines two decisions of the Judicial Council of the Republic of North Macedonia, which impose disciplinary measures on two judges at the Basic Court in G. Specifically, one disciplinary measure is imposed on Judge Kj.M. for a disciplinary violation committed during the period when he served as the court president, and the second disciplinary measure is imposed on the president of the Basic Court in G., E.A., for a disciplinary violation committed during his tenure as a judge responsible for the execution of sanctions in the court in G. In both cases, only one decision has been made, namely, the decision to impose a disciplinary measure, and the sanctioned judges did not use the other legally provided rights to appeal the decision. In both situations, the Judicial Council decided to impose a disciplinary measure in the form of a salary reduction, specifically, a 15% reduction in one case and a 30% reduction in the other, for a period of six months. The two decisions are analyzed together as they pertain to the same factual situation. Specifically, the Judicial Council of the Republic of North Macedonia determined that the judge responsible for executing sanctions, E.A., and the president of the court, Kj.M., acted unprofessionally and negligently in performing their judicial duties because, over an extended period, they improperly supervised the enforcement of sanctions, including fines, costs of criminal proceedings, confiscation of property and property benefits, and seizure of items. Namely, the judge E.A. responsible for the execution of sanctions, despite issuing timely orders for the enforcement of forced collections and execution orders to the Public Revenue Office (PRO) in Skopje, did not ensure, through the court's department for enforcement and misdemeanour sanctions, that these orders were forwarded to the PRO in Skopje. In this regard, the members of the Judicial Council also found accountability with the then-president of the court, Kj.M., who acted unprofessionally and negligently by failing to take appropriate actions to verify the execution of these orders. As a result, damage was inflicted on the Budget of the Republic of North Macedonia because the enforcement of these orders became statute barred. The procedure was conducted in accordance with the provisions of the 2019 Law on the Judicial Council.

FACTS OF THE CASE

In the specific case, the Judicial Council determined that Judge E.A. acted unprofessionally and negligently in performing his judicial duties. While serving as a judge for the enforcement of sanctions at the Basic Court in G. between 2013 and 2019, he handled cases assigned for the enforcement of sanctions such as monetary fines, criminal procedure costs, confiscation of property and benefits, and the seizure of items. Judge E.A. issued orders for the enforcement of forced collections and execution orders to the Public Revenue Office in Skopje. However, after delivering these enforcement orders to the department for enforcement and misdemeanour sanctions, he failed to monitor their execution, as he was obliged to do. Consequently, the cases were not forwarded to the PRO in Skopje or the enforcements agents regarding procedural costs, leading to the expiration of deadlines and an inability to collect these amounts. Through these actions, Judge E.A. acted contrary to the provisions of Articles 272, 274, 307, 213, and 320 of the Court Rules of Procedure. This, in accordance with Article 74, paragraph 1, item 2 ; Article 74, paragraph 3, item 2, and Article 76, paragraph 1, item 7 of the Law on Courts, constitutes unprofessional and negligent performance of duty. Regarding the established situation, the Judicial Council of the Republic of North Macedonia prepared a report on the identified circumstances and, at the session held on 15.03.2022, discussed the report of the Commission of Rapporteurs. Following the discussion, the Judicial Council determined that Judge E.A. was appointed as Acting President of the Basic Court in G., and during this period, the death of one of the court's couriers occurred. Subsequently, the court administrator conducted an inspection of the expedition unit. During this inspection, all cases that had not been submitted for collection to the PRO or for enforcement were discovered. In response to this situation, Judge E.A., acting as Acting President of the court, submitted a report to the Judicial Council of the Republic of North Macedonia and the Ministry of Justice. After identifying the problem, Judge E.A. initiated a different approach to handling cases related to the enforcement of misdemeanour sanctions and cases for forced collection, i.e., he issued orders that established a new practice – mandatory movement of cases in the ACMIS system, to the judge for the enforcement of sanctions, as well as electronic movement and recording in the

ACMIS system of cases from the misdemeanour department to the enforcement department, all the way to the expedition unit, contrary to the previous practice. With this newly introduced practice, it was found that the previous issue had been resolved. According to the explanation from the Judicial Council, this behavior of Judge E.A. was carried out without intent, but with obvious negligence and no justified reasons. Due to these actions, the Judicial Council imposed on Judge E.A. a disciplinary sanction of a 15% reduction in salary for six months.

On the other hand, the then-President of the Basic Court, G. Kj.M., was sanctioned for the same factual situation, as he directly monitored the execution of misdemeanour sanctions by overseeing registries and monthly and annual reports on the work of the judge responsible for executing sanctions and the court's operations. During that period, the president of the court did not interfere in the work of the judge responsible for executing sanctions, and the court administrator duly informed him about the work of the court staff in the department for enforcement and the expedition unit, indicating that they were acting in accordance with their work obligations while monitoring the status of the resolved cases. Furthermore, from the controls conducted by the then-President of the Court, it was not possible to determine that the orders had not been delivered to the PRO, since the cases were reported as resolved. According to the report and the supplement to the report of the Judicial Council, the president of the court, Kj.M., could only review the cases through the ACMIS system, but at that time these cases were displayed only in summary form. In other words, the failure to deliver the orders to the PRO in Skopje could only have been discovered through a direct review of each individual case. However, according to legal provisions, this would have meant interfering with the work of the judge responsible for executing sanctions. Regarding the control of the expedition unit, it was found that during that period, this unit operated only physically, and no other method was in place to monitor their work. Based on this, the members of the Judicial Council determined that there was no possibility for the judge, Kj.M., as the president of the court, to become aware of the delivery issue because he had not been informed about it by any of the responsible officers. Taking into account the fact that in this specific case, the judge, Kj.M., during that period as president of the court, according to the assessment of the Judicial Council of the Republic of North Macedonia, acted without intent but with obvious negligence and without justifiable reasons, he was sanctioned with a disciplinary measure, a 30% reduction in salary for a period of six months.

DECISION(S) AND ARGUMENTS (RATIO DECIDENDI)

In the cases that are the subject of this analysis, only one decision has been made for the judges in both cases. In other words, only one decision was adopted by the Judicial Council of the Republic of North Macedonia, imposing a disciplinary measure on the judge and the then-president of the court.

In the decision of the Judicial Council of the Republic of North Macedonia, it is stated that after conducting a procedure to determine the accountability of Judge E.A. and preparing a report on the established situation, the Judicial Council of the Republic of North Macedonia, at the session held on 15.03.2022, where it discussed the report of the Commission, determined that Judge E.A. had performed judicial duties unprofessionally and negligently, because during the period from 01.01.2013 to 2019, in his capacity as a judge responsible for the execution of sanctions in the Basic Court in G., handling cases assigned for the execution of sanctions – monetary fines – penalties, costs of criminal proceedings, confiscation of property and property benefits, as well as seizure of items, he issued orders for the enforcement of forced collections and enforcement judgments to the Public Revenue Office in Skopje. However, after delivering these enforcements to the department for enforcement and misdemeanour sanctions, although he was obliged to monitor the execution, he failed to do so, and as a result, the cases were not delivered to the PRO in Skopje and to the enforcement agents regarding the procedural costs, leading to the expiration of the cases and the inability to enforce them. With these actions, Judge E.A., in performing his judicial duties, acted contrary to the provisions of Articles 272 paragraph 4, 274 paragraph 1, 307 paragraph 1 and 2, as well as contrary to Articles 312 paragraph 3 and 320 of the Court Rules of Procedure, which, in accordance with the provisions of Article 74 paragraph 1, item 2, Article 74 paragraph 3, item 2, and Article 76 paragraph 7 of the Law on Courts (Official Gazette of the Republic of North Macedonia, No. 96/19), represents unprofessional and negligent performance of judicial duties. From the discussion on the report regarding Judge E.A., the Judicial Council established that following a control conducted by the court administrator at the Basic Court in G., after the death of a court courier, the disputed cases that were not delivered for collection to the Public Revenue Office and for enforcement were found. After the situation was established, Judge E.A., in his capacity as Acting President of the Court, officially notified the Judicial Council and the Ministry

of Justice. After discovering the problem, as Acting President, he initiated a different approach to handling cases related to the enforcement of misdemeanour sanctions and cases for forced collection. Specifically, he issued orders that established a new practice – mandatory movement of cases in the ACMIS system, to the judge handling enforcement sanctions, as well as electronic movement and registration of cases in the ACMIS system from the misdemeanour department to the department for enforcement of misdemeanour sanctions, and then to the expedition unit, which had not been practiced previously. This action has resolved the issue of unregistered and unpaid cases for enforcement of misdemeanour sanctions and forced collection cases, and steps were taken to ensure proper and timely handling of these cases in accordance with legal provisions, thereby preventing potential harmful consequences in the future. In this specific case, the Council found no aggravating circumstances that could have affected the actions of Judge E.A.

Based on the foregoing, the Council concluded that the circumstances provide sufficient grounds for imposing a disciplinary measure — a reduction of salary by 15% of the judge's monthly salary for the next six months. This measure is intended to fulfil the purpose of disciplinary sanctions by having a corrective effect on the judge against whom the proceedings for determining accountability were conducted. It aims to enhance the judge's accountability in performing their judicial duties in the future, ensure a more thorough approach to handling cases, and foster greater accountability in case management, particularly with respect to adherence to deadlines. The goal is to prevent the recurrence of violations of this nature in the future. In the present case, the Council stated in the reasoning of its decision that it had also taken into consideration the intention of the 2019 Law on the Judicial Council of the Republic of North Macedonia, which emphasizes a graded approach to disciplinary sanctions through the imposition of disciplinary measures, as opposed to dismissal.

In the Decision issued against KJ.M., the then-president of the Basic Court in G., it is stated that, following proceedings for determining the accountability of Judge KJ.M., pursuant to Article 74, paragraph 1, item 2, in conjunction with Article 79, paragraph 1, item 4 of the Law on Courts, and based on a prepared report on the established facts, the Judicial Council of the Republic of North Macedonia, at its session held on 15.03.2022, deliberated on allegations that Judge KJ.M., in his capacity as president of the court during the period from 19.10.2017 to 06.04.2020, acted contrary to Article 5, paragraph 1, item 22 of the Law on Case Management in the Courts (Official Gazette of RNM No. 42/2020), and contrary to Article 13, paragraph 1, Article 17, paragraph 1, and Article 272, paragraph 5 of the Court Rules of Procedure, by failing to monitor whether the department for enforcement of misdemeanour sanctions was timely forwarding prepared payment orders for misdemeanour fines to the Public Revenue Office for collection. Furthermore, during the aforementioned period, KJ.M., in his capacity as president of the court, failed to monitor the status of enforcement of misdemeanour decisions, did not conduct regular or extraordinary oversight of the timely and proper execution of tasks within the scope of the department for enforcement of misdemeanour sanctions, and did not perform monthly reviews and controls of the control book for monetary fines, penalties, costs of criminal and misdemeanour proceedings, and court fees. In other words, he failed to monitor the work of the department for enforcement of misdemeanour sanctions, which was not submitting the payment orders for collection, which was his obligation as the president of the court, pursuant to Article 5, paragraph 1, item 22, and Article 5, paragraph 2 of the Law on Case Management in the Courts. Through these actions, KJ.M. performed his duties unprofessionally and negligently, thereby violating the provisions of Article 74, paragraph 1, item 2, in conjunction with Article 79, paragraph 1, item 4 of the Law on Courts. Following the deliberation, the Judicial Council of the Republic of North Macedonia established that the president of the court, KJ.M., monitored the enforcement of misdemeanour sanctions directly through the review of registries and monthly and annual reports from the judge and the court. During this period, he did not interfere in the work of the judge responsible for the enforcement of sanctions and the court administrator regularly informed him about the performance of court staff in the department for enforcement and the expedition unit, confirming that they were acting in accordance with their duties while monitoring the status of resolved cases.

From the conducted inspections carried out in his capacity as the president of the court, it did not appear that the payment orders were not submitted to the Public Revenue Office, considering the fact that the cases were recorded as resolved. Accordingly, Judge KJ.M. did not have a legal means to determine whether the cases had been submitted or not. Based on the supplementary report, the Council established that the only way the court president, KJ.M., could exercise oversight was through review of the ACMIS system, where a summarized monthly report is displayed. The Council determined that the discovery of the non-submission of these payment

orders could only be carried out through direct review of each individual case. However, under the legal provisions, this would constitute interference by the court president in the work of the judge responsible for the enforcement of sanctions, who is accountable for the cases until their archiving. Regarding the monitoring of the expedition unit, where deliveries were carried out exclusively in physical form during that period without any other tracking mechanism, the president was informed by the court staff that there were no delays in deliveries. As for the inspection of cases through the ACMIS system, the Council members established that the court president could conduct inspections through registers and reports, rather than through a control book as stipulated in Article 272, paragraph 5 of the Court Rules of Procedure, because the ACMIS system did not contain a control book, and even if one had existed, it would not have provided an accurate representation of collected fines, as the court was not notified by the PRO of the outcomes of fine collections. Accordingly, the members of the Judicial Council determined that Judge KJ.M., while acting as the president of the court, could not have become aware of the issue with the delivery process in fulfilling his obligations within the scope of court administration. Furthermore, it was noted that he was not informed of this issue by the judge responsible for the cases, the court administrator, or the authorized court staff. As a result, Judge KJ.M. became aware of the delivery issue only after the conclusion of his term as court president, specifically in 2020.

Regarding the accountability of the judge, the Judicial Council did not identify any aggravating circumstances. As a mitigating circumstance, the Judicial Council established the fact that, during that period, the court did not have an established working body for managing the movement of cases, with members appointed to inform the court president of any irregularities related to the movement of cases within the court. Additionally, it was noted that the judge became aware of this matter only after the conclusion of his term as court president.

Based on this, the Council concluded that the aforementioned circumstances provide sufficient grounds for imposing a disciplinary measure - reduction of the judge's salary by 30% for a period of six months. This measure is intended to achieve the purpose of disciplinary action by serving as a corrective influence on the judge against whom the judicial accountability proceeding was conducted, aiming to enhance his accountability in performing his duties in the future. It also aims for a more thorough approach to case handling and greater responsibility in fulfilling obligations, particularly in meeting deadlines, to prevent similar violations from occurring in the future. In this particular case, the Council, in the reasoning of its decision, also noted that it had taken into account the intention of the 2019 Law on the Judicial Council of the Republic of North Macedonia to prioritize the gradation of sanctions through the imposition of disciplinary measures instead of dismissal.

CRITICAL REVIEW AND ANALYSIS

Within this section, a critical review of the entire procedure will be given, analysing it from both a formal and substantive perspective. Specifically, the procedural basis for conducting the proceedings is analyzed, as well as the substantive aspect, i.e., whether the Council's decision is appropriately supported and adequately reasoned.

Formal Elements and Aspects of the Procedure: Timeliness and Admissibility

Regarding the assessment of the timeliness of the submitted request, it can be noted that, according to Article 61, paragraph 1 of the Law on the Judicial Council, the procedure for determining the accountability of a judge is initiated within six months from the day the violation is discovered, but no later than three years from the day the violation occurred. Unfortunately, in both of the analyzed decisions determining the disciplinary measure against judges E.A. and KJ.M., the Judicial Council of the Republic of North Macedonia did not assess, in any paragraph or sentence, the formal basis for the procedure, i.e., the timeliness. Specifically, from the adopted and analyzed decisions, we are not even able to determine when the violation for which both judges were sanctioned was discovered. It is simply briefly stated that such a situation existed during the period when Judge E.A. was appointed as the judge for the execution of sanctions, i.e., from 2013 to 2019. Furthermore, we do not have appropriate information regarding when the procedure was initiated to assess the compliance with the legally prescribed subjective or objective deadlines for initiating this procedure. The only date mentioned in both decisions is the date when the decisions were adopted following the discussion at the session of the Judicial

Council, on 15.03.2022, as well as the date when Judge E.A., responsible for executing sanctions, was appointed as the acting president of the court in G. on 08.04.2000

Namely, regardless of the fact that, as can be seen from the reasoning of both decisions, the issue of not delivering the enforcement orders to the Public Revenue Office in Skopje and to the responsible enforcement agents had existed for a longer period, but was only discovered after the death of the courier who was supposed to deliver these orders to the PRO in Skopje for enforcement or to the responsible enforcement agents, timeliness represents an objective condition for initiating the procedure to determine the judicial accountability. Thus, the mere existence of a situation over a longer period of time should not prevent the Judicial Council from applying the law in its decision and stating whether the action was taken within the legally prescribed deadlines. Moreover, from the explanation of the actions taken and the way this situation was discovered, it is possible to find out approximately the exact moment of discovery, as the discovery is linked to the death of the courier, after which the acting president of the court notified the Judicial Council of the Republic of North Macedonia about the discovered situation.

Finally, in both decisions of the Judicial Council, it was stated that the procedure was being conducted upon the request of an authorized requester – a member of the Judicial Council of the Republic of North Macedonia, but without mentioning the initials of the submitter of the request for determining accountability, and as we mentioned earlier, the date of submission is also not provided.

In the analysis, identically in both decisions, the Judicial Council did not mention whether and when the report on the established situation was delivered by the Commission of Rapporteurs, nor how it was prepared, i.e., there is no data or information on how the procedure unfolded, whether there was a response from the judges against whom the request was filed, what evidence was presented etc. Furthermore, we do not have information about the members of the Judicial Council who participated in the Commission of Rapporteurs.

In this regard, we can only speculate whether the Judicial Council acted in a timely manner when adopting its two decisions in which it determined a disciplinary violation in the work of judges E.A. and Kj.M. from the Basic Court in G.

From a formal perspective, we can note other additional deficiencies in the adopted decisions. For example, the decisions do not mention the legal grounds on which the violation was established, for which the disciplinary measure was imposed. Instead, in both decisions, the Judicial Council only cited provisions from the Law on Courts regarding the determination of the type of disciplinary measure. In the decision for Kj.M., it can be noted that the Judicial Council requested an additional report from the Commission in order to reconsider it. Such an opportunity is provided by Article 70 of the Law on the Judicial Council, which requires seven votes, but the Council did not state in its decision the reasons why the report needed to be revised, nor did it mention the majority by which the decision was made.

In both analyzed decisions, other formal elements are also missing, such as the registry numbers under which they were recorded in the Judicial Council, as well as the details regarding who signed the adopted decision, and the instruction about the right to appeal for the judge, in accordance with the provisions of the Law on the Judicial Council of the Republic of North Macedonia, as well as information about the voting of the members of the Judicial Council.

In this regard, we can conclude that the two analyzed decisions of the Judicial Council of the Republic of North Macedonia do not meet the formal requirements prescribed for drafting a specific legal act.

Substantive Aspects: Inadequacy of the Reasoning and Basis for Accountability

According to the Law on Courts, precise grounds are provided for determining the disciplinary accountability for unprofessional and negligent conduct by the judges, as the basis for imposing disciplinary measures and their dismissal. In relation to previous legal texts, with the latest amendments to this law, there has been a more precise specification of the grounds, i.e., the criteria for disciplinary accountability of judges, as well as which actions of judges are characterized as unprofessional and negligent conduct.

In the analyzed cases, the Judicial Council in both decisions for the judges, where it decided to impose a disciplinary measure of reducing the salary by 15% for a period of 6 (six) months and 30% for a period of 6 (six) months, respectively, in the operative part of its decision did not state the basis for imposing this sanction. Specifically, the only phrase used is “due to violations committed while performing the function of a judge, i.e., president of the court...”. In this regard, it is surprising how persistent the Judicial Council is in not specifying the violation, i.e., the legal basis for determining the disciplinary sanctions. Moreover, it appears that such a style of writing decisions has even become standardized by the Judicial Council, as this remark has already been noted in other analyzed decisions in which the Judicial Council of the Republic of North Macedonia imposed disciplinary sanctions on judges.

Regarding the reasoning of the adopted decision, in both cases concerning the same factual situation, the members of the Judicial Council correctly noted that in accordance with Article 74, paragraph 1, item 2, and paragraph 3 of this article of the Law on Courts, the actions were committed by the judge and the then-president of the court with obvious negligence and without justifiable reasons. However, it seems that the members of the Judicial Council lacked the will to further elaborate on the damage caused to the Budget, which in this specific case is measurable, based on the number of decisions that have reached the statute of limitations for compulsory collection. In this way, the members of the Judicial Council too easily bypassed the second element, which is a necessary cumulative criterion for the dismissal of a judge, as regulated by Article 74 of the Law on Courts.

Furthermore, it seems that we have an insufficiently clarified and reasoned decision as support for the established factual situation, in which it is unequivocally stated in both analyzed decisions of the Judicial Council in both cases, that the failure to act by the judge for enforcement of sanctions, or by the president of the court, clearly resulted in reaching the statute of limitations, thus rendering the enforcement of these decisions impossible. This conduct, in other words, means direct harm to the entity in whose favour the payments for these orders should have been executed, which in this case is the Budget of the Republic of North Macedonia, through for example, the Public Revenue Office in Skopje. Thus, it appears symptomatic that the Judicial Council, in its decisions, avoided using the term “incurred damage,” which seems to be a deliberate action in terms of non-application of the provision of paragraph 3 of Article 74 of the Law on Courts, where the damage could be equated with the legal term “harmful consequence.”

Moreover, it seems that the Judicial Council has somewhat overlooked this provision in the continuation of the reasoning of the decision against Judge E.A., where it was stated that with the actions taken by the judge in his capacity as Acting President of the Court, “harmful consequences will be prevented in the future.”

In this regard, we believe that the members of the Judicial Council, in the two decisions made, lacked consistency in reaching the proper conclusion.

Namely, following the arguments of the then Judge for Enforcement of Sanctions, who claimed he had no control over the delivery of these orders to the PRO or to the enforcement agents, as well as the arguments of the then President of the Court, who stated that there were no established procedures for monitoring the work of the couriers, or if the work of the judge had been analyzed, it would have represented direct interference in his cases, it is truly surprising how the members of the Judicial Council found the responsibility to be with the judges. In other words, if these arguments were to be accepted, then Judges E.A. and Kj.M. should not have been sanctioned at all, as from the provided reasoning it is unclear how the members of the Judicial Council determined that the judges acted without intention but with obvious negligence, when in the preceding sentences of the reasoning it is stated that the judges could not have acted differently from the established practice.

Contrary to this, if the members of the Judicial Council had determined unprofessional and negligent conduct on the part of the then judge for enforcement of sanctions and the then president of the court, it is truly surprising that their position did not lean toward applying the strictest measure – dismissal of the judge due to unprofessional and negligent performance of the judicial function. Namely, if the members of the Judicial Council considered that the qualification of unprofessional and negligent conduct in service was justified, and taking into account the presented arguments for the physical inability to monitor the execution of these payment orders, whether by the judge for enforcement of sanctions or by the president of the court, and this being due to the lack of legal instruments for controlling the work of the couriers, it seems that the approach taken by the members of the Judicial Council was not fully reasoned and was too lenient toward their colleagues. This conclusion is based

on the fact that, after the problem was identified, the judge for enforcement of sanctions, while acting as the Acting President of the Court, took appropriate actions which made possible and ensured control over the work of the court couriers, thus preventing such violations from occurring in the future.

Furthermore, in this specific case, in order to impose the most severe sanction on the judges - their dismissal - pursuant to the Law on Courts, the Judicial Council needed to address another critical aspect: the occurrence of a harmful consequence. As noted earlier, in this particular case, such a consequence is practically evident but, unfortunately, is not adequately addressed anywhere in the decisions issued by the Judicial Council.

For this reason, we believe that the Judicial Council, in this specific case, with the two decisions rendered for imposing disciplinary measures on judges E.A. and Kj.M., is contradictory to itself or, at the very least, indecisive. On the one hand, it established a violation committed by both judges, but on the other hand, it adopted an excessively lenient approach toward this violation, thereby, in a way, relativizing it.

Namely, if the Judicial Council considered that the same violation occurred without intent and with evident negligence, without justifiable reasons, and at the same time it did not address the question regarding the actual harmful consequences for the Budget of the Republic of North Macedonia and, thereby, indirectly for the budget of the judiciary, the question arises: why did the Judicial Council decide to impose disciplinary sanctions at all, especially when they stated that both judges lacked the legal possibility to prevent such inactivity by the court courier? Accordingly, it seems that the Judicial Council, with this reasoning and approach, is overly harsh toward the judges, sanctioning them for something they could not have prevented. In this sense, we believe that from the reasoning provided, it follows that the Judicial Council, in the context of completely ignoring the actual damage to the Budget of the RNM, could have decided much more elegantly by applying the principle of *in dubio pro reo* and, consequently, refraining from imposing any sanctions on the judges. Moreover, this could explain why the Judicial Council did not clearly determine the specific violation for which the disciplinary measure was imposed, especially concerning Kj.M., where the reasoning does not clarify at all what the violation consists of.

Conversely, it appears that the members of the Judicial Council, through their omission of any mention of the incurred damage and their complete disregard for this undisputed fact, restrict themselves and impose an excessively lenient sanction, which is justified solely by an incomplete elaboration of the facts—primarily to defend the decision for imposing a disciplinary sanction.

Accordingly, it can be concluded that in these two analyzed decisions, the Judicial Council of the Republic of North Macedonia provides partial and insufficiently substantiated explanations for its rulings. Rather than concretely linking the facts to the applicable legal provisions, the members of the Council resort to pre-formulated language that is largely perceived as formalism and adherence to a predetermined template. An example of this is the consistent reiteration of the argument that the 2019 Law on the Judicial Council aims to establish a gradation of sanctions through the imposition of disciplinary measures as opposed to dismissal – an argument that lacks a clear legal basis. Similarly, the repeated invocation of Article 78, Paragraph 3 of the Law on Courts to justify the imposition of a disciplinary measure is made without adequately addressing the reasoning for the more lenient sanction.

CONCLUSION

In regard to the analyzed cases, it can be concluded that in both decisions of the Judicial Council, there is once again a lack of adequate reasoning and justification for its rulings. Unfortunately, these specific decisions also reveal a serious nomotechnical or formal shortcomings in the drafting of the decisions. Finally, the hesitancy of the Judicial Council is evident, leaving the impression of an incompletely resolved case. Moreover, the analyzed cases represent yet another example in the series of decisions by the Judicial Council to impose disciplinary measures, where it is evident that the Council disregards obvious facts and arguments, acting with a clear tendency either to spare judges or to compensate for previously unsanctioned violations, even though in the specific case there is no legitimate basis for determining judicial accountability.

08 CASE NOTE: IMPOSING A DISCIPLINARY MEASURE ON JUDGE V.D.

INTRODUCTION

The subject of this analysis is the decision of the Judicial Council of the Republic of North Macedonia regarding the imposition of a disciplinary measure on Judge V.D., a judge at the Basic Court in O., due to established disciplinary responsibility for his (non)action in a case, which led to delays in the proceedings.

FACTS OF THE CASE

In the specific case, the request for determining accountability, filed under No. 10-48/1 on 24.03.2022, was submitted against Judge V.D., a judge at the Basic Court in O., because, acting upon a filed lawsuit with a proposal for determining a temporary measure, he influenced the course of the procedure with his actions in a way that prolonged it in the following manner: after an appeal against the decision rejecting the proposal for a temporary measure, the appeal, along with the case files, was not sent to the higher court for more than two months, despite it being an urgent procedure; nearly a year after initiating the procedure, he failed to create conditions for the commencement of the hearing on the legal matter, considering that he scheduled a preparatory hearing while disregarding the timeframes set by the Law on Civil Procedure regarding the scheduling and holding of hearings, and subsequently postponed the hearing for the main trial to a later date. According to the submitter of the request, considering the manner in which Judge V.D. handled the case, there are grounds for establishing unprofessional and negligent exercise of the judicial office, as it is clearly intentional that he continuously delayed the proceedings and failed to schedule hearings.

Acting upon the submitted request, the Judicial Council of the Republic of North Macedonia established a Commission of Rapporteurs, which determined that the request was timely, complete, and not manifestly ill-founded, thereby meeting the conditions for further proceedings. Consequently, the Commission prepared a report on the established factual situation and submitted it to the Council. Based on this report, the Judicial Council deliberated at a session held on 10.02.2022 and decided to proceed with the disciplinary proceedings.

Within the proceedings before the Commission of Rapporteurs, the actions prescribed by the Law on the Judicial Council for this stage of determining judicial accountability were sequentially undertaken, namely: delivery of the request and evidence to the judge personally; submission of a written response to the request by the judge; and holding a hearing before the Commission of Rapporteurs.

Following the completion of these actions, the Commission of Rapporteurs prepared a report on the established facts, which was subsequently deliberated by the Judicial Council at its session held on 08.06.2022. As a result, the Council issued a decision imposing a disciplinary measure - a written warning on Judge V. D. of the Basic Court O., in accordance with Article 78, Paragraph 1, Item 1 in conjunction with Article 74, Paragraph 4 of the Law on Courts. No appeal was lodged against the decision of the Judicial Council of the Republic of North Macedonia.

DECISION(S) AND ARGUMENTS (RATIO DECIDENDI)

When deciding on the determination of judicial accountability for Judge V. D., the Judicial Council of the Republic of North Macedonia accepted the claims made by the submitter of the request regarding the committed disciplinary violation and established that the judge had committed a disciplinary offense by failing to schedule hearings in the case, thereby causing delays in the proceedings. However, considering that there were objective circumstances contributing to the delays (the judge's absence from work on two occasions due to illness and a surgical procedure), as well as the severity of the violation and the degree of responsibility in this particular case, the Judicial Council took the position that the judge's actions should be qualified as a milder form of violation. In accordance with Article 74, Paragraph 4 of the Law on Courts which stipulates that in cases of a milder form of a violation that could serve as grounds for the dismissal of a judge (a more serious disciplinary violation or unprofessional and negligent exercise of the judicial office), a disciplinary measure may be imposed. The Judicial Council opted for a more lenient sanction against Judge V. D. Consequently, it imposed only a written warning, taking into account the intent of the Law on the Judicial Council of North Macedonia, which emphasizes a graded

approach to sanctions through disciplinary measures rather than dismissal. This decision particularly considered the degree of responsibility, the circumstances under which the violation occurred, and its consequences.

In support of its decision and taking into account the evidence presented during the proceedings, the Judicial Council indisputably established that the judge, in handling the specific case, exceeded the statutory time limits for scheduling a hearing from the initiation of the proceedings. Additionally, the judge failed to create the necessary conditions for commencing the proceedings at the preparatory hearing stage, as required by the provisions of the Law on Civil Procedure and the Law on Securing Claims. Specifically, during the initial receipt and preliminary examination of the lawsuit, appropriate measures were not taken to prevent unnecessary delays in the proceedings. Furthermore, the Council also considered the failure to forward the filed appeal and case files to the higher court for more than two months after the appeal was submitted as an action by the judge that contributed to the delay in the proceedings. This should not have been allowed, particularly given that the case was categorized as urgent, where relatively short deadlines for procedural actions are prescribed.

CRITICAL REVIEW AND ANALYSIS

Within this section of the analysis, based on the available case files, we will examine and focus on specific issues and aspects of the procedure for determining the accountability of Judge V.D. More specifically, we will address questions related to the decision-making process and the reasoning behind the decision rendered by the Judicial Council of the Republic of North Macedonia. First, we will consider certain formal aspects of the procedure, followed by an evaluation of the Judicial Council's reasoning concerning the substantive adjudication of the case.

However, before addressing the formal and substantive aspects, we will present a key dilemma that arose during the analysis of this particular case concerning the competence of the Judicial Council to adjudicate the matter. Specifically, the dilemma pertains to whether, in such situations, it would be more appropriate to first allow the judiciary itself to find mechanisms for remedying the identified violations and procedural omissions through the procedure for the protection of the right to trial within a reasonable time before the Supreme Court, as regulated by Articles 35, 36, 36a, and 36b of the Law on Courts, before the Judicial Council proceeds with a procedure for determining judicial accountability. The intervention of the Judicial Council in an ongoing judicial case that is being handled at the moment of conducting the procedure for the judge's accountability, unless it concerns exceptional situations where irreparable harm may occur, could endanger the individual independence of the judge or judges regarding their freedom to adjudicate the specific case. For this very reason, Article 63, paragraph 4, item 3 of the Law on the Judicial Council, in the section clarifying the meaning of a manifestly ill-founded request, clearly refers to the use of legal remedies within the judiciary before submitting a request to determine the judicial accountability. What stands out in the specific case against Judge V.D. is that no irreparable consequences have occurred. This is evident from the fact that multiple requests for a temporary measure were considered and subsequently rejected, while at the same time, the case in question involved non-compliance with instructive deadlines in proceedings that were already suspended at the stage of the main hearing. Furthermore, the procedure for protecting the right to a trial within a reasonable time before the Supreme Court remains fully available as a legal remedy.

Formal Aspects: Legal Basis and Timeline of the Procedure before the Judicial Council

Regarding the legal basis or the reason for determining the accountability of Judge V.D. in relation to the handling of the specific case and the imposition of a disciplinary measure, it is evident that neither the operative part of the decision nor its reasoning explicitly states the specific violation committed, which served as the basis for the disciplinary measure in accordance with the Law on the Courts. This omission represents a serious shortcoming on the part of the Judicial Council. Namely, in the operative part of the decision, the Judicial Council merely refers to the provision of the Law on the Courts, which stipulates that in cases of a minor violation of the grounds that may lead to the dismissal of a judge, a disciplinary measure may be imposed (Article 74, Paragraph 4). It further cites Article 78, Paragraph 1, which regulates the types of disciplinary measures, specifically referring to Item 1, which prescribes a written warning as a disciplinary measure. Although the judge's conduct

in this case falls under the category of unprofessional and negligent exercise of the judicial office, as explicitly defined in Article 76, Paragraph 1, Item 4 of the Law on the Courts, specifically the failure to schedule hearings without justified reasons or otherwise delaying proceedings, the Judicial Council fails to mention this provision anywhere in its decision. Neither in the operative part nor in the reasoning does the Council classify the judge's actions under this provision. This omission represents a significant shortcoming, reflecting a superficial and inconsistent approach by the Judicial Council in disciplinary proceedings against judges. In this regard, this decision, like the previously analyzed ones, confirms an established pattern of inconsistency and frequent deficiencies in the operative parts and reasoning of the decisions issued by the Judicial Council in such proceedings.

Regarding the timeline of the proceedings before the Judicial Council, it is noticeable that there was an unusually long duration for this type of case involving a minor violation. From the submission of the request for determining the judicial accountability (24.03.2021) to the moment of the decision by the Judicial Council to continue the procedure following the submitted request (10.02.2022). However, the remaining, and in fact, the most substantial part of the procedure was completed within four months, with the final decision made on 08.06.2022. The analyzed decision lacks information on when the Judicial Council established the Commission of Rapporteurs and how long it took the Commission of Rapporteurs to submit its report on the established facts. Consequently, it is unclear why the Judicial Council took almost a year to decide to continue the procedure after the request was submitted. It is unacceptable for such a lengthy period to elapse between the initiation of the procedure and its first phase (the decision to proceed), given the legal provisions of the Law on the Judicial Council of North Macedonia, which explicitly state that the procedure for determining a judicial accountability is urgent (Article 61, Paragraph 2). Furthermore, the Commission of Rapporteurs is legally required to prepare its report within three months from the receipt of the request, which was not adhered to in this case (Article 63, Paragraph 8). Namely, this legal provision essentially compensates for the legislative gap regarding deadlines for continuing the procedure or more precisely, the absence of such deadlines, by regulating the total duration of the procedure before the Commission of Rapporteurs. It sets a clear three-month deadline for submitting the report under Article 67 of the Law on the Judicial Council.

Substantive Aspects: Insufficient Justification of the Decision Regarding the Determination of the Type of Disciplinary Measure

From the presented factual situation regarding the judge's handling of the specific case, it is indisputable that his conduct contains elements of negligent and unprofessional exercise of judicial office, which falls under one of the grounds for a judge's dismissal or the imposition of a disciplinary measure in the case of a minor violation. In this instance, the minor violation consists of inefficiency and unnecessary delays in the proceedings without justified reasons, either by failing to schedule hearings or by otherwise unnecessarily prolonging the procedure (Article 76, Paragraph 1, Item 4). The judge, in this case, made omissions that affected the timeline of the proceedings and contributed to their unnecessary prolongation.

In handling this case, the Judicial Council correctly determined that the judge's conduct contained elements of negligent and unprofessional exercise of judicial office and decided to sanction the judge by issuing a written warning as a disciplinary measure. The Judicial Council opted for a more lenient sanction from those prescribed by law, classifying the judge's conduct as a minor violation and considering that such a sanction would achieve the goal of corrective influence on the judge. Given the judge's actions in this case, particularly the fact that in an urgent procedure with short deadlines for procedural actions, the judge unjustifiably failed to forward the case to the higher court after an appeal was filed, we believe that the judge should have been sanctioned more strictly.

However, the relative correctness of the decision regarding the established accountability cannot overlook the evident shortcomings found in the extremely brief reasoning of the decision concerning the legal basis for determining responsibility and the specific violation committed. The Judicial Council dedicates only two paragraphs to analyzing the legal basis and the violation, once again using established phrases and sentences, especially by incorporating wording from Article 78, Paragraph 3 of the Law on Judges (without citing it explicitly) which are commonly found in decisions where disciplinary measures are imposed. More specifically, the Judicial Council does not provide any reasons for classifying the violation as a minor violation, particularly since it does

not examine the fulfillment of the cumulative conditions set out in Article 74, in other words it fails to address whether the violation was intentional or due to gross negligence and whether any harmful consequences occurred. Furthermore, although the Judicial Council mentions the grounds from Article 78, Paragraph 3, such as the severity of the violation, the degree of responsibility, the circumstances under which it was committed, and the consequences of the violation, it does not individually address these factors in any part of its reasoning when determining the disciplinary measure. In other words, there is no application or assessment of proportionality between the violation and the imposed sanction. Finally, a recurring issue in this type of decision is the reference to the Law on the Judicial Council regarding the alleged intent to introduce a gradation of sanctioning by imposing a disciplinary measure instead of dismissal. In the referenced law, aside from the section concerning the Judicial Council's decision-making process after the hearing, there is no provision that serves as a basis for drawing such a conclusion regarding the legislator's intent or purpose. The Law on Courts is the act that clearly defines how sanctions are determined based on the principle of proportionality by regulating the cumulative conditions for dismissal (Article 74, Paragraphs 1, 2, and 3), cases of a lesser violation (Article 74, Paragraph 4), and the grounds and circumstances to be considered when imposing a disciplinary measure (Article 78, Paragraph 3). Nowhere in this law is there a reference to any priority of disciplinary measures over the dismissal of judges, as this would contradict the proper respect and application of the principle of proportionality, as indicated by the aforementioned provisions.

CONCLUSION

The critical review of the Judicial Council's decision for establishing judicial accountability and impose a disciplinary measure - a written warning on Judge V.D. of the Basic Court O. reveals that the Judicial Council, when determining judicial accountability and making decisions in this regard, as well as in other analyzed cases, does not adequately qualify the violation committed by the judge in accordance with the provisions of the Law on Courts. Furthermore, it does not impose a sanction proportionate to the nature and severity of the violation. In this case, the Judicial Council made an omission both in the decision-making process and in the written formulation of the decision, considering that neither in the operative part nor in the reasoning does it reference the specific violation committed and the corresponding disciplinary measure imposed in accordance with the Law on Courts. Moreover, it does not classify the judge's actions under the appropriate legal provision explicitly stated in the Law on Courts. As seen in other analyzed cases, this approach by the Judicial Council reflects an established practice of drafting decisions with serious deficiencies, raising the question of whether the Judicial Council is fulfilling its responsibilities effectively in conducting proceedings for determining judicial accountability.

09 CASE NOTE: DISMISSAL OF JUDGE G.B.

INTRODUCTION

The subject of this analysis is the decision of the Judicial Council of the Republic of North Macedonia regarding the determination of unprofessional and negligent exercise of judicial office. The case concerns Judge G. B., a judge of the Basic Court S., who was found accountable for negligent and unprofessional conduct due to unjustified delays in the proceedings of a case without legal grounds, with the intent to cause the absolute statute of limitations for the criminal prosecution of one of the defendants. What makes this case particularly interesting is that it involves a high-profile case in which an indictment was filed by the former Special Public Prosecutor's Office under the code name "Trajectory".

FACTS OF THE CASE

According to the allegations in the request for determining judicial accountability of Judge G.B., submitted by V.D., a member of the Judicial Council of the Republic of North Macedonia, filed under reference number 10-104/1 on 09.11.2020, the same concerns violations by the judge in the case KOK no. 52/17 during the period from 18.12.2017 to 13.11.2019. Specifically, the judge exercised his judicial duties negligently and unprofessionally by delaying the proceedings in the case without legal grounds, with the intention of causing the absolute statute of limitations for criminal prosecution against the defendant N.G., which ultimately occurred. As a result, the criminal proceedings against this defendant were stopped with decision I KOK. no. 52/17 on 13.11.2019. In this case, the decision to stop the proceedings made by the judge was overturned by the Appellate Court in Skopje due to a substantial violation of the provisions of the criminal procedure. This conduct by the judge was in violation of the provisions of the Law on Criminal Procedure (LCP) because a decision was made instead of a dismissive judgment under Article 402, paragraph 1, item 6 of the LCP stating that the absolute statute of limitations for criminal prosecution had occurred, meaning that the costs of the proceedings should be covered by the Budget of the Republic of North Macedonia.

In response to the submitted request, the Commission of Rapporteurs formed by members of the Judicial Council of the Republic of North Macedonia prepared a Report on the established factual situation, after which the Judicial Council, on 11.03.2021, made a decision to continue the procedure. As part of the procedure, the Commission of Rapporteurs forwarded the request along with the attached evidence to Judge G.B. to allow him to respond to the allegations in the request for determining judicial accountability. According to the prescribed phases of the procedure, the judge submitted a written response in the specific case. The disciplinary procedure continued with scheduling a hearing before the Commission of Rapporteurs, which on 26.05.2021 was postponed due to an irregular invitation sent to the judge against whom the procedure was being conducted.

The rescheduled hearing was held on 03.06.2021 in the presence of the submitter of the request and the judge. Based on the hearing and the presented evidence, the Commission of Rapporteurs submitted a Report on the established factual situation to the Judicial Council, based on which the Council made a decision on 05.07.2021 to dismiss the judge from judicial office.

In his defense, the judge stated that upon receiving the case, he had noted that 4 years and 2 months had passed since the last deadline for the absolute statute of limitations for committing the criminal act. Regarding the specific case KOK no. 52/17, the judge mentioned that the hearings had been scheduled two to three times a month, with a total of 67 sessions set for the main hearings, of which only one had been postponed due to the absence of a member of the Trial Chamber, and not once had the legal deadline of 90 days between two hearings been exceeded. The judge, G.B., also noted that the number and frequency of the main hearings during the entire period of the case proceedings had been limited due to the fact that the defendants, M.J. and N.G., had appeared as defendants in more than 10 cases in the same court, as well as the fact that the accused, M.J., had attended main hearings in some of the court cases on a daily, alternating basis.

The judge did not file an appeal against the decision of the Judicial Council regarding his dismissal from the judicial office.

DECISION(S) AND ARGUMENTS (RATIO DECIDENDI)

The Judicial Council of the Republic of North Macedonia, when deciding on the determination of the judge G.B.'s accountability, made a decision to dismiss the judge from judicial function due to unprofessional and negligent exercise of the judicial office. The Judicial Council, as evident from the decision, accepted the claims of the submitter of the request that the judge had exercised the judicial office unprofessionally and negligently by delaying the procedure in the case without a legal basis, with the intention of allowing the absolute statute of limitations to apply to the criminal prosecution of the defendant N.G., which did occur. As a result, the criminal proceedings against this defendant were stopped with the decision KOK no. 52/17 of 13.11.2019. This decision was overturned by the Appellate Court in Skopje with the decision KOKZh-64/2019 of 16.12.2019, due to a substantive violation of the provisions of the criminal procedure. Namely, such conduct by the judge was contrary to the provisions of the Law on Criminal Procedure Code because a decision was made instead of a dismissive judgment in accordance with Article 402, paragraph 1, item 6 of the Law on Criminal Procedure, from which it is clear that the absolute statute of limitations for criminal prosecution of the defendant had occurred, and therefore, the costs of the procedure should be borne by the Budget of the Republic of North Macedonia.

The Judicial Council, considering the claims of the submitter of the request, determined that the judge had not taken the appropriate actions to ensure the smooth course of the procedure, meaning that he had not used the necessary legal mechanisms available to him according to the provisions of the Law on Criminal Procedure. In the reasoning of the decision, the Judicial Council noted that, given the public interest in these criminal cases, the judge, as the president of the chamber, had not shown satisfactory engagement with a pre-established dynamic for timely completion of the procedure. In support of its decision, the Council stated that the violation committed by the judge was intentional, without justified reasons, and caused a serious consequence, namely that the absolute statute of limitations for criminal prosecution had occurred for one of the defendants, resulting in the costs for him and his defense lawyer being borne by the Budget of the Republic of North Macedonia.

CRITICAL REVIEW AND ANALYSIS

In this part of the analysis, we will focus on aspects that are considered problematic from the perspective of the formal and substantive elements of the decision. Although at first glance it might appear that the decision is well-written and reasoned, it quickly becomes clear that, like other decisions, the one concerning G.B. has deficiencies and shortcomings that persist. Namely, first, we will address the formal aspects related to deficiencies concerning the definition and determination of the legal basis for the violation, as well as information regarding the composition of the Commission of Rapporteurs and the voting process. From a substantive standpoint, the main deficiency is the lack of reasoning in the decision, especially in the part concerning the legal argumentation of the violation, while too much focus has been placed on determining the factual situation.

Formal Aspects: Legal Basis for the Violation and Information About the Commission and Council Voting

As with several of the analyzed decisions which determine judicial accountability, in the decision regarding the dismissal of G.B., the specific legal basis for the violation committed by the judge, which led to his dismissal, is not mentioned in the operative part of the decision. Specifically, the decision only references the general legal basis for dismissal of a judge under Article 74 of the Law on Courts, stating that the judge is dismissed for unprofessional and negligent exercise of judicial office, a violation committed with intent or gross negligence without valid reasons, which caused severe consequences. However, what the specific violation was, or the exact form of unprofessional and negligent exercise of judicial office, is not indicated in the operative part of the decision. Moreover, it is evident that a practice has already been established by the Judicial Council where the names of the members of the Commission of Rapporteurs are not listed, as if their dignity is being protected, and as a result, the members are not mentioned. There is also no information regarding how the voting process took place within the Council, such as how many votes led to the judge's dismissal or the imposition of the disciplinary measure. Similarly, in the analyzed decision, this information is not provided.

Substantive Aspects: Inadequacy of the Reasoning

Although the analyzed decision thoroughly establishes the factual situation, its reasoning is marked by a sparse legal analysis concerning the application of legal rules regarding the judicial accountability in relation to the established facts. Specifically, the decision does not provide an adequate explanation of the grounds and cumulative conditions for the dismissal of the judge, and proportionality is neither mentioned nor applied. The Judicial Council focuses much more on the provisions of the Law on Criminal Procedure and the judge's responsibilities, while insufficient attention is given to the relevant provisions of the Law on Courts that govern the accountability of judges. In doing so, the Council acts more like an appellate court rather than as a Judicial Council.

The decision to establish the unprofessional and negligent exercise of judicial office by judge G.B., a judge at the Basic Criminal Court in S., was adopted by the Judicial Council of the RNM due to a violation according to Article 74, paragraph 1, item 2, in conjunction to paragraph 3, items 1 and 2 of the same article of the Law on Courts. Only in the reasoning of the decision is the legal basis for the specific violation mentioned, Article 76, paragraph 1, item 4, but the provision is not cited. Specifically, this provision regulates that unprofessional and negligent exercise of judicial office occurs when a judge "without justified reasons fails to schedule hearings in cases assigned to them or otherwise delays the proceedings." In the reasoning of the decision, it is stated that "the judge, in their capacity as the president of the chamber, did not take appropriate actions to ensure the smooth course of the procedure," or "to use the necessary legal mechanisms available to them according to the provisions of the Law on Criminal Procedure." The Council does not specify which actions should have been taken as appropriate to ensure the uninterrupted flow of the proceedings in this specific case, nor does it provide detailed information on which mechanisms the judge should have used according to the LCP. Furthermore, it does not accurately determine in what other ways, in the sense of Article 76, paragraph 1, item 4, the judge delayed the proceedings without justified reasons. It is stated that for the defendant N.G., the judge did not order forcible bringing-in despite the fact that the defendant failed to appear at the specific hearing without a justified reason. Additionally, it is noted that one hearing was postponed due to the absence of one of the defense attorneys, even though another defense attorney was present at the hearing, meaning the postponement was unnecessary. Similarly, the judge is criticized for not assigning additional judges or lay judges, even though the case was complex, with the likelihood of it taking longer and the risk of expiration due to the statute of limitations. The judge is also blamed for not planning and scheduling the hearings according to the so-called principle of concentration. On several occasions, hearings were postponed due to the absence of public prosecutors and expert witnesses (or their unpreparedness for the trial!). This cannot be directly attributed to the judge presiding, but is indirectly ascribed to poor management. The judge, however, is held accountable for not continuing with the presentation of other (material) evidence in the absence of the expert witnesses, instead immediately postponing the hearing.

Considering that for this case, in relation to one of the defendants, the statute of limitations for criminal prosecution was expected to expire, the Council believes that the judge demonstrated a relatively low level of attention, and the negligent and unprofessional management of the main hearing led to this outcome. In order to prevent the statute of limitations from expiring for any of the defendants, the judge, as soon as the case was assigned to them, should have paid attention to the deadlines for the expiration of the criminal charges against the accused. In this sense, the judge should have taken steps to prevent further delays in the proceedings or to expedite them. The Judicial Council also addresses another context, noting that, considering the public's interest in these criminal cases, the judge, as the president of the council, did not demonstrate satisfactory engagement with a pre-established timeline for the timely conclusion of the judicial proceedings.

Considering that for this case, in relation to one of the defendants, the statute of limitations for criminal prosecution was expected to expire, the Council believes that the judge demonstrated a relatively low level of attention, and the negligent and unprofessional management of the main hearing led to this outcome. In order to prevent the statute of limitations from expiring for any of the defendants, the judge, as soon as the case was assigned to him, should have paid attention to the deadlines for the expiration of the criminal charges against the defendants. In this sense, the judge should have taken steps to prevent further delays in the proceedings or to expedite them. The Judicial Council also addresses another context, noting that, considering the public's

interest in these criminal cases, the judge, as the president of the chamber, did not demonstrate satisfactory engagement with a pre-established dynamics for the timely conclusion of the court proceeding.

The judge is specifically held accountable for not using the opportunity provided by Article 347 of the Law on Criminal Procedure, which would have allowed the parties to be called and heard in advance regarding the relevance of the proposed evidence, considering the complexity of the case and the number of proposed pieces of evidence. This is a somewhat delicate remark, as the purpose of the hearing is to assist the judge in deciding on the relevance of the proposed evidence. Only indirectly could this lead to delays in the proceedings if it were shown that the accepted evidence was indeed irrelevant, and that this could have been obvious even before the trial began. No such finding has been made in this case, and it remains a mere speculation. Furthermore, judges, as a rule, apply this provision of the LCP very rarely, so it seems unfair to treat it as a significant factor in determining that the judge acted unprofessionally or negligently in this specific case.

The Council does not dispute that the case was complex, with many defendants and a large number of proposed pieces of evidence from both the prosecution and the defense. However, despite this, it concluded that the judge had intentionally delayed the proceedings, as evidenced by the records. The Judicial Council dismissed the circumstances that could represent valid reasons for the judge's actions with a single sentence, claiming that these "are not of decisive importance for determining a different factual situation." While a large number of hearings were held (almost none were postponed), in practice, they were significantly inefficient, in the sense that they often started late and, more frequently, lasted for a very short period. In its decision, the Judicial Council meticulously analyzed the duration of each hearing (sometimes lasting only an hour, and rarely exceeding two to three hours effectively). Based on this poor case management and the certainty of the statute of limitations, the Council concluded that the judge acted unprofessionally, negligently, and with the aim of making the prosecution statute of limitations expire. It appears that, in the absence of stronger evidence, the Council relied on these broad qualifications without precisely identifying the specific violations committed and linking them to the relevant legal grounds for accountability and this approach suggests a certain lack of confidence in its own assertions.

This issue appears to be central to the Council's decision, making it crucial to determine whether there was intent and/or negligence and unprofessionalism, specifically, whether the judge deliberately conducted the proceedings in a way that led to reaching the statute of limitations or if it was merely inattentiveness. Unprofessionalism would be difficult to establish in this context, at least not for a relatively experienced judge. In other cases before the Council, it has been unclear whether a finding of abuse of authority or gross negligence is necessary for dismissal, or if even minor mistakes due to inattention could suffice. The most delicate aspect is that proving abuse of authority is inherently challenging, i.e. it is difficult to establish in advance that the judge intended to delay the case to benefit someone. In this specific case, the Council does not present concrete evidence that indisputably proves the judge deliberately delayed the proceedings to let the case against N.G. expire. As a result, this claim remains more of a speculation which is possible, but far from proven.

The next question is whether the delay and expiration of the case were solely the responsibility of the presiding judge or whether the prosecution should also be considered accountable. Under the new accusatory criminal procedure model, a significant share of responsibility for case expiration falls on the competent public prosecutor. It appears that the Judicial Council still adheres to the old paternalistic model, where the judge is seen as the master of proceedings and is almost exclusively responsible for the overall progress of the case, including its duration and possible expiration. This does not mean that the Judicial Council should decide on the accountability of public prosecutors, but this factor should at least be considered when determining a judge's accountability.

Additionally, the question arises whether there was actual harm or a serious consequence in this case. Generally, prolonged proceedings are detrimental to defendants and constitute a violation of the right to a fair trial. However, the situation is significantly different when a case expires due to the statute of limitations. It remains an open question whether judges are held accountable whenever proceedings exceed a so-called "reasonable time" (as typically determined by the Supreme Court of North Macedonia or the European Court of Human Rights) or only in extreme cases where the statute of limitations is reached. In this specific case, the Judicial Council found that:

"The violation was committed with intent by the judge, without justified reasons, and caused a serious consequence consisting of the absolute statute of limitations on criminal prosecution for one of the defendants, whereby his expenses and the expenses of his defense counsel fall on the Budget of the Republic of North Macedonia. Considering that the case concerns liability for two road infrastructure projects of significant interest to a large number of citizens of the country and involves the payment of a substantial amount of funds from the Budget of the Republic of North Macedonia, allowing the prosecution of one of the defendants to become time-barred has particular significance for the public trust in the judicial system of the country."

This finding raises multiple uncertainties, as it refers to various circumstances of different nature, quality, and quantity, including the statute of limitations on criminal prosecution, procedural costs, the financial burden on the Budget due to the alleged (and unproven) corruption, public trust in the judiciary, and similar factors. It is inevitable to get the impression that the Judicial Council is not entirely certain about the exact nature and extent of the damage caused by the specific judge or the severe consequence resulting from his unprofessional and negligent conduct.

Based on these shortcomings in the reasoning, it is evident that the Judicial Council has failed to provide appropriate legal argumentation to establish the fulfilment of the cumulative conditions for the judge's dismissal. Specifically, it remains unclear how intent was determined, as well as how the harmful consequence was established and linked to the judge's actions. Namely, out of a 14-page reasoning, the Judicial Council addresses the cumulative conditions for a judge's dismissal in only three paragraphs, using highly general phrases and merely referring to legal provisions. Moreover, proportionality is not mentioned at all.

Finally, regarding the alleged mistake of Judge G.B. in terminating the statute-barred proceedings by issuing a decision, the Judicial Council found that the judge committed a serious procedural error by stopping the proceedings through a decision instead of rendering a dismissive judgment. It must be acknowledged that judicial practice in this matter has varied. Namely, at the time of the contested decision, there was no clear practice before domestic courts, nor any established legal opinion on the issue. On the contrary, recent practice at the Basic Criminal Court Skopje now aligns with Judge G.B.'s decision. Specifically, judges in this court consider that if proceedings become time-barred for one (or more) co-defendants, a decision should be issued concerning those individuals, while the proceedings should continue for the others. This approach avoids the need to wait for the entire proceeding to conclude before issuing a dismissive judgment for those whose prosecution has expired. In this sense, it can be argued that the judge did not make an error, at the very least, that this is a matter of differing legal interpretations, which would also preclude the judge's accountability for such a violation.

CONCLUSION

Based on the presented arguments and the analysis regarding the decision to dismiss Judge G.B., it can be concluded that this decision exhibits the same weaknesses noted in other decisions. Although in this case, the Judicial Council appears to have taken a relatively thorough approach in its proceedings, relying on the evidence and arguments presented in the request and later during the hearing before the Commission, this thoroughness pertains solely to the establishment of the factual situation. However, upon reviewing the legal analysis, which should involve the application of legal rules to the facts, it becomes immediately apparent that the decision is relatively weak and unsubstantiated due to a lack of proper reasoning. Simply put, the cumulative conditions for dismissal have not been established with the necessary precision to justify imposing the most severe sanction for the alleged violation attributed to the judge. Particularly concerning is the fact that the Judicial Council does not even mention the principle of proportionality, despite the gravity of dismissing a judge from judicial office. Once again, this decision also exhibits formal deficiencies, such as the absence of a legal basis for the specific violation in the operative part of the decision, as well as the lack of information regarding the composition of the Commission of Rapporteurs and details on the votes by which the Council reached its decision.

10 CASE NOTE: IMPOSING A DISCIPLINARY MEASURE ON JUDGE A.A.

INTRODUCTION

Within the framework of this analysis, the decision of the Judicial Council of the Republic of North Macedonia imposing a disciplinary measure on Judge A.A. in the Basic Court in N. is analyzed. In this decision, the Judicial Council imposed a disciplinary measure - a written warning on Judge A.A. for a disciplinary violation committed during the period when he served as the president of the Basic Court in N. The reasons for imposing this measure stem from the fact that, while Judge A.A. was the president of the court, he violated provisions of the Law on Case Management in Courts as well as the provisions of the Court Rules of Procedure. Specifically, despite his legally established duty as president of the court, he failed to monitor the status of case management regarding the delivery of cases for legal remedies, which could have, and indeed did, result in the absolute statute of limitations being reached in one particular case involving a misdemeanour prosecution. In this regard, the members of the Judicial Council determined that the then-president of the court acted unprofessionally and negligently in fulfilling his duties. The procedure was conducted in accordance with the provisions of the new Law on the Judicial Council from 2019.

FACTS OF THE CASE

In the specific case, the Judicial Council determined that Judge A.A. acted unprofessionally and negligently in performing his judicial duties, as, in his capacity as president of the court, he failed to oversee whether misdemeanour cases had been delivered to the higher court for proceedings after the filing of legal remedies. Namely, the Judicial Council, at its session held on 07.06.2021, reviewing the report of the Commission of Rapporteurs, determined that while Judge A.A. was serving as president of the Basic Court in N., he was obliged to monitor the management of case movement in the court regarding the delivery of cases for legal remedies. Additionally, he was responsible for overseeing the court's overall operations, organizing the work, and managing the court, ensuring proper conduct and actions of both judges and court staff. He was also required to conduct regular inspections of the timely and proper execution of tasks within the court at least twice a year and ad hoc as needed. Furthermore, he was expected to monitor the status of misdemeanour cases on which appeals had been filed against the decisions made, to organize the work in the court's registry, and ensure that these cases were processed appropriately and to regularly supervise the timely and orderly execution of the work in the court registry by the court clerk. At that time, the president of the court, A.A., did not monitor the status of the misdemeanour cases for which appeals had been filed against the decisions made, did not organize the work in the court's registry, and failed to ensure that those cases were processed. This negligence occurred due to a failure to conduct regular oversight of the timely and proper execution of tasks by the court clerk M.G., a court courier who, by the court president's decision SU 04.br.45/16 dated 03.03.2016, was authorized to temporarily perform tasks of the misdemeanour registry manager until the position was filled. As a result, the appeals filed against the first-instance decisions in 37 cases were not forwarded to the higher court for decision, and they were kept in the court registry. In two misdemeanour cases, the first-instance decisions were never delivered to the parties. These omissions were discovered by the newly elected President of the Basic Court N., Judge B. T., who began performing her duties on November 8, 2019, and after ascertaining the situation in the court's misdemeanour registry, she immediately took action to expedite the procedure in these cases in order to prevent the absolute statute of limitations on misdemeanour prosecution. Thus, the first-instance decisions were immediately delivered to the parties, after which the period for filing appeals began to run, and appeals were subsequently submitted, thus preventing the occurrence of absolute statute of limitations on misdemeanour prosecution in the cases before the appeals were delivered to the court of appeal, thereby preventing harmful consequences that would have occurred if the newly elected president of the court had not taken action to deliver the decisions to the parties or the filed appeals to the higher court for decision. In one case, the absolute statute of limitations for misdemeanour prosecution occurred - case PRK.br.106/15 - considering that it was submitted to the higher court for decision on 03.03.2020, while the offense was committed on 22.11.2014, meaning that the absolute statute of limitations of the misdemeanour prosecution occurred on 22.11.2018.

DECISION(S) AND ARGUMENTS (RATIO DECIDENDI)

In the analyzed case, only one decision was rendered. Namely, the Decision by the Judicial Council of the Republic of Macedonia imposing the disciplinary measure on the judge.

According to the allegations in the request for determining the accountability of a judge and court president, with the described actions, Judge A. A., in the capacity of President of the Basic Court N., during the specified period acted contrary to Article 6, paragraph 1, item 9 and item 10 of the Law on Case Management in Courts ("Official Gazette of the Republic of Macedonia" no. 171 of 30.12.2010), as well as Article 13, paragraph 1, Article 15, paragraph 2, and Article 17, paragraph 1 of the Court Rules of Procedure ("Official Gazette of the Republic of Macedonia" no. 66 of 09.05.2013).

The violation was committed passively, i.e., by failing to implement provisions related to oversight of the court registry for the timely and proper execution of tasks and, in general, the organization of work within the court. In this manner, A. A. unprofessionally and negligently performed the role of court president, as outlined in Article 74, paragraph 1, item 2, in conjunction with Article 79, paragraph 1, item 3 of the Law on Courts ("Official Gazette of the Republic of Macedonia" no. 58/2006, no. 35/2008, no. 150/2010, and no. 83/2018). At the session held on 07.06.2021, the Judicial Council deliberated on the Commission's Report and determined that while serving as the President of the Basic Court N., Judge A. A. was obligated to monitor the state of case management within the court regarding the submission of cases subject to legal remedies. Additionally, he was responsible for performing all duties within the scope of judicial administration, organizing and leading court operations, overseeing proper conduct and actions by judges and court employees, and conducting regular oversight of the timely and proper performance of court tasks at least twice a year, and extraordinarily as needed.

Furthermore, he was required to monitor the situation concerning misdemeanour cases in which appeals had been filed against the issued decisions, organize the work in the court registry, ensure the handling of such cases, and carry out regular oversight of the timely and proper execution of tasks in the court registry by the judicial officer.

At the session held on 07.06.2021, the Judicial Council discussed the Commission's Report and determined that while serving as President of the Basic Court N., Judge A. A. was obliged to oversee the management of case movement within the court, particularly regarding the submission of cases subject to legal remedies. He was also responsible for performing all tasks within the scope of judicial administration, organizing and managing the court's operations, ensuring proper conduct and procedures by judges and court employees, and conducting regular oversight of the timely and orderly execution of court operations at least twice annually, or more frequently if required. Additionally, Judge A. A. was required to monitor the state of misdemeanour cases with filed appeals against issued decisions, organize the work in the court registry, ensure proper handling of these cases, and conduct regular oversight of the timely and proper performance of tasks in the court registry by judicial officers.

As support for its decision, the Judicial Council identified several mitigating circumstances regarding the then-President of the Court, A.A. It found that A.A. could not have had complete influence over the overall situation due to staffing challenges resulting from an insufficient number of employees, especially in critical positions (e.g., registry managers, record keepers, and typists), where the number of staff had significantly decreased over an extended period. In this context, the Judicial Council further acknowledged that A.A., as President of the Court, had continuously taken measures to address these challenges despite the difficult working conditions. These measures included temporarily reassigning court staff from one position to another as needed, submitting requests to fill vacant positions within the court, occasionally emphasizing the priority and necessity of certain hires, and sending repeated urgencies to the Judicial-Budgetary Council to resolve the staffing shortages.

Additionally, the Judicial Council established that during the disputed period, in the Basic Court in N., out of a total of seven judges, only two remained, while the number of cases increased. A.A., in addition to performing the duties as President, also worked on cases from almost all areas, which required effort and additional engagement, inevitably impacting the regular execution of duties within his scope as President of the Court.

The Judicial Council of the Republic of North Macedonia did not find any aggravating circumstances in the actions of the then-President of the Basic Court in N., A.A.

Based on the established factual situation, the Judicial Council determined that Judge A.A., in his capacity as President of the Basic Court in N., during the specified period acted contrary to Article 6, paragraph 1, items 9 and 10 of the Law on Case Management in Courts ("Official Gazette of the Republic of Macedonia" No. 171 of 30.12.2010), as well as Article 13, paragraph 1, Article 15, paragraph 2, and Article 17, paragraph 1 of the Court Rules of Procedure ("Official Gazette of the Republic of Macedonia" No. 66 of 09.05.2013). This was due to his failure to implement provisions regarding oversight of the court registry for timely and orderly execution of tasks and, in general, organizing the court's operations, thereby performing his duties as President of the Court unprofessionally and negligently, as defined under Article 74, paragraph 1, item 2, in conjunction with Article 79, paragraph 1, item 3 of the Law on Courts ("Official Gazette of the Republic of Macedonia" No. 58/2006, No. 35/2008, No. 150/2010, and No. 83/2018). Based on this, the Judicial Council imposed a disciplinary sanction on Judge A.A. in the form of a written warning.

The Council concluded that the imposed disciplinary measure would have an educational effect on everyone, not just on the judge, particularly given that the individual is no longer the president of the court. However, this does not exempt the judge from the responsibility to ensure that no violations occur in the future. When determining disciplinary responsibility, the Council considered the severity of the violation, the degree of responsibility, the circumstances under which the violation occurred, and the consequences of the violation. This is especially important since the Judicial Council has a duty to preserve public trust in the judiciary and ensure the legal certainty of citizens.

Regarding the decision made, Judge A.A. did not exercise the right to file a legal remedy, meaning no appeal was submitted.

CRITICAL REVIEW AND ANALYSIS

Within this section, a critical review of the entire procedure will be conducted, analysing it from both formal and substantive aspects. Specifically, the procedural basis for conducting the process will be examined, as well as the substantive aspect, i.e., whether the Council's decision is adequately supported and justified.

Formal Aspects: Timeliness and Admissibility

Regarding the assessment of the timeliness of the submitted request, it can be noted that, pursuant to Article 61, paragraph 1 of the Law on the Judicial Council, the procedure for determining judicial accountability must be initiated within six months from the day of learning about the violation, but no later than three years from the date the violation was committed. In the Judicial Council's decision, this issue is not directly addressed. However, considering the facts of the case - alleged violations committed between 04.12.2017, and 30.04.2019, and the date when the decision was made, it can be indirectly concluded that there was untimely action regarding compliance with the subjective deadline for initiating proceedings. In this context, it is commendable that the analyzed decision includes both the archival number and the date of archiving and adopting the decision. Unfortunately, the Judicial Council did not explicitly consider whether the actions were in accordance with the time limits established for initiating the procedure.

Consequently, the Council states that the procedure was initiated on 07.09.2020, but at no point is it specified when the authorized submitter of the request became aware of the violations, or whether the procedure was initiated within the subjective legal deadline. In this regard, it can be assumed that the violations were discovered when the new president of the court was appointed, i.e., 08.11.2019. However, this conclusion is only indirect, as this date is the only one mentioned in the reasoning of the decision as the day when "...the situation in the misdemeanour registry was identified...". As stated above, the Council did not assess the timeliness of initiating the procedure at any point.

From the relevant dates mentioned in the reasoning of the decision, it can be concluded that if we take the elaborated date, i.e., 08.11.2019, as the day of discovering the violation, and counting up to the day the

procedure was initiated, i.e., 07.09.2020, we can conclude that the subjective deadline for initiating this procedure, as regulated in Article 61 of the Law on the Judicial Council, was not adhered to, because 10 months have passed between these two dates, or 4 months, minus one day, more than the legally prescribed subjective deadline of six months for initiating the procedure.

Analysing the remaining formal aspects of this decision of the Judicial Council, it can be concluded that the decision is slightly better than similar decisions by the Judicial Council in which disciplinary measures are imposed, but still, several formal deficiencies can be noted in this decision as well. Thus, in addition to not specifying the person who is the authorized submitter of the request, the operative part of the decision lacks a clear determination of the legal basis for the committed disciplinary violation. Namely, the operative part states the basis of Article 79, paragraph 1, item 3 of the Law on Courts, which reads "influence on the independence of judges in relation to deciding on individual cases", although throughout the entire reasoning, reference is made to a violation of item 4 of paragraph 1 of Article 79, which reads "non-application of the provisions relating to the management and distribution of court cases". Namely, we believe that the action identified as a disciplinary violation by the Judicial Council in the analyzed decision in its operative part, and in accordance with the cited provisions of the Law on Case Management in Courts, more closely represents a violation defined in item 4 of paragraph 1 of Article 79 of the Law on Courts, rather than item 3 of the same paragraph and article.

In addition to these formal deficiencies, the decision of the Judicial Council again lacks additional formal mandatory elements, such as data on the rapporteur who refers to the established violations, information about the authorized signatory of the decision, as well as the absence of legal instructions regarding the use of legal remedies in case the judge is dissatisfied with the outcome of the procedure. Furthermore, there is no information regarding the report of the Commission of Rapporteurs concerning the fact whether the request was timely, admissible or manifestly ill-founded, nor about the response of the judge and the progress and evidence presented during the hearing before the Commission.

Taking into account these formal deficiencies in the decision, the dilemma arises once again whether this is an original decision made by the Judicial Council, or a transcript that has been prepared, or anonymized, for the needs of the general public. In any case, regardless of whether it is a transcript or an original decision, it is considered that in the future, the Judicial Council should pay attention to the form of its specific acts, and that they should be fully available to the general public without editing, as a means to improve the accountability of the Judicial Council, with the aim of increasing public trust in the correctness of the work of the Judicial Council of the Republic of North Macedonia.

Substantive aspects: the inadequacy of the reasoning and the basis for imposing a disciplinary measure

According to the Law on Courts, precise grounds are provided for determining the disciplinary responsibility of judges, as well as for the presidents of courts. In relation to previous legal texts, with the latest amendments to this law, there has been a more precise definition of the grounds, or criteria, for the disciplinary responsibility of judges and court presidents.

In the specific case against judge A.A., for actions taken while he was president of the Basic Court N., as pointed out above, the Council's error is evident in the legal qualification of the violation. Throughout the entire text, the Council acted based on item 3, paragraph 1 of Article 79 of the Law on Courts, although, in fact, it should have been item 4 of the same article and paragraph.

It seems that within the reasoning of its decision, the Judicial Council only mentions mitigating circumstances, and as a result, it does not provide an accurate picture of the violation. Specifically, it appears that the Judicial Council focuses on elements that alleviate the position of judge A.A., in the sense that he did not have enough time to monitor the proper movement of cases, particularly in the case of misdemeanour cases and their delivery after submitted appeal to the higher court. Namely, in this case, the Council seems to focus solely on the latest circumstances of the reduced number of judges and staff in the court, which provides an argument for the then-president that he did not have enough time to focus on monitoring the work of administrative staff in the court with regard to case movement. However, the Judicial Council seems to be too

easily overlooking the fact that in this particular case the violation lasted for a long time, from 04.12.2017 to 30.04.2019. That is, the administrative staff failed to deliver cases to the higher court or to the parties filing appeals over an extended period, with the oldest case dating back to 22.11.2014.

As a matter of fact, the argument is acceptable that, if we take into account the oldest case from 2014, which in fact is the only one where absolute statute of limitations has occurred, the court was headed by a different acting president at that time. Meanwhile, the then-president, against whom this disciplinary measure was imposed, Judge A.A., took actions during his tenure as president to improve administrative work, including redistributing staff within the court to ensure the ongoing execution of tasks. In this regard, it is surprising that despite the efforts made by the then-president to manage the court and case movement, he failed to identify the issue regarding the delivery of misdemeanour cases for appeal. According to the reasoning of the Judicial Council, this issue was only discovered after the appointment of a new president of the court, on 08.11.2019.

Therefore, the decision of the Judicial Council of the Republic of North Macedonia to impose a disciplinary sanction on Judge A.A. is justified. However, what remains unclear is whether this sanction is fully appropriate concerning specific and general prevention. In other words, the Judicial Council does not provide additional and adequate arguments as to whether this sanction serves as a future example for other judges and court presidents regarding their professional and competent fulfilment of duties as court presidents.

Moreover, according to the provisions of Article 74 of the Law on Courts, when determining the accountability of a judge, the Judicial Council should also assess it in the context of paragraph 3 of the same article, not only in the context of paragraph 1 of Article 74 of the Law on Courts. Specifically, the procedure for determining judicial accountability for unprofessional and negligent performance of judicial duties necessarily requires the presence of a specific subjective element on the part of the judge, as stated in paragraph 3 of the same article. Namely, according to paragraph 3 of Article 74 of the Law on Courts, a judge is dismissed from judicial office for unprofessional and negligent performance of judicial duties if the violation was committed intentionally or through obvious negligence attributable to the judge without justifiable reasons and if the violation caused severe consequences. These criteria and conditions should be applied analogously to court presidents, especially in the context of adhering to the principle of proportionality.

Unfortunately, in this specific case, we do not find any arguments from the Judicial Council regarding the determination of the subjective aspect of the judge. Namely, according to the provisions of Article 79, paragraph 1, item 4, it can be concluded that the president of the court is obliged to ensure the lawful functioning of the court and to organize and implement the movement of cases within the court. However, for establishing accountability, it is essential to determine the subjective element on the part of the judge. This is precisely why we believe that the Judicial Council, in this case, acted inappropriately by proceeding as if the subjective responsibility was already established or at least presumed as proven, subsequently focusing only on elaborating the mitigating circumstances to justify the imposed disciplinary sanction.

We believe that this very shortcoming of the Judicial Council's decision should not be repeated in the future, given the fact that in this particular case the decision was not appealed, and thus was not tested in the second-instance procedure. Regardless of whether we agree with the correctness of the Judicial Council's decision in this case, the Council is obligated to provide sufficient and appropriate arguments to justify its decision. It should avoid relying solely on general formulations and sentences based on legal provisions, such as Article 78, paragraph 3 of the Law on Courts, without offering specific arguments regarding the accountability or the violation committed, or in this case, the reasoning for imposing the lightest disciplinary measure.

An additional shortcoming of the specific decision can be noted in the fact that the Judicial Council, in the specific decision, does not address the determination of any potential and actual harmful consequences arising from Judge A.A.'s failure to act as president of the court, as outlined in the operative part of the decision.

This refers to the idea that if the Council had identified any harmful consequences stemming from the judge's actions - or failure to act according to his presidential duties, it might not have been able to justify such a lenient punitive policy.

In that regard, it appears that the Judicial Council intentionally neglects to acknowledge that by failing to forward the cases for proceedings upon legal remedies, citizens are being deprived of a fundamental constitutionally guaranteed right - the right to appeal, thereby undermining the principle of second-instance proceedings. Moreover, the efficiency of judicial bodies in conducting proceedings is also adversely affected. This, combined with the Council's lack of willingness to establish that damage inevitably occurred in the case of the statute-barred misdemeanour case, where deadlines expired, and absolute statute of limitations occurred, inevitably leads to incurred damage at the very least, to the Budget of the Republic of North Macedonia, and potentially to one of the parties involved, given that monetary fines are the predominant sanction in misdemeanour cases. In this context, considering the extended period of omission in undertaking official duties by the president and the employees in the registry office, who directly failed to proceed with forwarding these misdemeanour cases for appeal proceedings, it is hypothetically possible or it may have already occurred that absolute statute limitation periods for other cases have also expired, considering the time required to resolve such cases on appeal before higher courts.

Precisely for this reason, we believe that the Judicial Council should pay greater attention to fully clarifying the factual circumstances of the specific case and, accordingly, provide an appropriate reasoning for its decision. Otherwise, by presenting only mitigating arguments while neglecting the actual or aggravating circumstances in the reasoning of the Judicial Council's decision, the impression of arbitrariness and selectivity is created, along with leniency in the Council's sanctioning policy. This is particularly problematic from the perspective of the consistency of the Judicial Council's actions, especially when considering its practice in correlation with other proceedings for determining judicial accountability during the analyzed period.

CONCLUSION

Regarding the analyzed case, we can conclude that the Judicial Council lacks adequate justification for its decisions. Unfortunately, in the specific court decision, a serious nomotechnical, that is, formal weakness was identified during the drafting of the decision. The analyzed decision fails to comprehensively determine the entirety of the legal violations, unjustifiably neglecting the criteria for assessing whether the conduct in question was carried out negligently. Furthermore, the decision lacks any arguments from the Judicial Council concerning the establishment of the individual accountability of the judge for failing to undertake actions as the president of the court. Instead, the Council proceeds as if the issue of individual accountability has already been resolved, without providing any justification for this position. Regrettably, in this analysis, we did not find a full clarification of the factual situation by the Judicial Council, particularly in terms of determining the extent of the damage that could dictate the severity of the disciplinary measure to be imposed. Nevertheless, even in this case, it seems that the lenient sanctioning policy of the Judicial Council in cases where disciplinary measures are imposed serves primarily to satisfy the outcome of the procedure for the judge against whom it was initiated. On the other hand, this results in the inability to re-evaluate the Council's decision, thereby rendering it legally effective.

11 CASE NOTE: DISMISSAL OF JUDGE Z.M.

INTRODUCTION

With this analysis, a review and critical reflection on the decisions of the Judicial Council of the Republic of North Macedonia regarding the dismissal of judge Z. M., a judge at the Appellate Court in Sh, have been made. He was dismissed due to committing a serious disciplinary violation that made him unfit for the performance of judicial duties while acting as the Acting President of the Appellate Court in Sh. What is characteristic in this case is that the judge was dismissed from judicial office, even though the disciplinary violation attributed to him was committed while taking actions that fall within the functional authority of a court president. In other words, the disputed actions that led to his dismissal were carried out as the president of the court, not as a judge in a specific court case. This is one of the cases related to the issue of the recusal of a judge within the same court, the Appellate Court in Sh. In this regard, the analysis should be read in conjunction with the analyses of the cases for determining the accountability of judges S. Z. and S. J., judges of the Appellate Court in Sh.

FACTS OF THE CASE

In this case, the request for determining judicial accountability, registered under number 10-39/1 from 25.02.2021, was submitted against two judges, namely as a complaint requesting the initiation of proceedings to determine the accountability and impose sanctions on judge S. Z., a judge at the Appellate Court Sh, and judge Z. M., for committing a violation while acting as the Acting President of the Appellate Court Sh. In the request for determining judicial accountability, the submitted of the request refers to the provisions of Article 75, paragraph 1, item 4, and Article 74, paragraph 1, item 1 of the Law on Courts, requesting that the judges be dismissed from the performance of judicial duties due to committing a serious disciplinary violation, which makes them unfit to perform judicial duties, as they violated the rules on recusal in situations where they knew or should have known about the existence of grounds for recusal as provided by law.

The request for determining judicial accountability was submitted because, in this particular case, according to the submitter of the request, the judges committed violations in the following manner: judge S. Z. acted and participated in the decision-making of a case filed before the Appellate Court Sh, despite being aware of circumstances that required his recusal. However, he did not recuse himself from acting on the case, nor did he request recusal from the Acting President of the Court, although the plaintiff's attorney in that case was a law firm in which his son was employed as a lawyer. On the other hand, judge Z. M., as the Acting President of the Court, did not recuse judge S. Z. from acting and deciding in the case, despite being informed by the submitter of the request about the circumstances indicating the existence of legal grounds for recusal and the apparent conflict of interest involving judge S. Z. in the case he was involved in and decided upon.

In response to the submitted request, the Judicial Council of the Republic of North Macedonia, at its session held on 11.03.2021, formed a Commission of Rapporteurs which prepared a Report on the established factual situation. The Report on the established factual situation by the Commission of Rapporteurs was submitted to the Council on 22.03.2021. Following the submission of the report, the Judicial Council deliberated at its session held on 25.03.2021 and decided to continue the proceedings. In this specific case, although the request for determining judicial accountability called for the dismissal of two judges, the Judicial Council did not separate the proceedings, but rather conducted a single procedure.

In the proceedings before the Commission of Rapporteurs, the actions stipulated by the Law on the Judicial Council regarding the procedure for determining judicial accountability were sequentially undertaken, including: delivering the request and evidence to the judges personally; providing a written response to the request by the judges; and holding a hearing before the Commission of Rapporteurs. After these actions, the Commission of Rapporteurs prepared a Report on the established situation, based on which the Judicial Council deliberated at its session held on 14.07.2021 and adopted decision no. 10-39/25, dismissing judges S. Z., judge at the Appellate Court in Sh., and Z. M., acting president of the Appellate Court in Sh., from performing judicial office.

This decision of the Judicial Council of the Republic of North Macedonia was appealed by Judge Z. M. The Appeals Council of the Supreme Court of the Republic of North Macedonia (Appeals Council), acting on the submitted appeal, issued decision OSZh no. 9/21 on 29.11.2021, by which the appeal was upheld, the decision of the Judicial Council of the Republic of North Macedonia was annulled, and the case was returned for reconsideration and a new decision.

In the repeated proceedings, the Judicial Council separated the procedures for determining the accountability of Judges S. Z. and Z. M. In the renewed proceedings, the Judicial Council undertook the prescribed actions in accordance with the Law on the Judicial Council and at its session held on 07.04.2022, issued a decision to dismiss Judge Z. M. from performing judicial office due to unprofessional and negligent performance of the duties of acting president of the Appellate Court in Sh.

DECISION(S) AND ARGUMENTS (RATIO DECIDENDI)

In the case of the dismissal of Judge Z. M., the Judicial Council deliberated on two occasions: initially, following the submission of a request for determining judicial accountability, and subsequently, during the repeated proceedings after the annulment of the original decision by the Appeals Council of the Supreme Court. Below is a summary of the main legal arguments presented in each of these decisions.

The Judicial Council of the Republic of North Macedonia adopted its initial decision to dismiss Judges S. Z. and Z. M. during its session held on 14.07.2021. In reaching this decision, the Council accepted the allegations presented by the submitter of the request and dismissed both judges from judicial office, concluding that their actions in the specific case constituted a serious disciplinary violation rendering them unfit for judicial office, as prescribed by Article 75, Paragraph 1, Item 4 of the Law on Courts. The Council determined that the judges had evidently violated the rules on recusal in situations where a judge knew or should have known about the existence of grounds for recusal as defined by law.

Regarding Judge Z. M., the Judicial Council referred in the operative part of its dismissal decision to Article 79, Paragraph 1, Items 1 and 6 of the Law on Courts. It emphasized that Judge Z. M. acted in the capacity of Acting President of the Appellate Court in Sh. According to the cited provision, a court president may be dismissed from their position when the Judicial Council determines, through proceedings, that certain grounds specified in the Law on Courts are met. In this case, concerning Judge Z. M., the dismissal was based on the following grounds: failure to notify the Judicial Council of a serious disciplinary violation committed by a judge in the court where Z. M. served as president, despite being aware of the violation, and this with the intent to conceal the violation, and for overstepping and breaching statutory authority.

In support of its decision, the Judicial Council of the Republic of North Macedonia determined that the judges were aware of the grounds for recusal and knowingly acted contrary to legal provisions and principles. The Council found that their actions caused significant harm, contributing to a negative public perception of the judiciary, damaging the reputation of the court and its judges, and casting doubt on the impartiality of the court and the fairness of its decisions concerning citizens' rights. According to the Judicial Council, it is irrelevant whether the judge rendered a lawful decision when, due to the close familial relationship, one of the parties in the proceedings has a legitimate perception of the judge's impartiality being compromised. Considering this, the Council concluded that the actions of the judges in this case, even when assessed under the objective test for impartiality in accordance with the case law of the European Court of Human Rights, cannot be justified under any circumstances. As a basis for its decision, the Judicial Council of the Republic of North Macedonia expressed the view that decisions made regarding recusal requests by the former court president or the president of the Supreme Court cannot serve as grounds for the acting president to rely on in the specific case. This is particularly true as the recusal request was submitted by one of the parties in the proceedings, not by the judge presiding over the specific case. In this instance, according to the Judicial Council, the acting president was obligated to assess, using the objective test, whether the judge provided sufficient assurances to exclude legitimate doubts about their impartiality, especially given the undisputed fact that their child was employed at the law office representing one of the parties. The Appeals Council of the Supreme Court of the Republic of North Macedonia, acting upon the appeal filed by Judge Z. M., upheld the appeal, annulled the decision of the Judicial Council of

North Macedonia No. 10-39/25 dated 26.07.2021, and remanded the case for reconsideration and further deliberation.

The Appeals Council accepted as well-founded the arguments in the appeal that the decision of the Judicial Council was unclear, incomprehensible, and lacked sufficiently reasoned explanations for the decisive facts on which the Judicial Council based its judgment. In this regard, the Appeals Council emphasized that a collective approach is not appropriate for such proceedings, given that judges are elected, promoted, evaluated, and sanctioned individually. Consequently, in disciplinary proceedings, an individualized approach must be observed. In this context, the Appeals Council argued that the Judicial Council should have separated the proceedings for determining the accountability of the two judges. The collective approach in the specific case constituted a procedural irregularity and a breach of the legal requirements for such proceedings. Furthermore, the Appeals Council noted that the Judicial Council's argumentation in support of its decision, particularly regarding the grounds for dismissing Judge Z. M., was unclear. The responsibility of Judge S. Z. was not clearly distinguished from that of Judge Z. M. in his capacity as acting president of the court. This lack of individualization in the decision-making process was problematic because it conflated the responsibilities of a court president or acting president with those of a regular judge, resulting in a decision to dismiss Judge Z. M. from judicial office. According to the Appeals Council, the Judicial Council of the Republic of North Macedonia did not clarify all the contentious circumstances on which the justification of the decision to dismiss Judge Z. M. depends, particularly regarding the severity of the alleged misconduct and its consequences.

In the repeated proceedings, the Judicial Council of the Republic of North Macedonia, adhering to the positions of the Appeals Council, separated the proceedings for determining the accountability of the two judges. At the session held on 07.04.2022, it issued a decision to dismiss Judge Z. M. from judicial office due to unprofessional and negligent performance of the role of Acting President of the Appellate Court in Sh., in accordance with Article 74, Paragraph 1, item 2, in connection with Article 79, Paragraph 1, items 1 and 6 of the Law on Courts. In the reasoning for its decision, the Judicial Council stated that Judge Z. M. acted negligently and unprofessionally as Acting President of the Appellate Court in Sh. Specifically, contrary to the recusal rules prescribed by the Law on Civil Procedure, and considering the undisputed conflict of interest which significantly called into question the impartiality of Judge S. Z. due to an evident close familial relationship, Judge Z. M. intentionally issued a decision rejecting the recusal request as ill-founded. According to the Judicial Council, this decision by Judge Z. M., as Acting President, intentionally caused severe consequences, manifested in the violation of the right to a fair trial, the right to be judged by an impartial court, and the erosion of public trust in the judiciary. The Council emphasized that such cases potentially enable corruption and that familial ties can be a means to achieve a desired judicial outcome, thereby damaging the reputation of the court as an institution and the judiciary as a whole.

CRITICAL REVIEW AND ANALYSIS

Within this section of the analysis, based on the available case files, specific questions and aspects of the proceedings identified as contentious in the decision to dismiss Judge Z. M. will be examined. The analysis will begin with a critical review of the formal aspects of the proceedings, focusing on the issue of the collective approach in determining judicial accountability and the lack of clarity regarding the decision-making process within the Council. Subsequently, the analysis will address contentious substantive issues, particularly concerning the insufficient reasoning in the Judicial Council's decisions regarding the decisive facts and the fulfilment of legal conditions and grounds for the judge's dismissal. Finally, the analysis will dedicate a separate section to the specific features of this case, particularly regarding the actions of N. G. as the Chairperson of the Appeals Council and issues related to the proceedings for his accountability in his capacity as Acting President of the Appellate Court in Sh., which were conducted before the Judicial Council.

Collective Approach in Decision-Making

The first observation that can be made regarding the Judicial Council's decision in this specific case is the presence of a collective approach, i.e., the lack of individualization in determining the accountability of the judges. As previously mentioned, the procedure for determining judicial accountability was initiated against two judges, and the Judicial Council did not separate the proceedings. Instead, in one procedure and with one

decision, it ruled on the accountability of both judges. Following the appeals and the annulment of the decision by the Appeals Council of the Supreme Court, the Judicial Council followed the guidance of the Appeals Council and, upon reconsideration, separated the proceedings. In this context, we would like to point out the following: The legal provisions do not exclude the possibility of deciding on the accountability of multiple judges in a single procedure. There is no obstacle to conduct one procedure and make decisions regarding the accountability of the judges in the same process. The problem arises when there is no individual approach in the decision-making process and when separate decisions are not made within the same ruling for the judges against whom the procedure has been initiated. In this particular case, the Judicial Council conducted a single procedure but did not individualize the process and failed to distinguish the actions of the judges against whom the procedure was initiated, nor did it separately examine and analyse the grounds and reasons for the dismissal of both judges. Even the operative part in the first decision of the Judicial Council was singular and applied to both judges. This approach by the Judicial Council represents a flaw in conducting the procedure and in the decision-making process. The Judicial Council corrected itself following the guidance of the Appeals Council and, upon reconsideration, conducted separate procedures for both judges and made individual decisions. In this context, it should be emphasized that the mistake of the Judicial Council was not in conducting a single procedure, but in the lack of an individual approach when determining the responsibility of each judge separately.

The Decision-Making Process of the Judicial Council of the Republic of North Macedonia

As with previously analyzed cases, the question of the decision-making process within the Council, in terms of the legal provision that regulates the decision-making procedure, arises once again. From the decisions of the Judicial Council, it can be concluded that in this case, the Council did not specify with what majority the relevant decision was made, nor did it indicate the number of votes by which the decision was reached. In this regard, the question is raised again as to why such data is missing from the Judicial Council's decisions, especially considering that it could shed light on the differing opinions and viewpoints of the 13 members with voting rights.

Furthermore, it should be pointed out that there is again no information regarding the composition of the Commission of Rapporteurs. This practice of omitting such data is concerning, as it creates the impression that the confidentiality of the procedure is aimed at protecting the "reputation" of the members of the Judicial Council, particularly those in the Commission of Rapporteurs, even though it is legally clear that this confidentiality pertains to protecting the reputation of the judge against whom the procedure has been initiated.

Inadequate Justification in Judicial Council Decisions Regarding Determinative Facts and Fulfillment of Legal Conditions for the Judge's Dismissal

Judge Z.M. was dismissed from performing judicial office due to unprofessional and negligent conduct in carrying out the role of acting president of the Appellate Court in Sh., pursuant to the provision of Article 74, Paragraph 1, Item 2 of the Law on Courts, which stipulates that a judge shall be dismissed for unprofessional and negligent performance of judicial duties under conditions established by law. This is in connection with Article 79, Paragraph 1, Items 1 and 6, which provide that a court president shall be dismissed from their position as president when the Judicial Council, among other things, determines that the president has exceeded or violated their legal authority (Item 1) and if the president fails to inform the Judicial Council about a serious disciplinary offense committed by a judge in the court where they serve as president, provided that the president was aware of the offense and the failure to report it was intended to conceal it (Item 6).

The main criticisms regarding the actions and decision-making of the Judicial Council in this case pertain to the insufficient reasoning provided in their decisions regarding the fulfilment of legal conditions and the grounds for dismissing the judge, as well as the lack of sufficient explanation regarding the assessment of the imposed sanction.

What issues arise when analysing the Judicial Council's reasoning in this case?

First, before delving into an analysis of the factual circumstances and the actions of Judge Z.M., which were identified as violations, we would like to focus on the legal basis established by the Judicial Council in this case and under which the judge's actions were categorized.

As previously mentioned, Judge Z.M. was dismissed based on the provisions of Article 74, paragraph 1, item 2, in conjunction with Article 79, paragraph 1, items 1 and 6 of the Law on Courts. Article 74 of the Law on Courts regulates, among other things, the grounds and conditions that must be met for a judge to be dismissed, while Article 79 addresses the issue of dismissing a court president from their position. The two violations attributed to Judge Z.M., as outlined in the Judicial Council's decision, are specified under Article 79 of the Law on Courts. According to the decision's operative part, Judge Z.M. is not being dismissed from the position of court president (in this case, acting president of the court) but rather as a judge, due to negligently and unprofessionally performing the duties of an acting court president. This raises several questions. First, can the actions of the acting president in this case fall under Article 79, paragraph 1, items 1 and 6? Second, can an acting court president be held accountable and dismissed as a judge for violations committed in the course of performing that role, or can they only be held accountable and dismissed based on the grounds for responsibility specified in the law for court presidents (Article 79 of the Law on Courts)? Alternatively, can they also be held accountable for violations for which a judge may be held responsible and consequently dismissed (Articles 75 and 76 of the Law on Courts)?

Regarding the first dilemma, whether the legal qualification in this specific case is correct, we believe that the Judicial Council could not have classified Judge Z.M.'s actions under the grounds outlined in the operative part of the decision. Specifically, the Judicial Council categorizes Judge Z.M.'s actions under the following grounds: 1) exceeding and violating legal powers by the court president, and 2) failing to inform the Judicial Council about a serious disciplinary violation committed by a judge in the court where they serve as president, if the occurrence of the violation was known to them, and the failure to report it was due to concealing it. In this context, the question arises whether Judge Z.M.'s actions can be classified as exceeding and violating legal powers when, in this specific case, he made a decision about the recusal of a judge within his legal authority, as prescribed by the provisions of Law on Civil Procedure. In this context, can the method of decision-making regarding the admissibility of the submitted recusal request be treated as exceeding or violating legal powers? Certainly not. As the functionally competent authority to decide on a recusal request, the court president, based on their own judgment, determines whether the recusal request is justified or not. The interpretation of facts cannot serve as a basis for determining a judge's accountability, and it cannot be classified as exceeding legal powers. Here, it is important to make a clear distinction, considering the circumstances of the specific case. One thing is whether Z.M., as acting president, made a significant professional error when deciding on the recusal request for a judge, especially if he relied on a "general" decision regarding the (non)recusal of specific judges. Another thing is whether this can be categorized as exceeding or violating legal powers. The latter seems to lack a basis for application in this specific case. Regarding the decision-making, it is clear that he should not have relied on established practice, and this was a mistake, as he should have taken an individual approach, assessed the circumstances, and determined whether there were grounds for the recusal of the judge in this specific case. Certainly, based on the available decisions from the case, it cannot be claimed that he solely relied on the previous president's decision, because in addition to this, he provided his own reasoning as to why he believed the existing circumstances were insufficient for recusal. On the other hand, the second violation he is accused of is also debatable. In this case, he believed that the judge acted lawfully, and for this reason, he did not inform the Judicial Council about a disciplinary violation committed by the judge. This was confirmed by the decision he made, in which he rejected the recusal request.

Regarding the second question, there is no doubt that a judge can be dismissed from performing judicial office for violations committed while acting as the president of a court. However, this raises the dilemma of whether, when a judge is dismissed for violations committed as the president of a court, only the grounds from Article 79 of the Law on Courts should be considered, or whether their actions, for which they are held accountable during their tenure as the president of the court, could also fall under violations as described in Articles 75 and 76 of the Law on Courts. We are of the opinion that any violation that is legally foreseen and for which a judge can be held accountable may serve as grounds for the accountability of the president of the court, depending on the actions taken during their tenure. In this regard, the actions of Judge Z. M. as acting president of the court should also be considered under Article 76 of the Law on Courts, i.e., as unprofessional and negligent

conduct while performing the judicial function as acting president of the court, if they are dismissed for those violations, certainly taking into account the specific circumstances of the case. Namely, in this case, Z. M. acted and decided based on a specific legal or procedural issue. It would be logical and justified for the Judicial Council to reference Article 74, paragraph 1, item 2, given that Article 74 regulates matters related to the dismissal of judges but not court presidents. Such a reference could only be justified if the intention of the Judicial Council was to provide a basis for the application of cumulative conditions in cases involving the determination of accountability for court presidents. Moreover, the argument that a judge cannot be held accountable for violations committed while performing the role of president of the court would potentially allow for evasion of accountability for such violations, especially considering the time limits for filing a request and the actions of the Judicial Council in light of the court president's mandate. This would be particularly relevant if the violation occurred just before the end of the mandate. On the other hand, it must be considered that court presidents often act and make decisions on specific cases as adjudicating judges. If a violation renders them unfit to carry out the other function, it should be legally justified and explained according to the specific circumstances of the case.

If we analyse the factual situation and the actions of Judge Z. M., as the acting president of the court, and considering the procedure for the recusal of a judge under the provisions of the Law on Civil Procedure, the established circumstances show that the judge, as the acting president of the court with the functional responsibility to decide on submitted requests for recusal of judges, acted within his legal authority, taking actions as prescribed by the Law. However, in deciding whether the judge should be recused from the case, we believe that an oversight has been made, as the decision was not made exclusively based on the principle of free judicial conviction. Instead, the judge relied on previously established practices from the former president of the court, who made a "general" decision stating that judges S. Z. and S. J., who had children employed at law firms, could still act on appeals, provided that their children were not involved in the specific case.

From the factual context, it follows that Judge Z. M. acted negligently and unprofessionally while performing the duties of the acting president of the court. The Judicial Council correctly determined that Judge Z. M., in handling the request for recusal, made a professional error. Namely, when it comes to the right to a trial by an independent and impartial court, such a right is considered one of the fundamental procedural guarantees for the parties in the case. Every party has the right to have a judge who will be objective and who will not have any circumstances that might affect their impartiality in the specific case, regardless of whether those circumstances are of an absolute or relative nature. What is important to emphasize in this context is the fact that when handling a request for the recusal of a judge, the (acting) president of the court must take into account the circumstances that could affect the impartiality of the judge and make a correct and lawful decision based on their knowledge, experience, and conscience.

Here, we would like to point out the following. The oversight of the acting president of the court lies in the fact that he relied on the so-called "general" decision when deciding on the submitted recusal request. Namely, when it comes to the institute of recusal of a judge, considering the purpose and function of this mechanism in the procedure, both the judge and the acting president of the court should never refer to established previous practice or a "general" decision. The reasons for recusal and determining whether there are circumstances for recusal should be assessed in each individual case separately, and there should be an individualized approach to the decision-making, considering the circumstances of each specific case. In this context, the adoption of a "general" decision by the president of the court, which decides on the general non-recusal of specific judges due to a particular reason, can be considered unlawful and not based on any legal provision, given that neither procedural law nor established practice recognizes the phenomenon of making general decisions regarding (non)recusal of judges.

Considering the circumstances related to this case, a legitimate question arises as to whether the Judicial Council was too strict when qualifying the judge's actions as a violation warranting his dismissal from the judicial office. In this specific case, there are elements indicating that the Judicial Council had room to impose a milder sanction, that is, instead of dismissal, a disciplinary measure. Moreover, the Judicial Council not only failed to invoke the principle of proportionality when determining the most severe sanction - dismissal for Z. M., but it also did not mention this principle at all.

One of the circumstances the Judicial Council should have considered in relation to the possibility of imposing a milder sanction on the judge is the fact that Judge Z. M., as the acting president of the court, was acting within his functional jurisdiction when deciding on the recusal request. In making his decision on this matter, although not entirely, he adhered to the principle of free judicial conviction.

It is also impossible not to notice that the Judicial Council, in its decisions, claims that the acting president acted intentionally, without clearly explaining how it determined the intention in this specific case. This is particularly relevant because one of the conditions that must be cumulatively met in order for a judge to be dismissed is that the violation must have been committed intentionally or with gross negligence by the judge without justified reasons.

Due to this, and considering the provisions of the Law on Courts, which point to the need for proportionality when determining the severity of specific violations and consequently the sanction or measure that should follow, the Judicial Council is obligated to provide a convincing explanation that leaves no doubt regarding the correctness and legality of their decision.

Regarding the fulfilment of the conditions for the dismissal of a judge, we would also like to address the last condition that must be cumulatively met in order to establish the judge's accountability, which is that the violation must have caused serious consequences (Article 74, paragraph 3, item 2 of the Law on Courts). In this case, the Judicial Council considers the serious consequence to be the contribution of this case to the formation of a negative perception of the judiciary, the reputation of the court and judges, the impartiality of the court's actions, and the fairness in decision-making regarding the rights of the parties. What is characteristic of this case is that the serious consequence is not specified or concretized, meaning there is no direct or individualized harmful consequence identified. Instead, the harmful consequence is viewed from the perspective of a broader societal impact and how such cases are reflected and the effect they have on the general public. In this specific case, it involves building a picture of distrust and a negative perception of citizens regarding the judicial system. It is undisputed that creating a negative image of the judicial system contains elements of serious consequences. However, it is debatable that in this case, the direct harmful consequence has not been specified or defined. This is because any action by a judge where their accountability for a professional error is established, whether it is classified as a serious disciplinary violation or as unprofessional and negligent conduct in performing judicial duties, essentially means creating a negative image and a lack of trust in the judiciary. Any action in this context should be considered to have caused serious consequences. Therefore, we believe that such a general and extensive approach by the Judicial Council in determining whether a serious consequence has occurred is inappropriate and too vague if applied only in specific cases. If the Judicial Council is of the opinion that every professional error made by a judge creates a negative perception of the judiciary among citizens and harms the reputation of the court and judges, thus causing a serious consequence, then this reasoning by the Judicial Council should be applied in every case and there should be consistency and uniformity in the practice of the Judicial Council in this regard. However, in our view, such a broad definition and the lack of concretization of harmful consequences and linking them in a cause-and-effect relationship with the violation should not be the practice of the Judicial Council.

Special circumstances related to Judge N. G. relevant for this analysis

Regarding the so-called general decision on the (non)recusal of judges made by the previous president of the court, which is crucial in relation to the dismissal of judges Z. M. and S. Z., as that decision is practically the basis upon which judges proceeded in their actions, we would like to point out that a separate procedure was conducted before the Judicial Council regarding the determination of accountability for the previous president of the court, N. G., concerning the cases of recusal of judges in the Appellate Court in Sh., and that procedure was stopped because the Judicial Council considered his actions lawful when he made decisions rejecting the recusal requests for judges S. J. and S. Z. as ill-founded. These are identical reasons for recusal, just as in the case when acting President Z. M. decided. The decision of the Judicial Council to stop the procedure for determining judicial accountability against Judge N. G. was made on 04.07.2023. Here, the fundamental question arises: how is it that the Judicial Council, for Judge Z. M., made a decision to dismiss him from judicial office due to unprofessional and negligent performance of the function of Acting President of the Appellate Court in Sh. in 2022 (the second and final decision of the Judicial Council was made on 22.04.2022), while a year later,

on 04.07.2023, it made a decision not to find any responsibility for the President of the Appellate Court in Sh., Judge N. G., who adopted that "general" decision on (non)recusal and his decisions where he considers the recusal requests for judges S. J. and S. Z. lawful?!" This action by the Judicial Council is scandalous, considering that in the cases involving judges S. Z. and Z. M., these judges were dismissed from their judicial functions precisely because the Council believed they relied on the prior practice of the former president of the court, as stated in the decision to dismiss Judge Z. M. Specifically, in the proceedings against N. G., the Judicial Council not only approved his actions as president of the court by endorsing the 'general' decision where he rejected the grounds for recusal and dismissed the corresponding request, but also concluded that at the time of the proceedings regarding N. G.'s judicial accountability, the question of his accountability could not be raised because the judge in question was no longer serving as the president of the court and had already been appointed to a higher court. This conduct by the Judicial Council leaves ample room for doubt about the validity of its decisions, raising concerns about potential influences on the Council in determining judicial accountability.

What further needs to scandalize and raise concern is the fact that the president of the Appeals Council in the Supreme Court, who annulled the first decision of the Judicial Council, is none other than Judge N. G. It is more than clear that there are circumstances for such a concern because one of the grounds for establishing the accountability of Z. M. is precisely the 'general' decision on non-recusal made by N. G., on which Z. M. relied when rejecting the request for recusal of S. Z., and for which he was dismissed. Namely, this fact, that is, the non-recusal of Judge N. G., clearly indicates his understanding of the recusal institute and how he perceives the principle of impartiality of the court and judges.

CONCLUSION

The case concerning the dismissal of Judge Z. M. is one in a series of cases where the accountability of judges from the Appellate Court in Sh. was established due to disciplinary violations related to the recusal mechanism. For this reason, this analysis should be viewed in conjunction with the critical review of the Judicial Council's decisions concerning the determination of accountability of Judges S. Z. and S. J. Similar to the decisions in those cases, this decision also exhibits certain deficiencies that call into question the quality of the decision and the correctness of the decision-making process. This is particularly evident in the insufficient argumentation regarding the decisive facts, fulfilment of legal conditions, the reasons for the judge's dismissal, and the imposed sanction. A specific feature of this group of cases involving judges from the Appellate Court in Sh., namely Z. M., S. Z., and S. J., is the fact that following the Judicial Council's decisions in their cases and the imposition of the respective sanctions or measures, a decision was made to stop the proceedings for establishing the judicial accountability of Judge N. G. This proceeding had been initiated precisely because of the contentious 'general' decision on non-recusal, yet no violation in the performance of the duties of Judge N. G., as President of the Appellate Court in Sh., was found. In the specific case of Z. M., he was dismissed partly because he relied on the contentious 'general' decision and acted similarly by rejecting the recusal request concerning Judge S. Z., in the same manner as N. G. had previously decided.

12 CASE NOTE: DISMISSAL OF JUDGE S.Z.

INTRODUCTION

This analysis provides an overview and a critical review of the decisions of the Judicial Council of the Republic of North Macedonia regarding the dismissal of Judge S.Z., a judge of the Appellate Court Sh, who was dismissed due to a serious disciplinary violation that rendered them unfit to perform judicial duties. This is one of the cases related to the issue of recusal of a judge within the same court, the Appellate Court in Sh. In this regard, it is recommended that the analysis be read in conjunction with the analyses of the cases concerning the determination of judicial accountability for Judges S.J. and Z.M., judges of the Appellate Court in Sh.

FACTS OF THE CASE

In the specific case, the request for determining judicial accountability, registered under no. 10-39/1 dated 25.02.2021, was filed against two judges as a complaint requesting the initiation of proceedings for determining judicial accountability and imposing sanctions against Judge S.Z., a judge of the Appellate Court Sh, and against Judge Z.M. for violations committed in his capacity as Acting President of the Appellate Court Sh. In the request for determining judicial accountability, the submitter refers to the provisions of Article 75, paragraph 1, item 4, and Article 74, paragraph 1, item 1 of the Law on Courts, and requests that the judges be dismissed from performing judicial office due to a serious disciplinary violation that renders them unfit to perform judicial office, as they violated the rules on recusal in situations where they knew or should have known of the existence of one of the grounds for recusal prescribed by law.

The request for determining judicial accountability was submitted on the grounds that, according to the submitter of the request, the judges committed violations in the following manner: Judge S.Z. acted and participated in decision-making in a case registered before the Appellate Court Sh, despite being aware of circumstances that required their recusal. They neither recused themselves from the case nor requested recusal from the Acting President of the court, even though the legal representative of the plaintiff in the case was a law firm where their son was employed as an attorney. On the other hand, Judge Z.M., as the Acting President of the court, failed to recuse Judge S.Z. from acting and deciding in the specific case, despite being informed and notified by the submitter of the request about the circumstances indicating the existence of legal grounds for recusal, as well as the apparent conflict of interest and private interest of Judge S.Z. in the case in which they acted and decided.

Acting upon the submitted request, the Judicial Council of the Republic of North Macedonia, at its session held on 11.03.2021, established a Commission of Rapporteurs, which prepared a Report on the Established Factual Situation. The Report on the Established Factual Situation was submitted by the Commission of Rapporteurs to the Council on 22.03.2021. Based on the said report, the Judicial Council deliberated at its session held on 25.03.2021 and decided to continue the proceedings. In the specific case, although the request for determining accountability sought the dismissal of two judges, the Judicial Council did not separate the proceedings but conducted a single procedure.

Within the proceedings before the Commission of Rapporteurs, the actions prescribed by the Law on the Judicial Council for this stage of the procedure for determining a judicial accountability were undertaken in sequence. These actions included: delivering the request and evidence to the judges personally, submitting a written response to the request by the judges, and holding a hearing before the Commission of Rapporteurs. Following the completion of these actions, the Commission of Rapporteurs prepared a Report on the Established Situation, which was deliberated upon by the Judicial Council at its session held on 14.07.2021. The Council issued Decision no. 10-39/25, by which Judges S.Z., a judge of the Appellate Court Sh, and Z.M., Acting President of the Appellate Court Sh, were dismissed from performing judicial office.

This decision of the Judicial Council of the Republic of North Macedonia was appealed by Judge S.Z. to the Appeals Council of the Supreme Court of the Republic of North Macedonia (Appeals Council). In deciding on the filed appeal, the Appeals Council issued Decision no. OSZh 8/21 dated 29.11.2021, by which the appeal was upheld, and the decision of the Judicial Council of the Republic of North Macedonia was annulled.

In the repeated proceedings, the Judicial Council separated the procedures for determining the accountability of Judges S.Z. and Z.M. In the repeated proceedings, the prescribed actions were taken in accordance with the Law on the Judicial Council, and at the session held on 07.04.2022, the Council issued a decision to dismiss Judge S.Z. from performing judicial office due to a serious disciplinary violation that rendered them unfit to perform judicial office, in accordance with Article 74, paragraph 1, item 1 and paragraph 3 in conjunction with Article 75, paragraph 1, item 4 of the Law on Courts.

DECISION(S) AND ARGUMENTS (RATIO DECIDENDI)

In the case of the dismissal of Judge S.Z., the Judicial Council made decisions on two occasions: initially, after the submission of a request to determine the accountability of the judge, and then in the repeated procedure following the annulment of the initial decision by the Appeals Council. Below is a summary of the main legal arguments in each of these decisions.

The first decision for the dismissal of Judges S.Z. and Z.M. was made by the Judicial Council of the Republic of North Macedonia at its session held on 14.07.2021. In making this decision, the Judicial Council accepted the arguments of the submitter of the request and dismissed both judges from performing judicial office on the grounds that it found they had committed a serious disciplinary violation while handling the specific case, rendering them unfit to perform judicial office as prescribed by Article 75, paragraph 1, item 4 of the Law on Courts. Specifically, it was determined that they had clearly violated the rules on recusal in situations where the judge knew or should have known of the existence of one of the grounds for recusal prescribed by law.

Regarding Judge S.Z., the Judicial Council noted that it is undisputed that when the judge received the case for review, they were aware that the legal representative of the defendant was a law firm where their son was employed. However, they did not inform the Acting President of the court about this and did not request their recusal from further handling and decision-making in the case. According to the Judicial Council of the Republic of North Macedonia, Judge S.Z. was obliged to inform the Acting President of the court about the situation and to request their recusal. Furthermore, Judge Z.M., as the Acting President of the court, was obliged to recuse Judge S.Z. from the case, as it is indisputable that there was an objective doubt regarding the impartiality of the judge due to the relationship between the judge and their son – an attorney employed at a law firm representing the defendant in the case before that judge.

In support of its decision, the Judicial Council of the Republic of North Macedonia noted that the judges were aware of the existence of grounds for recusal and consciously acted contrary to legal provisions and principles. The Judicial Council determined that their actions caused a severe consequence, contributing to the development of a negative perception of the judiciary, damaging the reputation of the court and judges, and casting doubt on the impartiality of the court's actions and fairness in decision-making regarding the rights of citizens. According to the Judicial Council of the Republic of North Macedonia, in such a case, it is irrelevant whether the judge made a lawful decision, as there exists a legitimate perception of a violation of the judge's impartiality due to the familial relationship with one of the parties in the case. Taking this into account, the Judicial Council of the Republic of North Macedonia stated that the actions of the judges in this case, when assessed from the perspective of the objective test for impartiality in the context of the European Court of Human Rights case law, cannot be justified in any way. To support its decision, the Judicial Council expressed the view that decisions made based on a request for recusal by the previous president of the court or the president of the Supreme Court cannot serve as a basis for guiding the Acting President in the specific case, especially since the request for recusal was submitted by one of the parties in the case, and not by the judge handling the specific case. In this case, according to the Judicial Council, the Acting President was obliged to assess, using the objective test, whether the judge provided sufficient guarantees to exclude legitimate doubt about their impartiality, given the undisputed fact that their child was employed in a law firm representing one of the parties in the case.

The Appeals Council of the Supreme Court of the Republic of North Macedonia, acting upon the appeal filed by Judge S.Z., upheld the appeal and annulled the decision of the Judicial Council of the Republic of North Macedonia, no. 10-39/25 from 26.07.2021.

The Appeals Council accepted as valid the appellant's claims that there was a procedural violation, consisting of the fact that the Judicial Council of the Republic of North Macedonia, in handling the specific case, violated the principle of individualization of the procedure for determining the accountability of Judge S.Z. The Appeals Council considered that the Judicial Council of the Republic of North Macedonia should have conducted a separate procedure for each judge and issued a separate decision for each. In fact, for this reason, the Appeals Council decided separately on the respective appeals of S.Z. and Z.M. in two different panels. The Appeals Council also accepted as founded the appellant's claim that the factual situation was incompletely established, since, in its assessment, the Appeals Council considered that the Judicial Council of the Republic of North Macedonia did not conclusively determine whether the grounds of Article 74, paragraph 3, items 1 and 2 of the Law on Courts were met. It was unclear from which evidence it could be concluded that there was an intention or obvious negligence on the part of the judge, and whether the violation caused serious consequences, as these grounds must be cumulatively fulfilled. Furthermore, according to the Appeals Council, the Judicial Council failed to establish the decisive facts concerning all circumstances in order to apply the material law from Article 75, paragraph 1, item 4 of the Law on Courts, i.e., whether the serious disciplinary violation attributed to the judge occurred.

In the repeated proceedings, the Judicial Council of RNM, adhering to the position of the Appeals Council, separated the procedures for determining the accountability of the two judges. At the session held on 07.04.2022, it issued a decision to dismiss Judge S.Z. from judicial office due to a serious disciplinary violation rendering them unfit to perform judicial office, in accordance with Article 74, paragraph 1, item 1, and paragraph 3, in conjunction with Article 75, paragraph 1, item 4 of the Law on Courts.

In the reasoning of its decision, the Judicial Council of the Republic of North Macedonia stated that Judge S.Z. deliberately failed to notify the Acting President of the Court of circumstances that could cast doubt on their impartiality, thereby necessitating their recusal from handling the specific case. Despite a request for recusal being submitted, and being aware of the circumstance that a law firm employing their son as an attorney was acting as a legal representative in the proceedings, and having confirmed the existence of this circumstance, the judge intentionally relied on prior court practice contrary to the law, which did not mandate recusal in such cases. Consequently, they were not recused in the specific case by the Acting President of the Court. With such conduct, according to the Judicial Council of the Republic of North Macedonia, the judge caused severe consequences by violating the right to a fair trial, specifically the right to a trial by an impartial court and fostering public distrust in the judiciary. This is particularly significant as the case in which the judge acted resulted in a decision favouring the party represented by the law firm where the judge's son was employed. This conduct contributed to undermining the reputation of the judiciary and creating a negative perception of the judiciary, the court, and judges, as well as compromising impartiality in proceedings and fairness in decision-making regarding citizens' rights. The Judicial Council further stated that by deliberately and blatantly violating the rules on recusal in a situation where the judge was aware of a basis for recusal, the judge committed the serious disciplinary violation attributed to them, resulting in severe consequences.

CRITICAL REVIEW AND ANALYSIS

In this section of the analysis, based on the available case files, focus will be placed on specific questions and aspects of the procedure identified as contentious in the decision to dismiss Judge S.Z. The analysis will commence with a critical review of the formal aspects of the procedure, addressing issues such as the collective approach to decision-making on judicial accountability and the lack of clarity regarding the decision-making process within the Council. Subsequently, the analysis will examine substantive issues, particularly the insufficient reasoning in the Council's decisions concerning the decisive facts, fulfilment of legal conditions, and the specific reasons for dismissing the judge. Finally, attention will turn to individual issues related to the peculiarities of this case, including the atypically extensive yet selective reliance on the jurisprudence of the European Court of Human Rights, inconsistencies regarding the accountability procedure of the former court president, N.G., and the composition of the Appeals Council.

Collective Approach in Decision-Making

The first criticism that can be directed at the Judicial Council regarding its decision-making in this specific case is the existence of a collective approach, i.e., the absence of individualization concerning the determination of judicial accountability. As previously mentioned, the procedure for determining judicial accountability was initiated against two judges, and in its decision-making, the Judicial Council did not separate the procedures but decided on the accountability of both judges in one procedure and with a single decision. After the appeals were submitted and the decision was annulled by the Appeals Council of the Supreme Court, the Judicial Council followed the instructions of the Appeals Council and, during the repeated proceedings, separated the cases. Here, we would like to point out the following. The legal provisions do not exclude the possibility of deciding on the responsibility of multiple judges in a single procedure. There is no obstacle to conducting a single procedure and deciding on the responsibility of judges within the same procedure, especially considering the efficiency and urgency of the procedure for determining judicial accountability. The problem arises when there is no individualized approach in decision-making and when individual decisions are not made regarding the judges against whom the proceedings were initiated. In this specific case, the Judicial Council conducted a single procedure but failed to individualize or distinguish the actions of the judges against whom the proceedings were initiated. Furthermore, it did not separately examine and analyse the grounds and reasons for the dismissal of the two judges. Even the operative part of the initial decision by the Judicial Council was single and applied to both judges. Such an approach by the Judicial Council represents a procedural and decision-making oversight. The Judicial Council corrected this after the instructions from the Appeals Council and, in the repeated proceedings, conducted separate proceedings for each judge and issued individual decisions. In this context, we would like to emphasize that the error of the Judicial Council does not lie in conducting a single procedure but rather in the lack of an individualized approach when determining the accountability of each judge separately.

The Decision-Making Process of the Judicial Council of the Republic of North Macedonia and the Composition of the Commission of Rapporteurs

As in previously analyzed cases, this one also raises the issue of the Council's decision-making in the context of the legal provision regulating the decision-making process. From the decisions of the Judicial Council, it can be observed that, in this case, the Council again fails to indicate the majority by which the decision was made or the number of votes supporting the decision. In this regard, the question arises once more as to why such information is absent from the Council's decisions, especially since it could shed light on differing opinions and perspectives among the 13 voting members. Additionally, no information is provided about the composition of the Commission of Rapporteurs, which is also problematic considering that the procedure is, by rule, confidential solely for the purpose of protecting the judge's reputation. This confidentiality does not extend to the members of the Judicial Council, their participation in the Commission of Rapporteurs, or their deliberations and voting.

Insufficient Reasoning of the Judicial Council's Decision in Terms of the Key Facts and Fulfilment of Legal Conditions and the Reasons for the Judge's Dismissal

Judge S.Z. was dismissed due to committing a severe disciplinary violation (Article 74, paragraph 1 of the Law on Courts), specifically for clearly violating the rules regarding recusal in situations where the judge knew or should have known about the existence of one of the grounds for recusal as provided by law (Article 75, paragraph 1, item 4 of the Law on Courts).

In cases where the Judicial Council decides to impose the most severe sanction, i.e., to dismiss the judge from judicial office, it is expected that the decision made will be clear, well-founded, sufficiently reasoned, and solidly argued, in order to convince that the decision is correct and lawful, and to avoid leaving any doubt regarding the appropriateness of the imposed sanction.

In this particular case, the main criticisms directed at the Judicial Council are the insufficient reasoning of the decisions regarding the fulfilment of legal conditions and the reasons for the judge's dismissal, as well as

the insufficient reasoning regarding the assessment of the imposed sanction. Additionally, considering that this case is part of a series of cases concerning the accountability of judges in similar factual and legal situations, it is reasonable to question whether the Judicial Council acted correctly when it made the decision to dismiss Judge S.Z., especially given that in its later practice, in a similar case involving another judge (Judge S.J.), the Council issued a decision finding the judge accountable for committing a disciplinary violation, but did not dismiss the judge from judicial office, instead imposed a disciplinary measure.

What is debatable when analysing the decisions of the Judicial Council in this specific case?

When analysing the factual situation and the actions of Judge S.Z. in this specific case, and considering the reasons why the judge should be recused under the provisions of the Law on Civil Procedure, as well as the circumstances that the judge must disclose in each individual case when handling a particular matter, which circumstances may affect their impartiality, it is undisputed that Judge S.Z. made a professional error that can be classified as significant and treated as a severe disciplinary violation under the provisions of the Law on Courts. What is problematic, however, is the fact that in this case, the harmful consequences directly resulting from the judge's identified professional shortcomings, the intensity of the consequence, and the judge's fault were not determined. The Judicial Council claimed that the judge committed the violation intentionally, through their fault, and without justified reasons, but failed to provide a well-reasoned argument as to how this was determined during the proceedings. As a result, the decision to dismiss the judge, rather than impose a disciplinary measure, can reasonably be challenged.

When analysing the factual complexity from which it arises that the judge committed a severe disciplinary violation, the Judicial Council correctly determined that the judge, when handling this specific case, made a significant professional error. Namely, when it comes to the right to be judged by an independent and impartial court, such a right is considered as one of the fundamental procedural guarantees for the parties in the case. Every party has the right, in the case in which it participates, for its rights and obligations to be decided by a judge who will be objective and for whom there are no circumstances that would affect his impartiality in the specific case, whether those circumstances are of an absolute or relative nature. What is important to highlight in this context is the fact that the judge is obligated, in each individual case they handle, to disclose all circumstances that may influence their impartiality and to request to be recused to remove any doubt that they may act with bias.

In this specific case, the reason questioning the impartiality of judge S. Z. is a familial connection, specifically a direct blood relationship (parent-child) between the judge and their child, who is employed as an attorney in the law firm representing the party against whom the decision was made by the higher court in which the panel, including judge S. Z., decided the case. This circumstance does not constitute an absolute, but rather a relative reason for recusal, according to the provisions of the Law on Civil Procedure, and is treated as another circumstance that casts doubt on the impartiality of the judge. According to Article 65, Paragraph 2 of the Law on Civil Procedure, if a judge believes that there are other circumstances that cast doubt on their impartiality, they must inform the president of the court, who will then decide on the recusal. From the presented factual situation, it can be concluded that judge S. Z. did not voluntarily inform the president of the court about the existence of such a circumstance, but only did so after a request for their recusal was submitted. Unlike previous cases in which they found themselves in an identical situation, where the judge regularly disclosed this circumstance on their own initiative and was recused from the case, in this specific case, the judge did not act in such a manner. The judge did not inform the president of the court upon receiving the case for processing, but only after a request for their recusal was submitted, although, as the Judicial Council found, the judge had been aware of the situation beforehand. The judge, in their defense, referred to the so-called general or broad decision of the previous president of the court, according to which two judges of the Appellate Court in Sh., including judge S. Z., will not be recused from cases if the reason for recusal is the circumstance that their children work as attorneys in law firms that represent parties in the case. In this sense, taking into account this decision and the established practice based on it, the judge in this specific case did not voluntarily inform the president of the court about the circumstances that would question their objectivity, and the acting president of the court did not recuse the judge from the case precisely because of this reason, i.e., the existence of the "general" decision for non-recusal. Here, we would like to highlight the following. A significant oversight by the judge handling the case, as well as by the acting president of the court, lies in their reliance on the so-called

"general" decision when taking (or failing to take) procedural actions and deciding on the submitted request for recusal. Specifically, regarding the institution of judicial recusal, given the purpose and function of this mechanism within the proceedings, they should, under no circumstances, have relied on the established prior practice or "general" decision. This is because the reasons for recusal and the determination of whether circumstances for recusal exist must be assessed in each specific case individually, ensuring a case-by-case approach that takes into account the circumstances of the particular situation. In this context, the issuance of a "general" decision by a court president, determining the non-recusal of specific judges due to a particular reason, can be deemed unlawful and unsupported by any legal provision. This is because neither the procedural law nor established practices regarding judicial recusal recognize the phenomenon of making general decisions on (non-)recusal. The fact that, on multiple occasions, there have been decisions by the court president rejecting submitted recusal requests and establishing a practice of not recusing judges does not, under any circumstances, justify the judge's failure to notify the court president when aware of circumstances that could affect their impartiality in a case. In this regard, the Judicial Council correctly determined that Judge S.Z. bears responsibility for the manner in which they acted in the specific case.

On the other hand, considering all the circumstances related to this case, it is reasonable to question whether the Judicial Council was overly strict in qualifying the judge's actions as a violation warranting dismissal from judicial office.

In this specific case, there are elements suggesting that the Judicial Council had room to impose a milder sanction, such as a disciplinary measure instead of dismissal, as it had done in a later decision involving a judge facing a similar accountability proceeding for an identical violation. What is even more concerning is that, even when imposing the most severe possible sanction or measure - dismissing a judge, the Judicial Council did not conduct an analysis of the proportionality or appropriateness of the dismissal in relation to the violation committed and the alleged damage resulting from the violation.

As circumstances that the Judicial Council should have considered regarding the possibility of imposing a milder sanction on the judge, one significant factor is their consistent self-initiated disclosure of circumstances they believed could impact their impartiality whenever handling cases involving the law firm where their child was employed. This continued until the moment when the so-called "general decision" was made by the president of the court. Additionally, it should not be overlooked that, in this case, the judge did not engage in a substantive ruling regarding the merits of the motion for a retrial that had been submitted. Instead, the appeal under his consideration pertained to the (un)timeliness of the submitted motion, specifically focusing on the fact that the first-instance court had rejected the motion as untimely. Furthermore, the judge did not decide as an individual judge, as the decision to dismiss the appeal as ill-founded was made collectively by a judicial panel.

It is also notable that the Judicial Council repeatedly stated in its decisions that the judge intentionally acted in the manner they did, without clearly explaining how it established the judge's intent in this particular case. This is especially significant given that one of the conditions that must be cumulatively met for a judge to be dismissed is that the violation must have been committed intentionally or through evident negligence, attributable to the judge without justified reasons. Furthermore, although the judge made a significant error by failing to inform the court president of the existence of the specific circumstance, the decision on whether to recuse the judge, according to the Law on Civil Procedure, is ultimately made by the court president. In this instance, the acting president of the court decided to reject the request for recusal. This raises the question of whether the acting court president would have reached a different decision had they been informed of the relative circumstances for recusal before the party in the proceeding submitted their request for the judge's recusal. Based on the case files, the answer to this question would very likely be negative.

For this reason, considering the provisions of the Law on Courts, which emphasize the necessity of proportionally and appropriately assessing the severity of specific violations and, consequently, determining the sanction or measure that should follow, the Judicial Council is obliged to provide a convincing explanation that leaves no doubt regarding the correctness and legality of its decision.

Regarding the fulfilment of the conditions for the dismissal of a judge, we would also like to address the final condition that must be cumulatively met to establish the judge's accountability: the violation must have caused serious consequences (Article 74, Paragraph 3, item 2 of the Law on Courts). In this case, the Judicial

Council considered the serious consequence to be the violation of the right to a fair trial, specifically the right to trial by an impartial court, as well as the creation of public distrust in the judiciary. This includes concerns that corruption might be possible and that familial ties could influence the outcome of a desired decision. The judge's actions have been deemed to contribute to fostering a negative perception of the judiciary, undermining the reputation of the court and judges, and diminishing public confidence in the impartiality of court proceedings and fairness in decisions concerning citizens' rights. What is characteristic of this case is that the serious consequence has not been concretized, i.e., no direct harmful consequence has been identified or individualized. Instead, the harmful consequence is viewed from the perspective of a broader societal reflection, focusing on how such cases influence public perception and the effect they produce among the general public. In this particular instance, this involves fostering distrust and a negative perception of the judiciary among citizens. While it is indisputable that generating a negative image of the judicial system contains elements of a serious consequence, the issue lies in the lack of specific definition or clear identification of a direct harmful consequence. This is particularly concerning because any instance where a judge's accountability for a professional error is established, whether classified as a serious disciplinary violation or as unprofessional and negligent performance of judicial duties essentially contributes to a negative image and distrust in the judiciary. Following this reasoning, any judicial action in such a context could be considered to have caused a serious consequence. Thus, we believe that such a general and extensive approach by the Judicial Council in determining the occurrence of a serious consequence is inappropriate and overly broad. Moreover, it becomes particularly problematic if applied selectively to certain proceedings.

Specific questions related to the particularities of this case

Selective invocation of ECtHR case law

What can be highlighted as positive compared to all other cases regarding judicial accountability that were analyzed is that the decisions in the proceedings against S.Z. and Z.M. extensively refer to international standards, especially the case law of the European Court of Human Rights regarding judicial impartiality in the context of judge recusals. This approach is highly uncommon for the Judicial Council, and perhaps due to this, certain weaknesses can be observed in referencing the ECtHR's case law.

Specifically, a certain selectivity is noticeable when citing various judgments of the ECtHR, both in terms of the judgments referenced and the legal opinions within them, namely only those that confirm the decision of the Judicial Council. More specifically, the Judicial Council does not refer to some of the key judgments that establish certain legal standards and opinions of the ECtHR, such as *Nicholas v. Cyprus*, App. No. 63246/10, 09.01.2018, and *Ramljak v. Croatia*, App. No. 5856/13, 27.06.2017, which, together with the case referenced by the Judicial Council, *Koulias v. Cyprus*, App. No. 48781/12, 26.05.2020, relate to identical circumstances as in the proceedings against S.Z. These judgments clearly point to additional circumstances that should be considered before determining any violation of the right, especially regarding the size of the country, the number of judges, the size of the law firm, the influence and position that the judge's child had in the firm, and whether they were involved in the specific case. These factors call for caution when deciding on recusals, particularly in smaller countries and jurisdictions, as rigid recusal rules can seriously hinder the justice system. (*Nicholas v. Cyprus* [62-63]) It should also be noted that in the judgments against Cyprus, *Nicholas v. Cyprus* [65] and *Accord Koulias v. Cyprus* [64], it was clearly established that the issue of recusal was not subject to judicial review because the specific circumstance came to light only after a decision had already been made. On the other hand, unlike *Ramljak v. Croatia*, where there was already a clear practice of the Supreme Court regarding recusal in such circumstances, in the case under review, prior practice in the court suggested that such circumstances for recusal were not accepted. And the final circumstance in which the case against S. Z. differs from the aforementioned ones is that in this case, the judge submitted a statement regarding the recusal request even before starting to act on the case, confirming the circumstances related to their son. For a proper assessment of an obvious breach of the recusal rules to be substantiated, it was necessary for the Judicial Council to take into account all the aforementioned circumstances, as focusing solely on the fact that the judge's son is an intern in a law firm where one of the attorneys represents one of the parties in the case is not, by itself, a sufficient basis to automatically determine an obvious violation of the recusal rules. In this regard, the Judicial Council had

enough grounds and circumstances through the principle of proportionality to determine that this was not an obvious violation of the recusal rules.

The "general" decision of the previous president N. G. and the disciplinary proceedings against him

A little over a year after the second decision of the Judicial Council for the dismissal of judge S. Z., the Judicial Council, in almost the same composition, decided on the disciplinary proceedings against the former president of the Appellate Court in Sh., at that time the current judge of the Supreme Court, N. G. On 04.07.2023, the Judicial Council decided to stop the proceedings against N. G. because it found no violation resulting from their "general" decision to reject the specific circumstances related to the son of judge S. Z. as sufficient grounds for their recusal. In its reasoning for the decision on N. G., the Judicial Council used the outcome of the specific court cases as an argument, while in the case of S. Z., the fact that a revision was filed on the second-instance decision, after which the Supreme Court upheld the decision, was not considered as relevant for the proceedings. Based on this, in the decision for N. G., the occurrence of harmful consequences was denied due to the rejection of the recusal request, citing precisely the outcome of the court cases, but also because there was no evidence of biased conduct by the judicial panels.

*"In both cases cited in the request, it is evident that no harm was caused solely due to the denial of recusal of judges who were requested to withdraw based on the relationship between the legal representatives and their children - a kinship that involved working in law offices. The actions of the judge of the Supreme Court of RNM, at that time president of the Appellate Court in Sh., do not serve as grounds for suspicion regarding impartiality or the legality of the decisions made. This is because, in one case, a decision was made in favour of the opposing party, not the party represented by the attorney whose office employed the daughter of the judge deciding the case in the judicial panel. The other case involved a matter of minor value. Furthermore, there is no evidence clearly and unequivocally indicating that the judicial panels acted with bias."*¹⁴

In contrast to this position of the Judicial Council in the proceedings against N. G., in the decision to dismiss S. Z., it is emphasized that the outcome or decision made in the specific case cannot play a role in determining whether there are elements of biased conduct.

*"It is entirely irrelevant whether a lawful decision was made or not, and it does not matter that the decision was made by a panel of three judges... in circumstances where there is an undisputed fact that her son works in the law office of the legal representative of one of the parties in the case; it is sufficient that the circumstance that gives rise to doubt about its impartiality is not assumed, but real and proven."*¹⁵

As a further illustration of this evident inconsistency by the Judicial Council, is the fact that in the decision to dismiss S. Z., it was explicitly stated that the general decision made by the previous president of the Appellate Court in Sh. was "clearly unlawful." (p. 23)

And as a final aspect and circumstance, among others, to which the ECtHR also refers in its case law, is the question of whether the judge's son took any actions in the specific case for which the proceedings against Judge S. Z. were initiated. While the Judicial Council does not address this question in the decision to dismiss S. Z., in the decision to stop the proceedings against N. G., it determined:

"The Council assessed that a decisive fact for rejecting the requests for recusal in these decisions is the circumstance that the legal representatives of the parties are the mentioned attorneys, not the daughter or grandson of the judges, who also did not take any actions in the stated cases, which is why it was not proven that there is a conflict of interest that would call into question the impartiality of his function as president of the court.."

¹⁴ Decision of the Judicial Council of RNM on determining judicial accountability of judge N.G. dated 04.07.2023, p.9

¹⁵ Decision of the Judicial Council of RNM on determining judicial accountability of judge S.Z. dated 07.04.2022, p.21

The composition of the Appeals Council of the Supreme Court of the Republic of North Macedonia

As a final specific detail to be presented in this section, it pertains to the composition of the Appeals Council of the Supreme Court, which adjudicated the appeal of S. Z. filed against the first dismissal decision of the Judicial Council. Specifically, Judge S. J. from the Appellate Court Sh. was part of this council that decided on the appeal. The presence of Judge S. J. raises significant concerns, especially given that the "general" decision regarding the non-recusal adopted by the former president N. G. pertains to circumstances involving two judges: in addition to S. Z., it also implicates S. J. This connection places Judge S. J. in a position of potential direct interest in the resolution of the case against S. Z. This potential conflict of interest became even more pronounced when disciplinary proceedings were initiated against Judge S. J. for an obvious violation of recusal rules, stemming from the same circumstances as those in S. Z.'s case. However, in the proceedings against S. J., the Judicial Council opted not for dismissal but instead imposed a sanction of a 30% salary reduction for a period of six months. This highlights not only a clear inconsistency in the Judicial Council's approach but also reflects Judge S. J.'s own interpretation and application of the rules governing judicial recusal.

CONCLUSION

The case involving the dismissal of Judge S.Z. is one of several cases in which the accountability of judges from the Appellate Court Sh. was determined due to disciplinary violations concerning the recusal of judges in civil proceedings. For this reason, this analysis should be viewed alongside the critical review and analysis of the Judicial Council's decisions on the judicial accountability of Judges S.J. and Z.M. As with other related cases, this decision reveals certain shortcomings that raise questions about the quality of the decision and the correctness of the decision-making process. This is particularly true regarding the insufficient substantiation of the decision in terms of the decisive facts, the fulfilment of legal conditions, the reasons for the dismissal of the judge, and the imposed sanction. What is perhaps most alarming is that the subsequent practice of the Judicial Council in identical factual and legal situations diverges from the position established in this decision, despite the fact that the normative framework and procedure for determining the judicial accountability have not been changed. Through such actions, the Judicial Council creates significant room for doubt about the correctness of its decisions, raising concerns about potential influences on the Council when determining the accountability of judges. These concerns are further highlighted by the specific circumstances of this case, particularly in the context of the inconsistent actions of the Judicial Council in the proceedings for determining judicial accountability of the former president of the Appellate Court Sh., Judge N.G.

13 CASE NOTE: DISMISSAL OF JUDGE D.M.

INTRODUCTION

The subject of this analysis is the decision of the Judicial Council of the Republic of North Macedonia regarding the dismissal of Judge D.M., a judge of the Basic Court in T. The judge was dismissed from judicial office due to unprofessional and negligent conduct, as it was determined that he had intentionally and unjustifiably committed a gross professional error.

FACTS OF THE CASE

In this particular case, the request to establish the judicial accountability of Judge D.M., registered under no. 10-32/1 on 10.02.2021, was submitted by a member of the Judicial Council. The request was filed on the grounds that, according to the submitter of the request, when deciding upon the creditor's request for the annulment of the clause of finality and enforceability of a first-instance decision by the Basic Court in T., Judge D.M. issued two rulings and applied different legal provisions, thereby causing legal uncertainty among the parties, acting contrary to the provisions of the Law on Civil Procedure. According to the submitter of the request, the actions of the judge constituted unprofessional and negligent conduct, warranting accountability under the provisions for the dismissal of a judge as prescribed in the Law on Courts.

Acting on the submitted request, the Judicial Council of the Republic of North Macedonia formed a Commission of Rapporteurs, which prepared a Report on the Established Factual Situation. The Judicial Council deliberated on the report during a session held on 25.03.2021, deciding to continue the proceedings. Within the framework of the procedure before the Commission of Rapporteurs, the actions prescribed by the Law on the Judicial Council for this stage of the procedure for determining judicial accountability were carried out, including: delivering the request and supporting evidence personally to the judge; receiving a written response to the request from the judge; and conducting a hearing before the Commission of Rapporteurs. After the submission of the Commission of Rapporteur's report on the established facts, dated 30.12.2021, the Judicial Council of the Republic of North Macedonia, in a session held on 07.04.2022, issued Decision no. 10-42/7, whereby Judge D.M. was dismissed from judicial office.

The decision of the Judicial Council of the Republic of North Macedonia was appealed by the judge. The Appeals Council of the Supreme Court of the Republic of North Macedonia (Appeals Council), acting on the case, with Decision no. OSZh 3/2022 dated 22.09.2022, rejected the judge's appeal as ill-founded and upheld the decision of the Judicial Council of the Republic of North Macedonia.

DECISION(S) AND ARGUMENTS (RATIO DECIDENDI)

The decision for the dismissal of Judge D. M. dated 07.04.2022 was made by the Judicial Council of the Republic of North Macedonia due to unprofessional and negligent performance of judicial duties (Article 74, Paragraph 1, Item 2 of the Law on Courts) for intentionally and unjustifiably committing a gross professional error (Article 76, Paragraph 1, Item 7 of the Law on Courts). In making this decision, the Judicial Council fully accepted the allegations of the submitter of the request and dismissed Judge D. M. for committing a gross professional error because of the following: in proceedings on a submitted proposal for counter-execution, upon a submitted request for the annulment of the clauses of finality and enforceability, the judge rejected the request, although he was obligated to summon the plaintiff, in accordance with the provisions of the Law on Civil Procedure, to supplement or correct the appeal, which was not done. Acting in the same case, the judge, despite already deciding on the request for annulment of the clauses of finality and enforceability, additionally summoned the representative of the creditor to supplement the appeal. Acting on the submission to supplement the appeal and the submission for annulment of the clauses of finality and enforceability, Judge D. M. issued a new decision and with that decision decided to annul the clauses of finality and enforceability.

According to the Judicial Council, based on the established facts, Judge D. M. intentionally and unjustifiably committed a gross professional error by issuing two different decisions for the same request within the same proceedings and applying different legal provisions. This caused legal uncertainty among the parties,

and through his actions, contrary to the provisions of the Law on Civil Procedure, he unprofessionally and negligently performed his judicial duties, thereby committing a violation that entails responsibility.

The Appeals Council of the Supreme Court of the Republic of North Macedonia, acting upon the appeal filed by Judge D. M., rejected it as ill-founded and upheld the decision of the Judicial Council of the Republic of North Macedonia. The Appeals Council considered the contested decision to be correct and lawful, made through a legitimate procedure, and containing sufficiently argued and reasoned grounds regarding the basis on which Judge D. M. was dismissed from performing judicial office.

CRITICAL REVIEW AND ANALYSIS

Within this section, and based on the available documents and decisions, we will address and focus on specific questions and aspects of the procedure for determining the accountability of Judge D.M.

Formal Aspects of the Judicial Council's Decision

The decision of the Judicial Council is characterized by a positive formal aspect that is rarely observed in other analyzed decisions concerning judicial accountability. Specifically, this pertains to an element that, fundamentally, should not require particular emphasis: the Judicial Council's decision includes details regarding the specific composition of the Commission of Rapporteurs, as well as all the statutory actions and phases of the procedure undertaken by the Commission and the Council, which are appropriately listed and described. In this context, however, a significant criticism arises regarding the actions of the Commission of Rapporteurs, particularly concerning the timeliness of carrying out the relevant statutory actions within the prescribed legal deadlines. According to Article 63, Paragraph 8 of the Law on the Judicial Council, the Commission of Rapporteurs is required to gather all necessary information and prepare a report within three months from the date of receipt of the request, assuming the Judicial Council has previously decided to proceed with the case. In the specific procedure for determining the judicial accountability of Judge D. M., as indicated in the Judicial Council's decision, the request was submitted on 10.02.2021, while the Report of the Commission of Rapporteurs was prepared on 30.12.2021. In other words, nearly 11 months elapsed from the date of receipt of the request to the preparation of the Commission's Report, significantly exceeding the legally prescribed three-month period.

Substantive Aspects of the Judicial Council's and Appeals Council's Decision

Inadequate Justification in the Judicial Council's Decision in Terms of the Decisive Facts and Fulfillment of the Legal Requirements and the Reasons for Dismissing the Judge

Judge D. M. was dismissed for unprofessional and negligent performance of judicial duties (Article 74, Paragraph 1 of the Law on Courts), specifically for intentionally and unjustifiably committing a gross professional error. It should be noted that differing interpretations of law and facts cannot constitute grounds for determining a judge's accountability (Article 76, Paragraph 1, Item 7 of the Law on Courts).

When analysing the justification of this decision, what emerges as problematic is the fact that the Judicial Council does not mention or address other provisions of the Law on Courts that are relevant for determining whether the conditions for dismissing a judge from their function have been met.

According to Article 74 of the Law on Courts, a judge is dismissed from judicial office if the following conditions are cumulatively met: 1) a serious disciplinary violation has been committed that renders the judge unworthy of performing judicial office, or the judicial office has been performed unprofessionally and negligently; 2) the violation was committed intentionally or with evident negligence attributable to the judge without justified reasons; and 3) the violation caused severe consequences.

According to us, the primary and significant oversight by the Judicial Council in rendering this decision is its failure to address the cumulative conditions stipulated by the Law on Courts for the dismissal of a judge (Article 74, paragraph 3 of the Law on Courts), namely that the violation was committed intentionally or with

evident negligence attributable to the judge without justified reasons and that it caused severe consequences. It has been repeatedly emphasized that this provision effectively serves as a safeguard to ensure judges are not easily dismissed. This provision requires the Judicial Council, when deliberating and deciding on the accountability of a judge, to analyse and establish all the individual aspects laid out through the cumulative legal conditions for dismissal, and only if all are met can a decision for dismissal be made. In this regard, the Judicial Council, in every case where it is deciding whether a judge will be dismissed from judicial office, is obligated to provide a convincing explanation that leaves no doubt about the correctness of its decision. Such an explanation must necessarily include, in addition to the cumulative conditions, consideration of the principle of proportionality in determining the sanction, especially when it concerns the dismissal of a judge.

In proceedings such as those for determining judicial accountability, which carry significant weight due to the nature of the work being evaluated and the consequences arising from it, we believe that clearly established legal rules must be strictly adhered to, leaving no room for improvisations or a superficial approach to decision-making.

The Judicial Council of the Republic of North Macedonia, neither in the operative part of its decision nor in its reasoning, referred to the second and third conditions, which pertain to the judge's fault and the severe consequences caused by the violation – conditions that had to be met to establish that the judge was accountable for unprofessional and negligent conduct.

In this regard, not only were the severe consequences of the violation neither mentioned nor explained, but the issue of the judge's fault – whether the violation had been committed intentionally or with evident negligence – and how this had been established during the proceedings was also not addressed. Furthermore, the Judicial Council, on the one hand, initiated and implied proceedings for dismissal, while, on the other hand, made no mention of the principle of proportionality or provided any reasoning as to why this principle had not been applied in the specific proceedings.

In this sense, what can be noticed when reading the reasoning of the relevant decision? Almost the entire reasoning relates to a poor overview of the actions taken during the proceedings before the Judicial Council and provides a confused overview of the actions taken by Judge D. M. when handling the case for which he was called to account, considering that the factual situation related to his actions was presented in a vague manner that prevents easy and clear understanding of the facts. The reasoning does not address the conditions for the judge's dismissal at all. It is stated that the judge's actions were contrary to certain provisions of the Law on Civil Procedure, thereby causing legal uncertainty for the parties, and that he performed his judicial duties unprofessionally and negligently, committing a violation that warrants accountability and should be sanctioned with dismissal.

When it comes to making a decision of such weight, the least that is expected from the Judicial Council is to provide a clear overview of the factual situation, to present its arguments and reasoning on what the violation consists of and how it was determined, and consequently, to establish whether all the cumulative conditions for the judge's dismissal are met. If the Judicial Council believes that the judge, given the violation committed, should be dismissed from the judicial function, it should provide a well-founded explanation for such a decision. In the specific case, the only thing that can be seen from the "argumentation" of the Judicial Council is that the judge's actions caused legal uncertainty for the parties. Particularly indicative in this regard is the fact that one of the parties in the proceedings, who was the plaintiff and requested the annulment of the clause of finality and enforceability, initially submitted a request for establishing the judge's accountability but later withdrew the request. This raises the question of whose legal certainty is being referred to and to whose detriment the Judicial Council is actually pointing.

Inadequacy of the decision of the Appeals Council

In deciding on the appeal of judge D. M., the Appeals Council made an extremely superficial and poor decision, rejecting the appeal as ill-founded, thereby confirming the decision of the Judicial Council to dismiss the judge. In other words, the Appeals Council hardly addressed the grounds of the appeal. Except for the issue of the right to submit a request for determining judicial accountability by a member of the Judicial Council, who was part of the Commission for Rapporteurs that initially rejected the request, and which the Appeals Council

did not raise as an issue and accepted it, the Council completely ignored the appeal grounds related to the material aspects. In this way, the Appeals Council once again approached the interpretation of its own competence according to Article 72, paragraph 4 of the Law on the Judicial Council too restrictively and failed to address what constitutes a serious violation of the procedural provisions for determining judicial accountability. It seems that precisely due to this restrictive approach, the Appeals Council did not even enter into a discussion regarding the obviously inadequately reasoned decision of the Judicial Council.

CONCLUSION

Given the presented factual situation regarding the work of judge D. M., unprofessional and negligent conduct in the specific case can be observed. However, considering that this is a decision for dismissal of a judge, the Judicial Council in this case should have provided sufficiently reasoned explanations regarding the fulfilment of the conditions and the reasons for determining unprofessional and negligent performance of judicial office. As in other analyzed cases, this case also reveals significant weaknesses in the actions of the Judicial Council, specifically the continued trend of issuing decisions that are inadequately reasoned and lacking sufficient arguments.

14 CASE NOTE: IMPOSING A DISCIPLINARY MEASURE ON JUDGE R.GJ.

INTRODUCTION

The subject of this analysis is the decision of the Judicial Council of the Republic of North Macedonia to impose a disciplinary measure – a 30% reduction in the monthly salary for a period of 6 months on Judge R. Gj., a judge at the Basic Court of N., due to established disciplinary responsibility for unprofessional and negligent conduct, unjustifiably committing a gross professional error, where differing interpretations of law and facts cannot serve as a basis for determining judicial accountability due to unprofessional and negligent performing of duties in judicial cases.

FACTS OF THE CASE

According to the allegations in the request for determining the accountability of Judge R. Gj., submitted by a member of the Judicial Council, registered under no. 10-33/1 of 27.02.2023, the request was made due to unprofessional and negligent conduct in accordance with Article 76, paragraph 1, item 7 of the Law on Courts, specifically due to intentionally and unjustifiably committing a gross professional error, where differing interpretations of law and facts cannot serve as a basis for determining judicial accountability. The request specifically relates to allegations of unprofessional and negligent work in the judicial cases: K. no. 17/19, K. no. 120/21, K. no. 43/22, K. no. 112/21, K. no. 118/20, K. no. 66/21, K. no. 156/21, K. no. 126/21, K. no. 7/22, K. no. 180/21, K. no. 3/22, K. no. 16/22, K. no. 1/22, K. no. 42/21, K. no. 67/21, K. no. 63/21, K. no. 25/20, K. no. 1/21, K. no. 160/19, K. no. 165/19, K. no. 111/20, K. no. 159/19, and K. no. 179/21.

In one of the specific cases, it was stated that the judge issued decisions in which criminal procedure costs were awarded, and these decisions became final on 20.01.2020. However, the judge did not submit them to the State Attorney's Office of the Republic of North Macedonia for voluntary payment until 2022, that is, after the deadline for voluntary payment had expired. In this way, the judge allowed the awarded criminal procedure costs to be subject to forced collection through an enforcement agent, thereby causing damage to the Budget of the Republic of North Macedonia due to unnecessary additional costs for forced collection. In another case, the judge decided that the criminal procedure costs in the amount of 13,000.00 denars, as well as the costs for the defense attorney appointed ex officio in the amount of 9,360.00 denars, should be borne by the Budget of the Republic of North Macedonia. The judge submitted the decision to the State Attorney's Office for voluntary payment, while at the same time, in the court treasury of the Basic Court N., she gave an order for the payment of the awarded costs for the defense attorney appointed ex officio, even though the costs were already paid into the lawyer's account. In this way, payment for the same awarded costs was ordered twice, once from the Budget of the Republic of North Macedonia and again from the court budget. Furthermore, as part of this request, the judge's actions in the cases K. no. 112/21, K. no. 118/20, K. no. 66/21, K. no. 156/21, and K. no. 126/21 are included, in which the judge adopted decisions and sent them to the State Attorney's Office for voluntary payment of costs in acquittal and dismissal judgments, even before they became final and without a finality stamp, for cases where it was decided that the costs should be borne by the Budget of the Republic of North Macedonia.

In the cases: K. no. 7/22, K. no. 180/21, K. no. 3/22, K. no. 16/22, K. no. 1/22, K. no. 42/21, K. no. 67/21, K. no. 63/21, K. no. 25/20, K. no. 1/21, K. no. 160/19, K. no. 165/19, K. no. 111/20, K. no. 159/19, and K. no. 179/21, the judge recorded in the minutes that the proceedings were terminated, but did not issue a formal decision to terminate the proceedings. In some of the mentioned cases, criminal procedure costs were awarded and the manner of their collection was noted, but this was recorded only in the minutes without a formal decision in the case, thereby acting contrary to the provisions of Articles 103 and 121, paragraph 1 of the Law on Criminal Procedure.

Upon reviewing the submitted request, the Commission of Rapporteurs formed by members of the Judicial Council of the Republic of North Macedonia in the framework of the proceedings forwarded the request along with the attached evidence to Judge R.Gj. to allow her to respond to the allegations in the request for determination of judicial accountability. Accordingly, following the stipulated stages of the procedure, the judge provided a written statement regarding the specific case. The disciplinary procedure continued with the

scheduling of a hearing before the Commission, which took place on 07.09.2023. At this hearing, the judge presented additional evidence, after which the hearing was postponed to allow the submitter of the request to familiarize themselves with the evidence, and the hearing resumed on 20.09.2023.

In her defense, the judge stated that according to Article 60 of the Law on the Judicial Council of the Republic of North Macedonia and Article 76, paragraph 1 of the Law on Courts, she did not act unprofessionally or negligently, which would affect the quality and efficiency of her work. She believed that according to Article 74, paragraph 1 of the Law on Courts, she should not be dismissed from judicial office, as she did not commit a serious disciplinary violation that would render her unworthy of performing the judicial function, and that she did not cause severe consequences for the Budget of the Republic of North Macedonia. Furthermore, she argued that a different interpretation of the law and facts cannot serve as a basis for determining judicial accountability.

DECISION(S) AND ARGUMENTS (RATIO DECIDENDI)

In the analyzed case, only one decision was made. Specifically, the Decision of the Judicial Council of the Republic of North Macedonia, which imposed a disciplinary measure on the judge, reducing her salary by 30% of her monthly salary for a period of 6 (six) months.

In the Decision of the Judicial Council of the Republic of North Macedonia, it is stated that after conducting a procedure to determine the accountability of judge R.Gj. and preparing a Report on the established situation, the Judicial Council of the Republic of North Macedonia, during its session held on 23.11.2023, discussed the report from the Commission, and found that the judge committed the violations described in the request for the initiation of procedure for determining her accountability. However, when making the decision, the Council considered the mitigating circumstances, especially the fact that the judge has many years of service in this court, that no disciplinary measure had been imposed on her by the Council before, her willingness to correct her decisions based on guidance from higher courts, and the fact that no damage was caused to the Budget of the Republic of North Macedonia.

In determining the disciplinary accountability, the severity of the violation, the degree of responsibility, the circumstances under which the violation was committed, and the consequences of the violation were taken into account. Therefore, the imposition of a disciplinary measure, as determined by the Council, will serve its purpose of having a corrective influence, both on the judge and others, especially since the Council has the duty to preserve public trust in the judiciary and to ensure legal security for the citizens.

This decision became final eight days after being received by the judge, as the judge had not filed an appeal to the Appeals Council of the Supreme Court of the Republic of North Macedonia.

CRITICAL REVIEW AND ANALYSIS

In this section, a critical review of the entire procedure will be made, analysing it from both a formal and substantive perspective. Specifically, the procedural grounds for conducting the procedure will be analyzed, as well as the substantive aspect, i.e., whether the decision of the Council is adequately supported and justified.

Formal Elements and Aspects of the Procedure: Timeliness and Admissibility

Regarding the assessment of the timeliness of the submitted request, it can be noted that, according to Article 61, paragraph 1 of the Law on the Judicial Council, the procedure for determining judicial accountability shall be initiated within six months from the day the violation is discovered, but no later than three years from the day the violation occurred. Unfortunately, in this specific case, it can be concluded that the Judicial Council did not address the issue of timeliness in its procedure at all. In fact, nowhere in the decision does the Judicial Council refer to the provisions of Article 61 of the Law on the Judicial Council. Moreover, the adopted decision gives the impression that this legal condition for initiating the procedure is not even foreseen by the Law. As a matter of fact, taking into account the chronological order of actions taken by the Judicial Council, it can be indirectly interpreted that the Judicial Council in this specific case may have acted within the subjective legal

deadline for proceeding, because it seems that, from some of the evidence presented during the procedure by the Judicial Council, it appears that the majority of the procedural actions taken both by the judge and the members of the Judicial Council and the Commission of Rapporteurs, were carried out in the second half of 2022, while the request for initiating the procedure was submitted on 27.02.2023. Nevertheless, we believe that timeliness is of particular importance for the effectiveness and fairness of procedures for determining judicial accountability by the Judicial Council, and therefore, it is crucial to properly and consistently apply these subjective deadlines for initiating the procedure.

In addition to the absence of deadlines for initiating the procedure, this decision also fails to explicitly state who the submitter of the request is, instead relying on the general declaration that the request was submitted by a member of the Judicial Council, thus deeming it admissible. We believe that in the future, it would be appropriate for the Judicial Council to specify the identity of the authorized submitter of the request, in line with the principles of publicness and transparency in the work of the members of the Judicial Council.

Apart from these formal deficiencies, from a formal perspective, we must point out that, in terms of the written drafting of this decision, there has been a certain positive step forward. Unlike other decisions made by the Judicial Council, this particular decision demonstrates a noticeable intention to pay greater attention to fulfilling the formal legal requirements for drafting the decision. This assessment is made in comparison to other analyzed decisions, although such an approach should be completely normal and regularly applied, which it has not been.

Namely, in this particular decision, we are provided with details about the date of its adoption, the date of submission of the request, the application of the provisions of Article 63 of the Law on the Judicial Council, as well as the method of selecting members of the Commission of Rapporteurs, and the names of the members of this Commission are also disclosed. Moreover, it is commendable that all procedural actions taken by the Judicial Council are accurately listed, including the dates of hearings, which allows for precise measurement of the duration of all procedural steps undertaken by the Judicial Council during the procedure for evaluating the accountability of judge R.Gj.

Furthermore, it can be concluded that the provisions of the Law regarding the judge's right to submit additional evidence and the right to further express their position concerning this evidence within the legally prescribed time frame have been fully respected.

Finally, from a formal perspective, the specific decision also adheres to the form regarding the legal guidance on the right to appeal, and it correctly mentions the signatory of this decision, specifically the name of the president of the Judicial Council.

Substantive Elements and Aspects: Inadequacy of the Reasoning and Grounds for Imposing a Disciplinary Measure

According to the Law on Courts, precise grounds are provided for determining the disciplinary accountability of judges and for unprofessional and negligent performance of duties by judges, as the basis for imposing disciplinary measures and their dismissal. In relation to previous versions of the law, with the latest amendments, there has been a more specific clarification of the grounds, or criteria, for disciplinary accountability of judges, as well as for defining which actions of judges are considered as unprofessional and negligent performance of duties.

In the specific case against Judge R.Gj., it appears that within the reasoning of its decision, the Judicial Council has seemingly clarified the factual situation and provided appropriate arguments in favour of its decision. However, upon closer examination of the reasoning behind the decision of the Judicial Council, it can be noted that while the Council lists the evidence presented, it does not specify on what basis it grounded its decision. In fact, in this case, the request for determining the accountability of Judge R.Gj. contains one part in which professional error is clearly identifiable and easily verifiable, which the Judicial Council sanctions. Namely, in one case, the judge recklessly considered that the entry in the minutes noting the termination of proceedings and determining the costs of the proceedings was sufficient, merely by noting it in the minutes without transforming it into an appropriate legal act, such as a judgment or decision, in accordance with Articles 103 and

121, paragraph 1 of the Law on Criminal Procedure. Accordingly, it is surprising that, despite the improved quality of the decision-making process, the Judicial Council did not determine which specific violations committed by Judge R. Gj. led to the conclusion that the judge had committed the violation under Article 76, paragraph 1, item 7 of the Law on Courts.

It is precisely this approach by the Judicial Council that generates the conclusion that the rendered decision, from the perspective of evaluating its substantive quality, is inadequate. In this sense, it can be noted that despite the extensive evidentiary procedure, during which a significant number of pieces of evidence were presented, the Judicial Council lacks a logical connection between the evidence and the decision rendered. Namely, it appears that in this particular decision, only the presented evidence and the established factual circumstances are listed and described, but there is no logical connection between the presented evidence and the specific violation. Although, in all fairness, from the description of the presented evidence, the violation is indeed obvious in certain instances, such as in the case of the written preparation of decisions for the termination of proceedings and the decision on awarding procedural costs. However, as noted above, the logical sequence, that is, the causal link between the presented evidence and the rendered decision, is missing.

In this context, the decision of the Judicial Council appears overly general and unreasoned. Regarding the reasoning in the final part of its decision, the Judicial Council stated:

"The Council determined that the judge committed the violations described in the request for initiating proceedings to establish judicial accountability. However, in making its decision, the Council took into account mitigating circumstances, particularly the fact that the judge has long-standing tenure in this court, has not previously been subjected to disciplinary measures by the Council, demonstrated a willingness to correct her decisions based on guidance from the higher court, and that no damage was caused to the Budget of the Republic of North Macedonia. In determining disciplinary responsibility, the Council also considered the gravity of the violation, the degree of responsibility, the circumstances under which the violation was committed, and the consequences of the violation. Consequently, the imposition of a disciplinary measure, in the Council's view, will fulfil its purpose to have an educational impact both on the judge and on others, especially since the Council has the duty to preserve trust in the judiciary and to uphold the legal certainty of citizens."

In light of the above reasoning, our assertions are fully supported that the Judicial Council, in its decision, does not provide specific arguments outlining the reasons for its conclusion but instead employs general formal statements. Unfortunately, these statements fail to adequately substantiate the Council's reasoning process, as they do not offer a proper explanation or assessment of the evidence presented. Consequently, the Council does not sufficiently justify the basis upon which it reached its specific decision.

In this context, it is also observed that the Judicial Council, while determining the facts related to the occurrence or non-occurrence of harmful consequences resulting from the judge's decisions, lacks a specific connection between the evidence presented and the conclusions drawn regarding this evidence. More specifically, there is no legal qualification of the facts of the case in a manner that accurately identifies the violation, namely, the unprofessional and negligent performance of judicial duties. The logical process should involve an evaluation of each fact presented and its alignment with the substantive norms governing judicial accountability, which would serve as the Council's rationale for its decision. Conversely, the approach applied in this case - simply narrating the evidence without a critical analysis or connection to the decision, renders the evidence unclear, irrelevant, and consequently, inapplicable as genuine justification or support for the decision made. Furthermore, the Judicial Council does not address the issue of proportionality between the violation committed and the sanction imposed.

Finally, the basis for invoking judicial accountability under Article 76, paragraph 1, item 7 of the Law on Courts, which states: *"Deliberate and unjustified commission of a gross professional error, whereby differing interpretations of law and facts cannot serve as grounds for determining judicial accountability due to unprofessional and negligent performing of duties in judicial cases,"* appears to be indirectly determined through an analysis of the evidence presented, a process that, unfortunately, is absent in this specific case. Namely, in the present case, the Judicial Council could have fully substantiated its decision to impose a disciplinary sanction against Judge R. Gj. based on the evidence presented. However, it failed to do so, neglecting to connect the

facts with the legal basis for accountability and, in this way, not clearly establishing the specific violation that justified the sanction imposed.

Namely, in the present case, the Judicial Council failed to provide reasoning as to how the gross professional error was committed deliberately and unjustifiably, even though the arguments appear to be embedded in the provisions of the Law on Criminal Procedure, specifically in Articles 103 and 123, which pertain to the written preparation of acts and decisions regarding procedural costs. In this particular case, it is also unclear what is meant by "differing interpretations of law," especially in instances where the judge failed to properly serve decisions regarding voluntary payment, despite having provided specific arguments in support of their actions. Consequently, it is impossible to fully ascertain which arguments were decisive for the Judicial Council's decision. Moreover, the issue of harmful consequences was inadequately addressed with a mere assertion that there was no harm to the state budget, despite the fact that the judge's violation, characterized by unprofessional and negligent performance of judicial duties, inherently involves this type of harm.

CONCLUSION

From the analysis of the Decision imposing a disciplinary measure on Judge R.Gj., amounting to a 30% salary reduction for a period of six months, certain progress can be observed from a formal point of view. Namely, the Judicial Council, in this decision, made a greater effort to meet the formal requirements for drafting such an act. Unfortunately, despite the fact that it appears to act within the legally prescribed subjective period of six months, this issue is entirely omitted from the decision itself. For this reason, as a formal precondition for initiating proceedings to establish judicial accountability, it is unacceptable for the Judicial Council to completely disregard this legal presumption in its specific act. Finally, the shortcomings persist regarding the factual reasoning of the decision. In the specific case, despite the fact that the Judicial Council seemingly had a relatively straightforward task of substantively supporting its decision, given the numerous facts established during the proceedings, it still failed to produce a decision that is factually substantiated. Regrettably, the Judicial Council once again missed the opportunity to deliver a decision that is fully aligned with the established factual situation.

15 CASE NOTE: DISMISSAL OF JUDGE S.R.

INTRODUCTION

The subject of this analysis is the decision of the Judicial Council of the Republic of North Macedonia regarding the determination of unprofessional and negligent performance of judicial duties. The case involves Judge S. R., a judge of the Supreme Court of the Republic of North Macedonia, who was found responsible for negligent and unprofessional performance of judicial duties due to violations committed in his capacity as Acting President of the Basic Criminal Court Skopje. These violations stemmed from actions contrary to Article 7 of the Law on Courts and Article 6, paragraph 1, items 5 and 15, of the Law on Case Management in Courts, as well as the Annual Schedule for Judges' Work at the Basic Criminal Court Skopje. Specifically, certain judges, who, according to the Annual Schedule, were assigned cases in the field of misdemeanours via the ACMIS system, were processing cases in the field of criminal matters involving adults, which had already been assigned to them.

FACTS OF THE CASE

According to the allegations in the request for determining the accountability of Judge S. R., submitted by member of the Judicial Council of the Republic of North Macedonia, registered under no. 10-69/1 on 24.04.2020, it is stated that the judge, in his capacity as Acting President of the Basic Criminal Court Skopje, acted contrary to Article 7 of the Law on Courts; Article 6 paragraph 1 items 5 and 15 of the Law on Case Management in Courts, and the Annual Schedule for Judges' Work at the Basic Criminal Court Skopje, which became final on 04.05.2017, and was applied starting 05.05.2017. Specifically, certain judges who, according to this Annual Schedule, were assigned to handle misdemeanour cases, were assigned cases involving criminal matters for adults through the ACMIS system. Consequently, judges formally assigned to the misdemeanours department were assigned cases from the adult criminal department, and no new misdemeanour cases were assigned to them, so they were only formally assigned to the said area with the Annual Work Schedule for 2017. This situation placed these judges in an unequal position compared to other judges in the court, who consistently received cases in their assigned departments during this period, thereby allowing the latter to achieve better quantitative results. According to the submitter of the request, through these actions, the judge abused his official position and exceeded his official authority by failing to apply the provisions regarding the allocation of court cases. This conduct is characterized as unprofessional and negligent performance of duties as Acting President under Article 74 paragraph 1 item 2 and paragraph 3 item 2 in conjunction with Article 79 paragraph 1 item 1 of the Law on Courts. Furthermore, this violation is explicitly provided for in Article 27 paragraph 1 item 2 and Article 79 paragraph 1 item 1 of the same law, under the designation "exceeding and violating legal authority."

Following the submitted request, the Commission of Rapporteurs, formed by members of the Judicial Council of the Republic of North Macedonia, prepared a report on the established factual situation, based on which the Judicial Council, on 29.09.2020, at a session, decided that the procedure should continue.

Within the procedure, the Commission of Rapporteurs delivered the request along with the attached evidence to Judge S. R., so that he could respond to the allegations in the request for determining judicial accountability. Thus, the disciplinary procedure proceeded in the proper order, with the delivery of the request to the judge, along with the attached evidence, his response, and a hearing before the Commission on 24.01.2021, in the presence of the submitter of the request and the judge. Based on the conducted hearing and the presented evidence, the Commission of Rapporteurs submitted a report on the established factual situation to the Judicial Council, which on 14.07.2021, made a decision to dismiss the judge from judicial office. This decision is numbered 10-41/21-14, dated 03.08.2021.

In his defense, the judge first pointed out that the statute of limitations for initiating the procedure for determining judicial accountability had expired, and that all knowledge of his actions and procedures was first made known to the Council in October 2017. Therefore, as stated in his response, the subjective time limit for the statute of limitations began to run on 02.10.2019, and expired on 02.04.2020, meaning that the request submitted on 24.04.2020, was after the expiration of the subjective deadline foreseen in Article 61, paragraph 1 of the Law on the Judicial Council of the Republic of North Macedonia.

Furthermore, the judge stated that the request was ill-founded, as the issue of not assigning misdemeanour cases to work pertains to facts that could have been reviewed by a competent authority, and that no objection was filed by the judges in accordance with Article 39 of the Law on Courts. Moreover, the judge indicated that the factual situation shows that the distribution of cases was carried out in accordance with the Work Schedule and the decisions for its implementation, which are in accordance with Articles 112 and 174-181 of the Court Rules of Procedure and the Law on Case Management in Courts. The judge further asserted that his actions, which are classified in the request as a violation, do not exist, and the cases were assigned in accordance with the schedule and the automatic distribution via the ACMIS system.

The decision of the Judicial Council of the Republic of North Macedonia was appealed by the judge. The Appeals Council of the Supreme Court of the Republic of North Macedonia (Appeals Council), after reviewing the case, with Decision OSZh No. 10/2021 dated 01.12.2021, upheld the judge's appeal, annulled the decision of the Judicial Council of the Republic of North Macedonia, and referred the case for reconsideration.

In the subsequent procedure, the Judicial Council of the Republic of North Macedonia once again took the necessary actions in accordance with the Law on the Judicial Council and at the session held on 07.04.2022, issued a decision to dismiss the judge S.R. from judicial office.

DECISION(S) AND ARGUMENTS (RATIO DECIDENDI)

In the specific case, three decisions were made: the first is the decision of the Judicial Council for the dismissal of the judge S.R., then the decision of the Appeals Council of the Supreme Court of the Republic of North Macedonia, and the third is the decision by which the Judicial Council of the Republic of North Macedonia again dismissed the judge S.R. In this way, all possible legal remedies in the procedure for dismissal, as provided by the positive legal provisions, were fully used.

In the first decision of the Judicial Council of the Republic of North Macedonia, No. 10-41/21-14 dated 03.08.2021, judge S.R. was dismissed from judicial office due to violations in the capacity of Acting President of the Court, in accordance with Article 74, paragraph 1, item 2 and paragraph 3, item 2, in connection with Article 79, paragraph 1, item 1 of the Law on Courts, for unprofessional and negligent performance of the judicial function.

Regarding this decision, the judge S.R. filed an appeal to the Supreme Court of the Republic of North Macedonia, which ruled in favour of the appellant, annulled the decision of the Judicial Council that had dismissed the judge.

In the repeated procedure before the Judicial Council, a new hearing was held, where evidence was presented, and the arguments of the submitter of the request and judge S.R. were heard. Following this, the second decision was made, in compliance with the mandatory instructions from the Appeals Council. In the second decision, the Judicial Council again decided to dismiss judge S.R. due to violations in the capacity of Acting President of the Court, in accordance with Article 74, paragraph 1, item 2 and paragraph 3, item 2, in conjunction with Article 79, paragraph 1, item 1 of the Law on Courts, for unprofessional and negligent performance of the judicial function.

CRITICAL REVIEW AND ANALYSIS

Within this section, a critical review of the entire procedure will be conducted, analysing it from both a formal and substantive perspective. Specifically, the procedural grounds for conducting the procedure will be analyzed, as well as the substantive aspect, meaning whether the decision of the Council is adequately supported and reasoned. In this part, all available decisions and submissions will be analyzed, including the two decisions of the Judicial Council, the judge's appeal, as well as the decision of the Appeals Council regarding the submitted appeal.

Formal elements and aspects of the procedure: timeliness and admissibility

Regarding the assessment of the timeliness of the submitted request, it can be stated that according to Article 61, paragraph 1 of the Law on the Judicial Council, the procedure for determining judicial accountability is initiated within six months from the day of becoming aware of the committed violation, but no later than three years from the day the violation was committed.

In accordance with these deadlines, and as clearly stated in the submitted appeal by the judge, it can be concluded that the Judicial Council in its first decision merely stated that it acted within the legally prescribed deadline, without providing a detailed explanation that the request was timely. In the reasoning of the first decision of the Judicial Council, the facts on which the Council decided are simply listed, and it is only briefly mentioned that the initiative to initiate the procedure for determining judicial accountability was taken by a member of the Council at the moment when a member of the Judicial Council of the Republic of North Macedonia was appointed to a commission formed to verify the allegations.

Due to this brief reasoning by the Judicial Council of the Republic of North Macedonia, the Appeals Council of the Supreme Court of the Republic of North Macedonia rightly concluded that the Judicial Council did not fully justify the formal element of timeliness in its proceedings. In other words, the Appeals Council upheld the appellant's objection, which argued that the decision was not made in accordance with the legal requirements for timeliness in the proceedings before the Judicial Council. However, in its reasoning, the Appeals Council did not explicitly state why it upheld the appellant's appeal in this regard, so it is not clear whether it agreed with the appellant that the Judicial Council acted outside the legally prescribed deadlines. Instead, it merely pointed out that the Judicial Council insufficiently explained or did not provide enough arguments to justify its actions concerning the adherence to the subjective and objective deadlines for initiating the procedure for determining judicial accountability in accordance with Article 61 of the Law on Courts.

Regarding the assessment of timeliness, the question raised by the dismissed judge seems justified, as to when exactly the start of the subjective deadline for the start of the limitation period for submitting the initiative for the determination of judicial accountability should be considered. In this regard, the interpretation of the Judicial Council of the Republic of North Macedonia appears too narrow, as it states in its additional decision that the subjective limitation period begins to run from the moment the member of the Judicial Council is appointed to the commission for verifying the allegations related to the specific case. According to this very narrow interpretation, it follows that indeed the initiator of the request, considered from the moment of being appointed as a member of the commission for verifying the allegations formed by the Judicial Council of the Republic of North Macedonia, acted within the subjective deadline of six months, because the initiator was appointed as a member of this commission on 05.02.2020. However, unfortunately, it seems that the arguments of the dismissed judge are indeed valid for comment, as in his defense, he stated that it is truly strange how the members of the Judicial Council could not have been familiar with the case earlier, given that multiple actions were taken by the Judicial Council, which were subsequently noted in relevant reports, first in 2018 and then in an additional report dated 02.10.2019. On the other hand, it is interesting to point out that the member of the Judicial Council who submitted the request actually assumed the position of Judicial Council member on 27.12.2019, was appointed as a member of the commission on 05.02.2020, and on 24.04.2020, submitted the request for determining the accountability of Judge S.R.

In this regard, the Judicial Council of the Republic of North Macedonia, neither in the first nor in the second decision, provides a specific answer as to why the subjective limitation period is not considered to start from 02.10.2019, when this report was or should have been delivered to all members of the Judicial Council of the Republic of North Macedonia, thus ensuring that the members would undoubtedly become familiar with its content. In this context, the position that the members of the Judicial Council, unjustifiably slow in their work, would only become acquainted with the content of the reports through the activities of the specially formed commission for verifying the allegations in these reports, which was formed only four months after the reports became available to the members of the Judicial Council of the Republic of North Macedonia, seems unacceptable.

Finally, the emphasis on the timeliness of initiating procedures for assessing the accountability of judges is particularly important in cases like the one specifically analyzed, because in this case, the procedure for assessing the accountability of the judge was initiated very close to the expiration of the objective limitation period of 3 years, calculated from the moment the violation occurred.

Regarding the assessment of admissibility, and considering the submitted appeal of the dismissed judge, where the appellant specifically addresses the impartiality of the Judicial Council member who initiated this procedure against the dismissed judge, it is surprising that this ground of the appeal, listed as point 2, was not at all considered by the Appeals Council. According to the provisions of the Law on the Judicial Council, it is within the jurisdiction of the Appeals Council to assess the legality of the procedure.

At the end of the analysis of the disputed formal aspects of the procedure, it should be emphasized that the legal deadlines were not respected by the Commission of Rapporteurs. Namely, according to Article 63, paragraph 8 of the Law on the Judicial Council, and in line with the fundamental principle that the procedure for determining judicial accountability is urgent, it stipulates that the Commission of Rapporteurs is required to collect all necessary information and prepare a report within three months from the date of receipt of the request. In the specific case, the request was submitted on 24.04.2020, while the Report of the Commission of Rapporteurs was prepared on 06.07.2021, meaning that instead of within three months, the Commission prepared it in just under 13 months.

Substantive elements and aspects

If we analyse the decisions of the Judicial Council from a substantive legal perspective, it can be concluded that the second decision of the Judicial Council of the Republic of North Macedonia is improved and, in essence, contains responses to the arguments as to why the first decision was annulled by the Appeals Council.

Unlike the second decision, the first decision, which was annulled by the Appeals Council of the Supreme Court of the Republic of North Macedonia, has several deficiencies, including mixed qualifications through the citation of articles in the operative part of the decision, as well as a lack of detailed analysis of the facts supporting the decision. In this regard, despite the fact that this is a decision that did not produce any legal effect, given that it was annulled, it can be concluded that it is largely formalistic and lacks broader legal argumentation for the positions of the council. Namely, it truly seems that after the detailed chronological explanation of the facts, a simple conclusion by the Judicial Council follows, without further explanation of the reasons for such a decision.

On the other hand, when analysing the decision of the Appeals Council an interesting observation can be made, given the fact that the Appeals Council did not fully respond to all the grounds of the appeal. Instead, it accepted the appeal in a way that only briefly addressed the shortcomings of the first decision of the Judicial Council, where three of the appeal grounds were accepted. In this way, the Appeals Council did not address the remaining five appeal grounds at all, ignoring them to such an extent that they were not even mentioned as grounds for appeal in their decision. It is likely that the position of the Appeals Council in this case was that the elaborated grounds of the appeal were sufficient to annul the first decision of the Judicial Council, and therefore, there was no need for further analysis. On the other hand, it is worth noting that although according to the legal provisions, the Appeals Council is composed of nine members, five of them were colleagues of Judge S.R.

Additionally, it is likely that the Appeals Council assessed that some of the grounds of the appeal were of a substantive nature, meaning that they did not fall within the scope of its legal authority to assess only the legality of the proceedings conducted by the Judicial Council of the Republic of North Macedonia. However, it can still be noted that the Appeals Council evaluated the reasoning of the decision of the Judicial Council, thereby partially delving into substantive aspects that should be understood as part of its jurisdiction under the legal phrase "gross violation of the provisions for the procedure for determining the accountability of a judge or president of a court.

Nevertheless, we believe that such conduct by the Appeals Council is incorrect, as it is obligated to address the merit of all grounds of appeal presented by the appellant, provided they relate to objections concerning the legality of the procedure conducted. However, it is unacceptable for the Appeals Council to only

partially address some of the appeal grounds in its decision, while neglecting the remaining grounds to the extent that it seems as though they did not exist at all, or failing to even mention them in its decision. We believe that the correct practice would be for the members of the Appeals Council to assess the appeal grounds related to the legality of the procedure. As for the remaining appeal grounds, if the members of the Appeals Council consider them to be substantive in nature and not related to the assessment of the legality of the procedure, they should state these grounds and provide appropriate reasoning as to why they believe that the specific appeal grounds were not and should not have been analyzed.

Through this ignorant attitude of the Appeals Council, an impression is generated of a certain degree of indolence on the part of the Appeals Council regarding the real and thorough evaluation of the procedure, thereby questioning both the justification and the effectiveness of the legal remedy this body represents in the procedure. Namely, we believe that, no matter how redundant, distant, or insignificant the appeal grounds might seem to the Appeals Council, these grounds should at least be concisely addressed by the body responsible for providing the evaluative opinion in terms of assessing the appeal, thus ensuring the right to a fair process for the appellant. Otherwise, the public may form a different impression about the correctness of judicial decisions, precisely due to the fact that some of the appeal grounds were not addressed at all in the decisions of the appellate body. In this regard, when considering the specific analyzed decision, it truly seems that certain significant appeal grounds raised by the appellant judge were not taken into account by the Appeals Council, thereby undervaluing the entire effort of the Appeals Council in ensuring a fair process for judges being evaluated regarding their expertise and conscientiousness in their work. Moreover, this practice may be perceived by the general public as an additional negative factor, which could indeed affect the trust in the judiciary and the work of judicial bodies.

Finally, according to the chronology of the decisions made, when analysing the second decision of the Judicial Council of the Republic of North Macedonia, a more serious approach can be observed, and accordingly, a higher-quality reasoning of the positions of the members of the Judicial Council. However, in all fairness, in the second decision of the Judicial Council of the Republic of North Macedonia, a more serious approach is noted, but only in relation to the appeal grounds annulled by the Appeals Council.

Thus, from the analysis of the second decision of the Judicial Council of the Republic of North Macedonia, as mentioned above, we can conclude that it is an improved decision compared to the initial one. In this regard, it seems that the Judicial Council, in its decision, made an effort to fully address the arguments of the Appeals Council, which initially annulled the first decision.

This means that the additional appeal grounds raised in the appellant's complaint, which were not considered by the Appeals Council of the Supreme Court of the Republic of North Macedonia, are also absent in the subsequent decision of the Judicial Council. Therefore, it can be concluded that the Judicial Council, in its subsequent decision, focused solely on improving those parts of the decision that were annulled in accordance with the Appeals Council's decision. In this sense, the arguments of the appellant judge, as stated in the complaint against the first decision of the Judicial Council, are entirely lost within the system of legal regulation of the procedure for the dismissal of a judge, thereby questioning the effectiveness of the legal remedy provided in this procedure.

In relation to the analysis of the subsequent decision of the Judicial Council, it can be concluded that it is technically improved, but we believe that it could be written in a technically clearer manner. Namely, it seems that the Judicial Council presents the same arguments on the same dilemmas at least twice in its decision, which results in the decision being overloaded with repetitive arguments. Despite the fact that these arguments are well-founded in the specific case, it is unnecessary to repeat them multiple times in the decision. In this regard, we believe that if the reasons were more clearly separated in the reasoning, rather than being simply piled together as on page 2 of the reasoning, and if the arguments related to these grounds were presented sequentially under the grounds, the decision would have been simpler, shorter, and clearer.

Regarding the reasoning of the arguments presented by the Judicial Council of the Republic of North Macedonia in its second decision, it can be concluded that despite the fact that there has been improvement in the reasoning, there is still a noticeable issue when it comes to one of the most elaborated appeal grounds. This concerns the dilemma raised by the appellant regarding whether the Judicial Council of the Republic of North Macedonia correctly interprets the provisions for the dismissal of a judge for violations committed as a court

president. Once again, the approach of the Judicial Council is noted for providing a brief elaboration of its stance. Namely, according to the dilemma raised by the appellant, i.e., whether a judge can be dismissed for actions performed as a court president, or whether these violations should result in dismissal only from the position of president or from the judicial position as well, the Appeals Council assessed that in the first decision, the Judicial Council did not provide sufficiently reasoned arguments. In the subsequent decision of the Judicial Council of RNM, the Council elaborates its position on the grounds for dismissal, specifically regarding the unprofessional and negligent performance of judicial duties, as well as the fact that the judge was dismissed from the judicial function even though the actions were committed while the judge was acting as the court president. On this occasion, the Judicial Council only mentioned the stance of the Supreme Court of the Republic of North Macedonia on this matter, without further elaborating on it. We believe that, in this specific case, the Judicial Council should have paid more attention to the stance of the Supreme Court of the Republic of North Macedonia, and it should have cited its relevant parts as support for its position. We believe that this practice would have been better in terms of providing a higher-quality explanation of the Judicial Council's stance, especially when it refers to decisions made by the Supreme Court of the Republic of North Macedonia. While these decisions, according to the legal framework, do not have binding legal effect, nor do they establish legal precedents in the sense of *stare decisis*, we still believe that it would not hurt to repeat these arguments from the Supreme Court of the Republic of North Macedonia, which would be beneficial to the members of the Judicial Council when supporting their decision. On the other hand, it is surprising that the members of the Appeals Council of the Supreme Court of the Republic of North Macedonia did not take into account the stance of the Supreme Court when making their decision regarding the specific appeal ground of the dismissed judge.

However, on the other hand, the later practice of the Judicial Council in another high-profile and public case of great interest, namely the proceedings against the Supreme Court judge N.G. for a decision made as the president of the Appeal Court in Ship, in the Decision of 04.07.2023, with a very similar composition, the Judicial Council, as an argument for stopping the proceedings, will refer to the following argument, which is completely inconsistent with the argument in the case against S.R.:

"In this case, the actions mentioned in the request were carried out by the judge during the period when he was president, and the request was submitted when he was no longer the president of the court and had already been elected to a higher court. This is not about failures on the part of the judge against whom the proceedings are being conducted, but rather about his actions as president of the court."

In this sense, we believe that the accountability of a judge for violations committed in their capacity as president of the court cannot be excluded in advance, especially if these violations can be linked to the grounds for judicial accountability. This is particularly significant when it comes to the dismissal of a judge. Furthermore, if such an approach is not taken, it will create a wide space for a form of amnesty for violations committed by court presidents, especially considering their limited four-year mandate, as well as the average duration of proceedings before the Judicial Council.

In addition, we believe that the Judicial Council of the Republic of North Macedonia, in arguing its position regarding the decision to dismiss Judge S.R., should provide a few additional arguments concerning the elaboration of the negligent performance of the judicial function in relation to the damage caused, as a cumulative part of fulfilling the grounds outlined in item 2 of paragraph 1 of Article 74 of the Law on Courts. In this regard, we believe that the Judicial Council has appropriately established that the action of the acting president of the court, through the redistribution of judges, indeed prevented them from accepting new cases from the areas they had been handling, meaning they could not accept new cases processed by the then Special Prosecutor's Office. This, in turn, provides a well-founded explanation of the subjective element outlined in item 1 of paragraph 3 of Article 74 of the Law on Courts. It remains evident that the Judicial Council could have provided additional clarification regarding the harmful consequences of the judge's behavior, specifically that of the acting president at the time. In this context, the Judicial Council did not address potential damage to public trust in the judiciary, a factor it has considered in other similar decisions. Furthermore, we believe that the Judicial Council should have offered additional arguments concerning the proportionality of the sanction in relation to the actions of the dismissed judge. For these reasons, it can be concluded that the Judicial Council has once again focused disproportionately on establishing the factual circumstances while dedicating insufficient attention to the legal

argumentation. This is evident in the lack of analysis and elaboration of the fulfilment of the cumulative conditions for the dismissal of a judge as stipulated in Article 74 of the Law on Courts.

Review of the appel process

Regarding the efficiency of the appeal process, it can be stated that, in accordance with the legal framework, it only partially contributes to upholding the principle of fair proceedings during procedures for determining judicial accountability. Namely, as analyzed earlier, in this specific case, regrettably, the Appeals Council did not exercise due diligence in its work, leaving multiple unanswered questions concerning the assessment of the appeal grounds in the decision they overturned. Notably, despite the fact that the members of the Appeals Council may consider the appeal grounds irrelevant, such as the appellant's arguments regarding proportionality or equality of arms, and even if they view these grounds as derivatives of previously stated grounds, we believe they are obligated to provide appropriate arguments in their decision regarding the acceptance or rejection of these appeal grounds. Consequently, we believe that the jurisdiction of the Appeals Council, as currently defined by law, primarily facilitates a formal assessment of the legality of assessments, thereby limiting its scope. In the specific analyzed case, the members of the Judicial Council demonstrated commendable diligence by providing a more credible justification for their decision, reaffirming their position established in the overturned decision. This implies that, under the current legal provisions, when members of the Judicial Council make a specific decision, following the decision of the Appeals Council, the subsequent decision by the Council members serves mainly to enhance their reputation and accountability within the general and professional public. The lack of detailed reasoning in this area is indeed concerning, especially given that it pertains to a dismissal of a judge, a situation in which no room for doubt should be left regarding the motives behind such a decision. It should be unequivocally evident that the decision stems from strict adherence to and application of the rules governing judicial accountability.

CONCLUSION

In this specific case, three decisions by the competent authorities, as well as the appellant's complaint, have been analyzed, fulfilling all instances concerning the procedure for determining judicial accountability as regulated by the Law on Courts and the Law on the Judicial Council. In this particular case, subject to analysis, we believe that the Appeals Council of the Supreme Court of the Republic of North Macedonia has indirectly facilitated the work of the members of the Judicial Council in evaluating the first decision to dismiss Judge S.R. We believe that, in the future, members of the Appeals Council of the Supreme Court should address all grounds for appeal comprehensively, thereby justifying their role as guarantors of fairness in the procedure for determining judicial accountability. In this regard, it seems that the Appeals Council has, in some ways, simplified the task for the Judicial Council in rendering their subsequent decision. The Judicial Council, in turn, focused primarily on providing substantiated responses solely to the points raised in the decision by which the Appeals Council annulled the initial decision. Nonetheless, we believe that the members of the Judicial Council, even in this specific case, should have made an additional effort to justify their decision, particularly in identifying the harmful consequences of the dismissed judge's unprofessional and negligent performance of judicial duties.

16 CASE NOTE: DISMISSAL OF JUDGE N.M.

INTRODUCTION

The subject of this analysis is the decision of the Judicial Council of the Republic of North Macedonia regarding the dismissal of judge N. M., judge of the Basic Court V. The judge was dismissed from performing the judicial function due to committing an offense that carries liability in accordance with Article 76, paragraph 1 of the Law on Courts, i.e., due to unprofessional and negligent conduct.

FACTS OF THE CASE

The request for determining the responsibility of judge N. M., registered under number 10-11/1 dated 31.03.2022, was submitted by a legal entity. The request was submitted because, in the specific case, according to the submitter of the request, while handling two cases, one civil case based on a lawsuit and one case in a procedure for securing claims, the judge committed a series of violations and irregularities.

Upon processing the submitted request, the Judicial Council of the Republic of North Macedonia, at the session held on 22.02.2022, formed a Commission of Rapporteurs which prepared a Report on the established factual situation. The Report on the established factual situation was submitted to the Judicial Council on 04.05.2022. Following the report, the Judicial Council discussed the matter at the session held on 08.06.2022, during which it decided to continue the procedure. Within the procedure before the Commission of Rapporteurs, all actions prescribed by the Law on the Judicial Council for this part of the procedure for determining judicial accountability were taken in sequence, including: delivering the request and evidence to the judge personally; delivering a written response to the request by the judge; gathering data and evidence relevant for determining the facts related to the request; and holding a hearing before the Commission of Rapporteurs. After the submission of the report by the Commission of Rapporteurs regarding the established situation based on the request dated 02.11.2022, the Judicial Council of the Republic of North Macedonia, at the session held on 12.12.2022, adopted a decision dismissing judge N. M. from performing the judicial function.

The decision of the Judicial Council of the Republic of North Macedonia was appealed by the judge. The Appeals Council of the Supreme Court of the Republic of North Macedonia (Appeals Council), after processing the case, with Decision OSZh no. 1/2023 dated 23.02.2023, rejected the appeal of judge N. M. as ill-founded and confirmed the decision of the Judicial Council of the Republic of North Macedonia.

DECISION(S) AND ARGUMENTS (RATIO DECIDENDI)

The decision for the dismissal of judge N. M., judge of the Basic Court V., no. 10-11/38 dated 12.12.2022, was made by the Judicial Council of the Republic of North Macedonia due to unprofessional and negligent performance of the judicial function in accordance with Article 76, paragraph 1, item 7 of the Law on Courts, i.e., due to intentional and unjustified commission of a gross professional error.

In relation to the first case, initiated by a submitted lawsuit, judge N. M. rendered a judgment that was appealed by the defendant and the intervenor on his side, and these appeals were upheld, leading to a modification of the first-instance judgment. Although the first-instance judgment was modified, a request for the change of ownership of real property was submitted to the Real Estate Agency based on the first-instance judgment which was confirmed as final and enforceable, without noting that it had been modified. The Judicial Council believes that the judge did not consider the provisions of the Court Rules of Procedure for handling the original document, particularly the provision according to which the judge must confirm the finality and enforceability of the original decision and certify it with their own signature.

In relation to the second case, initiated by a submitted proposal for the imposition of a temporary measure, the judge drafted two decisions registered under the same number and date. One decision deemed the proposal for the imposition of a temporary measure to secure a non-monetary claim of the creditor as withdrawn, and another decision approved the temporary measure. The Judicial Council found that a decision with the same number and date but with different content from the original decision contained in the case file

and generated in the ACMIS system was submitted to the Real Estate Agency. The decision, which was submitted to the Real Estate Agency, based on which a notation was made in the property certificate, is not included in the case file, nor was it created in the ACMIS system. In this regard, the Judicial Council considers that, in handling this case, the judge did not take into account the provisions of the Court Rules of Procedure, which regulate the matter concerning the original of the issued decision and the manner in which the judge handles the original document.

According to the Judicial Council, based on the established factual situation, judge N. M., judge of the Basic Court V., demonstrated unsatisfactory professionalism and negligence while handling the mentioned cases, which affected the quality of work and acted contrary to Article 76, paragraph 1, item 7 of the Law on Courts. As a result, the Council decided to dismiss the judge from performing the judicial function due to unprofessional and negligent conduct.

The Appeals Council of the Supreme Court of the Republic of North Macedonia, acting upon the appeal submitted by judge N. M., rejected the appeal as ill-founded and confirmed the decision of the Judicial Council of the Republic of North Macedonia. The Appeals Council considered the challenged decision to be correct and lawful, made through a legal procedure, and containing sufficiently reasoned and justified grounds regarding the basis on which judge N. M. was dismissed from performing the judicial function.

CRITICAL REVIEW AND ANALYSIS

Within this section, based on the available documents and decisions, certain aspects of the procedure for determining the accountability of judge N. M. will be addressed.

Formal Aspects of the Judicial Council's Decision

Absence of Relevant Information About the Commission of Rapporteurs and Council Voting

As in the majority of previously analysed cases, the Judicial Council's decision fails to provide any information regarding the composition of the Commission of Rapporteurs. Furthermore, the Judicial Council does not include details about the voting within the Council when adopting the decision for dismissal. The absence of such information cannot, in any case, be linked to the confidentiality of the procedure or the protection of the judge's reputation and integrity, as these details have no bearing on those matters. Specifically, transparently disclosing these details cannot affect the judge's reputation or integrity but would significantly enhance the transparency and accountability of the Judicial Council. The impression given in such cases is that the Council is more concerned with keeping its processes and voting secret. Additionally, in this context, information about the voting and the number of votes for the decision not only confirms adherence to the legal provisions for decision-making by the Judicial Council (Article 69 of the Law on the Judicial Council) but also provides insight into whether there were dissenting opinions or alternative views within the Council regarding the case.

Non-Compliance with Legal Deadlines by the Commission of Rapporteurs

The Law on the Judicial Council explicitly regulates, in Article 61, paragraph 2, that the procedure for determining the accountability of judges and court presidents is urgent. Furthermore, Article 63, paragraph 8, stipulates that the Commission of Rapporteurs is obligated to gather all necessary information and prepare a report within three months from the date of receipt of the request. As observed in several other analysed decisions where such data were available, in this case as well, the Judicial Council, through the Commission of Rapporteurs, significantly deviated from and violated the legally prescribed deadlines. Specifically, the request for initiating the procedure was submitted on 31.03.2022, while the report was prepared on 02.11.2022. This indicates that instead of meeting the three-month deadline, the Commission of Rapporteurs submitted the report after seven months.

Substantive Aspects of the Judicial Council's Decision

Insufficient Justification of the Judicial Council's Decision Regarding Determinative Facts, Fulfillment of Legal Conditions, and Reasons for Dismissal

As stated in the operative part of the Judicial Council's decision, judge N. M. was dismissed for unprofessional and negligent performance of judicial duties in accordance with Article 76, paragraph 1, item 7 of the Law on Courts, due to an intentional and unjustified commission of a gross professional error. It is further noted that differing interpretations of the law and facts cannot serve as grounds for determining a judge's accountability.

A notable issue upon analysis of the decision is that neither the operative part of the decision nor its reasoning references other provisions of the Law on Courts that are essential for the procedure of determining judicial accountability, particularly regarding the fulfilment of the prerequisites and conditions required for dismissing a judge from their judicial function.

According to the Law on Courts, a judge is dismissed from judicial function if the following conditions are cumulatively met: 1) a serious disciplinary offense has been committed, rendering the judge unfit to perform judicial duties, or the judge has exhibited unprofessional and negligent performance of judicial functions; 2) the violation was committed intentionally or through evident negligence attributable to the judge without justifiable reasons; and 3) the violation caused severe consequences (Article 74, paragraphs 1 and 3 of the Law on Courts).

Taking this provision into account, the problematic aspect of the decision in the specific case of determining judicial accountability is that the Judicial Council neither mentions, nor analyses, nor determines the conditions stipulated by the Law on Courts to be cumulatively met for a judge to be dismissed. Specifically, the decision merely states that the judge is dismissed from performing judicial function by citing the article of the Law on Courts referred to by the Judicial Council, without engaging in its analysis; moreover, the content of the relevant provision referred to by the Judicial Council is not mentioned at any point in the decision.

In our opinion, this is the primary oversight in making decisions of this nature. Every decision that involves the dismissal of a judge must necessarily establish several elements: the existence of a serious disciplinary violation, i.e., negligent and unprofessional conduct; that the violation was committed intentionally or through evident negligence attributable to the judge without justifiable reasons; and that the violation caused severe consequences.

It has been emphasized on numerous occasions that the insistence on observing and determining all the prerequisites stipulated in Article 74 of the Law on Courts serves as a safeguard to prevent judges from being easily subjected to dismissal. The Judicial Council is obligated, when deliberating and deciding on the determination of a judicial accountability, to analyse and establish all the individual aspects related to the legal conditions for dismissal, and only if all those conditions are cumulatively met can a decision for dismissal be made. In this regard, the Judicial Council is required to provide a convincing explanation that leaves no doubt about the correctness of their decision.

In proceedings such as those for determining judicial accountability, which carry specific weight in terms of the nature of the work being decided upon and the consequences arising from it, we believe that clearly established legal rules must be strictly adhered to, leaving no room for ambiguity or superficiality in decision-making.

The Judicial Council of the Republic of North Macedonia, neither in the operative part of its decision nor in its reasoning, refers at all to Article 74 of the Law on Courts, particularly regarding the conditions for dismissal, especially those pertaining to the judge's culpability, or the severe consequences caused by the violation.

In this context, as in most analysed cases, the approach of the Judicial Council is such that its decision neither specifies nor explains what constitutes the severe consequence of the violation, on the one hand, nor does it address the issue of the judge's culpability, namely, whether the violation was committed intentionally or through evident negligence, and how this was established during the proceedings. Additionally, in this case, the Judicial Council dismisses the judge without mentioning the principle of proportionality or balance, nor explaining why this principle was not applied in the specific proceeding.

In this context, the reasoning of the Judicial Council's decision in this case involves a detailed review of the phases through which the procedure for determining the accountability of Judge N. M. has passed on the one hand, and an examination of the factual situation established regarding how the judge acted in the specific cases for which the accountability is being determined on the other hand, or more specifically, it includes a review of the proceedings in which the judge acted and an examination of the actions taken by the judge, which, according to the Judicial Council, constitute a violation treated as unprofessional and negligent conduct. Additionally, the Judicial Council identifies the violation by referencing the provisions of the Law on Civil Procedure and the provisions of the Court Rules of Procedure, in relation to which the judge acted contrary to, or failed to adhere to.

When it comes to decisions of this nature, the least that is expected from the Judicial Council is, in addition to providing a clear overview of the factual situation, to reasonably present its stance on what constitutes the violation and how it was determined. Subsequently, it should establish whether all cumulative conditions for the judge's dismissal are met and if it is convinced that the judge, given the violation committed, should be dismissed from the judicial position, it should provide a well-supported justification for such a decision.

CONCLUSION

Given the established factual situation regarding the work of judge N. M., an unprofessional and negligent conduct in the specific cases is evident. Since this concerns a case in which a judge is being dismissed, the Judicial Council should have provided sufficiently reasoned explanations regarding the fulfilment of the conditions and the reasons for determining unprofessional and negligent performance of judicial duties. As with the other analysed cases, this case also demonstrates fundamental weaknesses in the proceedings of the Judicial Council, following the trend of making poorly reasoned and insufficiently substantiated decisions. It is not enough for the decisions to merely provide an overview of the actions taken during the proceedings to determine the judge's accountability and a review of the factual situation regarding how the cases progressed and how the procedural actions were undertaken by the judge whose responsibility is being assessed. The decisions of the Judicial Council, without exception, must be clear, well-organized, reasoned, and their reasoning must include all the elements relating to the fulfilment of legal prerequisites and the reasons for determining judicial accountability.

17 CASE NOTE: IMPOSING A DISCIPLINARY MEASURE ON JUDGE SH.D.

INTRODUCTION

The subject of this analysis is the decision of the Judicial Council of the Republic of North Macedonia in the procedure for determining the accountability of the judge of the Supreme Court of the Republic of North Macedonia, Sh. D., in which a disciplinary measure of written warning was imposed, in accordance with Article 78, paragraph 1, item 1 of the Law on Courts, due to a serious disciplinary violation under Article 75, paragraph 1, item 4 of the Law on Courts, i.e., due to the obvious violation of the rules for recusal in situations where the judge knew or should have known about the existence of one of the grounds for recusal provided by law. Since this is one of a total of four cases involving the issue of (non)recusal, and due to the importance of consistency in the actions of the Judicial Council, this case and analysis should be read together with the cases concerning the judges of the Appellate Court Sh. - S. Z., Z. M., and S. J.

FACTS OF THE CASE

The request for determining the accountability of judge Sh. D., filed under number 10-96/21 on 25.08.2021, as initially stated, was submitted by an authorized submitter, a member of the Judicial Council. The request was submitted because, in this particular case, the judge violated the provisions of the Law on Civil Procedure, Articles 64 and 65, thereby committing a violation of Article 75, paragraph 1, item 4 of the Law on Courts.

After receiving the request, the Judicial Council formed a Commission of Rapporteurs, which, after conducting the procedure for determining the accountability of judge Sh. D., prepared a report on the established factual situation. The Judicial Council discussed the report at the session held on 27.09.2022.

During the discussion of the report, the Council established that Risto Ristovski from T. on 09.09.2020, through his authorized representative S. P., an attorney from Skopje, submitted a request to the Supreme Court of the Republic of North Macedonia for the protection of the right to a fair trial within a reasonable time in the procedure of case PPOV. No. 15/18 at the Basic Court T. The case was filed at the Supreme Court of the Republic of North Macedonia under PSSRG. No. 65/2020 and was handled by a panel composed of judges Sh.D. as the president of the panel, and A. F. and m-r M. L. T. as members of the panel. Judge Sh.D., when handling the case PSSRG No. 65/20 in his capacity as president of the panel at the Supreme Court of the Republic of North Macedonia, did not recuse himself from the proceedings despite the fact that, prior to being elected as a judge in the Supreme Court of RNM, he had previously participated as a representative, attorney for the plaintiffs in the case P. No. 684/2003, a case on which he was now deciding as a judge regarding the request for the protection of the right to a trial within a reasonable time. Namely, the request for the protection of the right to a trial within a reasonable time refers to the procedure PPOV. No. 15/18 at the Basic Court T., which was conducted through an extraordinary legal remedy - a motion for the reopening of the procedure concluded with a final judgment P. No. 684/2003 dated 27.04.2007 at the Basic Court T. In the mentioned procedure P. No. 684/2003 (PPOV. No. 15/18), for which the reopening was requested, the attorney for the plaintiffs was the president of the panel, now judge Sh.D. When handling the case, the panel at the Supreme Court of RNM, which included judge Sh.D. as the president of the panel, issued the decision PSSRG. No. 65/20 dated 30.11.2020, rejecting the request of the applicant R. R. from T., submitted through his authorized representative S. P., an attorney from S., for the protection of the right to a trial within a reasonable time in the procedure for case PPOV. No. 15/18 at the Basic Court T., deeming it ill-founded. Dissatisfied with the decision of the Supreme Court of the Republic of North Macedonia, PSSRG. No. 65/20 dated 30.11.2020, the defendant R. R., through his authorized representative, filed an appeal against it. The Appeals panel of the Supreme Court of the Republic of North Macedonia, acting as the second instance body for decisions issued by its panels, reviewed the submitted appeal and issued Decision PSSRZh. No. 15/21 dated 22.02.2021. In this decision, the Appeals panel upheld the appeal filed by R. R. from T., annulled the Supreme Court's Decision PSSRG. No. 65/20 dated 30.11.2020 and returned the case for reconsideration to the first-instance panel with instructions. These instructions directed the Supreme Court of the Republic of North Macedonia, upon reconsideration of the request for the protection of the right to a trial within a reasonable time, to decide with a panel meeting the legal requirements for handling

the case in question. Following these instructions from the Appeals panel, the Supreme Court of the Republic of North The Judicial Council, through its decision dated 27.09.2022, imposed a disciplinary measure of a written warning on Judge Sh. D. In accordance with Article 78, paragraph 1, item 1 of the Law on Courts, due to a serious disciplinary offense as stipulated in Article 75, paragraph 1, item 4 of the same law. This offense involved a clear violation of recusal rules under Articles 64 and 65 of the Law on Civil Procedure in situations where the judge knew or should have known about the existence of grounds for recusal as prescribed by law. The Judicial Council partially accepted the claims of the submitter of the request. Specifically, the Council established that the violation was committed without intent but with evident negligence, without justified reasons. When determining the disciplinary responsibility and imposing the disciplinary measure, the Judicial Council considered the severity of the violation, the degree of responsibility, the circumstances under which the violation was committed, and the judge's conduct. The brief explanation highlights mitigating circumstances, particularly the fact that Judge Sh. D. acted in a procedure related to a request for the protection of the right to trial within a reasonable time. This procedure addressed the duration of proceedings before the Supreme Court following the submission of an extraordinary legal remedy - a motion for reopening of the procedure. It was emphasized that after an appeal was filed against the decision of the panel chaired by Sh. D., the second-instance panel of the Supreme Court annulled the initial decision and returned the case for reconsideration. Upon retrial, the Supreme Court assigned the case to a different panel, which issued a new decision. The Judicial Council concluded that no harm or legal consequences occurred for the submitter due to the violation since the second-instance panel's decision and the subsequent actions by another panel, excluding Judge Sh. D., effectively rectified the breach. Therefore, the Judicial Council considered that the imposed disciplinary measure, a written warning, would achieve its purpose by encouraging Judge Sh. D. to enhance his sense of responsibility, adopt a more thorough approach to his duties, and exercise greater caution in future proceedings. The goal is to prevent similar violations in the future.

No appeal was filed against the decision of the Judicial Council.

CRITICAL REVIEW AND ANALYSIS

Within this section, based on the available decisions of the Judicial Council, we will address and focus on certain issues and aspects of the procedure for determining the accountability of Judge Sh. D., which we consider contentious. More precisely, we will examine specific aspects of both a formal and substantive nature, which we believe constitute serious deficiencies in the decision to establish accountability and impose a disciplinary measure on Judge Sh. D.

Formal Aspects of the Judicial Council's Decision

Lack of Relevant Data Regarding the Composition of the Commission of Rapporteurs and the Course of the Procedure Before the Commission

The Judicial Council, in its rather brief decision, does not address the course of the procedure before the Commission of Rapporteurs or the actions undertaken by the Commission during the procedure. Specifically, none of the phases of the procedure are described, nor is it stated when and how it was determined that the request was timely and admissible, or when the Report on the Established Factual Situation was prepared. Consequently, it cannot be definitively established whether the three-month deadline for the preparation of the report, as stipulated in Article 63, paragraph 8 of the Law on Courts, was observed. The only information provided is that the Judicial Council deliberated on the report during the session held on 27.09.2022. Considering the fact that the request was submitted on 25.08.2021, it can be asserted with a high degree of probability that the Commission of Rapporteurs once again failed to adhere to the three-month deadline. This conclusion is based on the fact that 13 months elapsed between the submission of the request and the deliberation on the report at the session of the Judicial Council.

As a result of this lack of key data, the issue of the timeliness of the request remains open for debate. More specifically, based on the established factual situation, it can be concluded that the violation by Judge Sh. D. occurred due to his participation and presiding over the first-instance panel. However, given that the only data

provided are the dates of the submission of the request for protection of the right to a fair trial within a reasonable time, on 09.09.2020, and the date when the first-instance panel, chaired by Sh. D., rendered its decision, on 30.11.2020, it is entirely legitimate to raise doubts about its timeliness. Even if the date of the decision's adoption is taken as relevant, it could still be argued that the request for determining accountability was filed untimely, as it was submitted after the six-month subjective period relevant in this case, meaning the request was filed more than nine months later. This claim becomes even more pertinent when it is known that the second-instance panel of the Supreme Court, upon reviewing the appeal, rendered a decision on 22.02.2021, accepting the appeal, and even from this moment more than six months passed until the filing of the request for determining the accountability of Judge Sh.D.

Additionally, it should be noted in this section that the Judicial Council once again failed to specify the composition of the Commission of Rapporteurs, nor did it provide information on the voting of the Council, that is, how many votes were cast in favour of the decision to impose a disciplinary measure against Judge Sh. D.

Substantive Aspects of the Judicial Council's Decision

Insufficient Reasoning in the Judicial Council's Decision Regarding the Fulfillment of Legal Conditions and the Reasons for Imposing the Disciplinary Measure

In its decision rendered on 27.09.2022, the Judicial Council established the responsibility of Judge Sh. D. for violating the legal provisions of Articles 64 and 65 of the Law on Civil Procedure, thereby committing a serious disciplinary violation under Article 75, paragraph 1, item 4 of the Law on Courts, due to the obvious violation of the rules on recusals in situations where the judge knew or should have known about the existence of one of the grounds for recusal provided by law.

The analysed decision is notably brief and lacks substantiated reasoning, focusing primarily on establishing the factual situation while dedicating minimal attention to legal argumentation. Specifically, the reasoning does not demonstrate an appropriate application of the legal rules governing judicial accountability to the concrete factual situation, making it unclear which specific conduct of the judge constitutes the serious disciplinary violation. In this regard, the Judicial Council employed standard and general phrases, which are particularly frequent in other decisions imposing disciplinary measures, without proper individualization of the specific case and the violation committed by Judge Sh. D. For example, the Judicial Council used the wording from Article 78, paragraph 3 of the Law on Courts without referencing the specific legal provision. Furthermore, in justifying the imposition of the mildest disciplinary measure, it referred to the severity of the violation, the degree of responsibility, the circumstances under which the violation was committed, and the judge's conduct, without addressing the specific circumstances of the case and the violation. The Judicial Council merely asserted, without any argumentation or legal analysis, that the violation was committed not intentionally but due to apparent negligence without justified reasons.

Additionally, the Judicial Council relied solely on mitigating circumstances to justify imposing the mildest disciplinary measure, a written warning, by referring to two circumstances. First, the Judicial Council downplayed the violation committed by Judge Sh. D., which involved failing to recuse himself from a case as a Supreme Court judge in which he had previously acted as legal representative for one of the parties. This was done by emphasizing that the case concerned a request for protection of the right to a trial within a reasonable time, evaluating only the duration of the proceedings and not the merits of the initial judicial process. Second, the Judicial Council highlighted that no harm was caused as a result of the violation, specifically the judge's failure to recuse himself. This is particularly due to the fact that the decision of the first-instance panel was annulled by the second-instance panel of the Supreme Court, and upon reconsideration, a different panel, which did not include Judge Sh. D., rendered a decision. In this way, the situation was remedied, and the violation was rectified, ensuring that the complainant did not suffer any damage.

On the other hand, the Judicial Council failed to address aggravating circumstances, such as the fact that the case involved a Supreme Court judge, which implies a higher degree of responsibility and an obvious

violation of a legal provision in the Law on Civil Procedure that establishes an absolute ground for recusal. From this perspective, a significant inconsistency is observed compared to other analysed cases involving the issue of recusal, particularly in the cases of Judges S. Z. and Z. M. from the Appellate Court in Shtip, who were dismissed from judicial function for violating relative grounds for recusal under the Law on Civil Procedure. In those cases, the Judicial Council asserted in its respective decisions that the outcome of the proceedings on the revision of the second-instance decision before the Supreme Court was irrelevant to the judicial accountability proceedings. In contrast to these cases, in the case against N. G., the former president of the Appellate Court in Shtip and a Supreme Court judge, the Judicial Council relied on the outcomes of judicial proceedings to negate the existence of harmful consequences or bias in the judges' conduct.

As is the case with many of the analysed decisions, this decision also does not demonstrate the application of the principle of proportionality. The closest the Judicial Council comes to addressing proportionality is a general mention that the imposed measure is intended to "fulfil the purpose of educationally influencing the judge toward increasing his responsibility in performing his duties in the future, with a more thorough approach and greater care in handling cases, all aimed at preventing violations of this kind in the future." In fact, this statement is highlighted in several other decisions and is likewise not supported by any explanation as to why this specific measure, rather than a stricter one, would better achieve the stated objectives. This lack of reasoning is particularly concerning when the aggravating circumstances - circumstances that the Judicial Council fails to mention, are taken into account.

CONCLUSION

The decision of the Judicial Council, which imposed a written warning as a disciplinary measure for Judge Sh. D., represents yet another example of a decision riddled with formal deficiencies while also exhibiting inadequate and poor reasoning. The focus is placed on establishing the factual situation, with entirely insufficient legal argumentation, relying on the use of general phrases without any legal analysis or individualization. These deficiencies, particularly considering that they are fundamental shortcomings, leave ample room for doubt regarding the true motives of the Judicial Council in imposing the mildest possible disciplinary measure. Moreover, through this decision, the Judicial Council demonstrates complete inconsistency with other cases also involving violations related to a judge's recusal.

18 CASE NOTE: DISMISSAL OF JUDGE V.P.

INTRODUCTION

The subject of this analysis is the decision of the Judicial Council of the Republic of North Macedonia for determining unprofessional and negligent performance of judicial duties in the capacity of a court president. It concerns Judge V.P., a judge of the Basic Criminal Court S., who has been found accountable for negligent and unprofessional performance of judicial duties due to violations committed in the capacity of president of the Basic Criminal Court S., as he acted contrary to Article 7 of the Law on Courts, Article 3 of the Law on Case Management in Courts, as well as Article 174, paragraph 1, and Article 175, paragraph 5, of the Court Rules of Procedure.

FACTS OF THE CASE

According to the allegations in the request for determining the accountability of Judge V.P., registered under number 08-22/1 dated 08.06.2019, it is stated that during 2016, in the capacity of court president, the judge acted contrary to the provisions of Article 7 of the Law on Courts, Article 3 of the Law on Case Management in Courts, as well as Article 174, paragraph 1, and Article 175, paragraph 5, of the Court Rules of Procedure. The request for determining accountability states that, instead of distributing the cases arriving at the court for adjudication electronically among the judges via the automated computer system for case management in accordance with the law and the obligation to use ACMIS, the judge manually assigned newly received cases and based on his verbal instruction, the court clerk authorized to manage cases through ACMIS recorded such assignments in the system and noted that the cases were distributed based on the verbal instruction of the president and in consultation with the president. Moreover, aside from the manual distribution of cases for which he did not issue decisions with justified reasons, he also manually assigned a case to a judge contrary to the 2016 Annual Court Schedule.

Acting upon the submitted request, the Commission of Rapporteurs formed by members of the Judicial Council of the Republic of North Macedonia prepared a Report on the Established Factual Situation, based on which the Judicial Council, at a session held on 17.07.2019, rendered a decision for the temporary removal of Judge V.P. from performing judicial duties while the procedure for determining accountability is ongoing, in accordance with the law.

The Commission of Rapporteurs, within the framework of the procedure, delivered the request along with the attached evidence to Judge V.P. to allow him to respond to the allegations in the request for determining judicial accountability. Accordingly, the disciplinary procedure proceeded sequentially, starting with the delivery of the request for determining accountability to the judge along with the attached evidence, his response, and the holding of a hearing before the Commission on 30.10.2019 in the absence of the judge and his attorney.

The decision to hold the hearing in the absence of the judge was made because, despite multiple attempts by the Commission to deliver a summons for the hearing to the relevant address, the summonses and notifications had been received by the judge. The same applies to the attorney, who had duly received the summonses but did not attend the hearing.

Given that the hearing was held without the presence of the judge, the submitter of the request first stated that they stood by the submitted request, after which the response provided by the judge was read, and the evidence proposed by both parties was presented.

Based on the hearing and the presented evidence, the Commission of Rapporteurs submitted a Report on the Established Factual Situation to the Judicial Council, on the basis of which the Council, on 25.12.2019, rendered a decision to dismiss the judge from judicial office.

In his defence, the judge first requested to be granted access to the ACMIS system, the registers, and the court cases listed in the request for determining judicial accountability. Furthermore, in his defence, he stated that the manual assignment of cases was carried out without a written decision because such decisions were made in support of the Annual Court Schedule. The judge also noted that in each of the cases mentioned in the request, a written decision with justified reasons was issued for such actions and proceedings.

The decision of the Judicial Council of the Republic of North Macedonia was appealed by the judge. In the appeal, the judge, among other things, stated that the Judicial Council incorrectly applied Article 69, paragraph 3, of the Law on the Judicial Council because the Judicial Council conducted proceedings based on a filed request for determining the accountability of the judge for actions taken in the capacity of court president, yet rendered a decision for dismissal from the position of judge without establishing a violation of rights and obligations performed as a judge. Furthermore, in the appeal, the judge argues that his right to a fair trial, pursuant to the guarantees established in Article 6 of the European Convention on Human Rights, was violated because he was not provided with sufficient time and conditions to prepare his defence. The Appeals Council at the Supreme Court of the Republic of North Macedonia (Appeals Council), acting on the case, by Decision OSZh no. 1/2020 dated 26.06.2020, dismissed the judge's appeal as ill-founded and confirmed the decision of the Judicial Council.

DECISION(S) AND ARGUMENTS (RATIO DECIDENDI)

In the present case, two decisions have been made: the first is the decision of the Judicial Council for the dismissal of Judge V.P., and the second is the decision of the Appeals Council at the Supreme Court of the Republic of North Macedonia.

In the first decision of the Judicial Council of the Republic of North Macedonia, number 08/22 dated 25.12.2019, Judge V.P. was dismissed from performing judicial duties due to violations committed in the capacity of court president, pursuant to Article 74, paragraph 1, item 2 and paragraph 3, item 2 in conjunction with Article 79, paragraph 1, items 1 and 4 of the Law on Courts, for unprofessional and negligent performance of judicial duties. Specifically, these violations relate to actions committed as court president, namely exceeding and violating legal authorizations and failing to apply the provisions related to the management and distribution of court cases. Furthermore, Judge V.P., for the committed violations, which according to the Judicial Council were committed intentionally, was dismissed from judicial office pursuant to Article 74 of the Law on Courts due to non-compliance with Article 7 of the Law on Courts, Article 3, paragraph 2 of the Law on Case Management in Courts, and Articles 174 and 175 of the Court Rules of Procedure when distributing court cases, whereby he violated the parties' rights to equal access before the court in the protection of their rights and legally grounded interests.

Regarding this decision, Judge V.P. filed an appeal with the Appeals Council at the Supreme Court of the Republic of North Macedonia, which rendered a decision rejecting the judge's appeal as ill-founded and upheld the decision of the Judicial Council.

CRITICAL REVIEW AND ANALYSIS

Within this part of the analysis, and based on the available decisions and appeal in the case, the focus will be on identifying issues and aspects of the procedure that have been detected as contentious in the adoption of the decision for the dismissal of Judge V.P. In that regard, the analysis will begin with a critical review of the formal aspects of the procedure related to the question of the timeliness of the request, the absence of information about the submitter of the request, the composition of the Commission of Rapporteurs, and the manner of decision-making within the Council. Subsequently, a review will be provided of the contentious issues from a substantive aspect, related to the insufficient reasoning of the decisions of the Judicial Council concerning the decisive facts and fulfilment of the legal requirements and the reasons for which the judge is dismissed, as well as the dilemma whether a judge can be dismissed from judicial office for violations committed in the capacity of court president.

Formal Aspects of the Decision of the Judicial Council

Absence of Relevant Data

The analysed decision of the Judicial Council again manifests weaknesses of a formal nature. Specifically, the decision of the Judicial Council lacks relevant information regarding the submitter of the request. Nowhere in the decision is it stated who submitted the request for determining the accountability of the judge. Likewise, the members of the Commission of Rapporteurs are not identified, nor is there information on how the members of the Judicial Council voted on the decision to dismiss Judge V.P. Although pursuant to Article 62, paragraph 2 of the Law on the Judicial Council, the procedure for determining accountability is generally confidential in order to respect the reputation and dignity of the judge, this confidentiality does not extend to providing any protection for the members of the Judicial Council, as there is neither a basis nor a need for such protection. Therefore, these data, as a rule, should be public.

Dilemmas Regarding the Timeliness of the Request

The absence of information about the submitter of the request simultaneously raises a new problem related to determining the timeliness of the request. Specifically, Article 61, paragraph 1 of the Law on the Judicial Council regulates that the procedure for determining accountability is initiated within six months from the day of becoming aware of the committed violation, but no later than three years. Consequently, because the submitter is not identified, it remains unclear how it was determined whether the time limit is subjective or objective; that is, from which moment it can be considered that the submitter became aware of the committed violation and from which moment the six-month period began to run. The Judicial Council, in its decision, does not address this issue and simply assumes timeliness, while the Appeals Council at the Supreme Court, regarding the appeal in which one of the allegations concerns untimeliness, although it addresses the issue, does not determine at all from which moment it is considered that the submitter of the request became aware of the committed violation. Namely, it is not at all clear whether the moment of awareness is considered to be the date of submission of the report from the Ministry of Justice on 21.02.2018, or the report of the Commission for Verification of Allegations, formed by the Judicial Council, which was submitted on 18.12.2018, or perhaps the moment of the supplementation of the Commission's report in a changed composition. Depending on the answer to these dilemmas, it can be determined whether the request was timely or not from the aspect of the subjective deadline. Regarding the objective deadline, given that the violations were committed during 2016, some of the violations for which Judge V.P. is charged are definitely time-barred since the request was filed three years after their commission. If it can be assumed that the submitter of the request is a member of the Judicial Council, then only the subjective deadline is relevant. In any case, with this way of proceeding, the Judicial Council leaves a wide space for doubt regarding the timeliness of the request.

Question of (Non-)Competence in Deciding on Temporary Removal from Judicial Function

The final weakness of the Judicial Council's decision concerns the issue of legal grounds and the competence of the Judicial Council to temporarily remove the judge from judicial function. Specifically, under Article 68, paragraph 4 of the Law on the Judicial Council, the Judicial Council, deciding based on the report of the Commission of Rapporteurs, may temporarily remove the judge from performing judicial duties in accordance with the Law on Courts. In the Law on Courts, Article 67, paragraph 2 regulates that a judge may be removed from performing judicial duties when proceedings for determining accountability are initiated under the law and when there are justified reasons for removal from duty established by law. It is particularly interesting to note that the Judicial Council, as well as the Appeals Council, in their decisions, exclusively reference the Law on Courts while the relevant legal provision from the Law on the Judicial Council, which is the most pertinent in the given case, is completely omitted. Based on the legal framework set forth in this manner, there is no doubt that the Judicial Council can decide on the temporary removal of a judge only when deliberating on the Report of the Commission of Rapporteurs, but not in relation to the Notification on Established Factual Situation by the Commission of Rapporteurs, as was the case in the proceedings for determining the accountability of Judge V.P. To make this decision even more problematic, the Notification of the Commission of Rapporteurs is typically

submitted at an early stage of the proceedings and constitutes a preliminary determination. Furthermore, no appeal was permitted against the decision to remove the judge from judicial function. As such an option is not provided by law, generally in such cases, the competent body would be the administrative judiciary through an administrative dispute procedure. In this manner, a substantial procedural violation was committed, which the Appeals Council evidently overlooked.

Substantive Aspects of the Decision of the Judicial Council

Insufficient Reasoning in the Decision of the Judicial Council Regarding Decisive Facts and Fulfillment of Legal Conditions and Reasons for Dismissing the Judge

As stated in the operative part of the decision of the Judicial Council, Judge V. P. was dismissed for unprofessional and negligent performance of the function of court president pursuant to Article 74, paragraph 1, item 2 in conjunction with Article 79, paragraph 1, items 1 and 4 of the Law on Courts. Specifically, the dismissal was due to exceeding and violating legal authorizations and failing to apply provisions related to the management and distribution of court cases. From a substantive perspective, the decision of the Judicial Council is primarily characterized by insufficient reasoning regarding the legal conditions and reasons for the judge's dismissal, as well as insufficient explanation of the possibility of dismissing a judge for violations committed in the capacity of court president.

According to the Law on Courts, a judge is dismissed from judicial office if the following conditions are cumulatively met: 1) A serious disciplinary violation has been committed, rendering the judge unfit for judicial office, i.e., unprofessional and negligent performance of judicial duties; 2) The violation was committed intentionally or through obvious negligence attributable to the judge without justified reasons; and 3) The violation caused serious consequences (Article 74, paragraphs 1 and 3 of the Law on Courts). The legal grounds for unprofessional and negligent performance of judicial duties are defined in Article 76 of the Law on Courts, while the grounds for serious disciplinary violations are specified in Article 75 of the same law. On the other hand, the grounds for dismissing a court president are regulated by Article 79 of the Law on Courts. In this sense, the Law on Courts provides distinct grounds for dismissing a judge and a court president.

First, considering the provision of Article 74 of the Law on Courts, the problematic aspect in rendering the decision in the specific case of determining judicial accountability lies in the fact that the Judicial Council does not mention, analyse, or establish the conditions that the Law on Courts requires to be cumulatively fulfilled for a judge to be dismissed. Namely, the decision merely states that the judge is dismissed from performing judicial functions by citing the article of the Law on Courts relied upon by the Judicial Council, without delving into its analysis, while at the same time failing to specify a concrete basis or violation that constitutes unprofessional and negligent performance of judicial duties under Article 76 of the Law on Courts.

In our opinion, this constitutes a major oversight in making decisions of this kind. Every decision to dismiss a judge must necessarily establish several elements: the existence of a serious disciplinary violation, i.e., negligent and unprofessional conduct; the violation must have been committed intentionally or through obvious negligence attributable to the judge without justified reasons; and the violation must have caused serious consequences.

It has been pointed out on multiple occasions that insisting on the fulfilment and establishment of all the prerequisites set forth in Article 74 of the Law on Courts effectively serves as a safeguard to prevent judges from being easily subjected to dismissal. The Judicial Council is obliged, during deliberations and decision-making regarding the determination of judicial accountability, to analyse and establish all individual aspects concerning the legal conditions for dismissal. Only if all these conditions are cumulatively met can a decision for dismissal be made. In this context, the Judicial Council is obliged to provide a convincing explanation that leaves no doubt about the correctness of their decision.

In a procedure such as the procedure for determining judicial accountability, which carries a specific weight regarding the nature of the matter being decided and the consequences arising from it, we believe that clearly established legal rules must be strictly adhered to, leaving no room for ambiguities or a superficial approach in decision-making.

However, despite these clear standards and principles, the Judicial Council dedicates only a single paragraph in its reasoning to legal argumentation and the application of legal grounds to the factual circumstances, which cannot be considered an analysis, as the cumulative conditions for dismissing Judge V. P. are not clearly established. Excessive focus is placed on determining the factual circumstances, even though questions remain regarding whether the decisions on case distribution were notarized or falsified, while little attention is given to the legal analysis. Specifically, the Judicial Council refers to intent, even though the relevant provision refers to intention or apparent negligence. Furthermore, the Judicial Council identifies the violation of parties' rights to equal access in the distributed cases as harmful consequences, yet it does not analyse whether this directly resulted from the violations committed by the court president or whether these rights could have been protected within the regular judiciary and why this was not done.

Second, the Judicial Council does not address the open dilemma regarding whether a judge can be dismissed for violations committed while performing the function of court president. It is true that the Law on Courts makes a clear distinction between dismissing a judge from judicial office and from the function of court president, regulating them in separate articles of the law and providing different grounds. However, this does not necessarily indicate a strict separation of the functions, especially considering that the court president can only be a judge and, at the same time, may act as a judge in specific court cases while performing the function of court president.

In this regard, there is no doubt that a judge may be dismissed from judicial office for violations committed as court president. However, this raises the dilemma of whether, when a judge is dismissed for violations committed as court president, only the grounds from Article 79 of the Law on Courts should be considered, or whether their actions for which they are held accountable while performing the function of court president should also be classified as violations within the meaning of Articles 75 and 76 of the Law on Courts. We hold the position that any violation legally prescribed and for which a judge may be held accountable can also be a basis for liability of the court president, depending on the actions they took while performing that function. In this regard, the conduct of Judge V. P., as court president, should also have been classified under Article 76 of the Law on Courts, i.e., as unprofessional and negligent performance of judicial functions as court president, if he is dismissed for those violations, taking into account the specific circumstances of the case. This would logically and solidly justify the Judicial Council's reference to Article 74, paragraph 1, item 2, knowing that Article 74 regulates issues related to the dismissal of a judge, but not of a court president. Such a reference could only be justified if the intention of the Judicial Council was to provide a basis for applying the cumulative conditions even in cases concerning the determination of responsibility of a court president, something it fundamentally did not do. At the same time, the argument that a judge cannot be held accountable for a violation committed while performing the function of court president would effectively allow for the potential avoidance of liability for such types of violations, especially considering the deadlines for filing requests and the proceedings before the Judicial Council in light of the mandate of the court president, particularly if the violation was committed shortly before the end of the mandate. On the other hand, it must be taken into account that court presidents often act as trial judges in specific cases, and if a violation renders them unfit to perform one function, then this should be appropriately legally based and justified in accordance with the specific circumstances of the case.

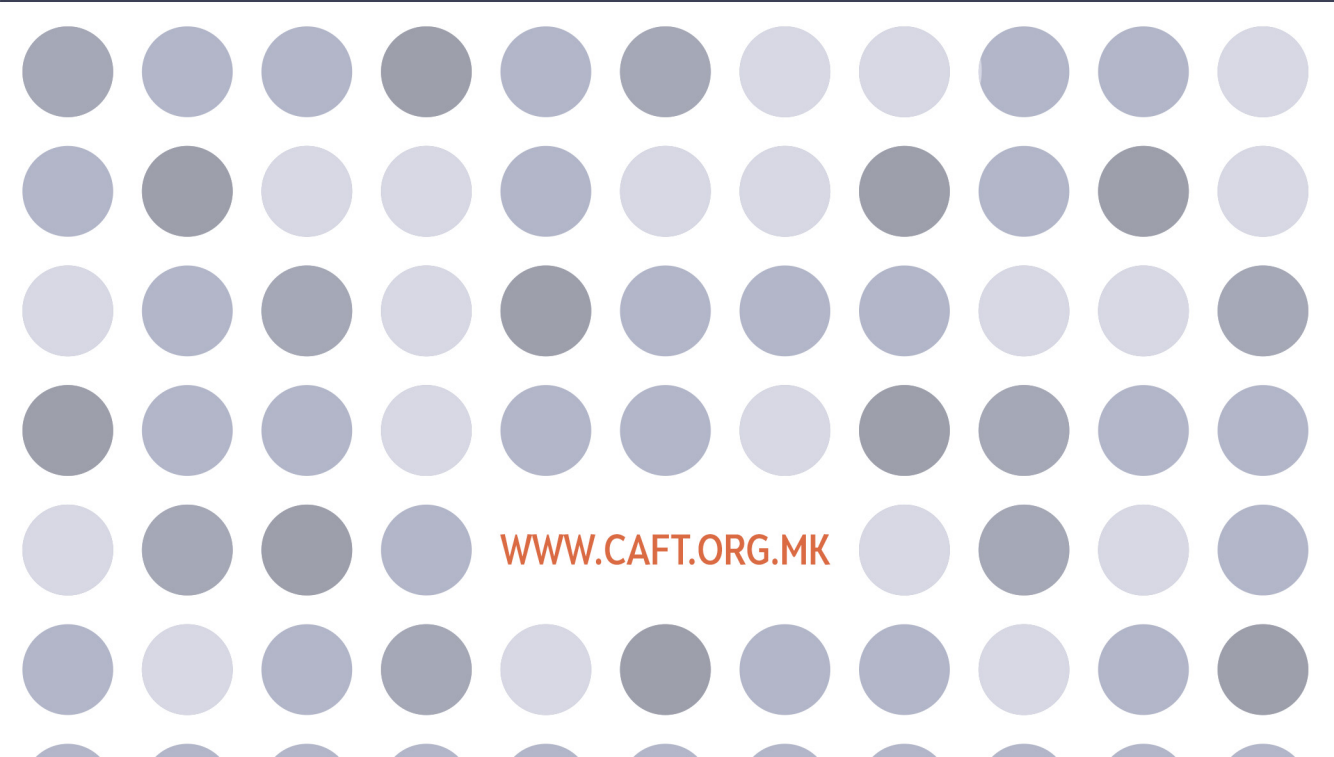
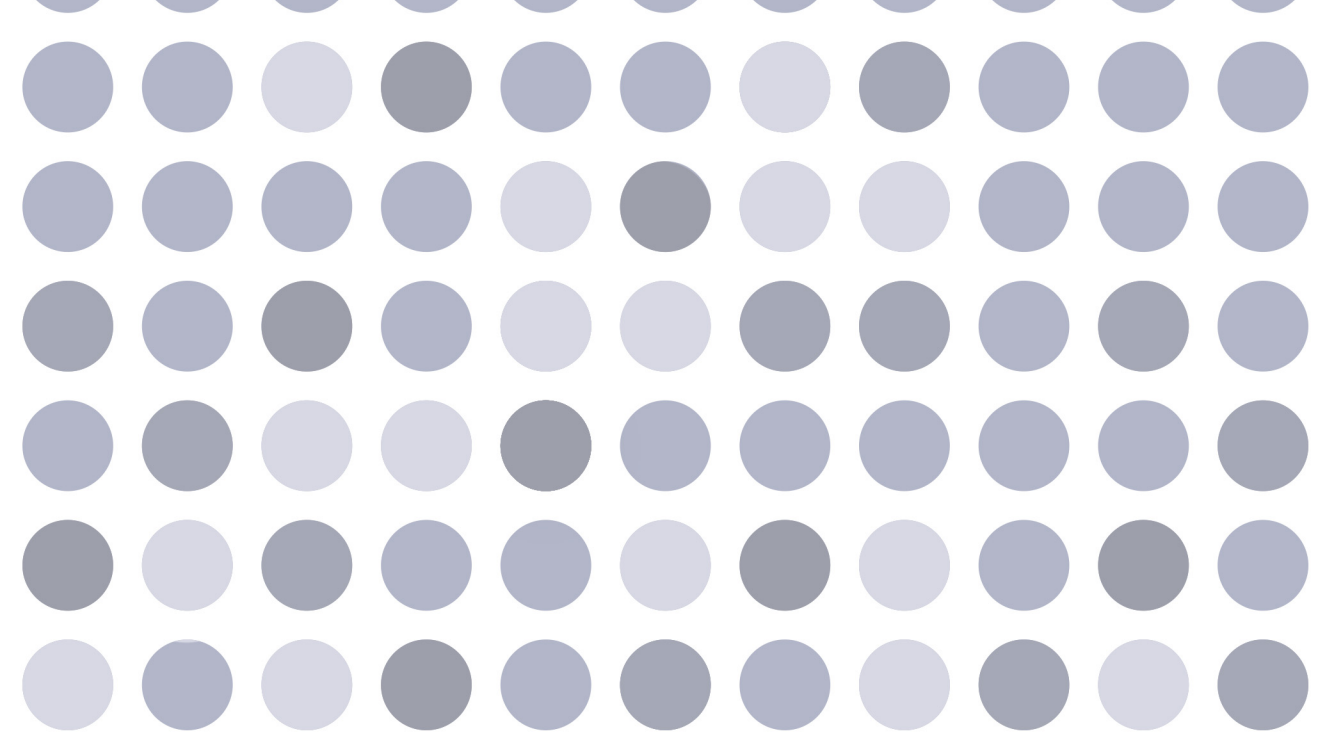
In the specific decision of the Judicial Council for the dismissal of Judge V. P., there is no reference whatsoever to Article 76 of the Law on Courts, which regulates the grounds for unprofessional and negligent performance of judicial functions, nor is there any correlation of violations committed in the capacity of court president with unprofessional and negligent performance of judicial functions. On the other hand, the Appeals Council, although it acted and decided on a specific appeal regarding this issue, has nonetheless failed to provide a proper reasoning or arguments as to whether a judge can be dismissed for violations committed as court president. In fact, the impression is that neither the Judicial Council nor the Appeals Council even attempt to resolve this dilemma.

A specific aspect regarding the relationship between the criminal procedure and the procedure for determining judicial accountability

A specific aspect of the procedure for determining the accountability of Judge V. P. concerns the relationship between the criminal procedure and the procedure for determining the accountability of a judge or court president. International standards are generally not concise on this issue, but it is generally considered that in cases where a criminal procedure has been initiated, the procedure for determining accountability should be suspended or stayed. Within the domestic legal framework, this issue is not regulated at all. In this sense, the fact that both disciplinary proceedings (for dismissal) and criminal proceedings have been conducted against Judge V. P. may potentially pose a problem in terms of European human rights standards. Specifically, in its case law, the European Court of Human Rights in Strasbourg considers disciplinary proceedings with serious sanctions as criminal in nature for the purposes of the right to a fair trial protected by Article 6 of the European Convention on Human Rights and Protocol No. 7 to the Convention, as well as the prohibition of double jeopardy or punishment for the same offense. Therefore, it is recommended that the Council consult with the competent public prosecutor's office whenever it appears likely that criminal prosecution may be initiated against a judge subject to proceedings before the Judicial Council for the same act.

CONCLUSION

In the specific case, two decisions of the Judicial Council and the Appeals Council at the Supreme Court, as well as the judge's appeal against the decision of the Judicial Council, were analysed. As in other cases, there is a lack of information regarding the submitter of the request, the composition of the Commission of Rapporteurs, and data on the number of votes with which the Judicial Council adopted the decision to dismiss the judge from judicial office, which is a contentious issue, especially in terms of calculating the limitation periods pursuant to Article 61, paragraph 1 of the Law on the Judicial Council. Unfortunately, we continue to note sparse and abstract reasoning by the Judicial Council, which insufficiently supports the decision they adopted. Likewise, the same applies to the Appeals Council, which has not addressed some of the appeal allegations nor expressed its position on them. As in other cases, it is important to emphasize that the Judicial Council must provide clear and well-argued reasoning in its decisions, clearly establishing whether the cumulative conditions prescribed by the Law on Courts for adopting a decision to dismiss a judge from judicial office have been fulfilled.



WWW.CAFT.ORG.MK