

ABSTRACT

The history of the principle of judge's liability is connoted by a never-ending – political and social, rather than doctrinaire - debate, concerning its function, its field of application, its limits and its basis.

From the Aristotelic notion of *isonomy*, intended as the substantial equality between those who judge and those who are judged, that represented the foundation of modern conception of judicial liability, the legal/ideological progress moved to those jusnaturalistic philosophical tendencies that have affirmed the principle, transformed – through the centuries – in an undeniable dogma, of the sole disciplinary liability of the judge.

Therefore, professional liability and disciplinary liability are the “pure model” we necessarily have to move from to initiate the analysis of modern judicial liability.

Disciplinary liability's dogma, raised upon the fertile humus of German philosophical doctrines, in a political-historical context aimed to the creation of an absolute State, managed to spread throughout the other legal Systems.

The historical recognition cannot help but focus on the Italian system, examining the diachronic evolution of this institute from the Middle Ages to the dispute of the seventies/eighties, before the pertinent referendum.

Then, the statute n. 117/88, shaping a renewed discipline of this subject, contemplates the hypothesis of judge's liability (fraud; gross negligence; refusal of justice); it establishes the subjective field of application; regulates the procedure for compensation of damages towards the State and the reimbursement rights toward the judge, waiving the ordinary discipline of Aquilian liability, ex article 2043 c.c.

A primary role, in the latest reform concerning judge's civil liability, has been played by the intervention of European jurisprudence.

The Court of justice has deemed the Italian discipline contrary to the communitarian law, in connection both to the exclusion of compensability of the damages deriving from the interpretation of juridical norms-or from the evaluation of fact and evidences - and the prevision of State's liability only in regard to the cases implying the presence of fraud or gross negligence, in the hypothesis that stands a precise violation of communitarian law.

The legislator in 2015, in order to suit our system to the indication arrived from EU's Court of justice, has sorted out the discipline, renewing the “Vassalli Reform”.

Statute n. 18/2015 has introduced certain significant innovation, pushing itself even beyond factual prescriptions come from the Court of justice, to redesign and extend the boundaries of judges' liability.

Mostly because of those changes, statute n.117/118 – such modified by the aforementioned renewal – seems to be placed in contrast with our Constitution and certain prescription of European judges, for it sanctions an automatic and necessary – if not direct – liability of this institutional figure.

Moreover, the Judicial liability's topic tangles with the other forms of responsibility foreseen by our legal system for the judges.

Furthermore, the comparative analysis allows the possibility of realizing, about the discipline of judges' civil liability, the similarities and differences in the midst of the various European legal systems.

In conclusion, also due to the aforesaid comparative study, the system of judge's civil liability doesn't turn out, with the needed limitations depending on the peculiarity of this essential mansion, to be a mere and empty privilege, but an unavoidable safeguard of magistrature's independence and – more than everything else – of citizens' equality in front of the Law.