

Ministerial Responsibility: Regulations and Practical Issues in the Republic of Serbia

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Given the specific nature of contemporary ministerial functions, the institute of ministerial responsibility has to be regulated by enacting special legislation on this issue. However, ministerial responsibility is a complex legal institute whose regulation requires a substantially different approach depending on the type of ministerial responsibility at issue. A well-regulated system of ministerial responsibility is very important for every state. It is also an essential legal presumption for a successful exercise of the ministerial office. In that context, the author points out the diverse option available in regulating the institute of ministerial responsibilities, and specifically explores some practical issues that might have an impact on the regulation of ministerial responsibility.

Key words: responsibility, minister, ministerial responsibility, political responsibility, criminal liability, civil liability

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1. Introduction

One of the fundamental principles in modern states is the responsibility of the state government highest officials, which is established to ensure a proper exercise of state powers and reduce a risk of their abuse. Yet, in comparison to the responsibility of all other state government officials, the responsibility of ministers emerges as a special legal category. Taking into account that the political and legal functions of state authorities are directly exercised through the ministerial function, ministerial responsibility must inevitably permeate both spheres, the sphere of politics and the sphere of law. Ministerial responsibility implies political responsibility for politically opportune actions as well as legal liability for specific types of unlawful conduct. As it is often difficult to draw a clear demarcation line between politics and law, the issue of providing a proper normative framework governing the scope of ministerial responsibility is quite a challenging task.

The complex nature and the social importance of the ministerial function impose the need for instituting a special legal regime of responsibility for these public officials. This special legal regime is embodied in a number of specific legal rules governing the subject matter of responsibility, the competent state authorities for establishing this type of responsibility, the procedure for establishing this type of responsibility and the sanctions that may be imposed on ministers for breach of ministerial duty. Apparently, each of these issues must be regulated in a substantially different manner in terms of ministers' political and legal responsibility. Moreover, different states have different instruments for regulating each of these issues regarding both political and legal forms of ministerial responsibility. For all these reasons, there is an array of various legal instruments for resolving the ministerial responsibility issues. Regardless of diverse solutions, ministerial responsibility is generally regarded as a highly specific and complex legal institute constituted of different kinds of responsibilities which are regulated by various legal rules.

Ministerial responsibility has always been a subject matter of special interest not only among the legal and political scholars but also among the general public. However, ministerial responsibility issues were seldom raised in the past. Nowadays, it is relatively common to raise ministerial responsibility issues, which may involve not only the ministers' political responsibility but also their criminal liability (as the most consequential type of legal responsibility). Only in the last couple of years, numerous European states (such as: Greece, Great Britain, France, Italy, Austria, Hungary, Romania, Bulgaria, Slovenia, Macedonia, Bosnia and Herzegovina, Croatia, Serbia, etc.) have recorded ample cases of raising ministerial responsibility issues,

which had not occurred in prior decades. Obviously, the years of recession and economic crisis substantially shifted the boundaries of moral values; in conjunction with the dynamic development of mass media and the legal provisions ensuring more transparent administrative action in terms of access to information on the administration activities; this shift had a considerable impact on the frequency of instituting proceedings dealing with ministers' political responsibility as well as with their criminal liability.

Consequently, a more frequent occurrence of ministerial responsibility issues in practice has given rise to the issue of providing adequate legal regulation of this institution. A well-regulated system of ministerial responsibility is a legal presumption for a successful exercise of a ministerial office. Thus, in order to explore how the institution of ministerial responsibility operates today, we will first provide an overview of diverse instruments for regulating this institute in different European states; then, we will point out to some practical issues which have proven to be important for the regulation of this institute, primarily relying on the prior experience of its operation in the legal system of the Republic of Serbia in the past decades.

2. Methods of Regulating Ministerial Responsibility

Ministerial responsibility is a complex legal institute comprising a number of diverse institutes. In legal theory, ministerial responsibility is classified into different types of responsibility: the ministers' parliamentary responsibility, legal liability before courts, public law and private law responsibility, constitutional responsibility, statutory responsibility, etc (Duguit, 1928: 846-848; Darcy, 1996: 15; Paillet, 1996: 10; Ardant, 1998: 513; Vedel-Delvolvé, 1992: 683-689; Waline, 1948: 5; Guillaume-Hofnung, 1987: 97). However, the legal nature of ministerial responsibility is the issue of utmost importance for considering methods of regulating ministerial responsibility; given its legal nature, ministerial responsibility is traditionally classified into: political responsibility, criminal liability and civil liability.¹ The diverse legal nature of ministerial responsibility requires a

¹ This kind of classification is accepted by a vast majority of authors. See: Duguit, 1918: 460; Esmein, 1899: II –572; Burdeau et al, 1997:116; Pactet, 1998: 145; Pitamic, 1927: 383; Krbek, 1940: 26; Jovanović, 1990: 575; Jovičić, 1969a: 8-15; Marković, 2006: 422; Davitkovski et al, 2012: 205.

differentiated approach to the regulation of each of the aforementioned types of ministerial responsibilities (Lončar, 2000-2001: 105-116).

2.1. Political Ministerial Responsibility

By its legal nature, political ministerial responsibility is essentially different from criminal and civil liability. When regulating these types of responsibilities, all essential elements of the legal regime (the subject matter of responsibility, the body before which the responsibility is established, the procedure for establishing this type of responsibility, and the sanctions which may be imposed on ministers) must be regulated in a substantially different manner in comparison to the regulation of criminal liability and civil liability, which are primarily legal forms of responsibility.

The subject matter of political responsibility is establishing whether the ministers' actions are politically opportune. It implies such exercise of the rights and duties of the ministerial office that is not in accordance with the general political standing of the state authority which has vested the minister with the power to run the ministerial office either by election or by appointment. In contrast, criminal liability and civil liability are legal forms of responsibility which necessarily assume a violation of a disposition of a legal norm, i.e. some unlawful action of ministers (under the criminal or civil legislation). As such, the subject matter of political responsibility has a much wider scope than the legal types of responsibility. Namely, ministers may be considered politically responsible not only for violating the dispositions of legal norms (in which case the political and the legal responsibility coincide in terms of the subject matter of political responsibility) but also for any ministerial action which is inconsistent with the political trust they had been vested with. The decision on this issue rests with the state authority which has elected or appointed them to office. Given the nature of their subject matter, these actions may be substantially different. Most frequently, the actions at issue are related to politically inopportune performance of the ministerial duties. However, the grounds for political responsibility may also be some other actions/acts which are unrelated to the exercise of the ministerial office. Sometimes, it may include actions which cannot be qualified as unlawful (illegal or inopportune)².

² As one of the basic characteristics of political responsibility, Leon Duguit emphasizes the fact that "political responsibility does not imply the commission of a delict (a wrongful act)" (Duguit, 1928: 848).

Thus, the subject matter of minister's political responsibility is closely associated with assessment of the state authority which has vested the minister with the exercise of the ministerial office. The state authority has to decide whether the specific person is still trustworthy, i.e. whether the person is still eligible to hold and exercise the ministerial office. Therefore, the subject matter of political responsibility may not be precisely regulated in advance, which is the case with primarily legal types of responsibility.³ Conditioned with such subject matter of responsibility, the other relevant elements of legal regime make this type of responsibility specific as compared to the primarily legal types of ministerial responsibility, for which reason they must be taken into account in the course of regulating this issue.

In this type of responsibility, ministers shall always be held accountable before one of the highest state authorities (parliament, head of state, or head of government) due to the fact that only one body of authority which holds such a position in the state government organisation can be qualified to assess the political opportuneness of minister's actions. This decision on the authority which will perform this task in each individual case depends always on the specific system of government (parliamentary, presidential or congressional) or on the form of government (republic or monarchy). Yet, the basic rule underlying the political responsibility is that each minister is held accountable before the same state authority which has elected or appointed the minister to office. The act of delegating the office to the minister is an expression of political trust vested in a specific person, for which reason the decision on the minister's eligibility for office may only be entrusted to the same authority which has elected or appointed the person to the specific ministerial office.

The procedure for establishing this type of ministerial responsibility is quite specific, and it has to be taken into account in the course of regulating this issue. Due to the presence of political factors in the subject matter of this responsibility (such as the assessment of minister's politically opportune actions in the course of exercising the ministerial duty), the procedure for establishing this type of responsibility necessarily requires certain flexibility. As the subject matter of this type of responsibility has never been precisely regulated, the procedure for establishing this responsibility cannot be fully regulated by the law, at least not to the extent to

³ According to Šefko Kurtović, "the area of political responsibility is a relapse of morality in politics, which implies the part of political morality that is still not considered to be so important to be transfused into law." (Kurtović, 1977: 306).

which it is regulated in legal types of responsibility.⁴ However, even when the procedure for exercising political ministerial responsibility is largely regulated by the law (which is, for example, the case with ministers' parliamentary responsibility), the procedural and legal rules related to this type of responsibility substantially differ from the procedural and legal norms pertaining to legal forms of responsibility. Even though the political ministerial responsibility is prescribed by legal acts of the highest legal power (such as the constitution, acts of parliament or government), the legal norms that regulate the procedure for establishing this responsibility are usually of an internal character, i.e. they are to be found in by-laws (such as: Parliamentary Rules of Procedure and Government Rules of Procedure) which are aimed at regulating the operative proceedings of the authority which is in charge of establishing this type of ministerial responsibility. Additionally, the practice of the competent authority before which the minister is held accountable is also highly important in the process of establishing this type of ministerial responsibility, whereby the procedure for establishing responsibility may sometimes be based on common law or may depend on the opinion of the representatives of the political majority in the authority before which this type of responsibility is established. As opposed to the political responsibility, all the procedural steps are always explicitly regulated in legal types of responsibility. Moreover, their violation makes the procedure for establishing ministerial responsibility unlawful; it gives rise to applying relevant legal remedies, which are never used in case of ministers' political responsibility.

Finally, the sanction pertaining to ministers' political responsibility is also very specific. Namely, the exercise of the ministerial function is an expression of political trust vested in a particular person. In case of establishing an inopportune action in exercising the ministerial duty, the focal point of

⁴ Depending on whether the procedure for establishing responsibility has been regulated, ministers' political responsibility is often qualified as non-legal and legal. Thus, the non-legal political responsibility is completely beyond the legal sphere (such as: social and political responsibility, party responsibility, responsibility before the general public, etc). Also, the legal political responsibility is predominantly regulated by the law (such as: parliamentary responsibility, responsibility before the head of the executive government, etc). The study of non-legal forms of political responsibility was widespread in the former Yugoslav legal theory in the 70s and 80s. Such differentiation of political responsibility was initiated by Miodrag Jovičić (1969b: 195) and it was later accepted by many other authors, such as: Popović (1980: 56-60), Radulović (1982: 45-55), Kristan (1983: 381), Krijan (1975: 50), Strobl (1969: 382), Grad (1994: 81-84), Davitkovski (1994: 384-393), Ristovska (1996-98: 733). For more information on the complexity of regulating political responsibility, see: Košutić, 1970.

sanctioning is the motion of no confidence. Basically, it only results in the termination of the ministerial office.⁵ On the other hand, in legal forms of responsibility, sanctions always have a repressive or restitutive character. As such, they are aimed either at a natural person or the property of the person performing ministerial duty.

In case of political responsibility of ministers, the actual degree and the manner of its regulation may be inconsequential. Even in cases where it is only partially regulated, this type of ministerial responsibility functions more or less efficiently in all legal systems. There are some issues of non-legal nature which may be more significant for the efficiency of establishing political responsibility of ministers than the manner of its regulation; the most prominent among these issues are: the form and type of the established political system in a specific state; the actual relations between political powers in the given political system; the number of political parties participating in the government; the degree of party discipline; the development of mass media; the influence of the public opinion on political life, etc (Chevallier, 1996: 180; Carcassonne, 2003; Dupuis et al, 2010: 80).

2.2. Criminal Responsibility of Ministers

Unlike political responsibility, which should primarily ensure the ministers' politically opportune conduct and which is set out in broad and flexible terms, the institute of criminal responsibility of ministers is aimed at establishing clear and precise legality framework. This framework would provide sufficient freedom for the ministers to exercise their official duties, limited only by the assessment of their politically opportune performance. In case they exceed these boundaries, they may face serious legal sanctions, such as imprisonment, fine, and even death penalty. Therefore, criminal ministerial responsibility and the sanctions stemming thereof may be by far the most efficient legal instrument which may be used against all ministers whose actions prove to be inconsistent with the legal norms and exceed the boundaries of lawful activities.

⁵ According to Leon Duguit, the essence of this type of responsibility lies in the fact that "the decision to impose a sanction is not necessarily governed by the need to establish that a ministry has violated a norm or committed a culpable act that a ministry " (Duguit, 1918: 561).

In case of establishing political responsibility, a minister who loses political trust is basically discharged from the office and replaced by another person who is more likely to implement the official standpoints of the state authority that has vested this power in them in a more efficient manner. In case of establishing criminal ministerial responsibility, its preventive effect takes priority. The preventive effect is reflected in the fact that ministers are always specifically informed in advance and required to fully acknowledge the boundaries of legality which they must observe during the exercise of their office. However, if the preventive effect does not prove to suffice and a minister, nonetheless, is found to be involved in some unlawful activity, the second aim of criminal responsibility comes into play; this aim is reflected in its repressive effect, which is expressed through criminal law sanction imposed on the minister. In such a case, the purpose of the imposed criminal sanction is retribution, which implies establishing equivalence between a specific social value protected by a criminal law provision (which has been violated by the minister's illicit action) and the sanction prescribed for such conduct.

Given the interrelatedness between the principles of opportuneness and legality, criminal ministerial responsibility necessarily arises from and supplements the political responsibility. Should there be no opportunity to raise an issue and instigate criminal responsibility proceedings, ministers could be prone to commit the most serious violations without an appropriate punishment. In case ministers were only subject to political responsibility, their only punishment would be a discharge from the office. Their ministerial function may be reinstated after the new elections or the government reconstruction, or even within the composition of the same government. Thus, the entire idea of ministerial responsibility, as a precondition for a successful exercise of the ministerial office, would be fully compromised.⁶

In addition, criminal ministerial responsibility may also have certain corrective role as compared to the political ministerial responsibility. Namely, this type of responsibility can sometimes serve as a unique substitute for the political responsibility. This may occur in those legal systems which,

⁶ In legal literature, the significance of introducing the criminal ministerial responsibility is very vividly depicted by Benjamin Constant at the beginning of the 19th century, when this type of ministerial responsibility gradually started being introduced into from the Anglo-Saxon (common-law) system into the legal system of the states governed by the European-Continental (statutory law) system. Constant's statement on this issue is still pertinent today: "Ministers may often be denounced; occasionally they may be accused but they are rarely convicted and almost never punished" (Constant, 1883: 88).

given the specific system of government (such as the presidential system), do not envisage any political responsibility of ministers as being accountable to parliament but only their criminal responsibility. In such a case, the criminal ministerial responsibility before the parliament is embodied in a special institute of “impeachment”. Due to specific trial proceedings and awarded sanctions which have a political and disciplinary character rather than criminal character (such as: termination of office, loss of competency for public service, etc.), the impeachment process may be quite successfully used in practice as a substitute for the lack of real political responsibility.⁷

Given the great significance of the issue of legality of ministers’ performance for a proper exercise of administrative function of state government, the legislations of contemporary states pay special attention to the criminal ministerial responsibility. Apart from the fact that ministers are subject to the criminal law legal regime which applies both to all citizens and to all officials performing their official duties, there is an increasing tendency of subjecting the ministers to special criminal liability regime due to the specific position and nature of the activities they perform. The distinctive features of this special criminal law regime are: special types of criminal offences (the so-called ministerial criminal offences), special bodies responsible for raising charges and initiating criminal proceedings, a slightly specific trial procedure, and special sanctions which are relatively more stringent (both in terms of their type and the imposed measure) as compared to the general criminal law sanctions (Ardant, 1998: 513; Darcy, 1996: 10; Mathieu, 1990; Viret, 1995; Gartner, 1994; Stefanović, 1936: 26-31; Havas, 2012.). The purpose of excluding the ministers from the general criminal liability regime and subjecting them to this special criminal liability regime is primarily reflected in the political character of the function they perform and, consequently, in the significance that criminal liability of the current or former minister may have on the political life of a state. Therefore, the legal regime of special criminal liability comprises a series of elements of both legal and political nature. They are mainly related to the subject matter of responsibility and reflected in form of specific criminal offences pertaining to the ministerial office (such as: treason or high treason of the state or the ruler; violation of the constitutional order; endangering state security; limiting the citizens’ political rights, etc.); they may also be

⁷ For this reason, rather than using the term “impeachment” referring to the process of establishing ministerial responsibility before parliament in the presidential system of government, some authors use the term “the disqualification procedure”. See: Bačić, 1975: 178; Kurtović, 1977: 177-201.

related to the state authorities responsible for raising charges (such as: Parliament, Head of State) and instituting the trial procedure (such as: the upper chamber of parliament, a special state court, a constitutional court) as their composition necessarily includes political representatives as well as lawyers/legal professionals. In case of being tried under the special criminal law regime, ministers are subject to a special type of mixed (legal and political) responsibility. In such a case, as opposed to the case of establishing political responsibility, legal elements mainly prevail, for which reason the criminal responsibility of ministers is usually regulated by enacting special legislation governing their ministerial responsibility.

Being subject to this special criminal liability, ministers may find themselves in a substantially more aggravating position in comparison to other ministerial personnel working in their departments. However, the more stringent criminal liability regime, that applies to ministers, does not concurrently constitute a breach of the principle of equality of citizens before the law. On the contrary, it is fully proportionate to the nature of the ministerial functions and activities performed by ministers. Namely, the ministerial function includes special powers which are not vested in any other person in the state administration. Therefore, it is quite natural that the ones who have more authorities have to bear more responsibility for their actions. However, the purpose of establishing a special criminal liability regime for ministers is not only reflected in the need to protect the social community from the ministers' illicit activities but also in the need to provide for the protection of ministers themselves. Namely, the role of this special criminal liability regime is to protect ministers from politically-biased criminal accusations they are necessarily exposed to, for the mere fact of being the highest public officials in the administrative departments. The criminal prosecution of public officials performing ministerial functions is frequently motivated by political reasons; it usually takes place in the course of their ministerial office for the purpose of their political discreditation, but it may also occur after they leave the office for the purposes of political revanchism. For all these reasons, the special criminal liability regime has to be explicitly regulated for the purpose of providing for the ministers' legal protection.

2.3. Civil Liability of Ministers

The civil liability of ministers implies their responsibility for material damage caused by the exercise of their ministerial office and it implies the

obligation to remunerate the injured party. This type of ministerial responsibility essentially implies the application of one of the fundamental moral and social norms, which has gradually developed one of the most important legal rules: anyone who causes damage to another shall be held liable for incurring the damage (Guillaume-Hafnung, 1987: 98).

Nowadays, ministers have been vested with such broad authorities that the irresponsible performance of their ministerial duties may incur invaluable damage both to the state and individuals. It is, therefore, quite justifiable that ministers who are taking office are required to give a sworn statement pledging their political and physical integrity in the form of political and criminal responsibility; concurrently, their private property is (to some extent) a guarantee of a proper exercise of the public office that has been conferred upon them.

In that context, the ministers' civil liability is a necessary corrective to political and criminal ministerial responsibility. The entire system of ministerial responsibility would be incomplete without civil liability. Namely, a minister may always be held politically accountable for specific faults in exercising the ministerial office; in cases involving illegal activities which are qualified as criminal offences, a minister may also be held criminally liable. However, the arising issue is whether the sanctions stemming from these two types of responsibility (such as: revocation from office, a term of imprisonment or a fine) are sufficient guarantees for a proper exercise of the ministerial duty. Today, when there are ample opportunities for ministers to acquire huge financial gain by inadequate exercise of their ministerial office or to inflict huge material damage to the state or individuals, the act of revoking the minister from office or imposing a fine or a sentence of imprisonment (both of which are necessarily confined in terms of time and amount to be paid) cannot serve as a sufficient guarantee for a proper exercise of the ministerial office. Therefore, it is necessary to explicitly notify to ministers that the entire material gain obtained in such manner will be confiscated; moreover, if their ministerial action is subject to a civil proceeding, they are obliged to compensate for all material damage inflicted upon another subject to a civil court decision.

However, the legal nature of ministers' civil liability (which is the legal ground for its regulation) is not substantially different from the general civil liability regime applicable to all other citizens.⁸

⁸ Moreover, some French authors believe that the civil liability of ministers actually implies the application of Article 1382 of the French Civil Code, which was the first legal

For a long time, civil liability of ministers did not exist as a special type of responsibility because it did not differ from the general civil liability regime. Ministers were obliged to compensate the material damage incurred by the state or individuals whenever the damage was the consequence of their unlawful or inadequate activities in the course of exercising their ministerial duty. Besides, they were obliged to compensate the damage irrespective of the fact whether the damage had been caused by the commission of a specific activity they had not been allowed to undertake (a commissive wrongful act) or by the omission to undertake a specific action or by their inactivity in cases where they had been obliged to act (an ommissive wrongful act). For this type of responsibility, ministers have always been held accountable before civil courts or criminal courts (in case the material damage was the consequence of a criminal offence for which the minister had been convicted but which was subject to the rules of regular civil (litigation) procedure, where the court could only award a civil law sanction such as pecuniary damages and restitution. Eventually, the states started developing legislation regulating the responsibility of the state for the damage inflicted on their citizens by the unlawful or inadequate activities of the state authorities; this transition from the system of unaccountability of the state into the system of partial and complete responsibility of the state has gradually changed the legal nature of ministers' civil liability to some extent (Laubadère, 1963: 120; Darcy, 1996: 15-26; Guettier, 1996: 44; Arandelović, 1912: 28-37; Debbasch, Colin, 2004, 515; Braibant, Stirn, 2002: 320.). On one hand, these two types of responsibility do not substantially differ in terms of the subject matter of responsibility, the body in charge of instituting trial proceedings, the court procedure and sanctions; on the other hand, the ministers' civil liability started being significantly different from the general civil liability after introducing the principle of subsidiary state responsibility and, subsequently, the principle of indirect state responsibility.

In contemporary legal systems, ministers' civil liability is only limited to those wrongful acts involving a certain degree of culpability, including intent (*dolus*) or recklessness (*culpa lata*). In all other cases, a wrongful act committed by ministers is always treated as a *faute de service* (a service-related fault) which is not charged upon the minister who has undertaken it but transferred to the state which has vested the minister with the power

document that stipulated the fundamental rule of civil liability: "any loss caused to a person through the behaviour of another must be repaired by the person whose fault it was that the loss occurred". See in more details: Esmein, 1899: 635; Darcy, 1996: 13; Ardant, 1998: 513; Debbasch, Colin, 2004: 500; Gaudemet, 2010: 155.

to perform those functions in the name of and on behalf of the state. By introducing a direct state responsibility into this type of ministerial responsibility, the contemporary legislations have created a necessary legal presumption for the ministers to freely perform the function they have been entrusted with, without fear of facing unpredictable legal consequences of the ample activities which they are obliged to undertake but whose ultimate effects may be unforeseeable as they are beyond their sphere of influence.

Due to the introduction of the principle of compensation for damage, the legal regime for establishing ministers' civil liability today is considerably different from general civil liability regime but it is not significantly different from the civil liability of other personnel in the state administration. Today, ministers' civil liability does not essentially differ from the legal regime for establishing civil liability of other public servants in administration (Dupuis et al, 2010: 598; Laubadere et al, 1996: 920; Waline, 2010, 455.).

For this reason, there are no special regulations on ministers' civil liability. Generally speaking, ministers' civil liability is very seldom included in the framework of legal provisions governing the ministerial responsibility. The constitutional provisions and special regulations on ministerial responsibility most frequently include only political ministerial responsibility and their criminal responsibility. In special regulations on ministerial responsibility, civil liability most frequently stems from the criminal offence committed by a minister. However, there are no special provisions that would discern this legal regime as substantially distinctive, for which reason the civil liability of ministers is established by applying the regulations pertaining to the general civil liability of public servants (Waline, 1948; Krbek, 1954; Konstantinović, 1952; Denković, 1961; Ivančević, 1964; Dimitrijević, 1981; Đoković, 1989; Labadère et al, 1996: 889-892; Chapus, 2001: 1227; Davitkovski et al, 2012: 225-228.).

3. Ministerial Responsibility in Serbia

Ministerial responsibility in Serbia has existed for almost two centuries. This legal institution in Serbia was found in the mid 19th century when it was regulated upon the model of the leading European states of the time. However, it has evolved to such an extent that it has essentially changed its character. Considering the legal regime and the manner of exercising the ministerial responsibility, there are basically two distinct periods in Serbia: the period before World War II and the period after World War II.

3.1. Ministerial Responsibility before World War II

In the period before World War II, the Serbian legislation included all three types of ministerial responsibility, which had a different practical significance and were regulated in a different manner.

The political ministerial responsibility was the basic form of ministerial responsibility. Considering the fact that the parliamentary system was the basic system of government during the entire period and that monarchy was the form of government in Serbia of that time, political ministerial responsibility was one of the most important principles of government organization. The parliamentary monarchy would not have been fully operative without the mechanisms of political ministerial responsibility. In that period, the manner and the instruments for the exercise of political ministerial responsibility were subject to insignificant changes, primarily depending on the constitutional changes involving the positions of the monarch and the parliament. However, regardless of numerous constitutional revisions which marked this period of the constitutional development of Serbia, the political ministerial responsibility was always used for resolving political conflicts between the monarch and the national assembly, as two branches of state government. The dynamics of political life in this period, where the monarch always had a more or less influential role, had a significant impact on the frequency in instituting proceedings for establishing this type of ministerial responsibility.

However, the basic characteristic of ministerial responsibility in this period was not related to the manner of exercising the political ministerial responsibility but to the fact that there was a special criminal law regime for establishing the ministers' criminal liability (Lončar, 2004: 1089-1104), which was first introduced in Serbia by the Constitution of 1869 (Articles 100-104) and the special Law on Ministerial Responsibility of 21 October 1870.⁹ Despite relatively frequent constitutional changes, this special criminal law regime on ministerial responsibility remained an essential characteristic of the Serbian legal system until World War II. This special legislation on the criminal liability was part of all constitutional texts writ-

⁹ Apart from the states with the Anglo-Saxon legal system where this type of ministerial responsibility had emerged much earlier, the special legal regime on criminal ministerial responsibility was envisaged in the legislations of the following European countries: Sweden (the 1809 Constitution), France (the 1814 Constitution), Norway (the 1814 Constitution), Portugal (the 1826 Constitution), Belgium (the 1831 Constitution), Italy (the 1848 Constitution), Denmark (the 1849 Constitution), Greece (the 1864 Constitution) and Romania (the 1866 Constitution).

ten before the First World War, not only in the Kingdom of Serbia (the 1888 Constitution, Articles 136-140; the 1901 Constitution, Articles 78-80; and the 1903 Constitution, Articles 135-139) but also in the Kingdom of Serbs, Croats and Slovenes (the 1921 Constitution, Articles 18, 50, 54 and 91-93) and in the Kingdom of Yugoslavia (the 1931 Constitution, Articles 78-80). Special laws on ministerial responsibility, largely dealing with criminal ministerial responsibility, were passed on three different occasions: the Law on Ministerial Responsibility of 21 October 1870, also the Law on Ministerial Responsibility of 30 January 1891, and the Law on Ministerial Responsibility of 20 June 1922.

In the period preceding World War II, there was a special criminal law regime on criminal ministerial responsibility in Serbia which was actually used in practice on several occasions. The most famous recorded cases concerning the criminal responsibility of ministers were the cases involving: Jovan Belimarković, Minister of Defence, 1873; Kosta Protić, Minister of Defence, 1875; the entire government of President Aćim Čumić, 1876; Nastas Petrović, Minister of the Interior, 1911, etc. However, all these cases were actually terminated at the stage of raising charges against ministers before the National Assembly, which did not accept any of those proposals to initiate criminal proceedings against the ministers. There was only one case where the charges were actually raised against the entire government and its President Jovan Avakumović in 1893 and where the criminal procedure for establishing ministers' criminal liability reached the trial phase. It was the first and the only case in the entire Serbian history that the State Court was established as a court of special jurisdiction which was to decide on the ministers' criminal liability. However, the criminal procedure for establishing the ministers' criminal liability was never completed because King Aleksandar Obrenović granted an official pardon to all the ministers before the court rendered the judgement (Kasanović, 1911: 200-206; Bodi, 1911: 303-310; Stefanovic, 1936; Vulović, 1924: 626-629; Kostić, 1938; Marković, 1912; Jovanović, 1939: 484-488.).

Unlike political and criminal ministerial responsibility, ministers' civil liability had never been envisaged in a special legislation that would only apply to ministers (Tasić, 1925). The provisions of general civil law had been applied to this type of ministerial responsibility not only in the period before World War II. Even today, the general civil law provisions equally apply to all public servants in the administration when they cause damage to another during the exercise of their official duties. Moreover, the legal regime on civil ministerial responsibility has always included only minor differences as compared to general civil legislation which all other citizens

are subject to. The basic difference between them generally refers to the compensation for damages, which was laid down in the legislation of the Kingdom of Serbia. Following the model used in the majority of other European countries at the time, Serbia first applied the principle of direct (exclusive) ministerial responsibility and, later on, the principle of joint responsibility of ministers and the state; starting from the 1890s, Serbia applied the principle of direct (exclusive) responsibility of the state. The differences in respect to other issues were so minimal that it is impossible to speak about a different legal regime on ministers' civil liability. In the period before World War II, the legislation which was used in establishing ministers' civil liability included the 1844 Civil Code and the 1861 and 1864 Law on Public Servants of Civil Order; later on, in the period of the Kingdom of Serbs, Croats and Slovenes and the Kingdom of Yugoslavia, the applicable law was the 1923 and 1931 Law on Public Servants (Kasanović, 1911: 196-200; Arandelović, 1912; Marković, 1912; Tasić, 1925: 280-295; Vulović, 1926: 221-238; Matijević, 1931: 330-345).

In the period before World War II, the ministerial responsibility for material damage resulting from the ministers' criminal action (as well as their criminal responsibility) was regulated by a special legislative act on ministerial responsibility. However, unlike the provisions on ministers' criminal responsibility, the provisions on their civil liability, contained in this legislative act, were scarce and largely declarative in their nature, which makes it impossible to speak about a special legal regime for this type of ministerial responsibility.¹⁰

For all these reasons, there were not many cases in this period dealing with the ministers' civil liability. There was only one recorded case involving an individual civil liability of Vukašin Petrović, Minister of Finance, 1887, (Kasanović, 1911: 104-105). No single case was recorded on the ministers' civil liability stemming from the commission of a criminal offence (even though there were a number of recorded criminal charges for property crimes against ministers in that period). In all these cases, the

¹⁰ The 1870 Law on Ministerial Responsibility contained only one provision on ministers' civil liability, which stated: "If there is room for the damage compensation to the state or to a private person, regular courts shall investigate into the matter and judge thereof" (Article 19). The 1891 Law on Ministerial Responsibility contained one provision, which stated: "Besides criminal responsibility for the offences prescribed in this Law, a minister shall also bear civil liability for the damage inflicted either to the state or individual persons (Article 19); moreover, the 1922 Law on Ministerial Responsibility stipulated: "For the offences envisaged in this Law, a minister shall also bear civil liability for the damage inflicted on another" (Article 4).

basic reason for the failure to pursue their civil liability lied in the fact that the ministers' criminal liability was not established in any of these cases, which was the formal/legal precondition for their pursuing their civil liability. The most famous cases of attempting to raise a civil complaint against ministers who committed some criminal offence involved the following public officials: Jovan Belimarković, Minister of Defence, 1873; Kosta Protić, Minister of Defence, 1875; Milivoj Blaznavac, Minister of Defence, 1879; Nastas Petrović, Minister of the Interior, 1911, etc.

3.2. Ministerial Responsibility after World War II

After World War II, there were significant changes in the political state system (instituted by the establishment of a one-party political system) and in the state government organisation (instituted by the establishment of the assembly-based system and the republican form of government). In such circumstances, the institute of ministerial responsibility became rather insignificant. It was formally envisaged in the legislation as a legal institute but it had no practical application at all. At the time, the political responsibility of state secretaries and executive officers of the administrative portfolios was based on the rules governing the assembly system, which rested on the principle of the unity of power. In the circumstances of a one-party political system, political responsibility was in the shadow of informal party responsibility. In terms of criminal responsibility, the new state cancelled special criminal law regime and established the regime of general criminal responsibility, which applied to all public servants who committed criminal offences while exercising their official duties (Lončar, 2004: 1097-1102). The civil liability regime was still based on general civil legislation, which basically existed before World War II (Krbek, 1954; Konstantinović, 1952: 296-305; Denković, 1961: 449-454; Denković, 1962: 58-66; Ivančević, 1964: 24-38; Dimitrijević, 1981: 1-21; Đoković, 1989: 201-214).

Regardless of the character of constitutional and political changes at the beginning of the 1990s, instituted first by passing of the 1990 Constitution of the Republic of Serbia and then by re-establishing a multi-party political system, the institute of ministerial responsibility was not subject to any significant changes. In comparison to the former period, which was characterized by the national assembly's unity of state power and the one-party political system, the only changes were introduced in the rules governing the political ministerial responsibility. It was based on the

relations which typically reflect the parliamentary system including the separation of powers. There were no changes in the other two types of ministerial responsibility. Ministers were still subject to general criminal responsibility and civil liability regime, which applied to all other public administration servants as well. The legal regime governing the institution of ministerial responsibility remained largely unchanged even after adopting the current 2006 Constitution of the Republic of Serbia.¹¹ However, given the fact that the the new political system has been operating within a different constitutional framework for the past two decades, the ministerial responsibility in Serbia today is exercised in a different manner than it used to be exercised after World War II. As the legal position and significance of ministerial function had completely changed, the constitution-framers and the legislator had to reconsider the regulation of ministerial responsibility and the issues pertaining to its exercise. Apart from the fact that the institute of ministerial responsibility has a much wider application now, it has also acquired some individual features which are today regarded as distinctive features underlying the operation of this legal institution in Serbia.

Irrespective of the distinctive rules which concurrently apply to parliamentary systems of government, the most significant issues for establishing political ministerial responsibility prove to be certain non-legal issues resulting from the specific features underlying the operation of the political system in Serbia. The most significant development is certainly reflected in the fact that all the governments since the beginning of the 1990s, when the multi-party system was introduced, were coalition governments which were frequently composed of more than ten political parties. The composition of coalition governments necessarily reflected not only their political stability but also the frequency of initiating proceedings for establishing this type of ministerial responsibility. In the past 23 years, only one government (out of total of 12 elected ones) managed to remain in power for the entire four-year term of office but none of these coalition

¹¹ It may be interesting to mention that the only attempt to introduce a special legal regime on ministerial responsibility in Serbia after World War II was related to the Draft Constitution of the Republic of Serbia of 24 July 2003 (Articles 124-125), which was submitted to the National Assembly by 50 deputies. Shortly afterwards, in October 2003, the National Assembly was disbanded and extraordinary parliamentary elections were held; thus, the national Assembly never formally voted on the Draft Constitution. After constituting the new National Assembly, the Constitutional Commission was immediately put together to draft a new constitutional act, which was finished in September 2006 but did not include the concept on introducing a special legal regime on ministerial responsibility simple.

governments actually preserved its original composition at the end of the mandate. However, the subsequent changes of ministers within the governments were exclusively made upon the government reconstruction or a minister's resignation rather than upon their revocation or replacement on the basis of a formally conducted political responsibility proceeding. Although there were several attempts at passing a no-confidence motion either against the government or against individual ministers, no single case has been recorded that a minister has been revoked from office and replaced on these legal grounds. Only one recorded case (involving an attempt to pass a no-confidence vote against the government in October 2003) can be said to have been successful, given the fact that the Prime Minister resigned during the assembly debate on the proposal for a no-confidence vote against the government. Moreover, there were cases when a proposal for a no-confidence vote against the government was submitted but, after the assembly debate, there was no formal vote on the submitted proposal even though the act of voting is a constituent part of this parliamentary institute. The development of mass media was particularly significant for establishing the political ministerial responsibility, particularly the process of privatization and property transformation of media; the impact of public opinion was so strong that the government reconstructions were instituted and the ministers resigned in order to prevent the instigation of formal proceedings in parliament and raising issues about their political responsibility.

The basic characteristic underlying the operation of criminal ministerial responsibility after the 1990s is that it actually started being applied to ministers (even though it was still within the general criminal law framework). Unlike the period of five decades after World War II when there were no recorded cases on the instigation of ministers' criminal responsibility, this type of responsibility started being applied to ministers after establishing a multi-party system. In 1993, two ministers of the Government of the Republic of Serbia (Sava Vlajković, Minister of Trade, and Velimir Mihajlović, Minister of Industry) were charged with the criminal offence of abusing their official duty (while importing oil) and sentenced to a term of four years' imprisonment. It was the first and so far the only criminal conviction of a minister in almost two-century long history of ministers' criminal responsibility in Serbia. In the last couple of years, however, there were several recorded cases on instigating criminal proceedings against some ministers, but the proceedings are still underway. In November 2004, the former Minister of Telecommunications and Traffic Marija Rašeta-Vukosavljević was charged with the criminal offence of

abusing the official duty while renovating Belgrade Airport. However, eight years later, she was acquitted by the first-instance court decision of July 2012. In October 2012, the former Minister of Environmental Protection, Spatial Planning and Mining Oliver Dulić was charged with the criminal offence of abusing the official duty when issuing permits for placing fibre-optic cable, but his trial has not started yet. In November 2012, the former Minister of Agriculture, Water Management and Forestry Saša Dragin was arrested and criminal investigation was initiated for a number of property-related criminal offences committed by abusing his official duty.

Besides the practical application of criminal responsibility, the contemporary period in the development of ministerial responsibility in Serbia has also been marked by the expansion of ministers' responsibility for misdemeanours; it is a new form of ministers' responsibility for delicts which is envisaged for offences of minor social danger as opposed to criminal offences. The misdemeanour responsibility has emerged as a consequence of regulating direct ministerial responsibility for a proper application of many new regulations pertaining to personal data protection, availability of information of public importance, accountancy and auditing, state administration, public servants, etc.; their application is monitored by new independent state bodies, such as: Commissioner for information of public significance and personal data protection, State Audit Institution, Anti-Corruption Agency, Commissioner for the protection of equality, Ombudsman etc. Thus, since 2012, the State Audit Institution has filed a total of 21 misdemeanour charges against former and current ministers for irregular spending of budgetary funds. On the basis of these charges, the competent court issued final judgments: only 5 ministers were sentenced to pay a fine, and 2 ministers were officially acquitted of misdemeanour charges in the final judgements. Since 2010, the Commissioner for information of public importance and personal data protection has filed a total of 14 misdemeanour charges against ministers for failing to keep records on personal data; no judicial decision has been rendered on this issue yet. In October 2012, the Anti-Corruption Agency filed a misdemeanour claim against the former Minister of State Administration and Local Self-government for untimely reporting on the property changes in his property card, and he was sentenced to pay a fine.¹²

¹² Interestingly, this Agency also raised criminal charges against the former minister of defence for failing to report a portion of property in his property card; the public attorney office still has no say thereof.

Such a huge number of misdemeanour charges and a relatively small number of convictions against ministers are mainly the result of the fact that the accountability for the alleged violations of regulations stipulated in the charges is largely based on the principle of objective ministerial accountability. Thus, in establishing this type of responsibility before the Misdemeanour Court, the prosecutor is obliged to prove/the court is obliged to establish a certain degree of culpability in the ministerial action, which was not easy to achieve in the aforementioned cases.¹³

The contemporary period in the development of ministerial responsibility in Serbia has also been marked by the application of civil ministerial responsibility. Although no single case has been recorded on establishing individual ministerial responsibility, it is still noteworthy that there is a recorded case on ministers' civil liability stemming from the commission of a criminal offence. Namely, after establishing criminal responsibility of two ministers in 1993, they were convicted and the court ordered the confiscation of the amount of 2,115,000 DM, which was believed to have been obtained by committing the criminal offence.

4. Conclusion

The complex legal nature of ministerial responsibility requires a considerably different approach to regulating the described types of responsibilities, which constitute the institution of ministerial responsibility.

Political ministerial responsibility is the least legal type of ministerial responsibility. No matter how extensively it may be regulated, this type of ministerial responsibility will always have predominantly non-legal character primarily because it involves the subject matter of politically opportune ministerial action, which can never be completely regulated. However, the efficiency in exercising this type of ministerial responsibility primarily de-

¹³ Here is an illustration for this attitude. Having encountered this problem, the State Audit Institution resorted to relegating the misdemeanour liability from the minister to individual senior public servants (who were directly involved in delegating assignments in specific misdemeanour cases) by introducing claim/charges for improper application of the budget management regulations. Thus, in the initial year 2010, out of the total number of 19 misdemeanour charges, 11 charges were raised against ministers. In 2011, out of the total number of 13 misdemeanour charges, 4 charges were raised against ministers. In 2012, out of in total number of 101 misdemeanour charges, only 2 charges were raised against ministers. In 2013, out of the total number of 192 misdemeanour charges, only 4 charges were raised against ministers.

depends on the issues pertaining to the characteristics of a specific political system rather than on the issues pertaining to the regulation of this type of ministerial responsibility. Yet, although the political ministerial responsibility does not merely have a legal character, regulations shall by no means be an obstacle for its efficient application. In case a legal system does not comprise all legal instruments for the application of this type of responsibility, they certainly have to be provided. However, the legal provisions are most unlikely to be the sufficient pre-requisite for an efficient application of ministerial responsibility. Given the differences in political systems, the same legal provisions on political ministerial responsibility may yield completely different results in different states. Therefore, the task of every well-regulated legal system is to create a sufficiently extensive and flexible normative framework so that all political processes (including the institute of ministerial responsibility) can be applied within the state institutional system.

However, the regulation of the other two types of ministerial responsibility must be governed by quite a different approach. Criminal and civil ministerial responsibility fall into the category of legal forms of responsibilities and all elements of the legal regime must be precisely regulated in advance. In regulating criminal ministerial responsibility, the basic dilemma concerns the option between the general and special legal regime of responsibility. In case that general criminal law regime proves sufficient to prevent illegal exercise of ministerial functions and efficient enough to subject every minister who commits some illegal activity to criminal responsibility (regardless of their role in the political life of the state, which is often not the case), a special regime of criminal ministerial responsibility is not necessary. On the contrary, a special legal regime of ministerial responsibilities may be expressed through a series of various elements (including special types of criminal offences, special bodies responsible for raising charges and initiating court proceedings, specific trial procedures, various sanctions which the states can select regarding the specific features of their constitutional and political system); all these elements should basically provide for a substantially stricter legal regime of ministerial responsibility. Concurrently, the introduction of such a special regime would prevent the possible political arbitrariness of the regular prosecution bodies, which often takes place in the event of raising the issue of criminal responsibility of the current or former minister (even though it may refer to a purely legal ministerial responsibility). In case the practice shows (in a longer period of time) that only former ministers (and not the current ones) are subject to criminal responsibility, it is certainly necessary to introduce a special regime for establishing their responsibility. In

that event, a special criminal law regime should enable the application of more stringent forms of responsibility to ministers if it is established that they have actually abused their ministerial office; moreover, this special criminal law regime will provide an adequate institutional protection from unjustified politically-biased criminal prosecution. After the termination of their ministerial office, this special regime of criminal responsibility provides the ministers with the same legal protection which they were given through ministerial immunity during their term of office.

Apart from being subject to criminal responsibility, ministers may also be subject to misdemeanour responsibility, which implies responsibility for committing a delict (a minor criminal offence). In that case, given the specific features of legal regime, this type of responsibility should always be assessed on the basis of the subjective standard, i.e. the minister shall be held accountable only on the grounds of individual culpability, primarily because the awarded sanctions always affect the minister's personality, physical integrity or property. Apart from ministers acting in the capacity of responsible persons in charge of running the department, this type of responsibility should also apply to other senior public officials in the administration and public servants, whose performance of their official duties may give rise to misdemeanour offences. Otherwise, the misdemeanour responsibility could turn into a unique political ministerial responsibility, irrespective of the personal and legal nature of the awarded sanctions.

The institute of civil ministerial responsibility has shown that the general civil law regime, which applies to all public servants in the administration, may be successfully applied to ministers. The principle of direct responsibility of the state for all the damage caused by ministers' illegal or improper actions enables ministers to perform their ministerial functions without additional anxiety. On the other hand, the state may institute recourse towards its ministers, which is always associated with a certain degree of their culpability (including intent or gross negligence); it enables the state to charge damages from every non-conscientious minister who acts in bad faith. Therefore, in terms of this type of ministerial responsibility, there are no significant differences among contemporary legal systems. The focal point in regulating this type of responsibility could be the civil liability of ministers stemming from the commission of a criminal offence. Namely, in case there is a special regulation on criminal ministerial responsibility, it is important to focus on the civil ministerial responsibility by regulating the basic elements which distinguish their responsibility under the civil liability from their criminal responsibility. Otherwise, the act of confiscating one's property or money which is suspected to have been

obtained by the commission of a criminal act may turn this type of ministerial responsibility into a common criminal law sanction.

In any case, each legal system regulates the institute of ministerial responsibility by selecting the most appropriate methods and mechanisms for its implementation. However, one should bear in mind that the proper selection of methods for implementing the institute of ministerial responsibility is also an important legal presumption for the proper exercise of ministerial duty, as one of the most important state functions.

References

- Arandelović, Dragoljub (1912) O odgovornosti države i činovnika (On Responsibility of State and Public Servants). Belgrade: Geca Kon
- Ardant, Philippe (1998) *Institutions politiques & droit constitutionnel*. 10-e édition Paris: LGDJ
- Bačić, Arsen (1975) Impeachment kao konstitucionalni proces (Impeachment as Constitutional Process). *Zbornik radova Pravnog fakulteta u Splitu* 75(XII): 177-188
- Bodi, Aleksandar (1911) Ministarska odgovornost (Ministerial Responsibility). *Arhiv za pravne i društvene nauke* 11(X): 303-319
- Braibant, Guy, Bernard Stirn (2002) *Le droit administratif français*. 6-e édition. Paris: Dalloz
- Burdeau, Georges, Francis Hamon, Michel Troper (1997) *Manuel de droit constitutionnel*. 26-e édition. Paris: LGDJ
- Carcassonne, Guy (2003) Rationaliser la responsabilité politique. In : *L'esprit des institutions, l'équilibre des pouvoirs, Mélanges en l'honneur de Pierre Pactet*. Paris: Dalloz
- Chapus, René (2001) *Droit administratif général, I*. 15-e édition. Paris: Montchrestien
- Chevallier, Jacques (1996) *Institutions politiques*. Paris: LGDJ
- Constant, Benjamin (1883) Načela politike i O ministarskoj odgovornosti (Principles of Politics and On Ministerial Responsibility). Belgrade: Kraljevsko-srpska državna štamparija, (prevod Đ.S. Simić)
- Darcy, Gilles (1996) *Responsabilité de l'administration*. Paris: Dalloz
- Davitkovski, Borče (1994) Parlamentarna kontrola nad upravata (Parliamentary Control over Administration). *Godišnik na Pravniot fakultet vo Skopje* 94: 384-393
- Davitkovski, Borče, Zoran Lončar, Ana Pavlovska-Daneva, (2012) *Nauka o upravi (Science on Administration)*. Podgorica: Fakultet za državne i evropske studije
- Debbasch, Charles, Colin Frédéric (2004) *Droit administratif*. Montchrestien, 7-e édition. Paris: Economica

- Denković, Dragaš (1961) Ko može neposredno odgovarati građanima za štetu koju prouzrokuju javni službenici (Who can be directly held answerable to the citizens for the damage caused by public servants?). *Anali Pravnog fakulteta u Beogradu* 61(4): 449-454
- Denković, Dragaš (1962) Osnov odgovornosti za štetu koju građanima prouzrokuju javni službenici. (The Basis of Responsibility for the Damage Caused by Public Servants). *Anali Pravnog fakulteta u Beogradu* 62(1-2): 58-66
- Dimitrijević, Pavle (1981) Odgovornost za štetu pričinjenu vršenjem delatnosti ili poslova od posebnog interesa (Responsibility for the Damage Inflicted by Exercising Activities or Affairs of Special Interests). *Zbornik radova Pravnog fakulteta u Novom Sadu* 81(1): 1-21
- Đoković, Tomislav (1989) Odgovornost društveno-političke zajednice za štetu zbog nezakonitog rada njenih organa (Responsibility of the Social and Political Community for the Damage Caused by Unlawful Work of their Bodies). *Pravni život* 89(1): 201-214
- Duguit, Léon (1918) *Manuel de droit constitutionnel*. Paris, Boccard
- Duguit, Léon (1928) *Traité de droit constitutionnel*, II. 3-e édition. Paris: Ancienne librairie fontemoing & C-ie
- Dupuis, Georges, Marie-José Guédon, Patrice Chrétien (2010) *Droit administratif*. 12-e édition. Paris: Sirey
- Esmein, Adémar (1899) *Eléments de droit constitutionnel français et comparé*, II. Paris: Sirey
- Gartner, Fabrice (1994) L'extension de la répression pénale aux personnes publiques. *Revue Française de Droit Administratif* 94(10): 126-158
- Gaudemet, Yves (2010) *Droit administratif*. 19-e édition. Paris: LGDJ
- Grad, Franc (1994) *Politička odgovornost ministara (Political Responsibility of Ministers)*. *Zbornik znanstvenih rasprav, Ljubljana* 94: 81-90
- Guillaume-Hofnung, Michèle (1987) La faute personnelle du fonctionnaire. *Droit* 87(5): 97-111
- Guettier, Christophe (1996) *La responsabilité administrative*. Paris: LGDJ
- Havas, Nathalie (2012) *La responsabilité ministérielle en France*. Paris: Dalloz
- Ivančević, Velimir (1964) Odgovornost za štetu nanesenu građanima protivpravnim ponašanjem službenih osoba (Responsibility for the Damage Inflicted to Citizens with Unlawful Behaviour of Officials). *Naša zakonitost* 64(1-2): 24-38
- Jovanović, Slobodan (1939) *Krivična odgovornost ministara po Ustavu od 1931. godine (Criminal Responsible of Ministers according to the Constitution 1931)*. *Arhiv za pravne i društvene nauke* 39(5-6): 484-488
- Jovanović, Slobodan (1990) *O državi (On State)*. Belgrade: BIGZ
- Jovičić, Miodrag (1969a) *Odgovornost nosilaca javnih funkcija (Responsibility of the Public Office Holders)*. Belgrade: Institut za uporedno pravo
- Jovičić, Miodrag (1969b) *Politička odgovornost (Political Responsibility)*. *Arhiv za pravne i društvene nauke* 69(1-2): 195-197

- Kasanović, Josip (1911) *Ministarska odgovornost u srpskoj javnom pravu* (Ministerial Responsibility in Serbian Public Law). Belgrade: Geca Kon
- Konstantinović, Mihajlo (1952) *Osnov odgovornosti za prouzrokovanu štetu* (The Basis of Responsibility for the Damage Caused). *Arhiv za pravne i društvene nauke* 52(3): 296-305
- Kostić, M. Lazo (1938) *Nadzor krivičnog suda nad javnom administracijom* (Criminal Court's Scrutiny over Public Administration). *Službeni glasnik Ministarstva unutrašnjih poslova* (poseban otisak) 38(8)
- Košutić, Budimir (1970) *Pravno regulisanje političke odgovornosti* (Legal Regulation of Political Responsibility). *Gledišta* 70(2): 215-224
- Krbek, Ivo (1940) *Dioba vlasti* (Division of Power) Zagreb. Hrvatski izdavački bibliografski zavod (Croatian Publishing and Bibliographic Institute)
- Krbek, Ivo (1954) *Odgovornost države za štetu* (State's Liability for Damage). Zagreb. JAZU
- Krijan, Pero (1975) *Politička odgovornost upravnih funkcionera* (Political Responsibility of Administrative Office Holders). *Naša zakonitost* 75(11-12): 50-58
- Kristan, Ivan (1983) *Politička odgovornost i Uporedni politički sistemi* (Political Responsibility and Comparative Political Systems). Belgrade: Savremena administracija, 381-390
- Kurtović, Šefko (1977) *Impeachment u SAD* (Impeachment in the USA). *Zbornik Pravnog fakulteta u Zagrebu* 77(4): 177-201
- Laubadère, André (1963) *Manuel de droit administratif*. 7-e édition. Paris: LGDJ
- Laubadère, André, Jean-Claude Venezia, Yves Gaudemet, (1996) *Traité de droit administratif*, I. 14-e édition. Paris: LGDJ,
- Lončar, Zoran (2000-2001) *Pravno regulisanje odgovornosti ministara* (Legal Regulation of Ministerial Responsibility). *Collection of Papers of the Faculty of Law in Novi Sad* 00-01(1-3): 105-116
- Lončar, Zoran (2004) *Nastanak i razvoj krivične odgovornosti ministara u našem pravu* (Emergence and Development of Criminal Ministerial Responsibility in Serbian Law). *Pravni život* 04(9): 1089-1104
- Marković, Lazar (1912) *Da li ministri za dela učinjena u službenoj dužnosti mogu biti optuženi redovnim sudovima*. (Can ministers be charged for offences committed in their official capacity before regular courts?) Belgrade: Štamparija „Dositej Obradović“
- Marković, Ratko (2006) *Ustavno pravo i političke institucije* (Constitutional Law and Political Institutions). Belgrade: Justinijan
- Matijević, Ivo (1931) *O odgovornosti činovnika za štetu po Zakonu o činovnicima* (On Responsibility of Public Servants for Damage according to the Law on Public Servants) *Arhiv za pravne i društvene nauke* 31(11): 330-345
- Mathieu, Bertrand (1990) *La haute Cour de Justice et la responsabilité pénale des ministres ou comment se servir d'un savre de bois*. *Revue Française de Droit Constitutionnel* 90(4): 710-739

- Pactet, Pierre (1998) *Institutions politiques et droit constitutionnel*. 17-e édition. Paris: Dalloz
- Paillet, Michel (1996) *La responsabilité administrative*. Paris: Dalloz
- Pitamic, Leonid (1927) *Država (State)*. Ljubljana Založila družba sv. Mohorja
- Popović, Slavoljub (1980) *Organi i oblici kontrole u SFRJ (Bodies and Forms of Control in Socialist Federative Republic of Yugoslavia)*. Zagreb. Informator
- Radulović, Petar (1982) *Odgovornost (Responsibility)*. Zagreb. Informator
- Ristovska, Marika (1996-98) *Politička kontrola na zakonodavna vlast vrst izvršna-ta vlast (Political Control of the Legislative Branch by the Executive Branch of Government)*. *Godišnik na Pravnot fakultet vo Skopje*, 96-98(t.38): 723-738
- Stefanović, Jovan (1936) *Krivična odgovornost ministara i šefa izvršne vlasti – upoređenje sa njihovom političkom odgovornošću (Criminal Responsibility of Ministers and the Head of Executive Power - Comparison with their Political Responsibility)*. Ljubljana: Jugoslovanska tiskarna, Poseban otisak iz Spomenice Dolencu, Kreku, Kušelju i Škrelju
- Strobl, Majda (1969) *Politička odgovornost za vršenje javnih službi u lokalnim (decentralizovanim) zajednicama (Political Responsibility for Exercising Public Services in Local (Decentralised) Communities)*. *Arhiv za pravne i društvene nauke* 69(3): 380-392
- Tasić, Đorđe (1925) *Građanska odgovornost ministara u našem pravu (Civil Responsibility of Ministers in the Law of the Kingdom of Yugoslavia)* *Ekonomist* 25(4): 280-288
- Vedel, Georges, Pierre Delvolvé (1992) *Droit administratif*. 12-e édition. Paris: PUF
- Viret, Jean (1995) *La responsabilité de l'administration et de ses agents à l'épreuve du droit pénale contemporain*. *Actualité Juridique de droit administratif* 95: 763-780
- Vulović, Velisav (1924) *Odgovornost ministara (Ministerial Responsibility)*. *Misao* 24(1): 621-629
- Vulović, Velisav (1926) *Odredbe Zakona o činovnicima u pogledu ministara odnosno podsekretara (The Provisions on the Law on Public Servants regarding Ministers i.e. Undersecretaries)*. *Arhiv za pravne i društvene nauke* 26(3): 221-238
- Waline, Marcel (1948) *De l'irresponsabilité des fonctionnaires pour leurs fautes personnelles et des moyens d'y remédier*. *Revue de Droit Public et de La Science Politique* 48: 5-22
- Waline, Jean (2010) *Droit administratif*. 23-e edition. Paris: Dalloz

MINISTERIAL RESPONSIBILITY: REGULATIONS AND PRACTICAL ISSUES IN THE REPUBLIC OF SERBIA

Summary

Given the specific nature of contemporary ministerial functions, the institute of ministerial responsibility has to be regulated by enacting special legislation. However, ministerial responsibility is a complex legal institute whose regulation requires a substantially different approach depending on the type of ministerial responsibility at issue. A well-regulated system of ministerial responsibility is very important for every state. It is also an essential legal presumption for a successful exercise of the ministerial office. In that context, the author points out the diverse options available for regulating the institute of ministerial responsibilities, and explores some practical issues that might have an impact on the regulation of ministerial responsibility.

Key words: *responsibility, minister, ministerial responsibility, political responsibility, criminal liability, civil liability*

MINISTARSKA ODGOVORNOST: REGULACIJA I PRAKTIČNA PITANJA U REPUBLICI SRBIJI

Sažetak

Ima li se u vidu priroda ministarske dužnosti u suvremeno doba institut ministarske odgovornosti treba regulirati posebnim zakonodavstvom. Ministarska je odgovornost složeni pravni institut čija pravna regulacija zahtijeva značajno drugačije pristupe ovisno o komponenti ministarske odgovornosti koja je u pitanju. Dobra pravna regulacija tog instituta od iznimne je važnosti za svaku državu. Napose je ona važan pravni preduvjet za uspješno izvršavanje ministarskih dužnosti. U tom kontekstu autor obrađuje različite varijante pravne regulacije ministarske odgovornosti koje stoje na raspolaganju te istražuje neka praktična pitanja koja bi mogla imati utjecaja na regulaciju ministarske odgovornosti.

Ključne riječi: *odgovornost, ministar, ministarska odgovornost, politička odgovornost, kaznena odgovornost, građanska odgovornost*