

"Argumentation Theory and Legal Reasoning in the Constitutional Rule-of-Law State"

The research project has purely cognitive objectives; namely, to understand better the nature of juristic reasoning in a constitutional rule-of-law state. Presumably, the project will influence the legal science in Poland because of its innovative character: for the first time, not only within Polish jurisprudence, the juristic reasoning in the frame of the constitutional *Rechtsstaat* (in many points different from the rule-of-law state) will be extensively analysed from the argumentative perspective. On account of such a context of research work, the results of investigations will be useful not only for legal theorist and philosophers, but also for the dogmaticians of constitutional law. Moreover, the possibility of the modification of a very positivist and formalistic paradigm of legal sciences, which is nowadays dominant in Polish legal culture, will be provided.

The objective of the research project is a critical inquiry on the possibility of applying the theory of legal argumentation for the model analysis of some basic types of juristic reasoning (i.e. the applicative, interpretive and validity reasoning) in the contemporary constitutional rule-of-law state. The examination of this possibility by means of the argumentative analysis of legal reasoning, which take place during judicial proceedings (in civil courts and constitutional tribunals) or in legal dogmatics' studies, will enable us to resolve many particular problems, related to legal interpretation, decisions on legal validity and the judicial application of law, which the traditional theory of juristic reasoning, grounded on the paradigm of legal positivism, is trying to resolve in a currently unsatisfactory way. The most important problem is to correctly understand the nature of the various types of juristic reasoning in the present context of an emergence of the constitutional law-of-law state, in which the most important role is played by legal principles, which directly influence the solutions of the interpretive questions (the legal interpretation is based on weighing), validity problems (the material criteria of legal validity), and the problems related to the law application (the restriction of the judicial discretion and the uniformity of jurisdiction).

Although the neoconstitutional theory of the constitutional rule-of-law state is being developed from the 1990s, the phenomenon of the constitutional *Rechtsstaat* is linked to the establishment of the new, post-authoritarian constitutions in Italy (1947), Germany (1949), Portugal (1976), Spain (1978) and in the numerous states of Latin America (Nicaragua 1987, Brazil 1988, Columbia 1991, Paraguay 1992, Peru 1993, Argentina 1994, Venezuela 1999, Ecuador 2008, Bolivia 2009). Therefore, it can be stated that the gradable process of the "constitutionalization" of the contemporary democratic legal orders, notwithstanding that it was defined quite recently, has begun in the 1950s as well. Unfortunately, although the very concept of constitutionalisation has been already a subject matter of the scientific reflexion of the Polish dogmaticians of the constitutional law, and – arguably – also the Polish Constitution from 1997 belongs to the category of post-authoritarian constitutions, the neoconstitutional theory of legal systems was so far totally ignored by the Polish legal science.

The theories of legal argumentation, elaborated from the 1950s, have become an important element of the anti-positivistic trend of the contemporary analytical legal theory. Despite of the fact that also the numerous Polish legal theoreticians have worked on this field, by analysing various types, problems and aspects of juristic reasoning from the argumentative perspective, in the Polish jurisprudential literature we do not find any comprehensive work, dealing in a complete way with the argumentation theory of juristic reasoning. Also in the foreign literature of the subject the monographs on legal argumentation theory are very rare; for instance, within the European jurisprudential literature we can indicate only three monographs directly and fully devoted to the theory of legal argumentation. The abovementioned facts show that the state of the art is quite unsatisfactory, in particular within the Polish legal science, and the research planned in the project will try to fill the gap in such an important sphere of legal cognition, related to the very nature of juristic reasoning in the constitutional rule-of-law state. Moreover, the research project is fully compatible with the programme of the interdisciplinary Polish School of Argumentation, the *Manifesto* of which has been recently published, and deals with the important sphere of the interdisciplinary jurisprudential investigations on the boundry between the analytical legal theory and the dogmatics of constitutional law.

The main research hypothesis of the project is that the model analysis of juristic reasoning, based on the theory of legal argumentation, make possible the more adequate determination and comprehension of the nature of juristic reasoning than the traditional, positivistically oriented methods of the analysis of the applicative, interpretive and validity reasoning, provided by the *juristische Methodenlehre*. In particular, in the context of the transformation of a rule-of-law state (*Rechtsstaat*) into a constitutional rule-of-law state, which takes place in the continental Europe, we assume that the most useful within the anti-formalistic theories of legal argumentation are the models of juristic reasoning elaborated in the frames of the rhetorical-topical theories of legal argumentation; whilst within the formalistic theories – the models provided by the proponents of a computational (informatics) study of argumentation, based on the non-classic logic (non-monotonic and defeasible logics), and correlated with the studies of the "AI&Law" movement.