

The project aims at examination, under what circumstances and with what intensity simplified reasoning and cognitive shortcuts in form of rules of thumb and automatic inferences influence the decisions made by judges. For many years, the impact of intuition on the judicial decisions constitutes a constant source of controversies and seems to be the subject of numerous theoretical discussions, which, however, do not lead to conclusive findings. On the one hand the legal formalism objects to any form of influence of unconscious processes upon the judgments issued by the courts, on the other hand legal realism used to emphasize the role of subconscious, intuitive processes, sometimes exaggerating their impact and claiming that the findings made by the judges are always inevitably based on intuition. The starting point for the proposed project is to reject both extremes and to propose more robust description of judicial activity of the courts, the one which would take into account the results of empirical research conducted so far and those pertaining to the eye-tracking based experiments planned to be carried out within the framework of this project.

These studies will allow for a clear assessment of the degree of influence of unconscious processes (intuitive) on the decisions pertaining to the application of law. The project therefore focuses on expanding knowledge simplified rules of inference, which are specific cognitive mental shortcuts defined by them as heuristics which have been for the first time described by Daniel Kahneman and Amos Tversky. The so called heuristics are usually identified with automated cognitive or computational processes by which we can very quickly reach conclusion and solve factual and evaluative problems. Unfortunately, like any automatic and subconscious processes, the heuristics have significant flaws occasionally leading to systemic errors. Those flaws can lead us to many misunderstandings. The basic forms of heuristics embrace anchoring heuristic, availability heuristic and representativeness heuristic.

The heuristics of anchoring consist in the fact that specific information is treated as a point of reference, adapting to it information on the assessed situation. For example, the court in a particular case granted certain amount of compensation (damages), while another court in similar situation treats the previous judgment as a kind of benchmark, relying on them, while unconsciously ignoring the important differences between two different situations and circumstances such as eg. the degree of fault or contributory negligence.

Availability heuristic is based on the reductionist strategy, when a given fact is supposed to be more likely in a situation where the decision-maker can more easily imagine the contingences, however unconsciously ignoring the influence of emotions or the specific nature of the situation, which is not possible to be captured by generalization, leading to significant errors involving eg. an unjustified generalization or ascription of certain qualities or characteristics to people whose behaviour is to be evaluated by a court.

In turn, the representativeness heuristic is based on the automatic and subconscious search for similarities where a given phenomenon or fact is erroneously supposed to be typical, but in fact it turns out to be not necessarily representative for a given case. This error very often occurs in connection to the analysis of statistical data by judges.

All of those heuristics mentioned above allow for quick decision-making, but unfortunately too often lead to errors regarding the assessment of the situation. In the event that they are committed by judges, the question arises how one can reduce their adverse impact through the creation of a mechanism which safeguards the conscious control over the outputs and the careful review of decisions issued on basis of conscious and rational analysis. It should be mentioned that at the same the use of heuristics allows for faster decision-making, which is of great importance in the context of judicial activity of the courts.

The objective of the project is therefore firstly to examine the impact and the nature of intuition in specific, typical cases identified in the study, with respect to Polish and European law.

In addition, the research project focuses on the identification of the causes and cognitive foundations of heuristics applied by judges, in situations such as the need for quick assessments, statistical data analysis and complex causal relationships. The project will attempt at identification of several areas where courts are in general prone to aforementioned heuristics, as is the case in family courts and criminal cases involving liability for damage and even in the jurisprudence of constitutional courts. The aim of the research is thus to explore these areas in terms of frequency of occurrence of these phenomena and to investigate the causes and the impact of intuition on cognitive errors committed in connection with the application of law. It seems that the pressure on increasing the efficiency of the courts, especially in speedier decisions inevitably leads to more frequent use of heuristics by the courts. The results of the research will allow developing a model of decision-making by the courts, which at the stage of proceedings would reduce the negative effects of heuristics, by eliminating the reasons for using them.

Such studies have not been conducted so far in relation to the Polish law. Therefore, the proposed study will have an innovative character, enabling the discovery of the causes of cognitive errors committed by courts. For jurisprudence these tests may be extremely important, pertaining to the vital aspects of the functioning of the legal system. With respect to the theoretical part, they will have an innovative character not only in Polish but also European law theory. The results of experimental study will allow building a more adequate descriptive theory of adjudicating. Secondly, the results of the proposed research will enable the identification of cognitive heuristics and taking their impact into account at the stage of creation of legal institutions and procedures.