

“Judges and Virtues. Study in the aretaic theory of the judiciary” – description for the general public

Public discussion on the judiciary, the role of judges and their political position has been particularly intense and often emotional in recent years. The language and arguments used in this debate, both at the media and the expert levels, are often inconsistent and heavily influenced by very different moral and political assumptions of the people who formulate them. The courts and judges are often described with extremely varied evaluative terms (“good”, “bad”, “unworthy”, “political”) resulting from different premises. These assessments are often formulated in relation to individual cases and particular decisions (deeds) and then extended to the assessment of individuals, institutions and even the entire professional group. This state of affairs occurs to varying degrees of severity in particular types of discourse (media, public, private, and even expert and scientific). This project aims to formulate a proposal that could organize the moral language in which the assessments of judges, their professional activities and the judiciary as a whole are formulated. This will serve the purposes of reformulating the scientific discourse in legal sciences. However, a wider impact of the research results on science and public debate is not excluded.

The theoretical basis on which this research is based is the concept of virtue ethics. This approach is undergoing a renaissance within the moral theory. It is, in fact, a proposal to return to the widespread ethical language of the antiquity, propagated by Aristotle, the Stoics, or – in the Chinese civilization – by Confucius. Instead of focusing on “duties” and “oughts” (this approach is called deontological) or determining actions as bad or good from the perspective of their consequences (consequentialism), virtue ethics proposes to focus on the characteristics of the subject. Representatives of this approach argue that it is better to focus the moral assessment on the attitudes and characters of people as moral subjects and to value their motives and intentions rather than to consider impersonal principles and evaluations based on moral rightness of a given conduct.

The virtue theory, or aretaic theory (in Greek *arête* means virtue or excellence) has already been applied to many fields of ethics (e.g. to bioethics, medical ethics), and only to a small degree has penetrated into legal sciences (legal theory, legal ethics). This project develops an aretaic approach to legal theory by attempting to formulate a theory of the virtues of the judges. The research team will analyze in detail the various concepts of the virtue theory in view of its application in law. Next, the main part of the project will focus on the reconstruction of the catalog of judicial virtues. To achieve this, an attempt will be made to analyze various aspects of the legal culture in Poland in search for the answer to the question what qualities of character of judges are recognized and accepted as judicial virtues. Legal culture is a broad concept and includes not only the law itself and the forms of its application (e.g. judgments of the courts), but also the state of knowledge about the law (both among lawyers as well as non-lawyers) and the perception of the law and its representatives, e.g. judges, which often manifests in the form of creations of culture: literature, film, art. On the basis of the analysis and interpretation of these sources, a certain picture in the eye of the society of the desirable virtues and the disapproved vices of lawyers, including judges, can be reconstructed. Because Poland is a member of the European Union and the EU courts headed by the Court of Justice of the European Union play an important role in the Polish legal system, we also need to ask the question about the desirable characteristics of a European judge, by way of conducting similar analysis. This will allow us to compare the two sets of virtues, reconstructed in these slightly different contexts, and enable to define the judicial character.

The aim of the project will be to relate the developed concept of judicial virtue, along with the catalog of specific virtues, to the situation of the judiciary and judges on the example of Poland. Checking whether the idea of describing the judicial roles in the language of the virtue theory can be useful for the legal scholarship, requires confronting it with specific problems. First of all, it is necessary to answer the question whether looking at the role of judges through the prism of their virtues is the proper and the best criterion for selecting people for the judicial offices. Secondly, it is worth considering the relationship between a specific set of judicial virtues and the overall dimension of exercising the judicial function. Does having some virtues make judges better from the perspective of the decisions they take (adjudication) in such a way that it increases the independence of individual judges and, consequently, the whole of the judiciary? In other words, whether a judge with the right set of virtues is more independent in adjudication, or the institutionally guaranteed independence is a prerequisite for the development of virtues constituting a good judge. This project seeks to answer these and some other, more specific questions, in order to propose a better theory and language in relation to the assessment of judges and the judiciary.