

## **The Empathy Challenge. The Case of Polish Judges**

### **Description of general public**

Discussion about the role of empathy in judging is getting increased attention both from the descriptive (what role it plays) and prescriptive (what and to what extent should it play any role) perspective. In legal science increased interest in interactions between emotions (where empathy is often placed) and the law resulted in a growing body of research on this issue. Along with them the rebirth of virtue jurisprudence also brought attention to a personal factor, which - in this case - includes the role of judicial empathy. It should be noted that in the American context much of the credit for emphasizing the role of empathy in judging should go to Barack Obama. While nominating federal judges, he advocated the use of empathy as an important quality to apply into decision-making - a thread present in many of his speeches throughout his career as a senator, and later as 44th President of the United States. Such repeated remarks triggered a broad debate (among politicians, publicists, and lawyers) about the relationship between law and empathy. Consequently, the issue of empathetic judging has become the subject of much more public attention.

Against the background of various relationships between law and empathy, the role of empathy in judging occupies a special place within this discussion. Obviously, the views on the place of empathy in adjudication are often a mere reflection of author's general preferences regarding the philosophy of law, the interpretation of law, and even their attitude toward political and ideological issues. Some authors clearly recognize the important role empathy plays/should play in judicial decision-making. Others, on the other hand, argue strongly against this approach, pointing to the negative influence empathy has on the process of judicial decision-making (e.g. for the sake of a common concern about the professional use of empathy in court is the potential for bias counteracting objectivity and impartiality).

So far, the issue of judicial empathy has not been studied from the judges perspective. The planned research aims to answer the general research question: how do the judges of Polish common courts (district and regional courts) perceive the role of empathy in judicial decision-making? The category of "empathy management" is central here. The proposed perspective underlines the fact that judges are going through complex socialization to do their job. Its element is to develop an attitude towards experiencing, manifesting and being driven by empathy. This applies to all stages of the judicial decision-making process. In this approach, the central category is empathy which associated with the professional practices. The issue of empathy management by Polish judges is situated in such perspective.

The planned research are primarily empirical one and refers to the socio-legal tradition of studying legal phenomena and legal professions. Such a perspective calls for using several research techniques. During the empirical phase of the research three basic research techniques will be applied: (1) survey on Polish judges of common (district and district) courts regarding their empathy and judicial empathy, (2) in-depth interviews with judges of common (district and district) courts on judicial empathy, (3) semantic analysis field and critical discourse analysis to determine to what extent, for what purpose and how Polish judges refer to different types of empathy in their judicial opinions.