

DESCRIPTION FOR THE GENERAL PUBLIC (IN ENGLISH)

Justice, truth and the rule of law - these concepts are usually understood as postulates that guide the fact-finding in the process of legal decision-making. The existing theory of law does not provide a straight answer on how to properly establish facts, achieve justice and - at the same time - consider what comes from the so-called "letter of the law". It shows that legal practice is based on a twofold contrast: on the one hand, it requires justice and objectivity from legal decisions, while on the other hand, these decisions are the results of the assessments considering the actual states of affairs. How is it then possible to reconcile these two seemingly conflicting tendencies? Stakes of the answer are high - only the objectivity of the actual findings on which the decision is based can provide legitimacy of the judgement.

It should be emphasized that the fact-finding process is not independent from its context which is the legal practice itself. To a large extent, fact-finding depends not only on the movements that the participants of the particular legal proceedings make in the so-called 'game of justice', but also on actions of the participants of other legal proceedings relevant to the case.

If the law is to be considered as a special discursive practice, it should be stated that in the theory of law there is no such description that would put legal fact-finding in the context of legal practice as a whole. In particular, there is a tendency to describe legal fact-finding "atomistically", that is as a process isolated from the content of other legal decisions. The theory of law has also become entangled in severe epistemological difficulties (e.g. as to the concept of truth).

The objective of the project is to overcome the ambiguities as to the fact-finding taking place during application of the the law. This will be carried out by using the achievements of the contemporary philosophy of language. In particular, it will be associated with creative development of the semantic inferentialism of Robert B. Brandom. In the project it is claimed that basic act of speech - assertion - has normative consequences. Thus by analysing inferences it is possible to identify in favor of which conceptual content a decisionmaker is committed. This verification is being accomplished by means of interactions between participants of the practice in the form of such acts as query and challenge. The process of mutual verification of participants' discursive commitments and entitlements can be explained by using of the TOTE cycle (Test - Operation - Test - Exit).

The effects of the research will enable to overcome the problems identified in contemporary theories of legal fact-finding by introducing new, pragmatic tool for describing both the dynamics of the process of fact-finding and the holistic approach to the concept of proof. The assertability conditions for the claims about facts will also be established. It is to allow the participants of the legal practice to verify adequacy of the authorities decisions as to the factual findings. Consequently, the results of the research will allow to limit judicial activism and the instrumentalization of law.