

The freedom of expression of judges as related to their job role

(description for the general public)

The project aims to explore issues related to the scope of the judge's freedom of expression, in particular the judicial freedom of speech. Expression is comprehended here to comprise all manners of displaying and communicating one's beliefs, attitudes and emotions. Even though the most characteristic human way of expression involves speaking, the project will attend also to non-verbal behaviours. We view the judge's sphere of conduct as tripartite, including: a) the courtroom; b) private life; and c) public life outside the courtroom.

Our research will be carried out on two mutually complementary levels. One of them concerns law-dogmatic issues and includes analysing: a) normative acts within the national law, the European law and the law of the European Union; b) disciplinary decisions of national courts, jurisdiction of European courts (the European Court of Human Rights, the Court of Justice of the European Union); and c) specific jurisprudence commentaries and official statements issued by the judiciary circles and European organisations. Our aim therein is, thus, to provide a systemic account of all legal norms in force in Poland regarding, directly or indirectly, the permissible scope of the judge's expression. Preliminary studies show that the existing regulations do not settle all the relevant questions related to the judge's freedom of expression, with the third of the spheres distinguished above being particularly ridden with vagueness.

The other level of our research is theoretical. It will involve analysing three discourses on, respectively: a) the freedom of speech as such; b) theories of the professional role; c) concepts of democracy. Therein our aim will thus be to establish how the issues of the judge's freedom of expression are framed in terms of such disputes informing these discourses as the constitutive vs. the instrumental justification of the freedom of expression, the structuralist vs. the interactionist model of the job role and the consensual vs. the non-consensual concept of democracy. The types of approaches gleaned from analyses of each of the three discourses will be confronted subsequently with one another and with the legal order in place in Poland as depicted earlier.

Given that social expectations towards judges are far from homogeneous while the issues of the judge's freedom of expression are rather scarcely regulated by normative acts, it seems that the study of theoretical factors underpinning pronouncements and positions on this issue is useful in terms of both cognitive needs and practical concerns.