

Judging judicial independence – Judges' liability from a transitional justice viewpoint

In legal circles and courts of public opinion in Poland, the European Union and the world, the criminal and administrative (e.g., vetting) responsibility of judges for decisions they implement in authoritarian states or during armed conflicts has been closely debated. Judiciary reform based on the rule of law is a topic that sparks categorical and often extreme views.

The potential liability of judges for compromising judicial independence is neither a straightforward problem nor a new one. Over the last 40 years, many countries worldwide have witnessed radical political change related to the collapse of undemocratic authorities or the end of armed conflict. Throughout the period of democratization, i.e. the transformation from a state of instability and injustice into a state of balance based on the rule of law, a specific set of mechanisms. Based on the concept of justice, this set of mechanisms can be described as transitional justice. The exact objectives of transitional justice vary depending on the context, but standard features include dealing with the legacy of the past, and redressing and recognizing violations as well as working to prevent their recurrence.

Transitional justice mechanisms are invariably political elements that are associated with the risk of causing new divisions and conflicts. Extremely divisive, but at the same time necessary for building a democratic state, is the mechanism of reforming the judiciary and bringing judges to justice. The importance of this issue stems from the complexity of the philosophical and legal debate on settlements within the framework of transitional justice. It also stems from the special status of the judiciary in the state based on the rule of law, which must guarantee the independence of the courts through principles such as the irremovability of judges. While this principle is necessary to ensure that settlement mechanisms are not initiated hastily or instrumentally, judges have often been a part of oppressive systems, pursuing repressive policies under the mantle of the law. Therefore, transitional justice may require their removal from office to protect human rights and the judiciary overall.

This project aims to investigate how transitional justice relates to the possibility of judges being held accountable for compromising judicial independence during pre-transition periods. In particular, the project aims to create a normative model of responsibility that could be applied to various types of transitions. For this purpose, extensive literature, legal acts, documents, court decisions and case studies will be analyzed to reconstruct the above philosophical and legal debate as well as descriptive models of judges' accountability.

Implementation of this project will enrich the discipline of transitional justice and contribute to the effective future use of transitional justice mechanisms related to judiciary reform and judges' accountability in different countries as needed. The model of responsibility constructed through the project will also answer questions that are the subject of current debate in Poland and the European Union. In Poland, for example, judicial reforms that raise fundamental doubts based on the rule of law but are often justified on the grounds of transitional justice are at issue. This project aims to answer whether - from the perspective of transitional justice - the actions taken by the authorities (e.g., the reform of the Supreme Court) were acceptable. Analysis of the emerging normative model of judicial independence and disciplinary responsibility of judges in the judgements of the Court of Justice of the European Union and the European Court of Human Rights will also show what level of disciplinary responsibility is acceptable in states governed by the rule of law and whether the same principles will apply to periods of transition.