Uncertainty and Argumentation:

Decision-Making Under Uncertainty in Legal Disputes

Lawyers representing clients in legal disputes are forced to make decisions under conditions of uncertainty. This is a special kind of uncertainty, as it includes, on the one hand, uncertainty about the possible decisions of the judge, but also uncertainty about the actions that the opposing party will take, or even uncertainty about the client's preferences regarding the resolution of a specific dispute.

While it can be argued that there is a category of cases that are simple, repetitive and ultimately predictable, it is impossible not to notice that there are also cases that are completely different. For example, difficult precedent cases (e.g. those concerning issues that have not previously been decided by the courts), or cases in which, due to the number of possible outcomes, it is impossible to predict what the court will actually rule (e.g. the amount of compensation awarded at the end), as well as what the opposing party will do (e.g. whether they will raise a specific argument or file a particular motion during the proceedings). In these more complex and complicated cases, it is very difficult or even impossible to predict the course of the proceedings based on the current state of knowledge. Nevertheless, lawyers are often obliged to recommend a course of action and adopt a specific litigation strategy in such uncertain circumstances.

What advice can be given in such a situation? How should such a situation be analysed? What characterises this situation and what actually makes it *uncertain*? How and what decisions should be made in such situations? Is it possible to provide technical support to lawyers in making these decisions, and if so, how?

The aim of this project is to examine these questions from the perspective of both legal theory, which has been interested in the problem of uncertainty for many years, and specific disciplines that focus on the problem of decision-making under conditions of uncertainty. The problem of decision-making under conditions of so-called *deep uncertainty* may prove particularly interesting. Simply put, this refers to situations in which not only do we not know the future, but we are also unable to determine with a high (or simply sufficient) degree of certainty what scenarios are possible, what the effects of our decisions will be, or what values should guide our decision-making. Reflections on legal reasoning and its formal presentation, or even the prediction of court rulings, which are a particular focus of interest in the field of research known as artificial intelligence and law (AI & Law), may also prove helpful.

The reason for undertaking this research was the unique nature of lawyers' work as decision-makers in uncertain conditions, as mentioned earlier. Although this specificity has been studied from various perspectives, these perspectives have rarely entered into dialogue with each other. The intention of this project is to change this state of affairs. On the one hand, this should enable an analytical look at different decision-making strategies in legal disputes, and on the other hand, it should create a potential theoretical basis for practical solutions supporting the work of lawyers, or simply a better understanding of the phenomenon of *uncertainty* in the context of legal disputes.

The project will result in the identification and characterisation of the types of uncertainty that occur in legal disputes. Taking into account the specific situation in which lawyers make decisions, a theoretical model of the decision-making process of a lawyer involved in a legal dispute will be constructed, taking into account interactions with the opposing party. In order to assess which strategies are most appropriate in a given type of uncertainty in a legal dispute, the project will create an environment for computer simulations in which it will be possible to test the effectiveness of given strategies for action in legal disputes under controlled conditions.