

## FREEDOM OF EXPRESSION AND COMMUNICATION COMPETENCE OF THE JUDGE: AN INTRODUCTION

The subject matter of this volume of “The Critique of Law: Independent Legal Studies” is a continuation of the research we initiated several years ago on the pages of “Archiwum Filozofii Prawa i Filozofii Społecznej: Journal of the Polish Section of IVR”.<sup>1</sup> At that time, we tried to propose an approach to the study of the problem of lawyers’ and judges’ actions in the world of institutions, focused on three ideas: subjectivity, responsibility and historicity. In the course of the research, the problem of judicial integrity emerged, understood as: 1) identity, being oneself regardless of the number of roles performed (sometimes conflicting) in the sphere of everyday life. In this sense, integrity means the ability to maintain autonomy in the face of the demands of the social practices in which we function; 2) an attitude of honesty understood in a particular way: as fidelity to one’s own moral convictions, which is manifested in the subject’s actions. In this perspective, integrity is defined as the consistency of one’s beliefs and actions, while its opposite is hypocrisy.

Referring to these findings, we found it necessary to have a closer look at the category of integrity in relation to the judge in particular. This conviction is reinforced by the debate in many Central and Eastern European countries, especially in recent times, around the role of a judge in the rule of law. It has made the issue of the integrity of a judge the subject of some of the studies presented last year on the pages of “The Critique of Law: Independent Legal Studies”.<sup>2</sup> In the foreword to the 3/2021 issue devoted to judicial integrity, we wrote that in this area we consider particularly important questions concerning freedom of expression: is a judge entitled to use moral and political arguments in the interpretation and application of the law? Is a judge allowed to reveal his or her views and criticise other authorities? Finally, what circumstances affect the judicial freedom of expression?

An expression of the conviction that the issues taken up require further research is the presented volume on the freedom of expression and communication competence of the judge. The timeliness of this issue is a consequence of the ongoing

---

<sup>1</sup> See: “Archiwum Filozofii Prawa i Filozofii Społecznej” (1/2018) which is a thematic issue titled *Legal Ethics: Lawyers’ Activity in the World of Institutions*.

<sup>2</sup> See: “The Critique of Law. Independent Legal Studies” (3/2021) which is a thematic issue titled *The Faces of Judicial Integrity*.

re-evaluation in thinking about the law, perception of the role of the judiciary and judges, both in the public debate and in legal discourse. Without aiming for an exhaustive identification of these overvaluations, let us first refer to Marek Zirk-Sadowski's research on the participation of judges and lawyers in legal culture, which exposes the subjectivity of a judge. In this view, the institutional structure ceases to act as a factor external to the subject and becomes a framework in which the interactions made can be attributed a productive and reproductive meaning. As a result, law is seen as a cultural phenomenon that requires the involvement of an interpreter. This theoretical-cognitive resolution can be delineated in terms of the choice of attitude that judges take towards legal culture: 'whether they are merely recipients of cultural patterns or whether they actively influence the content of these patterns.'<sup>3</sup>

The re-evaluations indicated above also translate into the role of a judge. According to Susan Daicoff, a judge tasked with managing the judicial process, influencing the experience of law in the courtroom, as well as the reception of law in the public sphere, should be equipped with certain competencies.<sup>4</sup> Among them, it is worth pointing to interpersonal competencies, which aim, among other things, to be able to cooperate with other judges, lawyers, litigants, as well as citizens and the public. In practice, these competencies mean the ability to listen, observe, and – to set behavioural boundaries when dealing with others.

The importance of the issue we are addressing is also a consequence of the growing role of new technologies in the judiciary (e.g. online hearings), as well as the related increasing activity of a judge in social media. Weronika Świerczyńska-Głownia points out that: 'The challenge that judges face today is not to decide whether or not to participate in the debate on social media, but how to speak out in order, on the one hand, not to offend the dignity of the office of a judge, and on the other hand, to influence the ongoing discussion and, as a result, to shape the image of the court and judges in the contemporary social space.'<sup>5</sup> The gravity of this challenge is reinforced by the fact that judges are not only important actors of communication in the courtroom, but they are co-responsible for the image of the law in the public space.

Addressing the topic of the judicial freedom of expression and communication is considered necessary also because of the current social and political context. It draws attention to a number of interrelated phenomena, which together are usually referred to as a constitutional crisis. Although this name may be considered far

---

<sup>3</sup> M. Zirk-Sadowski, *Prawo a uczestniczenie w kulturze*, Łódź 1998, p. 35.

<sup>4</sup> S. Daicoff, *The Future of the Legal Profession*, "Monash University Law Review", 2011, 37.

<sup>5</sup> W. Świerczyńska-Głownia, *Komunikowanie z perspektywy sali sądowej*, Kraków 2019, p. 229.

from accurate, there is no doubt that judges have become the focus of public debate, which may consequently contribute to raising the legal awareness of citizens. We are observing a clear shift away from a culture of silence to the participation of judges in ongoing public disputes. There are many indications that this is not just a temporary involvement. Consequently, it can be seen as an expression of deeper social changes involving a reconfiguration of the relationship between law, politics and the media as the three great social subsystems. Judges, as a result of these changes, are increasingly being drawn into personalised conversations involving other citizens. On the one hand, this is an opportunity for the judiciary, but on the other hand, there are many risks involved. After all, the failure of judges to participate personally in public debate can have a variety of effects not in the personal sphere, but in the institutional sphere, i.e. concerning the perception of the entire judiciary. Therefore, in addition to the issue of judges' freedom of expression, it is also important to address the issue of their communicative competence not only in the context of activity in the courtroom, but also outside it, such as in social media.

Encouraging you to read the presented volume, we would like to thank Professor Gülriz Uygur for her active participation in this project and for inviting other female researchers from Turkey to participate as well. We would also like to thank the Editorial Board of "The Critique of Law", especially Professor Jolanta Jabłońska-Bonca, for the enthusiasm with which the proposal to conduct further research on the role of a judge has met. Thanks to the kindness and assistance we received from the entire Editorial Board, it was possible to publish the presented volume. This was also possible due to the commitment of the authors, whom we thank for the articles sent. Last but not least, we would like to thank the researchers who published in the aforementioned earlier two volumes, of which this issue is a continuation.

Przemysław Kaczmarek, Paweł Skuczyński  
Wrocław–Warszawa, November 2022