„Krytyka Prawa", tom 14, nr 4/2022, s. 60–73, ISSN 2080-1084, e-ISSN 2450-7938, © 2022 Authors.
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GÜLRIZ UYGUR[1], FATMA İREM ÇAGLAR GÜRGEY[2]

'Improve the Law' as a Judicial Duty on the Borderlines of Free Speech: Judges as Responsible Epistemic Agents[3]

Submitted: 10.06.2022. Accepted: 11.10.2022

Abstract

This paper discusses judicial duty of improving the law on epistemic grounds and claims in that regarding this obligation, it is possible to give a place to free speech from an epistemic point of view. As a requirement of having epistemic agency, judges like other human beings have epistemological responsibility. Different from the others' responsibility, judges' responsibility is connected to their duty of improving the law, which is required by their job as well as the idea of the rule of law and judicial professional principles. Judges should improve the law's capacity to guide the conduct of its citizens, who are obligated to obey the law. Improving the law also improves the delivery of justice. The ways of legal interpretation and justification are important to improve it. While applying the law, judges can find the law unclear or they may encounter some norm conflicts. In these cases, they should resolve them to keep the law 'legally in good shape', which should meet epistemological requirements. When fulfilling this obligation, judicial free speech on epistemic grounds should not be limited.

Keywords: judicial ethics, judicial free speech, epistemological responsibility, agency.

1 Prof. Gülriz Uygur – Ankara University Law School, Ankara (Turkey); e-mail: guygur@law.ankara.edu.tr; ORCID: 0000-0002-2598-6350.

2 Fatma İrem Çaglar Gürgey, PhD – MEF University Law School, Istanbul (Turkey); e-mail: gurgeyi@mef.edu.tr; ORCID: 0000-0002-3928-3509.

3 The research in this article has not been supported financially by any institution.

„Krytyka Prawa", tom 14, nr 4/2022, s. 60–73, ISSN 2080-1084, e-ISSN 2450-7938, © 2022 Authors.
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„Ulepszanie prawa" jako sędziowski obowiązek na granicy wolności słowa – sędziowie jako odpowiedzialni pośrednicy w dochodzeniu do prawdy[4]

Streszczenie

Artykuł omawia sędziowski obowiązek ulepszania prawa na gruncie epistemologii. W tekście pada stwierdzenie, że jeśli chodzi o ów obowiązek, z epistemicznego punktu widzenia jest miejsce dla wolności słowa. Sędziowie, jak inni ludzie, są odpowiedzialni epistemologicznie, co stanowi wymóg zachowania sprawczości epistemicznej. Odpowiedzialność sędziów, która różni się od odpowiedzialności innych osób, wiąże się z obowiązkiem ulepszania prawa, czego wymaga ich praca, a także idea praworządności oraz zasady etyki zawodowej sędziów. Udoskonalanie prawa oznacza również udoskonalanie wymiaru sprawiedliwości. W celu uzyskania poprawy ważne są sposoby interpretacji i uzasadniania przepisów prawnych. W momencie stosowania prawa sędziowie mogą je uznać za niejasne albo mogą się natknąć na konflikty niektórych norm. W takich przypadkach powinni te konflikty rozwiązywać, aby prawo było nadal „legalnie w dobrej kondycji", co powinno spełniać wymagania epistomologiczne. Na gruncie epistemicznym sędziowska wolność słowa nie powinna być ograniczona przy wypełnianiu tego obowiązku.

Słowa kluczowe: etyka sędziowska, sędziowska wolność słowa, odpowiedzialność epistemologiczna, sprawczość.

[4] Badania wykorzystane w artykule nie zostały sfinansowane przez żadną instytucję.

 DOI: 10.7206/kp.2080-1084.556

Introduction

Academics who write about the profession of judge are in two camps. One of them is sceptics and struggles with the question of how judges should do. The other group is enthusiasts, and they struggle with the issue of what judges should not do.[5] These two camps also exhibit parallel approaches related to the freedom of judges. While sceptics focus on limiting freedoms, other enthusiastic groups push the limits of freedom. Different from these camps, this study focuses on epistemological responsibility of judges and explains that this responsibility has inner relation with freedom of expression, which does not yield arbitrary decisions and arbitrary behaviours of judges.

From one perspective, law is what a judge is obligated to use as a legal standard for making a legal decision. And reciprocally the role of a judge is constrained by those standards we think of as law, in terms of decision-making process.[6] Adding the principles to those standards, it becomes clear that the role of the judges is not limited to applying legal rules but also considering the principles which are part of the law. This is not merely a legal obligation. Judges have an epistemological and ethical obligation to use these principles. Both rules and principles and other obligatory standards have a constitutive relationship to the role of the judges. And this means that sometimes judges will be justified in stepping out of the legal rules because other values and principles are more applicable than those formal standards. We try to explain this perspective associated with epistemological responsibility of the judge. This explanation assumes the job of a judge based on epistemic grounds as well as on ethical grounds.

Within this boundary, judges have both legal and epistemological obligations to use the law, to protect the law and to improve the law. When fulfilling these obligations, judicial free speech must not be limited. At the same time, these judicial obligations may also draw the limits of professional judicial free speech on epistemic grounds. To explain this point, we will move on to the epistemological responsibility of judges.

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5 D. Dyzenhaus, *The Very Idea of a Judge*, "University of Toronto Law Journal" 2010, 60(1), p. 61.

6 The connection between role of a judge and law has been put forward explicitly by Ronald Dworkin (see: R. Dworkin, *Taking Rights Seriously*, Harvard University Press 1978, chapter 2).

In this paper, firstly we will explain epistemic responsibility of judges and try to explain free speech according to this responsibility. Secondly, we will explain the duty of judges to improve the law according to this responsibility and the principle of free speech.

Judge as a Responsible Epistemic Agency and Free Speech

'Law is a site of knowledge production where legal precedents validate a specialized kind of truth.'[7] Judges play a primary role to determine this knowledge. In this respect, we need to insist on judges' epistemic responsibility.

Epistemic agency is generally defined in the context of responsibility. According to one definition of it, 'etymologically, the term epistemic refers to knowledge, therefore epistemic agency is considered the type of human agency that entails the learning of knowledge. This involves those agents are responsible for what they know and what they do not know, or, in other words, that knowledge arises from choices the agent is responsible for.'[8] From philosophical perspective, epistemic agency 'involves human beings having control of their course of actions and be able to determine and how to apply their will in concrete acts.'[9] At this point, it is important to stress the meaning of knowing.

According to Jose Medina, 'knowing is mainly a matter of doing, that is, of engaging in epistemic actions and participating in epistemic practices.'[10] Following Medina, we consider individual epistemic responsibility associated with shared epistemic responsibility, since 'the former is intrinsically social, consisting of our epistemic orientations toward ourselves and toward others, that is, in our responsivity to our own epistemic attitudes (often socially generated or socially mediated) and to the epistemic attitudes of others.'[11] This view cannot ignore individual epistemic responsibility but insists on 'the analysis epistemic responsibility of agents cannot disregard social groups in which these agents are formed.'[12]

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7 L.M. Eckert, *Free Speech Law and the Pornography Debate: A Gender-Based Approach to Regulating Inegalitarian Pornography*, London 2020, p. 3.

8 A. Karpati, H. Dorner, *Developing Epistemic Agencies of Teacher Trainees: Using the Mentored Innovation Model*, [in:] A. Moen, A.I. Mørch, S. Paavola (eds.), *Collaborative Knowledge Creation: Practices, Tools, Concepts*, Rotterdam 2012, p. 204.

9 Ibidem.

10 J. Medina, *The Epistemology of Resistance: Gender and Racial Oppression, Epistemic Injustice, and Resistant Imaginations*, Oxford 2013, p. 52.

11 Ibidem.

12 Ibidem.

 DOI: 10.7206/kp.2080-1084.556

From Miranda Fricker's writings, we know that epistemic injustice prevents reaching to making of true decision as well as just decision. Fricker states two kinds of epistemic injustice: Testimonial injustice and hermeneutical injustice. She says that 'testimonial injustice happens when a speaker receives a deficit of credibility owing to the operation of prejudice in the hearer's judgement.'[13] For instance, a judge, who is affected by the racial or sexual prejudice may refuse to hear voice of woman speaker. Especially, credibility of marginalised groups can easily be deflated. In those cases, a judge may take a speaker's word not seriously.

According to Fricker, hermeneutical injustice 'happens when a subject who is already hermeneutically marginalised (that is, they belong to a group which does not have access to equal participation in the generation of social meanings) is thereby put at an unfair disadvantage when it comes to making sense of a significant area of their social experience. An example might be a woman who attacked or killed a long-term physically abusive partner at a time before the background history of his own violence and intimidation came to be interpretable by reference to the legal category of "provocation".'[14] Hermeneutical injustice, as well as testimonial injustice, cause unfair judicial decisions. Indeed, there is a relationship between two kinds of injustice and judges' epistemic responsibility. Namely, when judges do not have epistemic responsibility, they cause epistemic injustice.

To prevent epistemic injustice in legal cases, judges as epistemically responsible agents must fulfil their epistemic obligations. For this they should have epistemic virtues. According to Fricker, these virtues are testimonial justice and hermeneutical justice, which provide to reach a decision on epistemic grounds.[15] But we should not forget the social nature of epistemic responsibility. From this perspective, it is possible to say that epistemic responsibility has communicative nature. If so, the question is whether there is an internal relation between the idea of such epistemic responsibility and free speech. If we follow John Stuart Mill, who states a famous epistemic defence of free speech, we can say that there is a relationship between them. Mill says that: 'If all mankind minus one, were of one opinion, and only one person were of the contrary opinion, mankind would be no more justified in silencing that one person, than he, if he had the power, would be justified, in silencing mankind.'[16]

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13 M. Fricker, *Epistemic Justice as a Condition of Political Freedom?*, 2013, p. 2. https://www.mirandafricker.com/uploads/1/3/6/2/136236203/epistemic_justice_as_a_condition_of_poli.pdf (access: 10.03.2022).

14 Ibidem, p. 3.

15 Eadem, *Institutional Epistemic Vices: The Case of Inferential Inertia*, p. 1, https://www.mirandafricker.com/uploads/1/3/6/2/136236203/institutional_epistemic_vices_the_case_o.pdf (access: 10.03.2022).

16 J.S. Mill, *On Liberty and Other Writings*, ed. S. Collini, Cambridge 1989, p. 20.

At this point, it is possible to state free expression contrary to silencing people. It is also possible to defend it as providing epistemic conditions, since silencing blocks them. In that point, it is important to stress the role of free expression. Namely, especially regarding marginalised groups, 'that freedom is grounded in it being necessary to preserve the members' rights to agential epistemic participation.'[17] Fricker defines epistemic participation as to '*contribute to the pool of shared epistemic materials* – materials for knowledge, understanding, and very often for practical deliberation.'[18] In that way, the capability of epistemic participation is ability to function 'not only as receivers but also givers of knowledge – one who, in this case, stands in presumptive relations of *epistemic reciprocity* with others.'[19] We may consider that judicial treatment is an example of presumptive relations of epistemic reciprocity with others. Since everyone has the capability of epistemic participation, it relates to equality. By the way, following Fricker, we claim that this kind of equality should be epistemic relational equality which does not cause epistemic injustice. According to Fricker, 'we will value epistemic relational equality, for each is equally a general condition for knowledge in the social body.'[20] In that point, this kind of equality blocks unequal relationships in the context of producing knowledge since it requires to overcome hierarchical, disrespectful, and exclusionary social relations which cause epistemic injustice. In that point one may claim that judicial hierarchy and the position of judges may block this kind of equality. But judges' epistemic responsibility requires to involve this kind of equality.

Hence it is possible to claim free expression connected with epistemic participation. In other words, if we state epistemic contribution together with epistemic relational equality, this equality requires free expression for all the agents. As regards to this point, Fricker says that 'Epistemic Contribution is an ability to express one's epistemic subjectivity, to share by communicative means one's beliefs and interpretations, and I have suggested that its possession by all might usefully be conceived as establishing the core of epistemic relational equality. Given its communicative nature, we should ask the question whether there is an internal relation between the idea of such epistemic relational equality and freedom of expression. It seems there is, for we do not have to look very closely to see that

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[17] L. Smith, *The Right to Press Freedom of Expression vs the Rights of Marginalised Groups: An Answer Grounded in Personhood Rights*, [in:] M. Garcia-Godinez, R. Mellin, R. Tuomela (eds.), *Social Ontology, Normativity and Law*, Berlin 2020, p. 85.

[18] M. Fricker, *Epistemic Contribution as a Central Capability*, 2015, p. 4, https://www.mirandafricker.com/uploads/1/3/6/2/136236203/epistemic_contribution_as_a_human_capabi.pdf (access: 6.05.2022).

[19] Ibidem, p. 10.

[20] Ibidem, p. 17.

 DOI: 10.7206/kp.2080-1084.556

Epistemic Contribution plays an embedded central role in the classical liberal defence of free speech.'[21]

Having said this, this does not mean that everyone has the same right to determine epistemic pool and we should make a distinction. Equal epistemic participation does not involve that everyone has same level of epistemic participation. For instance, the constitutional principle of equality before the law requires that every citizen has equal a right regarding epistemic participation. However, this principle does not mean that every citizen has same level epistemic participation. Regarding this point Fricker says that there are different sorts of epistemic functioning and claims that 'while equal citizenship does not require that all citizens be educated to the same level, it does however require that all citizens receive a basic level of education; that while the views of all citizens need not be sought on every issue, the right to vote is universal and that while not every citizen need attend to the views of anyone who happens to express them, there are many contexts and relationships that create obligations of this sort, such as doctors to patients, line managers to their staff, teachers to their students, parents to their children, and so on. Such relationships and roles are part of the practical wisdom governing our substantive and context-sensitive judgements about what forms of social uptake are required from whom to sustain a capability.'[22] Moving from Fricker's ideas, we claim that judges have the obligations to attend to the views of claimers and other people connected with judicial treatment.

We claim that we should understand Mill's ideas in this context. His assumption about freedom of expression is 'wrong opinions and practices gradually yield to fact and argument.'[23] This assumption may seem problematic since it causes domination of biases and prejudices, which yield epistemic injustice. Mill also knows about this danger. He says that 'Assuming that the true opinion abides in the mind, but abides as a prejudice, a belief independent of, and proof against, argument – this is not the way in which truth ought to be held by a rational being. This is not knowing the truth. Truth, thus held, is but one superstition the more, accidentally clinging to the words which enunciate a truth (Mill, 1989 ch. 2).'[24] In that case, we may say that Mill brings epistemic limitations. But, as Fricker rightly stated, we cannot wait every participant can obey these limitations. There are different reasons for this. For instance, some of the participants cannot make any distinction between statements of prejudices and knowledge. Fricker also says that 'This is

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21 Ibidem, p. 16.
22 Ibidem, p. 18.
23 J.S. Mill, p. 24.
24 I borrow this paragraph from Fricker. See: M. Fricker, *Epistemic Contribution…*, p. 16.

because in such a situation the epistemic contribution of certain groups would not come to the fore, and so very likely some epistemic materials required for knowledge of certain relevant subject matters, including those bearing on how best to live together, would be absent.'[25] Furthermore, regarding judicial treatment people generally do not have knowledge regarding law materials. It is also difficult to understand the language of law for ordinary citizens.

In that context, judges' position is important. As we stated earlier, we move from epistemic agent and epistemic responsibility. This responsibility also requires to be aware of obstacles which produce epistemic injustice. In addition, since epistemic virtues are connected to epistemic responsibility, these virtues also require not to moving based on prejudices and biases.

In fact, we may pose the question that whether every individual should/we must regard everyone have obligation of epistemic responsibility or not. We may claim that the answer to this question is a 'yes'. However, as we stated earlier, we cannot suppose that all the participants know epistemic limitations. Beside of this, in the context of the power relationships and inequalities, we should not expect for ordinary individuals to take this responsibility. We should at least wait for those who are professionally required to take this responsibility. One of those professions is judges, since the process of judgement, especially evaluation process of a case, relates to epistemology. Particularly the meaning of the job of the judge relates to correct understanding, correct adjudication, justification and not arriving at an arbitrary decision.[26] For instance, epistemological responsibility relates to justification. In that context, we regard that a belief which is justified is a product of epistemically responsible action. Namely, epistemically responsible action is that individual subjects are the product of knowledge with justification. On this point, we claim that we should explain the job of the judge connected to her/him epistemological responsibility. In this context we make a distinction between judges and participants who are involved in a judicial process.

We claim that judges must have epistemic responsibility. This responsibility entails avoiding epistemic injustice. Regarding this point, we may support judges' epistemic responsibility according to Iris Marion Young's social responsibility theory. According to her this theory 'finds that all those who contribute by their actions to structural processes with some unjust outcomes share responsibility for the injustice.'[27] Hence, judges have responsibility to block structural injustice which is also produced by epistemic injustice. For this, judges must have freedom of

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25 Ibidem, p. 16.

26 See: G. Uygur, *The Job of the Judge in the Crisis Times (in the Context of Silenced Groups)*, [in:] R. Hauser, M. Zirk-Sadowski, B. Wojciechowski (eds.), *The Common European Constitutional Culture*, Frankfurt 2016.

27 I.M. Young, *Responsibility for Justice*, Oxford 2011, p. XIV.

 DOI: 10.7206/kp.2080-1084.556

expression which provides them to move on epistemic grounds. In this case, since judges have epistemic virtues, these virtues provide them not to count biases and prejudices as the knowledge. In that context, there is an internal relation between epistemic responsibility and freedom of expression.

Regarding citizens, even if they do not behave as epistemic agents, judges must listen to them. For instance, since testimonial injustice results silencing people, judges who have testimonial justice can hear these people's voices, that is, free speech involves their voices. On the other hand, to listen to them does not mean to accept their views as truth. Indeed, judges must be aware of others' prejudices and biases. Namely, judges will determine what counts as knowledge because of their situation.

We may explain this point according to Mill's assumption about the freedom of expression. As we stated earlier Mill defends that 'wrong opinions and practices gradually yield to fact and argument.' In fact, these practices and opinions cannot yield by themselves to fact of determinant. We therefore need an epistemic perspective to regard this practice as wrong and determine how one reach an argument based on them. In that point, judges' role is important. Judges who have this perspective can regard them as fact and argument. To explain this point, we can refer to Mill's ideas again. In fact, 'Mill demonstrates how freedom of expression can help us (the individual and political community) have better justified and more correct belief'[28] in his book *On Liberty*. Based on the thought of Mill, we can say that judges who have epistemic virtues can assess reasons and arguments regarding conflicting claims and reach more better justified decisions. On the other hand, since judges hear different opinions, they can treat the participants as knowers. According to Fricker, epistemic injustice should result avoiding treating participants as knowers. In that case, when judges who have epistemic responsibility listen participants completely, they also treat them as knowers and the do not ignore their capacities of knowing. We therefore claim that freedom of expression for the participants yield to recognise their knowing capacities at the court.

These points also explain why judges have obligation of epistemological responsibility. Finally, we claim that judges' free speech should be understood together with their epistemic responsibility. As regards, we claim that we should also understand the duty of judges to improve the law according to their epistemic responsibility.

[28] I. Cerovac, *John Stuart Mill and Epistemic Democracy*, Lanham, MD 2022, p. 46.

Obligation to Apply and Improve Law

Ioanna Kuçuradi thinks that being in a judicial activity creates a unique, ethical relationship as the judge is not a person who is involved in the action in dispute. Rather a judge keeps a certain distance from the parties involved in the action and evaluates their relations in the context of the action. To make this kind of judicial evaluation correctly, the judge must first understand the fact in dispute and obtain correct knowledge about the fact.[29] It will only be possible for a judge to apply the legal norms after the completion of the knowledge phase about the event related to the dispute.[30] While applying the law, judges can find the law unclear or encounter some norm conflicts. In these cases, they should resolve them to keep the law 'legally in good shape' which should meet epistemological requirements. When fulfilling this obligation, judicial free speech on epistemic grounds should not be limited.

Legal disputes cannot be settled by themselves. Someone must do this job, and the judges are the ones who have obligation to solve the disputes by making legal decisions based on legal rules if we were to say that the community had a legal system. Legal rules do not *per se* apply themselves. A judge must decide which rules to apply and must implement what these chosen rules mean in the circumstances of the case. The legal rules may be deficient, may be badly drafted or inconsistent with the other rules. The ideal rule makers should make the law legally in good shape. However, the world being what is it, this obligation will never be realised in full.[31] Therefore a judge should be faithful to the law, maintain professional competence in it. In other words, a judge should know what the law is. While applying the law, if there is a deficiency, judges have a positive obligation to keep the law 'legally in good shape' that is associated with their epistemological responsibility. When judges encounter unclarity in the law such as ambiguity or vagueness in the language of law, they need to clarify it. When there is a conflict in the law, it is also among the obligations of the judges to resolve conflicts in law. In general, judges should improve the law's capacity to guide the conduct of its citizens, who are obligated to obey the law.

Judges' obligation to improve the law stems from their professional role which is based on their epistemological responsibility. Judges are obligated to fulfil this obligation both in their judicial activities and during their legal activities outside the courthouse. Judges' epistemological responsibility is not only connected with the evaluation of the fact, but also connected with the legal norms. The law improving

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29 İ. Kuçuradi, *Etik*, Ankara 1999, pp. 127–128.

30 Eadem, *Ahlak, Etik ve Etikler*, Ankara 2019, pp. 106–107.

31 A. Glass, *The Vice of Judicial Activism*, [in:] T. Campbell, J. Goldsworthy (eds.), *Judicial Power, Democracy and Legal Positivism*, Routledge 2016, p. 351.

 DOI: 10.7206/kp.2080-1084.556

obligation require creative judges to interpret the law, to fill the gaps, to use discretionary power. From the perspective of formalists, the ones defined as 'automaton judges' are only the officials who provide a narrow judicial service. This conception of a judge is purely instrumental.[32] However, they are not suitable for the title of judge. Considering the social phenomenon dimension of the law, the creativity of the judges is an indispensable dimension of the law. Otherwise, the law will become unable to respond to social dynamism. As a result, all legal systems are dynamic due to their close connection with social facts, and judges have obligations to shape the law on epistemic grounds.[33] The judicial obligation to improve and protect the law is not only related to epistemological responsibility. Due to the law's close tie with the value of justice, it also obligates judges to go beyond what the existing evil laws require without going against the law. Thus, there is a relationship between ethical and ethical responsibility for judges. Judges are responsible for detecting and changing the rules that do not realise the value of justice. If the judges are not able to change the unfair rule, they are obligated not to apply it. In this case, the judges go beyond the rule (*extra legem*), but they do not go against the law (*intra ius*). Such actions are the result of the judicial role obligations.

Some standards bind judges, not because they are law, but simply because they are part of what it means to be a judge.[34] Some moral principles bind judges not because they are human but because they serve in a particular role, which they choose voluntarily. But they should make this choose according to their epistemic responsibility. In that context judges have epistemic and ethical responsibility. As we stated earlier, judicial epistemological responsibility also requires ethical virtues. We can see some other legal philosophers, such as Hart state this point. According to Hart, the fact that the judicial decision making is creative does not mean arbitrariness. At the same time, legal decision-making actions are not a mechanical action, as the formalists claim. Judges are neither automatons nor arbitrary decision makers. Hart calls the limitations of judges' decisions are 'characteristic judicial virtues'. These virtues are impartiality and neutrality. It is an aspect of impartiality and neutrality to put forward an acceptable general principle that will form the basis of the decision, considering the interests of all those who will be affected by the decision. These virtues are essential not only in hard cases but in all activities involved in the role of judge.[35] Beside these virtues, judges should have epistemic justice virtues. Without them, it is not possible to reach full knowledge of participants.

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[32] D. Dyzenhaus, op. cit., p. 6.

[33] E.P. Soper, *Legal Theory and the Obligation of a Judge: The Hart/Dworkin Dispute*, "Michigan Law Review" 1977, 75(3), p. 488; H.L.A. Hart, *The Concept of Law*, Oxford 1994, p. 205.

[34] E.P. Soper, op. cit., p. 477.

[35] H.L.A. Hart, op. cit., pp. 204–205.

Judicial decisions especially on hard cases involves a choice between principles which should be made together with epistemic justice virtues. However, when making this choice, the interests of the parties need to be weighed and balanced, as Hart states.[36] In this respect, the judge should strive to have full knowledge of the interests of the parties for a fair trial and decision. As we stated earlier, judges' epistemic responsibility requires to have this kind of knowledge. Since we understand free speech of judge on epistemic grounds, it is not difficult to talk about freedom of the judge here.

The role of judicial creativity emerges for the fulfilment of the obligations to improve the law. Judges apply the law to resolve the dispute before them. However, there is no system in the world, neither in the present nor before, that consists of legal rules that will settle all disputes due to the dynamic nature of the societies. Societies need a dynamic legal system. Judicial creativity becomes an important element when legal rules cannot meet this need. There have always been and will always be the absence of a legal regulation compatible with the current conflict, and the areas where the legislator leaves the judges discretionary space to decide. There will be some legal norms that require interpretation due to an ambiguity arising from the legal language. For this reason, modern legal systems have ensured judicial creativity through their legal systems – with some exceptions – to maintain the system fairly.

Judicial creativity can only be achieved in an environment where freedom of speech is not hindered. As with all kinds of creativity, judicial creativity can only show itself in an environment where freedom of speech is not hindered. In judicial systems where freedom of speech is limited, it will not be possible to talk about the judicial creativity and it will not be possible for the judges to fulfil their obligations to improve and protect the law. It is a necessity to ensure the judicial independence in order not to limit the freedom of speech and expression of the judges and judicial creativity.

Conclusion: Epistemological Responsibility, Ethical Virtues and Free Speech

The judges' obligation to improve the law is not arbitrary. It has some boundaries. Partisanship, discriminatory language, hate speech etc. are outside the realm of judicial epistemological responsibility. The judge must account for the way in

[36] Ibidem, p. 205.

 DOI: 10.7206/kp.2080-1084.556

which discretionary power to apply has been used in the specific case.[37] The judge must go beyond the law and apply the moral values and principles to come to what seems best decision on the problem in hand, without sacrifice of impartiality.[38]

Judges should be bound by epistemic responsibilities. Epistemological responsibility of judges requires these things outside of the free speech since this responsibility requires to understand it on epistemic grounds. Namely a judge who has epistemological responsibility aware of that these things are main obstacles to reach knowledge. In other words, epistemological responsibility requires that judges should make a distinction between knowledge and non-knowledge. Thus, there is an internal relationship between epistemological responsibility and freedom of expression. Without this freedom it is not possible to fulfil this responsibility.

Secondly, judicial treatment has a communicative nature. Participants have rights to epistemic participation. Since they are equal to have these rights, they must have free expression. In that context, moving from Fricker, we mention relational equality. Judges who aware of this equality, namely have epistemological responsibility make a space for the speech of those who are usually silent or whose speech are rarely heard or believed due to epistemic injustice. In this way, judges do not only discover the truth, but also make just decisions. On this point, we claim that there is a relationship between epistemic and ethical responsibility. To realise these responsibilities, freedom of speech is necessary since without it judges cannot hear the voice of participants and participants cannot use their rights to epistemic participation.

In this context, we regard the judges' obligation of improving of law based on the epistemic grounds, as well as ethically grounds. In this way, we claim that there is an internal relationship between judges' epistemological responsibility and freedom of expression.

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 DOI: 10.7206/kp.2080-1084.556