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Reflexivity and the Codification of Legal Ethics. Remarks on the Basis of Paul Ricoeur's "Little Ethics" Theory[1]

Codes of legal ethics encounter constant waves of criticism. It is pointed out that their disadvantage is, on the one hand, the excessive casuistry, limiting the possibility of taking independent decisions in cases of ethical and professional conflicts, and, on the other hand, the exaggerated declarative character of perfectionist ethical and professional virtues. The gap between the abovementioned perspectives, easily perceived in such codes, results in a dysfunctionality of professional ethics in the actions undertaken by members of the legal profession. The article, apart from the critical-comparative part, includes a proposal of reading and interpreting the content of the codes in a way that transgresses the above opposition. The theoretical basis of the presented position is provided by the concept of "little ethics" formulated by Paul Ricoeur in his work *Oneself as Another*. The ethical theory developed by Ricoeur combines the elements of Aristotelian ethics of virtues with Kantian ethics of duty. For this reason, it sets a uniform perspective for opposing elements, namely: subordination to the norm of the code and pursuit of ethical and professional self-improvement by legal professionals. The proposed solution belongs to the "reflexive" paradigm of the lawyer's professional ethics proposed on the basis of Ricoeur's onto-ethical theory.

Keywords: legal ethics, codification, reflexivity, Paul Ricoeur, teleological ethics, deontological ethics, "little ethics"

1. Introduction

Jurisprudential discourse revisits the question of the codification of legal ethics.[2] At the same time, in spite of the theoretical dilemmas, legal corporations around the world

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[2] Cf. P. Kaczmarek, *Kodeksy etyki zawodowej: w poszukiwaniu bezpieczeństwa moralnego w czasach niepewności* [Eng. *Codes of Professional Ethics: In Search of Moral Safety in Times of Uncertainty*], in: H. Izdebski, P. Skuczyński (eds.), *Etyka prawnicza. Stanowiska i perspektywy*, [Eng. *Legal Ethics. Positions and Prospects*], Warszawa 2013, pp. 13–26; R. Sarkowicz, J. Stelmach, *Kodeksy etyki zawodowej* [Eng. *Codes of Professional Ethics*], in: R. Sarkowicz, J. Stelmach, *Teoria prawa* [Eng. *Theory of Law*], Kraków 1996, pp. 206–214; P. Kaczmarek, *Tożsamość prawnika jako wykonawcy roli zawodowej* [Eng. *The Identity of a Lawyer as the Executor of a Professional Role*], Warszawa 2014, pp. 182–197; P. Skuczyński, *Status etyki prawniczej* [Eng. *The Status of Legal Ethics*], Warszawa 2010, pp. 114–117; I. Bogucka, T. Pietrzykowski, *Etyka w administracji publicznej* [Eng. *Ethics in Public Administration*], Warszawa 2015, pp. 134–142; M. Pieniążek, *Etyka sytuacyjna prawnika* [Eng. *Lawyer's Situational Ethics*], Warszawa 2008, pp. 41–53.

make an effort to create sets of rules of professional ethics. Today, the phenomenon is so common that it is no exaggeration to speak of "saturating" legal corporations with ethical-professional issues both on a local and a global scale.[3] On the other hand, in the opinion of a number of lawyers, the codes of ethics remain peculiarly impotent colossuses – an ineffective tool for professional conflict prevention and resolution. The sources of this phenomenon should be sought among other things in the unclear status of corporate legal ethics, which is neither positive law nor a living morality.[4] The consequence of legal ethics being torn between law and morality – reinforced by the assumptions of legal positivism – is a low sense of the binding nature of ethical and professional norms. Its visible manifestation is the discrepancy between the prevalence of codification and limited respect for the norms of legal ethics. The universality of the regulation seems to confirm the scale of the problem signaled. What is more, the very codes tend to be regarded as a source of low efficiency of professional ethics. One can even get the impression that the criticism of professional ethics is focused on the sets of principles. This argument has the purpose, *inter alia*, to assess whether this criticism is justified and whether the content of the existing codes is the cause of the weakness of legal ethics in practice. Therefore, these considerations are not based on *a priori* theoretical assumptions, but rather on the conclusions derived from the analysis of the content of a number of codes of legal ethics.[5]

2. Code content analysis – the critical part

Generally speaking, the drawback of the sets of principles of legal ethics is, on the one hand, their quasi-legal normativity, limiting the possibility of taking independent decisions in cases of ethical and professional conflicts, and, on the other, the exaggerated declarative character of professional virtues. This gap is visible in the content of legal ethical and professional codes, both in the common law and civil law tradition. This phenomenon can be illustrated by sample regulations taken from the Polish and the American sets of rules of legal ethics.

The basis for the codification of legal ethics in the US are the ABA Model Rules of Professional Conduct.[6] In their essential part Model Rules[7] have the character of

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[3] For example, the member organisations of Conseil Consultatif des Barreaux Européens adopted 30 codes of legal ethics in total. Available online at: http://www.ccbe.eu/. As for the examples of the globalisation of the codification of lawyer's ethics, see the entry *Kodeksy etyki zawodowej* [Eng. *Codes of Professional Ethics*], in: P. Skuczyński, S. Sykuna (eds.), *Leksykon etyki prawniczej. 100 podstawowych pojęć* [Eng. *Lexicon of Legal Ethics. 100 Basic Concepts*], Warszawa 2013, pp. 202–203.

[4] R. Sarkowicz, J. Stelmach, *Filozofia prawa XIX i XX wieku* [Eng. *Philosophy of Law of the 19th and 20th Century*], Kraków 1998, pp. 32–34; cf. P. Skuczyński, *Status…*, pp. 237–257.

[5] Compendium of Rules on Advocates' Ethics and the Dignity of the Profession (Advocates' Code of Ethics), attached to the Resolution of the Supreme Bar Council No. 32/2005 dated 19 November 2005 amended by the resolutions of the Supreme Bar Council No. 33/2011–54/2011 dated 19 November 2011; Code of Ethics for Legal Advisers, Annex to Resolution No. 3/2014 of the Extraordinary National Congress of Legal Advisers dated 22 November 2014; Notary Code of Professional Ethics, Annex to Resolution No. 19 of the National Council of Notaries dated 12 December 1997 as amended; Standards of Professional Conduct for Prosecutors, Annex to Resolution No. 468/2012 dated September 2012; The Code of Professional Ethics for Court Enforcement Officers, Annex to the resolution KRK No. 909/IV dated 8 February 2012; Standards of Professional Conduct for Judges, the Annex to the Resolution No. 16/2003 of the National Council of the Judiciary of 19 February 2003.

[6] In the Federal District and in all the states except California. Available online at: http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct.html. Cf: D.C. Rules of Professional Conduct, available online at: https://www.dcbar.org/bar-resources/legal-ethics/amended-rules/; New York Rules of Professional Conduct, effective April 1, 2009 as amended through January 1, 2014 with Commentary as amended through March 28, 2015, available online at: http://www.nysba.org/CustomTemplates/SecondaryStandard.aspx?id=26633.

[7] American Bar Association Model Rules of Professional Conduct (2002 edition) as passed by the American Bar Association, House of Delegates February 5, 2002 and amended in August 2002, available online at: https://www.law.cornell.edu/ethics/aba/current/ABA_CODE.HTM.

rational professional pragmatics, aimed at the effective implementation of the lawyer's obligations in relations with clients, courts, corporations, etc.[8] The dominant, normative nature of the Rules is revealed already in the Preamble, setting out, in paragraph 14, the statute-like (mandatory or dispositive) manner of formulating them:

> Some of the Rules are imperatives, cast in the terms "shall" or "shall not". These define proper conduct for purposes of professional discipline. Others, generally cast in the term "may", are permissive and define areas under the Rules in which the lawyer has discretion to exercise professional judgement.[9]

The premise of the statutory character of the Model Rules is their direct influence on the content of the codes issued by the respective Bar Associations, incorporated, under court decisions or legislative authorities, into the state systems of legal sources.[10] On the other hand, the Model Rules state that "the exercise of professional judgement" consists in improving the lawyer's relations with the client, the court, other lawyers, etc. Therefore, the number of core principles have a clearly perfectionistic character and they refer to professionally conditioned virtues. Already point 1 of the Preamble states that "A lawyer, as a member of the legal profession, is a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice" (yet another emphasis). The further points of the Preamble expressly indicate legal professional virtues. For example, in accordance with point 2 "As advocate, a lawyer zealously asserts the client's position under the rules of the adversary system". In turn, in light of point 4, "In all professional functions a lawyer should be competent, prompt and diligent". There is also point 5 which has a perfectionistic expression, according to which:

> A lawyer's conduct should conform to the requirements of the law, both in professional service to clients and in the lawyer's business and personal affairs. A lawyer should use the law's procedures only for legitimate purposes and not to harass or intimidate others. A lawyer should demonstrate respect for the legal system and for those who serve it, including judges, other lawyers and public officials.[11]

The professional virtues indicated in the Preamble are referenced to all spheres of the lawyer's professional activity and are subject to clarifying the content of the respective Rules. For example, in the chapter "Client-Lawyer Relationship", according to Rule 1.1: Competence, "A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation necessary for the representation". The lifelong training of a lawyer, with an aim to maintain a high degree of their professional competence, remains an important

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[8] For example, according to Rule 3.5 (Impartiality and Decorum of Tribunal):
A lawyer shall not:
(a) seek to influence a judge, juror, prospective juror or other official by means prohibited by law;
(b) communicate *ex parte* with such a person during the proceeding unless authorized to do so by law or court order;
(c) communicate with a juror or prospective juror after discharge of the jury if:
(1) the communication is prohibited by law or court order;
(2) the juror has made known to the lawyer a desire not to communicate; or
(3) the communication involves misrepresentation, coercion, duress or harassment; or
(d) engage in conduct intended to disrupt a tribunal.

[9] American Bar Association Model Rules of Professional Conduct….

[10] R. Sarkowicz, *Amerykańska etyka prawnicza* [Eng. *American Legal Ethics*], Kraków 2004, p. 46.

[11] American Bar Association Model Rules of Professional Conduct….

element of self-improvement: "To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject".

Another example of developing legal ethics in the context of professional self-development can be found in the section "Counselor". In the light of Rule 2.1, shaping the professional judgement about the client's situation goes beyond the normative dialectic of "shall or shall not", entering the prospect of a broad knowledge of life:

> In representing a client, a lawyer shall exercise independent professional judgement and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client's situation.[12]

It should be noted that Rule 8.4, listing six categories of misconduct (among others, violation or attempted violation of the Rules), also provides for cases of conduct contrary to the perfectionist, ethical-professional virtues. This includes situations where a lawyer "engage[s] in conduct involving dishonesty, fraud, deceit or misrepresentation", as well as situations where an offence impacts directly on "the lawyer's honesty, trustworthiness or fitness as a lawyer".[13]

The coexistence of the perspective of ethics of norms and ethics of virtues is also evident in Polish codes of legal ethics. It can be argued that, except the succinct Standards of Professional Conduct for Judges, they have a quasi-statutory character, complemented by a set of preliminary perfectionist declarations. An authoritative example of such statute-like form is §23a of the Code of Advocates' Ethics, which enumerates meticulously the permitted forms of announcing one's services.[14] On the other hand, the perfectionist perspective is determined in the abovementioned Code in broad terms, since, in accordance with § 4, an attorney bears disciplinary responsibility for incompliance with advocates' ethics or a violation of the dignity of the profession in professional, public and private life. Moreover, § 8 contains a catalogue of relevant ethical and professional virtues. In the light of the latter, an attorney should carry out their professional activities to the best of their knowledge and will, with due honesty, conscientiousness and zeal. An advocate is also obliged to pursue continuous professional training and strive to maintain a high level of professional competence. Thinking in terms of ethical-professional virtues is also visible in the content of § 43 (Relationship to clients), according to which an attorney is obliged to defend the interests of their client in a courageous and honorable manner, while preserving the respect and courtesy owed to court and

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[12] American Bar Association Model Rules of Professional Conduct….

[13] Rule 8.4 Misconduct reads: It is professional misconduct for a lawyer to:
(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
(b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;
(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
(d) engage in conduct that is prejudicial to the administration of justice;
(e) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law; or
(f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.

[14] The Code of Rules on Advocates' Ethics and the Dignity of the Profession…

other authorities, without regard to their own personal benefit or the consequences of such an attitude, both for themselves or for another person. Similar regulations are contained in the Code of Ethics for Legal Advisors (e.g. in articles 11 and 12), whereas their perfectionist expression is further strengthened by the reference to the wording of their oath (article 6).[15] The Code of Ethics for Prosecutors (§ 2 point 1 and 2) also enumerates such virtues as honesty, dignity and honor as well as a sense of duty and responsibility.[16] The perspective of thinking in terms of ethical and professional virtues also comes to the fore in the general part of the code of ethics for notaries[17]and bailiffs.[18] In turn, in the short code of judicial ethics it forms the basic framework of regulations.[19]

The latter example is the exception that proves the rule, according to which both in the US Model Rules of Professional Conduct and in Polish codes of legal ethics containing the rules of quasi-statutory nature there coexist declarations of excellence in professional virtues. Legal ethics is therefore shaped by the creation of two heterogeneous perspectives – deontological and perfectionist. The difference between them can be regarded as one of the fundamental reasons for the practical dysfunctionality of professional ethics in the operations of an attorney, a judge or a prosecutor. This is the case since being subject to deontological obligation is something radically different from the call for self-improvement in ethical-professional virtues. Moreover, the prescription, legalistic in its nature, to comply with ethical-professional norms is indeed in contradiction with the requirement for a flexible resolution of non-codified conflicts. As a result, the vagueness of the concepts of "dignity of the profession", "professional judgement", "self-improvement", etc. weakens the meaning of the basic, ethical-professional duties, whereas the detailed nature of norms undermines the validity of teleological declarations.

It can therefore be claimed from the jurisprudential point of view that in the content of professional codes of ethics there co-exist at least two different ethical perspectives. I would venture to say that one of them is the perspective of Aristotelian ethics of virtues, while the other – of Kantian ethics of duty. The first forces one to make ethical

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[15] Article 6. A legal advisor, having in mind the content of the oath specified in the Act on legal advisors, shall perform professional activities fairly and honestly, in accordance with the law, rules of professional ethics and morality. After: The Code of Ethics for Legal Advisors…

[16] Cf. Standards of Professional Conduct for Prosecutors…

[17] § 6 The fundamental principles of a notary are: honesty, integrity, independence and impartiality, as well as professional secrecy. § 7 A notary should, by their attitude and actions, give good testimony of their profession and uphold the gravity, honour and dignity of their profession. § 8 A notary should take care that the rules of ethics are also observed by other members of their professional environment and their employees. § 9 A notary should develop their professional knowledge in order to improve the quality of their services, in particular by attending courses and seminars. § 11 1. A notary is obliged to carry out professional activities in accordance with the law, to the best of their ability and knowledge and with due diligence. After: Code of Professional Ethics for Notaries…

[18] § 4.1. A bailiff bears disciplinary liability for a breach of professional conduct in the course of undertaking professional and public activities, as well as in private life, in the selection of the environment and social relations. (..) § 7.1. A bailiff shall perform their professional activities to the best of their knowledge and ability, with due honesty and impartiality, reliability and efficiency. 2. A bailiff should expand their professional knowledge, in particular by participating in training courses and seminars. After: Code of Professional Ethics for Court Enforcement Officers…

[19] § 1 There are certain duties as well as personal limitations connected with the holding of judicial office. § 2 A judge should always be guided by the principles of integrity, dignity, honour, sense of duty and observe good manners. (..) § 12 (..) 2. With regard to the parties and other persons participating in the proceedings, a judge should have a dignified attitude, patience, politeness, and also require from those people proper behaviour. § 16 A judge cannot, by any of their behaviour, create even an appearance of failure to respect the legal order. § 17.1. A judge should avoid personal contact and any economic relationships with other entities, if they could cast any doubt on the impartial performance of their duties, or undermine the prestige and confidence in the judicial profession. 2. A judge should exercise due diligence so that no such behaviour is ever displayed by their immediate family. After: Standards of Professional Ethics for Judges…

and professional choices in the context of striving for a good professional life, while the second – in the context of the valid norm of professional deontology. If one accepts this premise, the internal gap within the codes of legal ethics renders itself to explanation in the light of the dialectic of two leading trends of the theory of morality.

3. A proposal to solve the problem – the constructive part

3.1. Paul Ricoeur's views

It begs the question of whether the radical dissimilarity of two great ethical traditions can be removed at the meta-theoretical level and if so, what the consequences for the codification of legal ethics would be. Consequently, I would like to refer here to the original attempt to reconcile the Aristotelian and the Kantian perspective,[20] made by Paul Ricoeur in his work *Soi-même comme un autre* (*Oneself as Another*).[21] Ricoeur's proposal bears a modest name of "little ethics" and is covered by the study VII, VIII and IX of that work.[22]

Ricoeur most generally writes that "from Aristotle he would like to preserve the ethics of sharing, co-existence", present in his concepts of friendship and justice.[23] Therefore, in Ricoeur's views, the "Aristotelian perspective" includes the issues of reciprocity and equality of entities,[24] both in the interpersonal dimension (in such case the philosopher uses the term "solicitude"[25]) and in the social one (then the philosopher writes about "justice"). In turn, the "Kantian perspective"[26] comes to the fore in the conception of "self-obedience" to the promise made, as adopted by Ricoeur.[27] In this context, Ricoeur raises the question of the autonomy of will and surrendering to the prescription of "equal treatment of oneself as another and another as oneself", understood as a categorical imperative.[28]

In order to formulate the "little ethics", Ricoeur adopts a number of presuppositions. The philosopher introduces primarily a rather unusual understanding of the concepts of ethics and morality, relating the first with the teleological perspective ("with what is assessed as good") and the other with deontological perspective ("with what imposes itself as obligatory"). Then Ricoeur formulates his theses, being the axis of reasoning, namely "1) the priority of ethics over morality [in the above sense – M.P.]; 2) the necessity of filtering the ethical pursuit through norms; 3) the validity of referring from the norm to the pursuit, where the norm in practice leads to dead ends".[29] In

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[20] Cf. D.M. Kaplan, *Ricoeur's critical theory*, New York 2003, pp. 102–109. Cf. H. Barreau, *L'éthique de Paul Ricoeur à partir de "Soi-même comme un autre"* [Eng. *The Ethics of Paul Ricoeur from "Oneself as Another"*], 1990, available online at: https://hal.archives-ouvertes.fr/halshs-00108135/document, p. 1.

[21] P. Ricoeur, *Soi-même comme un autre, L'Ordre Philosophique* [Eng. *Oneself as Another*], Paris 1990. Subsequent footnotes refer to the Polish edition.

[22] Cf. P. Ricoeur, *O sobie samym jako innym* [Eng. *Oneself as Another*], Warszawa 2005, p. 482. See also P. Ricoeur, *From the Moral to the Ethical and to Ethics*, in: P. Ricoeur, *Reflections on the Just*, Chicago–London 2007, pp. 45–52.

[23] Cf. Aristotle, *Etyka nikomachejska* [Eng. *Nicomachean Ethics*], Warszawa 1982, V, 1131a 12–13.; V, 1131a 29–32; IX, 4, 1166a 32.

[24] Cf. M. Pieniążek, *On Paul Ricoeur's tribute to legal philosophical issues of recognition and reciprocity*, in: K. Cern, B. Wojciechowski, M. Zirk-Sadowski (eds.), *Towards Recognition of Minority Groups. Legal and Communication Strategies*, London 2014, pp. 87–102.

[25] The philosopher adds that justice is on the social level what solicitude is in interpersonal relations.

[26] Cf. P. Ricoeur, *The Concept of Responsibility*, in: P. Ricoeur, *The Just*, Chicago–London 2003, p. 16ff.

[27] Cf. P. Ricoeur, *From the Moral…,* p. 53.

[28] Cf. I. Kant, *Ugruntowanie metafizyki moralności* [Eng. *Groundwork of Metaphysics of Morals*], Kraków 2005, p. 95.

[29] P. Ricoeur, *O sobie samym*…, p. 282.

other words, Ricoeur argues that Aristotelian ethics includes the Kantian conception of morality, representing "only a limited, albeit legitimate, or even necessary fulfillment of ethical pursuit". Between the indicated traditions there would therefore exist the relation of "subordination and complementarity, (…) reinforced by the ultimate reference from morality to ethics".[30]

Paul Ricoeur associated the above assumptions with the basic theme of "Oneself as Another", namely with the developed ontoethical concept of entity.[31] It should be recalled that the philosopher distinguishes between "being oneself in the sense of *idem*", identified with the changeable qualities of human character and "being oneself in the sense of *ipse*",[32] consisting in fidelity to the ethically conditioned project of "being oneself", namely, the promise made.[33] The actual "being oneself" is thus a consequence of the consistent implementation by the entity the "ethical aspirations" defined by Ricoeur as "the intention to achieve 'good life' with other people and for other people in just institutions".[34] This means that ethical aspiration is performed on three complementary levels (internal, interpersonal and institutional), bonded with "narrative unity of life" of the entity.[35]

As mentioned earlier, the implementation by the entity of the teleological "ethical aspiration" is, according to the philosopher, impossible without the "deontological moment".[36] In order to closely interrelate the two indicated aspects of the ontoethical theory with the entity, Ricoeur introduces the corresponding subjective concepts of "self-esteem" and "self-respect".[37] These are, according to the philosopher, "the most mature stages of growth, which is at the same time treated as developing (…) being oneself". Ricoeur carries out their dialectics through three definitional levels of the ethical aspiration.[38] The philosopher writes that "self-respect, corresponding at the moral level to self-esteem at the ethical level, will reach its full meaning (…) when the respect for the norm evolves into the respect for another and "for oneself as another" and when the scope of the latter extends to anyone who has the right to expect adequate participation in the fair distribution".[39] Ricoeur concludes the interrelations between two ontoethical aspects of the entity by saying that "self-respect stands for self-esteem under the pain of moral law".[40]

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30 P. Ricoeur, *O sobie samym*…, p. 283.

31 E. Wolicka, *Narracja i egzystencja. „Droga okrężna" Paula Ricoeura od hermeneutyki do ontoantropologii* [Eng. *Narration and Existence. Paul Ricoeur's "Roundabout Route" from Hermeneutics to Ontoanthropology*], Lublin 2010, pp. 121–122.

32 P. Ricoeur, *Refleksja dokonana. Autobiografia intelektualna* [Eng. *Reflection Made. Intellectual Autobiography*], Kęty 2005, pp. 49–50.

33 P. Ricoeur, *Krytyka i przekonanie. Rozmowy z François Azouvim i Markiem Launay* [Eng. *Critique and Conviction: Conversations with François Azouvi and Marc de Launay],* Warszawa 2003, p. 132.

34 P. Ricoeur, *O sobie samym*…, p. 285.

35 P. Ricoeur writes: "The concept of narrative unity of life assures us that the subject of ethics does not differ from the one to whom the narrative grants the narrative identity. (…) The notion of the narrative unity focuses on a mixture of intentions, causes and cases that we find in all the narratives". After: P. Ricoeur, *O sobie samym*…, p. 296. Cf.: J. Dunne, *Beyond sovereignty and deconstruction: the storied self*, in: R. Kearney (ed.), *Paul Ricoeur. The Hermeneutics of Action*, London–New Delhi 1996, pp. 137–157; D. Rasmussen, *Rethinking subjectivity: narrative identity and the self*, in: R. Kearney (ed.), *Paul Ricoeur*…, pp. 160–172.

36 Cf. P. Ricoeur, *From the Moral…,* p. 49.

37 Cf. P. Ricoeur, *Who Is the Subject of Rights?*, in: P. Ricoeur, *The Just,* p. 4.

38 P. Ricoeur, *O sobie samym*…, p. 338.

39 P. Ricoeur, *O sobie samym*…, p. 338. Ricoeur adds elsewhere that "the rule of justice expresses at the level of institutions the same normative requirement, the same deontological formulation as the autonomy at the pre-dialogical and intrapersonal level". After: P. Ricoeur, *O sobie samym*…, p. 376.

40 Following the earlier assumptions, the philosopher assumes "1) that the [teleological – M.P.] attitude of respecting oneself is more basic than the [deontological – M.P.] self-respect; 2) that self-respect is an aspect that the attitude of respecting oneself assumes under the rule of the norm; 3) (...) that the *aporias* of obligation create situations in which respecting oneself turns out to be not only the source, but the mainstay of respect when no rule serves any longer as a reliable guide for the bestowal of a *hic et nunc* respect". After: P. Ricoeur, *O sobie samym*…, p. 283.

What is, therefore, understood as the dialectic synthesis of the teleological and deontological aspect, crucial for Ricoeur's views? The philosopher claims that "conflicts caused by formalism, which is itself closely linked to the deontological moment, bring back the return from morality to ethics, yet such ethics which is enriched with the passage through the norm and entangled in the moral situational judgement".[41] This means that the teleological aspiration for good life should "go through" the respect for the universal norms, if it is to be something more than a spontaneous quest for happiness. On the other hand, as indicated by Małgorzata Kowalska, the respect for norms must be mediated by the pursuit of the good life, if it is to go beyond dogmatic adherence to abstract principles that do not take into account the diversity of specific cases, and in addition may lead to a conflict of duties.[42] The dialectic of virtue and imperative can be therefore summarized by saying that the moral norm is verified in the situational judgement, due to the aspiration for ethical perfection "here and now".

It should be added that the foundation of the situational judgement is the "practical wisdom"[43] characteristic of the entity, being the consequence of "reconciling Aristotle's *phrónesis* with Kant's *Moralität*".[44] P. Ricoeur explains that the practical wisdom "takes from *phrónesis* that its horizon is "the good life", its mediation – reflection, its originator – *phrónimos* ["man of the wise judgement"[45] – M.P.] and the points of its application – specific situations". At the same time, practical wisdom includes the moment of "moral obligation, duty, which prescribes that evil should not take place".[46] Practical wisdom is thus the result of the ethical aspiration, manifested in the moral judgement given in a specific situation.

The prospect of "practical wisdom" is used by Ricoeur to show the signaled priority of the aspect of the teleological ethical aspiration before the deontological one.[47] To that purpose the philosopher examines the casus of Antigone, thus illustrating the weakness of a dogmatic adherence to the rules, separated from the situational context. As a consequence, Ricoeur introduces the concept of tragedy, understood as the immanent feature of ethical conflicts. The philosopher states that "the tragedy should be sought (…) in conflicts piled up on the way leading from the rule to the moral situational judgement".[48] Therefore, the "tragedy of the action, illustrated by Sophocles' Antigone,[49] leads the formalism of action to the very heart of ethics".[50] The practical wisdom of the entity is not born painlessly, but as a consequence of "being guided by the tragedy" in the situation of conflict.

Furthermore, according to Ricoeur, moral conflict "emerges (…) once it turns out that the diversity of people, inseparable from the very idea of human multiplicity, cannot be reconciled with the universality of rules (…); respect then begins to be divided into

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41 P. Ricoeur, *O sobie samym*…, p. 337.

42 M. Kowalska, *Wstęp. Dialektyka bycia sobą* [Eng. *Introduction. The Dialectics of Being Oneself*], in: P. Ricoeur, *O sobie samym*…, p. XXIX.

43 Cf. P. Ricoeur, *From the Moral*…, p. 52.

44 Ricoeur's synthesis in its ultimate version also covers *Sittlichkeit* in the understanding of G.W.F. Hegel. The latter issues exceed the modest frames of this paper. Cf. G.W.F. Hegel, *Zasady filozofii prawa* [Eng. *The Principles of Philosophy of Law*], Warszawa 1969.

45 P. Ricoeur, *O sobie samym*…, p. 292.

46 P. Ricoeur, *O sobie samym*…, pp. 482–483.

47 D.M. Kaplan, *Ricoeur's critical*…, pp. 109–115.

48 P. Ricoeur, *O sobie samym*…, p. 412.

49 Sophocles, *Antigone*, Cambridge 1999.

50 P. Ricoeur, *O sobie samym*…, p. 414.

the respect for law and the respect for people".[51] In such a situation, according to the philosopher, practical wisdom would consist in giving priority to the respect for people "in their irreplaceable individuality", before the respect for universalizing norms.[52] The consequent complementation of the ontoethical theory of the entity includes Ricoeur's view that "the man of the wise judgement [within Aristotle's meaning – M.P.] defines at the same time the rule and the case, comprising the situation in its full individuality".[53] This leads the philosopher to the conclusion that the verification of the moral norm in the "mature situational judgement" allows *phrónimos* the individual assessment of the extent of the implementation of the plan of "being oneself".

3.2. Reflexivity

In this context the fundamental place is taken by the issue of the reflexivity of the entity, reoccurring in Ricoeur's considerations. It constitutes a correlate of the concept of practical wisdom, resulting in a "mature" situational judgement. At the same time, reflexivity of the entity is for Ricoeur synonymous with self-interpretation. The philosopher states that "in the continuous effort of the interpretation of action and of oneself there takes place the search for the consistency between what seems best for our entire lives, and the preferential choices (provisions) that govern our practices".[54] Ricoeur draws at this point on his earlier findings, in the light of which the interpretation of human action and the text is covered by a unifying methodology of hermeneutics.[55] Referring to the views of Charles Taylor,[56] Ricoeur states that "to interpret the text of the action in the case of the originator means to interpret oneself".[57] One of the contexts of self-interpretation are at the same time "standards of excellence" [within the meaning coined by Alasdair MacIntyre – M.P.], inscribed in the teleological perspective, which enable us to refer as good to a doctor, an architect, a painter, or a chess player.[58] Ricoeur writes that the standards of excellence can be viewed as the rules of comparison applied in connection with the ideas of excellence, common to a certain community of performers and "manifested by the masters and virtuosos of the analysed practice".[59]

Moreover, in view of Aristotle's Golden Rule, Paul Ricoeur states that reflexivity seeks to find a balance "between our aspiration for the 'good life' and (…) the specific choices". This balance is the result of "a circular game between the guiding concept of 'good life' and the most significant provisions of our existence (career, love, leisure activities, etc.)". The philosopher adds that "the situation is like with the text in which the whole and the constituting parts are mutually understood by each other". The reflexivity of the entity is therefore strictly conditioned by the aspiration for the good life, or "self-esteem" within the designated promise of "being oneself" at the three levels

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[51] P. Ricoeur, *O sobie samym…*, p. 435.
[52] P. Ricoeur, *O sobie samym…*, p. 435.
[53] P. Ricoeur, *O sobie samym…*, p. 290.
[54] P. Ricoeur, *O sobie samym…*, p. 299.
[55] Cf. P. Ricoeur, *The Model of the Text: Meaningful Action Considered as a Text*, in: P. Ricoeur, *From Text to Action. Essays in Hermeneutics, II*, Evanston 2007, pp. 144–162; P. Ricoeur, *Task of hermeneutics*, in: P. Ricoeur, *Hermeneutics and the Human Sciences*, Paris 1981, pp. 43–45.
[56] Cf. Ch. Taylor, *Human Agency and Language*. *Philosophical Papers I*, Cambridge 1999, p. 45.
[57] P. Ricoeur, *O sobie samym…*, p. 299.
[58] Cf. A. MacIntyre, *Dziedzictwo cnoty. Studium z teorii moralności* [Eng: *After Virtue: a Study in Moral Theory*], Warszawa 1996, p. 365.
[59] P. Ricoeur, *O sobie samym…*, p. 292.

of the implementation of ethical aspiration. In contrast, the effect of self-reflection of the entity is its somewhat ephemeral or situational "belief that he properly thinks and operates".[60] As Ricoeur writes, this conviction is the result of a balance between "the requirement of the universality and the recognition of contextual constraints". In summary, reflexive equilibrium between deontology and teleology is "the ultimate price of the situational judgement" of the entity.[61]

3.3. Paul Ricoeur's concept in the perspective of legal ethics

At this point, I would like to once more assume the perspective of professional legal ethics. The premise for presenting Ricoeur's views was the critical analysis of the content of codes of legal ethics. Two ethical perspectives, teleological and deontological, have been observed. This diversity was to result in the dysfunctionality of professional ethics of an attorney, a legal adviser, a bailiff, etc. Meanwhile, Ricoeur's "little ethics" offers theoretical tools that enable us to challenge the critical initial arguments.

Firstly, in the light of the philosopher's views, the perspectives of virtues and duties are complementary in nature, leading to a more complete description of the phenomenon of legal ethics. As pointed out above, Ricoeur demonstrates the need for filtering the ethical aspiration through the norms, as well as the legitimacy of referring from norm to aspiration when the norm in practice leads to a "dead end". The coexistence of these two ethical perspectives in the professional codification is therefore not a methodological mistake, but rather the consequence of their practical mutual conditioning, captured by the practice of law.

What is more, the assumption of the priority of the teleological "ethics" before the deontological "morality" helps end the dispute on non-codified legal ethics. In the light of the philosopher's views, the general concepts of "good judge", "reliable legal adviser", "self-improvement", etc. determine the farthest horizon of the drive for professional excellence. In contrast, the validity of ethical norms, both those already covered by codification and newly established ones, is subject to verification in conflict situations in the perspective of the pursuit of a good professional life.

Nevertheless, Ricoeur's views allow us to go one step further and correlate the content of codification with the actual, ethically significant state of "being" a judge, an attorney, a prosecutor, etc. On the basis of the proposed theory, the mutual conditioning of the perspectives of ethical and professional virtues and duties in fact takes place in the sphere of the lawyer's ontoethics. To use Ricoeur's language, the lawyer remains "himself in *ipse* sense", keeping his promise of a good, professional life. It could be argued further that the ethical conduct of a judge, an attorney or a prosecutor stands for the pursuit of a good professional life with another and for another (a client, litigating parties, etc.) in just institutions (a corporate, the government, etc.). In other words, the "(self-)respect for oneself as a lawyer" is being developed in three areas of professional life: internal, interpersonal and institutional.[62] The content of the existing codes indeed gives expression to the fact that the ethical and professional aspiration of a lawyer is realized under the imperative of the norm in personal self-improvement, in the dialogue with a client, a litigating opponent, etc., as well as in "properly ordered" institutions

[60] P. Ricoeur, *O sobie samym…*, p. 299.
[61] P. Ricoeur, *O sobie samym…*, p. 479.
[62] Cf. P. Ricoeur, *Who Is the Subject…*, pp. 5–10.

of self-government, the judiciary, etc. Thus, the analyzed position allows us to capture the correlation between "the normative narrative"[63] of the code, and the ontoethics of the entity of the legal ethics.

As we recall, according to Ricoeur, "dialectics of ethics and morality starts and finishes in the situational judgement". When assuming this perspective, the heart of the professional ethics would then be the "situational judgement" exercised by a lawyer, grounded in ethical-professional practical wisdom.[64] In such a judgement the norm from the code would be verified through the prism of the pursuit of a good professional life, manifested in a particular case. It should be recalled that, in Ricoeur's view, "the tragedy of action" is the result of mindless application of norms, detached from the situational context. As a result, this gives rise to an observation that a particularly confrontational nature of legal ethics, both internally, interpersonally and institutionally, results from the approach to solving the conflicts between the ethical aspiration and the codified norm. As mentioned earlier, according to Ricoeur, the norm is confirmed – or not – in the situational judgement, due to the drive of the entity towards ethical excellence. Meanwhile, the legalistic perspective of the duty forces lawyers to give priority to the norm, in spite of contextualized ethical aspiration, implemented "here and now".

The last and the most important step therefore leads from the codified norm to a reflexive entity of the legal ethics. Such an entity would perceive the situation of ethical and professional conflict "in its full individuality", through the prism of the intention of a good, professional life. In light of Ricoeur's views, a lawyer's reflexivity would stand for a situational reinterpretation of "one's own text of professional operation". It should be noted that Ricoeur's views on the methodology of hermeneutics allow for including under self-interpretation both "the normative narrative" of the codes of professional ethics and the perfectionist personal patterns of a good judge, attorney, notary, etc. The ideal ethical and professional decision would ultimately be "the reflexive equilibrium" between the prescription of the codified norm and the professional aspiration to excellence.

4. Conclusion

The dialectics of deontological and teleological aspects perceived in the codes of professional ethics, initially regarded as a mechanism of mutual ineffectiveness, finally turns out to be a double flywheel of the ethical and professional self-reflection of the lawyer. In the light of the conception of the "little ethics" the codified prescription does not preclude the ability of an attorney, a judge or a prosecutor to interpret "the text of their own actions" in the context of the intention of a good professional life. On the contrary, the verification of the norm in the professional situational judgement (reminiscent of "soft" syllogism[65]) is a correlate of practical professional wisdom, and, at the same time, the road leading to the balance between ethical-professional virtue and duty. "Little ethics" therefore allows for a determination of a uniform perspective for the seemingly

[63] As to the "normative narrative", see M. Pieniążek, *The Application of Paul Ricoeur's Theory in Interpretation of Legal Texts and Legally Relevant Human Action*, "International Journal for Semiotics of Law" 2015/3, pp. 627–646.

[64] Ricoeur himself provides an example related to the judicial ethics. Cf. P. Ricoeur, *From the Moral…,* pp. 54–57. See also P. Ricoeur, *Decision Making in Medical and Judicial Judgments*, in: P. Ricoeur, *Reflections…,* pp. 218–222.

[65] Cf. P. Ricoeur, *O sobie samym…*, p. 412. The issue was raised by Ricoeur in later work, dedicated to the legal syllogism in terms of Ronald Dworkin. Cf. P. Ricoeur, *Justice and Truth*, in: P. Ricoeur, *Reflections…,* pp. 69–70.

opposing elements, namely legalistic subordination to the valid norm and the pursuance of ethical and professional self-improvement by a lawyer in the internal, interpersonal and institutional sphere. Ricoeur's concept ultimately makes for building a coherent model of legal ethics in which the reflexive entity makes an ethical-professional choice because of the "normative narrative of the code" and the personal models of professional excellence.

To sum up, this means that the codification of legal ethics is not in as bad a shape as one might think, while the reflexive parties – judges, legal advisers and bailiffs – remain on the bumpy road to a good professional life.

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