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ROLE OF LEGAL CULTURE IN DEVELOPING STANDARDS OF JUDGES' PROFESSIONAL ETHICS

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1. INTRODUCTION – DILEMMAS ABOUT DEFINITION

Law is one of the most important elements of culture[1] since it is a product of culture and a major culture-creative factor. Law and culture are inter-related and affect each other in many different ways. Relationships between law and culture are usually analysed in two ways – either such analyses cover solely the notion of legal culture, or the notions of law and culture are compared to identify the relationships between the notions.[2] The duality of studies on the notions of law and culture somehow is due to the fact that it is extremely difficult to clarify the notion of culture as such. This situation is clearly manifested in the statement of the German sociologist Johann Herder who in the forward to his *Ideas on the Philosophy of the History of Mankind* wrote: "There is nothing more indefinite that the word 'culture'".[3]

In its original Latin understanding, culture means: "'cultivation' consisting in transformation of the natural condition or nature and man into a practically useful condition and positive in moral and intellectual sense".[4] Originally, the notion referred to agriculture but soon it began to be used in a metaphoric sense also with reference to other areas, for instance, Cicero wrote about the "culture of soul".[5]

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1 Quote after K. Pałecki, *O pojęciu kultury prawnej*, Studia Socjologiczne No. 2, 1972, p. 205.

2 O. Kucharski, *Koncepcje kultury prawnej w naukach prawnych*, Disputationes Ethicae. Etyka a prawo – Etyka działania, No. 3, 2007, p. 71.

3 Quote after A. Kłoskowska, *Socjologia kultury*, Wydawnictwo Naukowe PWN, Warszawa 2007, p. 19.

4 A. Kłoskowska, *Kultura. Zagadnienia istoty kultury. Kultura a natura*, [in:] *Encyklopedia Socjologii*, Vol. 2, letters K–N, (ed.) W. Kwaśniewicz, Oficyna Naukowa, Warszawa 1999, p. 100.

5 J. Szacki, *Kultura*, [in:] *Wielka Encyklopedia PWN*, Vol. 15, (ed.) J. Wojnowski, Wydawnictwo Naukowe PWN, Warszawa 2003, p. 181.

In its colloquial meaning, culture is understood as certain selected areas like literature, art, music, theatre, cinema. However, the term does not refer to religion, science or technology. In another sense, culture is understood as an area of habits, e.g. cultural behaviour at the table, culture of work, culture of co-existence.[6]

Nowadays, it is commonly accepted that the term "culture" does not have one consistent and commonly acceptable definition. The uncertainty results in many works being published in which the authors attempted to define the complex notion. One of the best known is the work by Alfred Kroeber and Clyde Kluckhohn. The authors decided to present a set of over 200 definitions of culture as can be found in anthropological works, dissertations in other social sciences and humanities. An attempt to determine one consistent definition generated the identification of six aspects used to define culture: a descriptive and enumerative approach, a historic, prescriptive, psychological, structural and genetic approach.[7] In line with the above aspects, the most comprehensive Polish work on the definition of culture was presented by Antonina Kłoskowska in her book *Sociology of Culture*.[8]

Generally speaking, sociological definitions combine several elements and accept that culture is a feature of the society and not of an individual. That is why, it affects social life and creates its appropriate structure. Culture encompasses everything that a human being learns in social life and that is transferred from one generation to the next. In Ralph Linton's opinion, culture is the "social heritage of members of the society".[9] Norman Goodman and Gary T. Marx named culture as a "knowing, socially transferred heritage of products, knowledge, values and standardised expectations and the heritage supporting members of the society in handling problems as they arise".[10]

Marshall Sahlins wrote that culture includes patterns of meaning that have been created by people. A feature of human beings who live in a material world shared with other organisms is a specific subordination of the way of life to those patterns.[11]

In sociology there is also a view that: "culture derives from nature in its phylogenetic dimension. (…) However, in the ontogenetic dimension, in the development of human beings accessible to empirical studies, culture may not be derived directly from nature."[12] This means only that in a sense culture derives, originates from nature. However, that does not mean that it has been developed solely as a result of transformations in nature. In this context, culture is a derivative of nature, but it is not directly derived from nature.[13]

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[6] *Ibid*.

[7] M. Borucka-Arctowa, *Kultura prawna na tle myśli filozoficznej i społecznej o kulturze*, Studia Prawnicze No. 1(151) 2002, p. 5.

[8] A. Kłoskowska, *supra* n. 3.

[9] R. Linton, *Kulturowe podstawy osobowości*, PWN, Warszawa 1975, p. 67.

[10] Quote after N. Goodman, *Wstęp do socjologii*, (transl.) J. Polak, J. Ruszkowski, U. Zielińska, Wydawnictwo Zysk i S-ka, Poznań 1997, p. 37.

[11] A. Kłoskowska, *supra* n. 4, p. 100.

[12] *Ibid*., p. 101.

[13] *Ibid*.

Additionally, Edward B. Tylor notes as follows: "Culture or civilisation is a complex whole covering knowledge, beliefs, art, law, morality, customs and all other skills and habits acquired by a human being as a member of the society."[14]

Since the definition of culture by Edward B. Tylor covers various multiple areas of human activity, including law and morality, therefore his definition constitutes the basis for a further discussion concerning culture and law, including legal culture.

Defining "legal culture", similarly to the notion of "culture", also poses problems. It was Bronisław Wróblewski who introduced the definition of legal culture[15] to legal studies[16]. He stated that legal culture meant: "updates or reflection in behaviour of legal values, the value of justice as well as equity and usability values in a form adjusted to previous ones."[17]

In the 1960s, the term of "legal culture" was quite often used; however, no attempts were made to define its meaning and it was used only intuitively assuming that it was: compliance with law, assessment of law, legal awareness, foundations related to applying and development of law or lawfulness.[18]

Now quite often "legal awareness" is used as a synonym of "legal culture". However, the notions do not have identical meanings and often they are not knowingly differentiated.[19] Therefore, there are at least several definitions of "legal culture".

The concepts of legal culture in Polish science can be split into four core groups:
– sociological and legal (Maria Borucka-Arctowa, Anna Gryniuk, Krzysztof Pałecki),
– historic and legal (Stanisław Russocki and Stanisław Grodziski),
– comparative and legal (Roman Tokarczyk),
– philosophical and legal (Włodzimierz Gromski).[20]

According to Maria Borucka-Arctowa, the normative concept of culture stemming from anthropological studies is the most "incontestable and useful" factor to define legal culture. The author understands culture as: "comprehensive prescriptive patterns of behaviour, socially acceptable and passed on from one generation to the next using thematic symbols". On that basis, relying on her own research, she defined legal culture as: "comprehensive prescriptive patterns of behaviour and values related to those standards, socially acceptable, learned (or taken over as a result of interaction and mutual contacts between persons and groups of persons), passed on with thematic symbols either within one generation (diachronically), or from one generation to the next (synchronically) so that such transfer is permanent".[21]

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[14] Quote after A. Kłoskowska, *supra* n. 3, p. 22.

[15] More precisely, B. Wróblewski uses the notion of "lawyers' culture". This is most likely related to the origin of the term "legal culture".

[16] Quote after O. Kucharski, *supra* n. 2, p. 72.

[17] B. Wróblewski, *Studia z dziedziny prawa i etyki*, Kasa im. Mianowskiego, Warszawa 1934, p. 423; Quote after O. Kucharski, *supra* n. 2, p. 72.

[18] O. Kucharski, *supra* n. 2, p. 72.

[19] M. Borucka-Arctowa, *supra* n. 7, p. 6.

[20] O. Kucharski, *supra* n. 2, p. 74.

[21] M. Borucka-Arctowa, *supra* n. 7, p. 15; O. Kucharski, *supra* n. 2, pp. 74–75.

Krzysztof Pałecki offers a most general approach to call "legal culture a set of socially performed symbolic actions performing the patterns of symbolic behaviour incorporated in law".[22] Additionally, the author (which should be specifically stressed) performed a systematic arrangement of the notions of "legal culture" that are used. He identified: (1) understanding of legal culture as a metric of compliance with law (with a certain variety of the notion as a popularity metric of legalistic attitude in a society), (2) understanding of legal culture as a metric of the extent of internalisation of legal standards, (3) understanding of legal culture as a metric of knowledge about law, (4) understanding of legal culture as a metric of the level of legal awareness, (5) understanding of legal culture as a metric of the historic continuity of law.[23] Krzysztof Pałecki indicates that the notion of "legal culture" is further used to characterise the activities of people who professionally practise law, which is material for the discussion at hand. When the notion of "legal culture" is used with reference to activities of people who professionally practise law, minimum two ways of understanding the notion can be identified: "a) legal culture as a measure of lawfulness – legal culture is referred to in that sense when law-enforcement agencies in their activities strictly follow legal regulations and avoid manipulating the regulations that would be contradictory to the assumptions underlying the legal regulations; b) legal culture as a measure of effective functioning of law enforcement agencies – legal culture in that sense is referred to when the process of law application is fast and when it generates legally desirable effects".[24]

It is also worth adding that the above-named author also identifies the notion of "lawyers' culture". In his opinion, legal culture is referred to in relation to the entire society, that is legal and symbolic activities pursued by the entire society (this concerns legal symbolic activities pursued in various specific situations by various society members). In this context, the knowledge about legal culture among those members of the society who professionally practice law is of special importance. That group of people is called lawyers by Krzysztof Pałecki, understood as all people who professionally practise law. In that connection, he terms lawyers' culture as "overall legal symbolic activities pursued by lawyers in their professional activities over certain time".[25]

Such lawyers' culture, in his opinion, is an "integral part of social legal culture and its identification is solely a methodological trick to facilitate the performance of corresponding research".[26]

Essentially, a conclusion can be drawn that there is no thematic difference between legal culture and lawyers' culture, the difference is rather with respect to coverage. According to Stanisław Tochowicz, in case of legal culture "we usually face overall legal symbolic activities pursued by the entire population that is subject to certain legal regulations, while [in lawyers' culture – addition by M.K.] we face

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22 K. Pałecki, *O użyteczności pojęcia kultura prawna*, Państwo i Prawo No. 2, 1974, p. 70.
23 *Ibid.*, p. 72.
24 *Ibid.*, p. 73.
25 *Ibid.*, pp. 73–74.
26 *Ibid.*, p. 74.

such laws, symbolic activities that are performed by lawyers. However, such lawyers have been understood very broadly".[27]

Additionally, the notion of "legal culture" is also used to characterise the activities of people professionally practising law.

Stanisław Russocki and Stanisław Grodziski also proposed a historic and legal approach to legal culture.

As stated by Anna Rosner, Stanisław Russocki was trying to identify "if and to what extent (…) political and systemic distinctiveness [is – addition by M.K.] reflected in legal relations and standards".[28] That is why, Stanisław Russocki verified and exemplified his theoretical discussion of legal culture with legal institutions and their social perception in Mazowsze that he considered a specific region which "in its system has a number of elements characteristic for the time of feudal fragmentation".[29] Russocki's interest in the history of law and social history underlay his definition of legal culture understood as a "set of intermingled attitudes and behaviour types – both individual and collective – and the results thereof versus law being duties, rules, imposed standards, provided with adequate sanctions and systematically enforced by an authority appropriate for the society and resulting from the system of values shared by the community; the said set of attitudes, behaviour and results thereof, shared, absorbed and transferred to others in the form of patterns, also in an objective and symbolic way, serves to transfer human communities into a separate society, aware of the status."[30]

The definition of "legal culture" proposed by Stanisław Grodziski is the most popular one. In his opinion, legal culture can be defined as: "socially manifested individual and collective attitudes vis-a-vis law, both understood as a structure enforcing justice, its institutions and specific legal standards delimiting the borders of freedom and prohibition zones".[31] Scientists focusing on that type of moral reflection in law agree that legal culture incorporates the notion of professional ethics.[32] An obvious conclusion is that such vision of legal culture and lawyers' ethics understood as professional ethics of lawyers are complementary. The relationship consist, inter alia, in the fact that as a result of applying the moral principles of lawyers' responsibility for law and thus for legal culture, and due to "taking an attitude to pursue the principle, it is possible to apply self-limitation of lawyers dominating in the culture and that they obtain social confidence which is a form to obtain legitimacy of their activities or simply substituting the legitimacy".[33]

Roman Tokarczyk's concept of legal culture is classified as a comparative and legal approach to the issue since legal culture is interpreted in the context of

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[27] S. Tochowicz, *Kultura prawna oraz kultura prawnicza jako elementy działań nauczyciela*, Studia Pedagogiczne No. 13, 1985, p. 186.

[28] A. Rosner, *Profesor Stanisław Russocki (1930–2002)*, Rocznik Mazowiecki No. 15, 2003, p. 164.

[29] *Ibid*.

[30] S. Russocki, *Wokół pojęcia kultury prawnej*, Przegląd Humanistyczny No. 11/12, 1986, p. 16.

[31] S. Grodziski, *Z dziejów staropolskiej kultury prawnej*, Universitas, Kraków 2004, p. 10.

[32] A. Kozak, *Myślenie analityczne w nauce prawa i praktyce prawniczej*, Wydawnictwo Uniwersytetu Wrocławskiego, Wrocław 2010, pp. 64–72.

[33] P. Skuczyński, *Status etyki prawniczej*, LexisNexis, Warszawa 2010, p. 262 et seq.

various relations with religion–morality–law and the relations are treated as the basic criterion to identify legal cultures of the world.[34] Therefore, legal culture by "incorporating law to the world of culture being everything that has been created by human beings contrary to what has been created by nature must lead to using major achievements of philosophy of culture and culture sciences to describe and assess macro units of law".[35]

Włodzimierz Gromski developed his own philosophical and legal concept of legal culture on the basis of Jezry Kmita's achievements. Gromski is of the opinion that one of the functions of legal culture is to ensure autonomy of law which determines axiological limits of law instrumentation acts and affects certain conditions of its effectiveness.[36]

In the author's opinion, the notion of legal culture can be used in a sense to clarify the limits and effectiveness of the instrumental nature of law. However, that should be done prudently in view of the fact that legal culture "acquires a specific ideological character". The dynamics of European legal culture is determined by the needs of a post-industrial society that does not manifest uniform normative and directive beliefs. The convictions make up a specific legal culture. Legal culture becomes conservative. It is believed that a feature of extreme autonomic nature of law is to reject standards resulting in the specific legal culture, which is then treated as positivist and oppressive by nature.[37]

Włodzimierz Gromski assumed that the "instrumental nature of law 'by nature' determined by the use thereof implies its analysis from the viewpoint of theories of acts of speech, intentions and will of law users. As a result, a problem arises how in acts of speech the commonly existing categories of notions are manifested as well as ways of understanding common to all law 'users'. Consideration should be given to what element is the bridge between law and use thereof. It turned out that the bridge is made up of the European legal culture treated in a prescriptive manner."[38]

The legal culture of a society may be analysed from an external and internal viewpoint. The external viewpoint refers to the occurrence of observed regularities governing the [society's] behaviour types which are a manifestation of the rules of a specific legal culture. And the internal viewpoint relies on volitional and cognitive elements supporting the identification of the rules of a specific legal culture. Thus, it is a reflexive and critical approach from the viewpoint of the rules characteristic for a specific legal culture. Manifestations of a specific legal culture may also be perceived without any reflection as an expression of certain behaviour, statuses or events independent of human will and cognition. Such behaviour may generate from customs and habits. For that reason, the notion of legal culture happens to be

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[34] R. Tokarczyk, *Zmiany tradycji i postępu w prawie*, Teka Komisji Prawniczej Vol. I, PAN, Warszawa 2008, p. 193.

[35] *Ibid*.

[36] M. Smolak, *Jak prawo łączy się ze światem. Uwagi na marginesie książki W. Gromskiego, Autonomia i instrumentalny charakter prawa*, Ruch Prawniczy, Ekonomiczny i Socjologiczny Year LXIII, No. 3, Poznań 2001, p. 191.

[37] *Ibid*., p. 194.

[38] *Ibid*., pp. 195–196.

perceived as conservative since "law, its development and application are treated as a local practice followed by small communities, and thus it contradicts the existence of legal culture as a set of ideas, values and beliefs, or directives of conduct of a political community."[39]

Paweł Skuczyński is of the opinion that if reflectiveness and assumption of moral responsibility are features of institutions of the contemporary world and the culture which is developed must ensure the reflectiveness, then this means that ethics should rely on critical thoughts on one's own professional activity in relation to the entire legal culture. Therefore, according to the above author, "Such ethics has to apply to a view of the activities and legal culture as if from the outside, 'as if' since the entity in the discussed situation may not get rid of its socialisation. Such a quasi-external view is possible due to procedures typical of professional ethics, such as the distance of roles".[40] As a result, individuals are able to understand the roles they perform in a society, including professional roles and "realise which elements of their identity result from actions within the specified institutions. (...) Thus one can say that (...) ethics of distance is a solution since it is the distance that supports the implementation of the principle of moral responsibility."[41] This requires that individuals critically approach their own professional roles and discourses related to those roles, specific objectives and values that are central for them. "Such discourses may result in developing a vision to improve an institution, which is a regulatory idea including an element of reflectiveness of the institution. The ethics of responsibility is ethics of distance since distance to one's own activities supports responsible activities."[42]

2. PROFESSIONAL ETHICS OF JUDGES

Ethics of judges is part of a broader subject of lawyers' ethics. As concerns ethics of professional judges, an adaptation is made of more general ethical standards of lawyers' ethics to more detailed situations related to that profession. The task is to identify the way of exercising the profession of a judge that may be characterised as ethically correct. The role of ethics of judges is also to confront a morally correct method to pursue the profession with behaviour that can be termed as incorrectly ethical or immoral. Judges' ethics relies on an idea to prevent judges' behaving in a morally reprehensible manner or unethically. There is a conviction in the society that a higher prestige may be identified with respect to judges than in relation to other legal professions. This is most probably linked to an opinion that the profession of a judge is the top level of legal professions and the function is the ultimate

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[39] *Ibid*., p. 196.

[40] P. Skuczyński, *Jakiej etyki potrzebuje sprofesjonalizowana kultura prawna?*, [in:] *Perspektywy juryscentryzmu*, Wrocław 2011. This paper was presented under the title *Jakiej etyki potrzebuje juryscentryzm?* during the conference *Perspektywy juryscentryzmu*, organised by the Department of Theory and Philosophy of Law of the University of Wrocław, p. 101.

[41] *Ibid*.

[42] *Ibid*.

accomplishment for legal professionals.[43] Judges – who perform different functions from other lawyers – "are bound by moral standards adequate for the function. They are in contact with the principles of lawyers' ethics in many ways: sometimes those standards are fully or partly identical to legal standards or etiquette standards, while sometimes they are not related."[44]

Thus, a statement can be made that judges' professional ethics provides how judges should act and how professional knowledge is to be combined with the values of moral good, while rejecting moral evil. The essence of judges' professional ethics is set forth by the social role attributable to judges with social expectations of judges being specific since they refer to their moral self-responsibility, and when this fails, moral and legal responsibility. In order to minimise situations whereby judges' moral self-responsibility is put at risk, codes have been developed to enforce moral attitudes compliant with judges' professional ethics. That happened at the beginning of the 20th century when legal regulations were developed that related to judges' ethics in the form of sets of moral standards.[45]

3. JUDGES' ETHICS VERSUS LEGAL CULTURE

The issue of judges' ethics, their approach to their profession and legal culture, closely related to the mission pursued by judges, are of particular importance also nowadays: until recently, a dispute has been carried out on the regulations applicable to the Constitutional Tribunal. Various environments developed various arguments that were often contradictory to one another. Two completely diverse standpoints may be presented that referred to judges' conscience: one of the candidate to the position of a Constitutional Tribunal judge who has been elected, Professor Zbigniew Jędrzejewski, and the other of the First President of the Constitutional Tribunal at that time, Professor Małgorzata Gersdorf. Responding to a number of questions about his opinion on the dispute, Zbigniew Jędrzejewski answered: "If I replied, you would announce that I am a PiS candidate and that I would rule one way or another; why do you wish to prove that I am a bad PiS member?"[46] A moment later he added that he would rule in compliance with his conscience, weighing pro and counter arguments.[47] According to Professor Jerzy Zajadło, Professor Zbigniew Jędrzejewski took a step backwards referring solely to unspecified deepest parts of his conscience and did not provide a straightforward response.[48] Professor Małgorzata Gersdorf, in a letter to the General Assembly of Judges of the Constitutional Tribunal, wrote as follows: "I would like to ask all Polish judges to display courage. Today they do not only act as 'the mouth of the legislator' but – I will say that with no pathos and

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[43] R. Tokarczyk, *Etyka prawnicza*, LexisNexis, Warszawa 2011, pp. 115, 118.
[44] *Ibid*., p. 115.
[45] *Ibid*., p. 119.
[46] Quote after J. Zajadło, *Różne sumienia sędziego*, Gazeta Wyborcza of 26 April 2016, No. 97. 8704, p. 7.
[47] *Ibid*.
[48] *Ibid*.

exaggeration – they are depositories of the values of Polish democracy and holders of public power. (…) Thus, courts should file legal queries when they see poor law (…). It is worth reminding the thoughts of St Thomas Aquinas who admitted that laws may exist that 'are not binding in soul' and in fact they constitute lawlessness. There is nothing more important than standing on the right side: on the side of one's own rightful soul."[49] Definitely, the standpoint of Professor Małgorzata Gersdorf is no evasion of the question asked. That was an appeal with a clear message in which stress was put on the paramount principle referring to judges' conscience. The question is about the principle that legal regulations that in an obvious way are against natural law and inherent dignity of each human being, that are incompliant with judges' conscience and common sense, become lawless and no judge should apply them under any circumstances.

As noted by Professor Jerzy Zajadło: "judges' conscience is not about being faithful to one's own individual views but being faithful to the values underlying a democratic state of law."[50]

4. PRINCIPLES OF PROFESSIONAL ETHICS OF JUDGES

Despite the fact that the issues of judges' ethics and the role of legal culture affecting the ethics continue to be valid, for many years there were no written regulations in Poland concerning professional ethics of judges. The issue itself has an abundant tradition in our country. For quite some time, postulates were raised to compile basic principles of judges' ethics, ideas were put forward as to their characteristics and even certain proposals of such regulations were presented. Among the first attempts to identify the major canons of judges' ethics and to make them a binding standard was the speech of a member of the Polish Parliament in the 17th or 18th century. The author (whose name remains unknown) in 17 canons incorporated recommendations that he further developed in his detailed observations. He often referred to Latin maxims and observations of lawyers of various generations.[51]

Postulates to compile the rules of judges' professional ethics in the form of codified regulations were also raised in the period between the two world wars. In 1938 an observation was made that "young lawyers are faced with so many issues and duties at the same time that it is extremely purposeful to provide them with something like a 'Code of Ethics' to be binding in the judiciary".[52] Despite the postulates, both a draft of *Code of Conduct of Polish Judiciary* and of *Code of Ethics in Judiciary* did not become legally binding.[53] In the literature of that time attention was also paid to the rank of the judges' profession which should be treated with specific

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[49] *Ibid*.

[50] Quote after J. Zajadło, *ibid*.

[51] J.R. Kubiak, *Wokół idei kodeksu etyki zawodowej sędziów*, Palestra No. 39/3–4(447–448), 1995, pp. 77–97, at p. 78.

[52] E. Merle, *Z dezyderatów sądowych. O etykę zawodową*, Głos Sądownictwa. Miesięcznik poświęcony zagadnieniom społeczno-prawnym i zawodowym No. 12, 1938, pp. 962–963.

[53] R. Tokarczyk, *supra* n. 43, p. 127.

seriousness and respect. For those reasons, judges accepted that also out of court judges should maintain specific elements of attire manifesting their profession and raising due respect also in private situations. Supporting their standpoint, judges gave examples of officials of other state functions who had uniforms. Another issue that may be found strange for today's readers was the issue of insufficient railway ticket discounts for members of the judicial circles.[54]

It is worth noting that in the period between the two world wars material values were identified to be followed by judges when passing judgments. The aspect of judges' independence is of special importance and may be subject to no exceptions. It is impossible to be independent in certain aspects, while dependent in certain other. There is a view in contemporary literature that judges' independence should apply not only to each specific judgment passed by judges but also their entire professional work, or even the entire life. Judges' independence may not be treated as a right of judges since this is one of their duties that may not be treated as a privilege.[55]

In the second half of the 20th century note was taken that judges and public prosecutors, as representatives of professions of public trust, do not have a code of professional ethics.[56] During a public debate, a view emerged that it was necessary to codify professional ethics of all professions, not only judges; e.g. Roman Łyczywek stated as follows: "I can see no distinction between professions into those that will develop their systems of professional ethics and those that will not. That will be done by all professions once they consolidate their social functions."[57] A different standpoint on the codification of ethics of individual professions was presented by Władysław Biegański. He stated as follows: "the idea of codifying ethical standards and making them mandatory, the idea of implementing legal procedures related to ethics will not support the achievement of the intended purpose: to raise the level of professional ethics."[58]

Nowadays, self-regulations, autonomous approaches to judges' ethics are opposed to regulatory heteronymous developments. Standards developed by the "IUSTITIA" Polish Judges Association may be treated as a self-regulation. The regulations concerning lawyers' ethics come from outside the judiciary and are specified, inter alia, in the Act of 27 July 2001: Law on the common court system.[59]

The "IUSTITIA" Polish Judges Association compiled their regulations concerning judges' ethics as *Principles of Conduct by Judges*. The publication includes an extensive preamble followed by three parts: general rules of conduct by judges, principles of performing the service, rules of conduct by judges outside the service. As the preamble specifies, the objective of the publication was to "set criteria to assess conduct of judges and standards of their ethical conduct".[60] On the basis of the

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[54] A. Stankiewicz, *Sądownicze troski*, Głos Sądownictwa. Miesięcznik poświęcony zagadnieniom społeczno-prawnym i zawodowym No. 12, 1938, pp. 964–965.

[55] A. Bobkowski, *Niezawisłość sędziowska a chwila obecna*, Głos Sądownictwa. Miesięcznik poświęcony zagadnieniom społeczno-prawnym i zawodowym No. 10, 1938, pp. 752–753.

[56] K. Kąkol, *Przy redakcyjnym stole. O etyce zawodowej*, Prawo i Życie No. 1(253), 1966, p. 3.

[57] R. Łyczywek, *Kilka problemów etyki zawodowej*, Prawo i Życie No. 3(255), 1966, p. 4.

[58] *Ibid*.

[59] Dz.U. 2001, No. 98, item 1070.

[60] R. Tokarczyk, *supra* n. 43, p. 127.

Principles of Conduct by Judges, key features were identified to characterise each judge. Among them, those especially important are: impartiality combined with knowledge, integrity, dignity, disinterestedness and equal treatment of the parties.[61]

In 2003 the National Council for the Judiciary as the legally competent body modified the code developed by "IUSTITIA" and changed its name to the *Principles of Professional Ethics of Judges*.[62] The document was approved pursuant to an explicit statutory authority of Resolution No. 16/2003 of the National Council for the Judiciary of 19 February 2003 approving the principles of professional ethics of judges. In view of the nature of the regulation, it is not, and it may not be an act enumerating the principles of professional ethics of judges. The standards in the document are only an attempt to make precise and identify as well as to supplement the principles of professional deontology as set forth in the Act of 27 July 2001: Law on the common court system.[63] The regulations in the principles are not autonomous, and thus they may not be competitive to statutory standards.[64] The newly published *Principles of Professional Ethics of Judges* show that special focus should be given to such values as: taking of immediate action, maintenance of independence and impartiality, clear substantiation of judgments, cultural conduct at court proceedings.[65] With respect to the attitude of judges to law, § 16 of the principles was found to be of special importance, in accordance with which: "By no conduct, may judges make even appearance that they do not respect the legal order".[66] This means that judges should respect the legal order compliant with the current legislation.[67] Despite the fact that the *Principles of Professional Ethics of Judges* were expanded, the document no longer is a closed catalogue as judges in view of their moral self-responsibility should avoid any behaviour that might discredit their dignity, even if not specified in the *Principles of Professional Ethics of Judges*.[68]

For that **reason**, the development of the Polish code of judges' professional conduct was equally needed by judges and the entire society. The code informs citizens what should be expected of judges and of their conduct. The code of judges' professional ethics serves not only judges but also people from outside this group, thus, everybody can refer actual conduct of judges to the codified standards.[69]

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[61] *Ibid*.

[62] *Ibid*.

[63] Dz.U. 2016, item 2062, as amended.

[64] G. Ławnikowicz, *Etyka sędziego w czasie przełomu ustrojowego*, [in:] A. Machnikowska (ed.), *Legitymizacja władzy sądowniczej*, Wydawnictwo Uniwersytetu Gdańskiego, Gdańsk 2016, p. 89.

[65] R. Tokarczyk, *supra* n. 43, p. 127.

[66] Annex to the Resolution No. 16/2003 of the National Council for the Judiciary of 19 February 2003: *Principles of Professional Ethics of Judges* [*Zbiór Zasad Etyki Zawodowej Sędziów*], p. 5.

[67] *Zasady etyki zawodowej, etyka zawodowa sędziów*, [in:] G. Borkowski (ed.), *Etyka zawodów prawniczych w praktyce. Wzajemne relacje i oczekiwania*, Oficyna Wydawnicza Verba, Lublin 2012, p. 273.

[68] M. Dziurnikowska-Stefańska, *Opinie sędziów o potrzebie kodyfikacji zasad etyki zawodowej*, [in:] E. Łojko (ed.), *Etyka prawnika. Etyka nauczyciela zawodu prawniczego*, Wydawnictwa Uniwersytetu Warszawskiego, Warszawa 2006, p. 195.

[69] *Ibid*., p. 199.

5. ATTRIBUTES OF JUDGES

Legal culture as overall standard patterns of conduct and values related to the standards, socially accepted, transferred from one generation to the next, is a foundation of a pre-determined profile of a judge. That is why, the legal culture of judges as law enforcement bodies is manifested primarily in the features that should characterise actions taken by judges. It is an indisputable opinion that judges should be independent and impartial in their judgments. They should maintain such stance not only when in office but also in life. As a result, their impartiality and neutrality will not raise any doubts. Judges may not be people who are vulnerable to any pressure and their actions may not manifest any sense of threat or fear. This is of special importance as judges vulnerable to impact by other people could be easily manipulated and their judgments could be deprived of impartiality. Nowadays, it is the media that pose a major hazard to judges as they often try to affect the activity of independent judges.[70] Judges have to be integral so that in their judgments they could be rid of personal preferences, subjective likings, emotions and convictions.[71] Activities of judges should further be characterised with courage that is combined with major responsibility for their judgments. Judges must be able to cope with various consequences and distress on the part of the society that may occur when certain judgments are perceived as unjust, although they are legally justified and appropriate.[72] There is also a view that fortitude should be an attribute of judges, in its daily meaning somewhat similar to courage. It is one of cardinal virtues that include prudence, justice and moderation. Judges should be courageous since this is the only way to remain independent in their judgments. This means that judges should be characterised primarily by overall independence and independence of thinking. This is of primary importance as we live in the times when everyone – not only judges – is subject to attempts to be persuaded or even forced to follow the only one, proper way of thinking. Although many people finally accept the imposed beliefs and give in to pressure, judges are obliged to be able to withstand and not to give in to such influence. It is also worth noting the existence of "unjust law". A great German thinker and lawyer, Gustav Radbruch, termed such law as "statutory lawlessness". Those are situations when applicable laws are contrary to basic human rights and the fundamental sense of justice. Therefore, a "courageous" judge may not hesitate and apply a solution – exceptional if not extreme – or simply refuse to apply a standard that is contrary to the basic system of values.[73]

Prudence is considered to be the most important cardinal virtue and, in this context, it is perceived as a synonym of wisdom. This in a feature absolutely required of each judge, while persons devoid of it may not be accepted as those qualified to judge others. Justice is another cardinal virtue. An indispensable component of

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[70] M. Romer, *Etyka sędziego*, [in:] E. Łojko (ed.), *Etyka prawnika. Etyka nauczyciela zawodu prawniczego*, Wydawnictwa Uniwersytetu Warszawskiego, Warszawa 2006, p. 34.

[71] M. Safjan, *Etyka zawodu sędziowskiego*, [in:] E. Łojko (ed.), *Etyka prawnika. Etyka nauczyciela zawodu prawniczego*, Wydawnictwa Uniwersytetu Warszawskiego, Warszawa 2006, pp. 47–48.

[72] M. Romer, *supra* n. 70, pp. 34–35.

[73] A. Górski, *Triada cnót sędziowskich*, Krajowa Rada Sądownictwa No. 3(8), 2010, pp. 49–50.

justice is reliance solely on facts. When ascertaining facts, thoroughness is required, and inquiries and assessments should be comprehensive. Law is inseparable from facts. Justice is extremely important for judges since the basic tasks of judges is to make subsumptions, which means attribution of facts to a correctly interpreted legal regulation. Sometimes, this is a very difficult task in view of extensive and complex regulations that are often amended. Such situation creates favourable circumstances to excessive formalism, literal treatment of regulations, or solely applying linguistic interpretation. That may generate dangerous consequences such as judgments passed exclusively based on superfluous meaning of regulations. For that reason, in the opinion of Antoni Górski, a just judge is one who is able to avoid such risk due to an in-depth, comprehensive and multi-faceted analysis performed not with a view to a person and his/her act referred to the applicable law but also from the applicable law to the person.[74]

The essence of the virtue of moderation is to control one's emotions. Judges must always be able to control emotions, not only during hearings but also – due to their office – also in private life outside of court. The issue is also carefully listening to all parties to the trial so that no appearances of partiality are created. The skill to courteously address the people involved in the trial is by no means negligible, which beyond any doubt manifests the treatment of them as subjects. However, moderation is most important when decisions are taken that are of fundamental importance for the case, such as: attribution of guilt and the type of guilt, the punishment, remedy of losses, amount of damages or compensation. Judges must prudently, with moderation, perform an analysis and take final decisions. Similarly, when wording the justification to judgments, moderation should play an important role and be decisive for the wording and content of the arguments incorporated in the justification.[75]

Judges should also follow maximum objectivity with reference to the cases at hand. I think that this is most difficult with reference to criminal cases since the society follows an erroneous belief that judges should adjudicate the most severe punishment available to criminals as this is the only way to achieve the objectives of punishment. In Maria Romer's opinion, this is an erroneous thinking. Judges should always pass judgments that, in their opinion, are adequate to the perpetrator's guilt and will contribute to achieve the objectives of punishment.[76]

6. PUBLIC PERCEPTION OF JUDGES

In compliance with moral responsibility of lawyers for law and thus legal culture, it is extremely important that within the culture judges obtain social trust that is a way to legitimise their activity.

However, a decreasing number of people in the society trust judges or treat them with esteem. Studies can be quoted in that respect carried out by the CBOS

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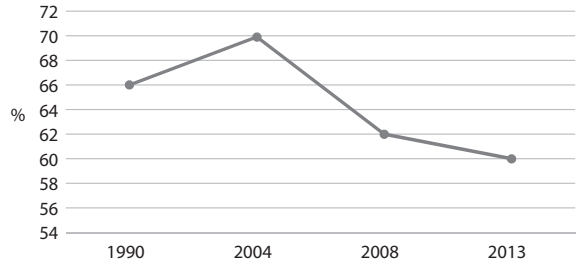
74 *Ibid*.

75 *Ibid*., p. 50.

76 M. Romer, *supra* n. 70, pp. 34–35.

Public Opinion Research Centre. The studies show that 66% of the respondents declared esteem for judges in 1999. In 2004 a slight increase was observed: 69.9% of the respondents declared esteem for judges. However, afterwards there was a major decline of social trust to the judicature. In 2008 only 62% of the respondents appreciated the rank of the judges' profession.[77] In 2013 only 60% of the society declared esteem for judges.[78]

Chart 1. Public esteem for judges



Source: the author's specification on the basis of the CBOS studies carried out in the years indicated above.

On the basis of the studies carried out in 2008 among 33 professions with prestige reviewed by the CBOS, the profession of a judge was ranked 11th. Higher prestige than that of judges is enjoyed by the following professions: university professors (84% of major esteem) or medical doctors (73%) as well as fire fighters, nurses, engineers in factories and even qualified workers (machine operators, bricklayers). Bus drivers are also ranked ahead of judges and enjoy esteem of 61% of the society.[79] The situation was even worse in 2013 when judges were ranked in the 15th position of the esteem study out of 30 reviewed professions. Fire fighters were ranked first (87%) followed closely by university professors (82%). It is worth noting that the following professions were ranked ahead of judges: individual farmers with average farms (69%) or accountants (63%).[80]

In 2016 a study was held on the honesty and professional reliability of representatives of various professions as viewed by the society. According to it, 27% of the respondents viewed judges' reliability and honesty as very low or quite low, and 41% viewed judges' reliability as medium or average. Only 3% of the respondents perceived the reliability of judges working in courts as very high.

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[77] E. Łojko, *Wizerunek zawodu sędziego w opiniach sędziów, prawników i społeczeństwa*, Krajowa Rada Sądownictwa No. 4(9), 2010, p. 65.

[78] On the basis of the announcement of the CBOS studies concerning the prestige of professions (BS/164/2013) published in 2013. The study was performed on 1–12 August 2013 on a representative random sample of 904 adult inhabitants of Poland, p. 3.

[79] On the basis of the announcement of the CBOS studies on the prestige of professions, published in January 2009. The survey was performed in November 2008 on a representative random sample of 1,050 inhabitants of Poland, p. 2; E. Łojko, *supra* n. 77, p. 65.

[80] On the basis of the announcement of the CBOS studies concerning the prestige of professions (BS/164/2013) published in 2013, supra n. 78, p. 3.

Generally speaking, a vast majority perceives judges quite negatively. With time, judges generally are viewed increasingly worse in terms of honesty and reliability. In 1997 the average grade of judges in the scale of 1 to 5 was 3.02, while in 2016 this was only 2.85. However, it should be noted that there has been a slight change in the trend since the assessment of judges was improved in 2006-2016 and grew from the average of 2.76 to 2.85.[81]

The studies of the Public Opinion Research Centre conducted in February 2017 on a representative random sample of 1,016 adult inhabitants of Poland[82] show that the respondents asked about their general attitude to judges, most often (45%, a drop by 6 percentage points since 2012) defined it as ambivalent. According to the CBOS, a supposition may be made that the above was largely due to the effect of limited experience in contacts with courts. Less than one-fourth (24%) of the respondents have a negative attitude to judges, while over one-fifth (22%, a growth by 3 percentage points) – positive. Although in all social and demographic groups most often the assessment is neutral, relatively worse opinions on Polish judges are voiced by people with low income per capita (31%), and people who live in cities from 100 thousand to 500 thousand inhabitants (30%). The studies by the CBOS show that personal contact with the system of justice only slightly affects the attitude to Polish judges.[83]

Table 1. Esteem for judges in the opinion of students

Study of 1997		**Study of 2008**	
Year 1	**Year 5**	**Year 1**	**Year 5**
(n=202)	(n=138)	(n=365)	(n=216)
78.7%	87%	77%	87%

Source: E. Łojko, *Wizerunek zawodu sędziego w opiniach sędziów, prawników i społeczeństwa*, Krajowa Rada Sądownictwa No. 4(9), 2010, p. 66.

Judges are treated quite differently by young lawyers (those who have been working in the profession for four to five years, graduates of law faculties): 78.3% of them declared their highest esteem for judges. Among all legal professions, it was young law graduates who declared their highest esteem for judges.[84] Law students are of the opinion that it is judges who enjoy the highest respect from among all

[81] On the basis of the announcement of the CBOS studies concerning social assessment of professional honesty and reliability (No. 34/2016) of 2016. The survey was performed on 3–10 February 2016 on a representative random sample of 1,000 adult inhabitants of Poland, pp. 2, 6.

[82] On the basis of the announcement of the CBOS studies concerning assessment of justice (No. 31/2017). The computer-assisted (CAPI) surveys were carried out face-to-face on 2–9 February 2017, p. 1.

[83] *Ibid*., pp. 10–11.

[84] E. Łojko, *Role i zadania prawników w zmieniającym się społeczeństwie: raport z badań*, Wydawnictwo Wydziału Prawa i Administracji Uniwersytetu Warszawskiego, Warszawa 2005, p. 137.

legal professions. The opinion was shared by a growing percentage of students in the senior year of their studies (see Table 1). Students in each year of their studies are of the opinion that the society feels increasing respect for judges.[85]

Also judges themselves are aware that their prestige has deteriorated. Such opinion was shared by as many as 67.2% of the questioned judges and every fourth of them was quite convinced of that respect (26.9%).[86]

7. CONCLUSIONS

Remaining within the sphere of discussions related to the role of legal culture in the development of standards of judges' professional ethics, it is worth reminding Robert Jessop's thought, according to whom each "idea" creates certain notional framework which is to support individuals or human communities in coping with the reality.[87] This view also applies to professional ethics of judges.

As the analysis performed above shows, law is a product of culture and one of its major components. Law understood as a set of regulations contains a number of symbolic patterns. This means that actions taken in compliance with legal patterns are symbols conveying abstract content.

However, the knowledge about legal culture is of special importance for those members of the society who professionally practice law, including judges. The social weight of legal symbolic acts performed by judges results primarily from the fact that in many instances it is only their acts that may generate certain effects, i.e. accomplish statuses conventionally attributable to such acts. Therefore, acts of judges performed when applying law are usually important since those are acts that reflect their legal culture, which is of primary importance to the development of standards of judges' professional ethics.

In accordance with the concepts of legal culture presented above, it may be accepted as the "third" element between law and application of law. Therefore, legal culture performs a social and regulating role. As a result, legal actions can be taken in order to implement certain values (e.g. values of the state of law) as well as actions that are not aimed at achieving certain values but at accomplishing pre-planned objectives.[88] The heart of the matter is that the legal culture of the bodies that apply law is not contradictory to the commonly accepted systems of values and that it serves the society. This is of major importance in the context of judges' independence, especially when nowadays there has been an increasing influence exerted by politics on judges' activity.

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[85] E. Łojko, *supra* n. 77, p. 66.

[86] *Ibid*., p. 66.

[87] Quote after W.J. Wołpiuk, *Kultura prawna z perspektywy dystynkcji między cywilizacją a kulturą*, Gdańskie Studia Prawnicze Vol. XXXI, 2014, p. 179.

[88] M. Smolak, *supra* n. 36, p. 197.

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ROLE OF LEGAL CULTURE IN DEVELOPING STANDARDS OF JUDGES' PROFESSIONAL ETHICS

Summary

The aim of the article was to define the role of the legal culture in development of the standards of judges' professional ethics, to indicate the most representative definitions of culture and legal culture, and to specify the most important characteristics of judges required both in their work and in private life. The discussion covers also the issue of the legitimacy and significance of elaborating the most important principles of the judges' professional ethics in the form of a code both in the past and present. The article presents the problem of the prestige of the judicial profession as viewed by the general public, lawyers, students and judges themselves. The analyses of documents, literature, as well as the historical and statistical techniques were exploited in the article. As a result of the conducted analyses, it was recognized that legal culture is the "third" element between law and its use, by which it also fulfils a social-regulatory role. The legal culture of authorities that apply law should not be in contradiction with the general system of values and ought to serve the society. This is particularly important in the context of judicial independence, because nowadays more and more influence of politicians and various lobbies on the activity of the judges is observable. As

a consequence, it leads to the instrumental use of the legal acts and makes the position of the judge not impeccable in terms of ethics. In turn, this state of affairs brings about a significant decline of public esteem for judges.

Keywords: culture, legal culture, ethics, judge

ROLA KULTURY PRAWNEJ W KSZTAŁTOWANIU STANDARDÓW ETYKI ZAWODOWEJ SĘDZIEGO

Streszczenie

Celem artykułu było określenie roli kultury prawnej w kształtowaniu standardów etyki zawodowej sędziego, wskazanie najbardziej reprezentatywnych definicji kultury i kultury prawnej, a także wyszczególnienie najistotniejszych cech sędziego, wymaganych zarówno w jego pracy zawodowej, jak i w życiu prywatnym. Przedmiotem refleksji była też kwestia zasadności i istotności opracowania najważniejszych zasad etyki zawodowej sędziego i ich ujęcie w ramy kodeksu w kontekście historycznym. W artykule poruszono również zagadnienie prestiżu zawodu sędziego w opinii ogółu społeczeństwa, prawników, studentów i samych sędziów. Posłużono się metodą analizy dokumentów, analizy literatury, wykorzystano także metodę historyczną, jak i techniki statystyczne. W wyniku przeprowadzonych analiz uznano, że kultura prawna jest „trzecim" elementem między prawem i jego użyciem, przez co pełni też niejako rolę społeczno-regulującą. Należy dążyć do tego, aby kultura prawna organów, które stosują prawo, nie pozostawała w sprzeczności z ogólnie przyjętymi systemami wartości i służyła społeczeństwu. Jest to szczególnie istotne w kontekście niezawisłości sędziowskiej, ponieważ współcześnie uwidacznia się coraz większy wpływ polityków i różnorakich lobby na działalność sędziowską. W konsekwencji prowadzi to do instrumentalnego stosowania aktów prawnych i powoduje, że pozycja sędziego nie jest nieskazitelna pod względem etycznym. Ten stan rzeczy wpływa z kolei na znaczący spadek poważania dla zawodu sędziego w opinii społeczeństwa.

Słowa kluczowe: kultura, kultura prawna, etyka, sędzia

EL PAPEL DE CULTURA JURÍDICA EN LA FORMACIÓN DE ESTÁNDARES DE ÉTICA PROFESIONAL DE JUEZ

Resumen

La finalidad del artículo consiste en determinar el papel de cultura jurídica en la formación de estándares de ética profesional del juez, indicar las definiciones más representativas de la cultura y de la cultura jurídica, así como enumerar las características más importantes de un juez requeridas tanto en su trabajo como en su vida privada. La obra trata también de la cuestión de justificación e importancia de elaborar los principios más importantes de la ética profesional de juez en forma de un código. Se habla del prestigio de la profesión de juez en la sociedad, entre los juristas, estudiantes y los jueces en sí. Se ha utilizado el método de análisis documental, análisis de literatura, se ha utilizado también el método histórico y técnicas de estadística. Como resultado de dichos análisis se hace constar que la cultura jurídica es el "tercer" elemento entre el derecho y su aplicación, por lo que desempeña de cierta

forma el papel social y regulador. Hay que aspirar a que la cultura jurídica de los órganos que aplican el derecho no sea contraria al sistema general de valores y que sirva a la sociedad. Esto es muy importante en relación con la independencia de los jueces, porque actualmente se observa cada vez mayor influencia de políticos y de diferentes lobby a la actividad judicial. En consecuencia, esto conlleva a que la posición del juez no es impecable desde el punto de vista ético. Tal estado de las cosas influye a caída importante del respeto de la profesión del juez en la opinión de la sociedad.

Palabras claves: cultura, cultura jurídica, ética, juez

РОЛЬ ПРАВОВОЙ КУЛЬТУРЫ В ФОРМИРОВАНИИ НОРМ ПРОФЕССИОНАЛЬНОЙ ЭТИКИ СУДЬИ

Резюме

Статья написана с целью определить роль правовой культуры в формировании норм профессиональной этики судьи, указать наиболее представительные определения культуры вообще и правовой культуры в частности, а также перечислить наиболее существенные черты характера судьи, требуемые как в его профессиональной деятельности, так и личной жизни. Автор также размышляет в историческом контексте о проблеме обоснованности и важности формулирования основных принципов профессиональной этики судьи в рамках соответствующего кодекса. В статье также затронут вопрос престижа профессии судьи в глазах широкой общественности, юристов, студентов и самих судей. При работе использован метод анализа документов и специальной литературы, а также исторический подход и статистические методы. Проведенный анализ позволяет утверждать, что правовая культура является «третьим» элементом между правом и его применением, что в каком-то смысле придает ей роль общественного регулятора. Следует стремиться к тому, чтобы правовая культура правоприменительных органов не шла вразрез с общепринятой системой ценностей и служила интересам общества. Это особенно важно в контексте независимости судебной власти, поскольку в настоящее время становится все более очевидным влияние политиков и различных лобби на деятельность судебных органов. Как следствие, законодательные акты могут применяться инструментально, а положение судьи перестает быть безупречным с этической точки зрения. В свою очередь, такое состояние дел приводит к значительному ухудшению репутации профессии судьи в глазах общественности.

Ключевые слова: культура, правовая культура, этика, судья

DIE ROLLE DER RECHTSKULTUR BEI DER FESTLEGUNG BERUFSETHISCHER STANDARDS FÜR RICHTER

Zusammenfassung

Ziel des Artikels ist es, die Rolle, die der Rechtskultur bei der Gestaltung der Standards der Berufsethik für Richter zukommt, zu bestimmen, die gängigsten Begriffsbestimmungen der Kultur und Rechtskultur aufzuzeigen und die wichtigsten, sowohl in seiner beruflichen Tätigkeit als auch in seinem Privatleben geforderten Eigenschaften eines Richters aufzulisten. Behandelt wird außerdem die Frage der Legitimität und Bedeutung der Ausarbeitung der wichtigsten Grundsätze der Berufsethik für Richter und deren Einbeziehung in den Verhal-

tenskodex in einem historischen Kontext. In dem Artikel wird auch die Frage des Ansehens des Rechtsberufs in der Gesamtbevölkerung, bei Anwälten, Studenten und Richtern selbst aufgegriffen. Genutzt wurden die Methode der Dokumentenanalyse und der Literaturanalyse und außerdem hat der Verfasser auf den historischen Ansatz zurückgegriffen und statistische Techniken eingesetzt. Im Ergebnis der durchgeführten Analysen wurde deutlich gemacht, dass die Rechtskultur als „drittes" Element zwischen Gesetz und seiner Anwendung anzusehen ist und ihr folglich auch eine soziale und regulatorische Rolle zukommt. Es ist darauf hinzuarbeiten, dass die Rechtskultur der Organe und Stellen, von denen die Gesetze angewendet werden, nicht mit den anerkannten Wertesystemen in Konflikt steht und der Gesellschaft dient. Dies ist insbesondere im Zusammenhang mit der Unabhängigkeit der Justiz von Bedeutung, da der zunehmende Einfluss von Politikern und verschiedenen Interessengruppen auf die Justiz immer deutlicher sichtbar ist. Das führt in der Konsequenz zu einer instrumentalen Anwendung von Rechtsakten und führt dazu, dass die Position des Richters in ethischer Hinsicht nicht mehr makellos und unangreifbar ist. Dadurch wiederum nimmt das Ansehen des Richterberufs in den Augen der Gesellschaft erheblichen Schaden.

Schlüsselwörter: Kultur, Rechtskultur, Ethik, Richter

LE RÔLE DE LA CULTURE JURIDIQUE DANS L'ÉLABORATION DES NORMES D'ÉTHIQUE PROFESSIONNELLE DES JUGES

Résumé

Le but de l'article était de déterminer le rôle de la culture juridique dans l'élaboration des normes d'éthique professionnelle judiciaire, d'indiquer les définitions les plus représentatives de la culture et de la culture juridique, ainsi que de répertorier les caractéristiques les plus importantes d'un juge requises dans son activité professionnelle et dans sa vie privée. Le sujet de la réflexion a également été la question de la légitimité et de l'importance de développer les principes les plus importants de l'éthique professionnelle du juge et de les inclure dans le cadre du code dans un contexte historique. L'article aborde également la question du prestige de la profession de juge dans l'opinion publique, des avocats, des étudiants et des juges eux-mêmes. La méthode d'analyse des documents et de la littérature, ainsi que la méthode historique et les techniques statistiques ont été utilisées. À la suite des analyses effectuées, il a été reconnu que la culture juridique constituait le «troisième» élément entre la loi et son utilisation, remplissant ainsi également un rôle social et réglementaire. Il est important de veiller à ce que la culture juridique des organes qui appliquent la loi n'entre pas en conflit avec les systèmes de valeurs acceptés et serve la société. Ceci est particulièrement important dans le contexte de l'indépendance des juges, car l'influence croissante des hommes politiques et des divers groupes de pression sur l'activité judiciaire devient de plus en plus évidente. Par conséquent, cela conduit à une application instrumentale d'actes juridiques et signifie que la position du juge n'est pas éthiquement irréprochable. À son tour, cet état de fait réduit considérablement le respect de la profession de juge de la part de l'opinion publique.

Mots-clés: culture, culture juridique, éthique, juge

IL RUOLO DELLA CULTURA GIURIDICA NELLA FORMAZIONE DEGLI STANDARD DI ETICA PROFESSIONALE DEL GIUDICE

Sintesi

Obiettivo dell'articolo è definire il ruolo della cultura giuridica nella formazione degli standard di etica professionale del giudice, indicare la definizione maggiormente rappresentativa di cultura e cultura giuridica, nonché specificare le caratteristiche più essenziali del giudice, richieste sia nel suo lavoro che nella sua vita privata. Oggetto della riflessione è anche la questione della fondatezza e importanza dell'elaborazione dei più importanti principi di etica professionale del giudice e il loro inserimento nell'ambito del codice, nel contesto storico. Nell'articolo è stata toccata anche la questione del prestigio della professione di giudice nell'opinione generale della società, dei giuristi, degli studenti e degli stessi giudici. Si è utilizzato il metodo di analisi dei documenti, della letteratura, si è fatto uso anche del metodo storico e delle tecniche statistiche. Dai risultati è emerso che la cultura giuridica è un "terzo" elemento, tra il diritto e la sua applicazione, e in questo svolge in qualche modo un ruolo di regolatore sociale. Bisogna aspirare al fatto che la cultura giuridica delle autorità che applicano la legge non sia in contraddizione con il sistemi di valore generalmente accettati e che sia al servizio della società. Questo è particolarmente importante nel contesto dell'indipendenza dei giudici, perché oggigiorno si presenta un influsso sempre maggiore dei politici e di svariate lobby sull'attività dei giudici. In conseguenza questo porta a una applicazione strumentale degli atti giuridici e rende la posizione del giudice sempre meno immacolata sotto l'aspetto etico. Questo stato di fatto determina a sua volta un calo del rispetto della professione di giudice nell'opinione della società.

Parole chiave: cultura, cultura giuridica, etica, giudice

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