STANISŁAW LESZEK STADNICZEŃKO

Office, Dignity, Authority, Conscience of the Judge of the Republic of Poland

Abstract

The author analyzes and considers the office of a judge of the Republic of Poland, his dignity, authority and conscience in the context of judicial independence from the point of view of the rule of law, separation of the tripartite power in a democratic state of law. The independence of the judiciary, the independence of the judiciary are unquestionable values as the basis of the rule of law. The office, dignity, authority and conscience of the judge of the Republic of Poland are creative norms, which are based on the system of law and ethics. Attention has been paid to the systemic guarantees of the independence of the judiciary provided by the Constitution and laws regulating the court system. The surprisingly large scope of the sovereign powers of the representative of the executive power – the Minister of Justice over the common courts was pointed out. The importance of personal dignity, personal dignity of the judge and the dignity of tenure was emphasized. Undoubtedly, they are revealed in private, social and professional life and with the system of regulation and integration of activities (human behavior) as personality and legal thinking. It was pointed out that conscience, which is invoked by the judge in the oath of office, is the natural ability of reason to morally value actions and phenomena. Conscience as an intrinsic attribute of the human being currently or potentially belongs to every human being, as it is the first norm of conduct with a special ability to regulate human behavior and shape interpersonal coexistence. The connection between the practice of law (judging) and sensitivity is a moral issue and an important ethical quality to which special attention should be paid today. A judge should be perceived as a human being, as a person, as an entity, as a bearer of values, professionally prepared to realize them in social life, while fulfilling a servant role to man and society.

KEYWORDS: legal position of judge in Poland, judicial system in Poland, judges

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1 Introduction

Given the modest volume of this paper, it is impossible to present detailed considerations, but it is worthwhile to point out the most important issues related to this issue. In the current socio-political situation, in many circles, both legal and non-legal, the tripartite separation of powers, as defined in Article 10 of the Constitution of the Republic of Poland (Journal of Laws of the Republic of Poland No. 78, item 483), as well as the independence of the courts and the independence of judges and the attributes of judicial power, political and ideological neutrality, socio-legal knowledge and the degradation of the ethos of the legal profession are being disputed. The brutalization of language and relations within the legal community is not conducive to the office and dignity of a judge in the Republic of Poland. The legal community requires special prudence in private and professional life, as well as wisdom, including adherence to legal and ethical norms, which should characterize our environment. An individual's readiness for office is determined by the relevant provisions contained in the Constitution and Acts. The issues addressed in the paper required the use of methods that helped to identify facts and phenomena, which are presented below – the method of analysis and criticism of the literature, legal sources, the application of the process of mental cognition, analytical thinking used in the science of law and legal practice. The title of this paper outlines the research paper of a task-oriented nature, and this concerns the recognition of the importance of their properties (characteristics) and stems from the concern about the place of the lawyer, the judge in the modern world under conditions of crisis and full of new challenges, where it is constantly heard about the need for the development of intellect and the use of new technologies without preparing to collide with the challenges in terms of reason and responsibility, succumbing to emotions that dominate reason as well as intellect. Changes in attitudes toward modern law and the administration of justice are an integral part of a broader discussion about the evolution of law and the entire social system. Social theorists hold very different perspectives, although they agree that we live in worlds characterized by a new mode of social and cultural organization. Persons who meet the requirements of the law, namely having a legal education, a certain practice, and therefore possessing certain knowledge, competence and skills, as well as personality predispositions, can be appointed to the office of judge. The provisions of Part Two, Chapter One and Chapter 1a from Articles 55-66 (Act of July 27, 2001 Law on the Common Court System,

Journal of Laws. 2024.334, i.e., dated March 8, 2024). The requirements for the position of a district court judge are docketed by Articles 61, 62, the requirements for the position of a circuit court judge are docketed by Article 63, and for a judge of an appellate court – by Article 64. The consideration of candidates for the position of judges of common courts is carried out in the National Council of the Judiciary in accordance with the procedure set forth in the Act (Act of May 12, 2011 on the National Council of the Judiciary, Journal of Laws. 2024.1186, i.e. dated August 6, 2024) in accordance with the provisions included in Chapter Three and the proceedings before the Council, Articles 28-45c. It follows from the regulations that a candidate for the office of a judge should have certain personality predispositions and, in addition, join an open competition announced by the Minister of Justice for a specific position in a given court district, and then submit to the requirements of the competition, which is conducted by the College of the Court after hearing a review (evaluation of the candidate's qualifications), his previous work drawn up by the appointed visitors of a given court. Following this, only the president of the relevant court forwards the application to the incumbent National Council of the Judiciary, which in turn is subject to an evaluation of the person's past work and suitability for the office by an appointed internal commission. The National Council of the Judiciary, after reviewing the commission's opinion and voting, decides to forward the application to the incumbent President of the Republic of Poland, who takes action to appoint the judge to the office. The fact that the President of the Republic of Poland has appointed a person on behalf of the state confers dignity and authority on the judge of the Republic of Poland, who only after taking the oath acquires the right to take up the office of judge. The fact of appointment is announced in the official journal. A judge's official relationship, according to Article 65 of the Common Court System, is established after he or she has received a letter of appointment and reports for work within 14 days.

2

When attending meetings in different communities, it is possible to encounter the attitude of many people that legal conflicts and disputes do not concern them. Most people do not understand the reasons for these

disputes and treat them as a manifestation of political struggle abstracted from their daily affairs, not understanding the antagonism of the legal community. However, some people are beginning to realize that these disputes are not abstract and that this is becoming an extremely important issue for everyone involved. In their statements, referring to Article 1 of the Constitution of the Republic of Poland and the principles resulting from, among others, the Preamble of the Constitution, which has a declarative-normative character, these people emphasize that they would like to live in a state with a stable legal system and a government that properly performs its functions.

The public authorities should implement Article 2 of the Constitution concerning a democratic state of law realizing the principles of social justice with respect for Article 30 of the Constitution concerning the personal dignity of every human being, and therefore the norms governing the constitutional foundations of political, social and economic systems, as well as human freedoms and rights. The principles contained in the Constitution of the Republic of Poland are of particular importance, as they are the principles of all law in Poland. Among the most important principles are: – common good, – respect and protection of inherent human dignity, – democratic state of law realizing the principles of social justice, – sovereignty of the Nation, – independence and sovereignty of the state, – civil society, – separation of powers, – equality, – social market economy, – decentralization of public power, – subsidiarity. In addition to the Basic Law, the norms of constitutional law are found in many laws and normative acts of a lower order. However, they must be in accordance with the Constitution of the Republic of Poland, which is the supreme law of the Republic of Poland – Article 8(1) of the Constitution. Many people often refer to a specific provision without paying attention to the fact that it is a technical unit of a legal act, a task unit in the grammatical sense, from which it is necessary to derive a legal norm as a rule of conduct. A lawyer, in turn, on the basis of principles, rules, norms, determines the conduct that should be followed, taking into account the sources of universally binding law that appear in legal transactions and using the interpretation of law, which consists of interpretation and legal inference. Unfortunately, in public life the presentation of a particular legal provision contained in a particular piece of legislation without correct interpretation is encountered. The Polish state is to be subordinated not to any law, but to such a law, the basis (foundation) of which are such values, especially as the common good, democracy and social justice, human dignity.

The Constitution of the Republic of Poland clearly states that supreme power „belongs to the Nation". This highlights the permanent nature of this supremacy, which is not exhausted only by the periodic participation of citizens in elections. It is rightly pointed out that the constitutional statement „the supreme power belongs to the Nation" implies „the requirement of the broad, diverse and continuous nature of the influence of the general public on public power".

It should be noted that for the first time in a Polish constitutional act, not only the rule of separation of powers, but also the balance of powers, i.e. balancing of the various authorities, was defined. In Article 10 of the Constitution of the Republic of Poland, the legislator settled the following issues: – distinguished three fundamental spheres of state activity and referred to them as: the legislative power, the executive power and the judicial power (the subjective division of powers), – delegated the exercise of legislative power to the Sejm and the Senate, the executive power to the President and the Council of Ministers, and the judicial power to the courts and tribunals (the subjective separation of powers). Unfortunately, in the executive branch there is a desire to subordinate the spheres of activity of the other authorities.

Article 10(1) of the Constitution recognizes as the basis of the state system of the Republic of Poland – in addition to the separation of powers – the „balance of powers." The principle of the balance of powers is based on a system of interactions, especially between the Parliament, the President and the government (legislative and executive), shaped into a certain tangle of „brakes" and „overlaps" of competence. On the other hand, the Constitutional Court has the right to repeal the validity of a normative act (norms contained therein) that is inconsistent with an act (norms contained therein) of a higher order. These solutions are intended to prevent the „growth" of one authority over another. In one of its rulings, the Constitutional Court states that judicial independence is the organizational and functional separation of the judiciary from the organs of other authorities, while the independence of a judge consists in the fact that a judge acts solely on the basis of the law, in accordance with his conscience and internal conviction, and his independence includes the following elements: – independence in relation to extrajudicial bodies, – impartiality in relation to the participants in the proceedings, – independence of the judge in relation to the judicial authorities and bodies, – independence from the influence of political factors, – internal independence of the judge [Judgment of the Constitutional Court of November 9, 1993, K 11/93].

According to Jan Woleński[1],

> The rule of law is a so-called regulative idea, i.e., a certain ideal towards which specific regimes aim. No state is fully a state of law and never will be. On the other hand, it is not a matter of indifference how much of a state of law is in a particular social organism functioning here and now, i.e. in a particular time and place [...]. In general, every state is formally a rule of law, because every state obeys some kind of law. In contrast, not every state is materially law-abiding, because in order to be, it must obey a law of some content. The difference is as follows. No distinction is made between the rule of law in the formal sense and the rule of law in the substantive sense. The idea of the rule of law is uniform. Of course, it can be said this way: the rule of law consists in being formally and materially lawful, provided that the content of the law meets the requirements from the side of human rights. Regardless of how it is understood, the traditional issue of guarantees of the rule of law is actually the same issue with regard to the rule of law. The separation of powers, the independence and instantiation of courts, the constitutional judiciary, the administrative judiciary – these are just some of the institutions that protect the rule of law.

Tadeusz Biernat notes that

> the complexity of power, its multifaceted dimension, and above all, the changes within it, resulting from the transformations taking place in social reality, justify and warrant any new attempt to analyze the phenomenon of power. Power, especially public power, has always been the basis for the functioning of an organized society. It has always been a focal point within this organization, but it has been particularly influential on the functioning of society within the modern model of democracy, in which, original solutions in the sphere of power have been made the main motive for the construction of system. This model, complemented by the idea of the rule of law, has been undergoing changes for many years. Their essence is the formation of the relationship between: the law, the institutions of power, the means of its exercise, and the autonomy/freedom of an individual. [...] Legal regulations in the form of principles, norms and laws, institutions taking the form of diverse bodies, and resources, i.e. a set of means that

1 Jan Woleński, „Zawody prawnicze w państwie prawa", [in:] *Notariusz w polskim systemie prawa*, ed. Jan Woleński (Kraków: Wydawnictwo Ratio, 2002), 40.

> enable effective actions to be taken, are in the modern democratic system, the main factors determining the shape of power. At the same time, these are the basic features of public power. [...] With the model of the rule of law, it is linked, in an absolute way as a necessary condition, only the independence and instantiation of the courts. On the other hand, when it comes to determining the particular forms and competencies of judicial bodies, such as the postulated separation of constitutional judiciary does not constitute a feature of the rule of law[2].

Many politicians are aware and we citizens must also be aware – wrote Lech Morawski[3] – that in a democratic state of law, the functioning of public power, including politically, is changed by greater involvement of judicial bodies and the impact of their decisions on the shape of public power. Constitutional courts and tribunals, administrative courts, but also ordinary courts make decisions that directly affect public power. The jurisdiction of modern constitutional courts and tribunals often includes resolving disputes of competence, impeachment proceedings are sometimes held before them, it is not uncommon for them to make decisions on the legality of political parties or elections, and the interpretation of constitution increasingly becomes in their hands an element of creative shaping of legal and social order. Therefore, the judicial power is of clear interest to the other public authorities. Marek Zirk-Sadowski[4] points out that the extent of involvement of modern courts in issues related, in particular, to strategies for achieving political goals has assumed such proportions that the subject of isolated research is the phenomenon of performance of the tasks of governance by the judicial government. This is one of the elements of „judicialization" of politics, which is characterized not only by the increasing role of courts in defining political goals and strategies, but also by the growing constitutional control of political decisions, the creation of a discourse on rights.

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2 Tadeusz Biernat, *Władza publiczna w demokratycznym państwie prawa. Prawo – Instytucje – Zasoby* (Kraków: Oficyna Wydawnicza AFM, 2014), 9 et seq.

3 Lech Morawski, „Two Doctrines of Judicial Application of Law", [in:] *Politics of Law and Legal Policy. Between Modern and Post-modern Jurisprudence*, ed. Tadeusz Biernat, Marek Zirk-Sadowski (Warszawa: Wolters Kluwer, 2008), 162.

4 Marek Zirk-Sadowski, „European Judicial Governance and Legal Philosophy", [w:] *Between Complexity of Law and Lack of Order*, ed. Bartosz Wojciechowski, Marek Zirk-Sadowski, Michał J. Olecki (Toruń-Beijing: Nicolaus Copernicus University Press, 2009), 77.

It should be mentioned that the Council of Europe, of which we are a member, starting from a pragmatic point of view, adopted a Resolution 1594(2007) „The Principle of the Rule of Law", the rationale for its adoption was that legal thinking in many countries supports the understanding of the „rule of law" as the supremacy of „the supremacy of the state law", indicating that this is the way the idea of the rule of law is understood in countries where totalitarian traditions are present in both theory and practice. Such a formalistic approach and interpretation of concepts of the rule of law and Etat de droit (as well as *Rechtsstaat*) is contrary to the essence of both the „rule of law" and the supremacy of law. The content of the adopted resolution clarifies the meanings of discussed concepts, which are extremely important for the functioning of modern state.

The findings of the Report adopted by the Venice Commission in March 2011 are extremely interesting because for the first time a list of characteristics was drawn up to evaluate specific states from the point of view of fulfilling the criterion of a state that respects the rule of law, and the appendix formulates questions such as access to justice before independent and impartial courts: – is the judiciary independent? – are prosecutors' offices independent to some degree from the state apparatus? – do they operate on the basis of laws, rather than politically motivated guidelines? – are individual judges subject to political influence or manipulation? – is the judiciary impartial? – what regulations ensure its impartiality? – do citizens have effective access to justice, as well as judicial review of the administration's and executive branch's actions? – does the judiciary have sufficient mechanisms and remedial powers? – is there a recognized, organized and independent legal profession? – are judgments implemented? – is respect for res judicata ensured?

In terms of respect for human rights, are the following rights guaranteed in practice: the right of access to justice, do citizens have effective access to justice, the right to a competent judge, the right to be heard, ne bis in idem, is there a legal principle that measures imposing burdens should not be retroactive, the right to an effective remedy, the presumption of innocence, the right to a fair trial.

Accordingly, for the purposes of this paper, a review of the current Constitution and the Act was carried out. At present, the principle contained in Article 2 Constitution of the Republic of Poland of 1997 plays a special role as it clearly refers to the idea of the rule of law and the concept of the „rule of law" in the material and formal sense. Strongly rooted in European legal tradition and culture, it is, like the rule of law, an overarching

principle that constitutes a kind of keystone for the legal system, whose construction is based on other principles.

The principle of the common good and the special role of the principle of the democratic rule of law lie in their universality, which can be generally characterized as expressing the expectation that public authorities meet the highest standards in all areas of their activities. They are not explicitly defined, but are derived from these principles in specific situations, most often in the course of cases considered by the Constitutional Court[5].

The principle contained in Article 173 of the Constitution of the Republic of Poland is a fundamental rule of the separation of powers, which requires the establishment of the position of the judiciary as separate and independent from the legislative and executive powers. The mutual relations of these three powers must include elements of control and balance. The role of the judiciary is to decide cases on the basis of generally formulated legal norms. Judicial power in the Republic of Poland is vested in the courts, the Constitutional Court and the State Tribunal.

It follows from Article 174 of the Constitution of the Republic of Poland that adjudication as the issuance of decisions is the primary function of the organs of judicial power. Courts and Tribunals issue decisions in the form of judgments. Judges of courts and Tribunals are an independent authority in the field of adjudication and issue their judgments directly on behalf of the State. In particular, the principle of the autonomy and judicial independence of the courts is thus implemented. At the same time, judges are fully responsible for their verdicts in legal and moral terms.

According to Article 175 of the Constitution of the Republic of Poland, the principle of judicial administration of justice, which is of momentous importance for the guarantee of the rule of law and the protection of citizens' rights and freedoms. Courts – entities entrusted with the administration of justice – are state legal protection bodies authorized to issue binding rulings, deciding what is just in a particular case. The concept of justice is closely related to the rule of law as a principle of action of state bodies. Courts, which directly apply legal norms to specific facts, must also take into account the public's sense of justice.

Attention should be paid to Article 179 of the Constitution, which states that Judges are appointed by the President of the Republic of Poland at the

5 Marzena Kordela, „Możliwość systemu zasad prawa", [in:] *System prawa a porządek prawny*, ed. Oskar Bogucki, Stanisław Czepita (Szczecin: Wydawnictwo Uniwersytetu Szczecińskiego, 2008), 71.

request of the National Judicial Council, for an indefinite period of time. The appointment of a judge by the President of the Republic of Poland indicates the stature of the office of judge, constituting a general power to hold the office of judge for an indefinite period of time. In the determination of candidates for the position of judge, the principle of electability by voting at the convention of a particular court and then voting at the National Judicial Council applies.

Article 179 of the Constitution of the Republic of Poland does not use the phrase „judges may be appointed," but the legislator used the phrase „judges shall be appointed by the President". Article 144(3) of the Constitution defining the prerogatives of the President of the Republic of Poland lists in item 17 „appointment of judges", while non-appointment is not mentioned.

Referring here to Article 66 of the Act on the Organization of the Common Courts (Journal of Laws 2024.334, i.e.) on the oath of office, which constitutes the oath's rotas. § 1 Upon appointment, a judge takes an oath before the President of the Republic of Poland according to the following rote: „I solemnly swear as a judge of a common court to serve faithfully the Republic of Poland, to uphold the law, to perform the duties of a judge conscientiously, to administer justice in accordance with the law, impartially according to my conscience, to keep legally protected secrets and in conduct to be guided by the principles of dignity and honesty"; the person taking the oath may add at the end the phrase: „So help me God". § 2 Refusal to take the oath is tantamount to resignation from the judicial post.

Also important from a constitutional point of view are Articles 178 and 180 of the Constitution, which state that a constitutional principle related to the independence of the judiciary as a separate power is the principle of judicial independence. This principle applies to the activities of all judges and to the various areas of their jurisdiction. Independence is a characteristic feature of the functioning of the judiciary, which guarantees the rule of law and objectivity in jurisprudence. Singling out the Constitution as a fundamental act alongside other laws underscores its leading character and overarching role in the legal system. Judges have the right to rule according to their own internal conviction based on the principle of free evaluation of evidence, in accordance with life experience and according to their conscience. Independence refers to a judge's independence from all authority and external pressures and influences of a formal or material nature, which formulates the judge's impartiality and objectivity. To guarantee judicial independence, it is important to ensure the due professional

status of a judge with dignity of office. When exercising justice, judges may not be associated with any political party affiliation, relationship, and may not engage in political activities.

Article 180 of the Constitution indicates that judges are irremovable and the guarantee of the independence of judges is the constancy of the judicial profession. This constancy is determined by the principles of non-removal, and non-assignment of judges and the age limit up to which the profession of judge can be exercised.

3

Every profession requires certain personality predispositions, legal professions over a certain formation. The literature emphasizes that a profession is a set of activities that are distinguished in the social division of labor, require appropriate qualifications, are performed by an individual on a permanent or occasional basis, and are a source of livelihood, prestige, and sometimes power. Secondly, the term „profession" also means the totality of people engaged in a specific occupation. Practically speaking, it is of great importance to distinguish between a learned profession and an occupation in practice.[6] The term „profession," which is probably closest to the Polish language, competes with the terms „skilled trade" and „occupation." The term „skilled trade" has a German etymology, while the term „occupation" has an English etymology.

Roman Tokarczyk points out that „the theory of the legal profession, stemming from the structural-functional concepts of the American sociologist Talcott Parson, places lawyers in a system of social stratification providing them with professional autonomy, self-government, self-regulation. While for Weber's theory the key category is the market, for Marx's theory the role of such a category is fulfilled by class, for Parson's theory the key category remains the social order. According to structural-functional concepts, the social position of a profession, especially the legal profession, is determined by many variable factors combined. It is determined by

6 Krystyna Wojtczak, *Zawód i jego prawna reglamentacja* (Poznań: Wydawnictwo Uniwersytetu im. Adama Mickiewicza, 1999), 71; Andrew Abbott, *A System of Professions* (Chicago: The University of Chicago Press, 1988), 17.

family environment, ethnicity, race, gender, religion, education, occupation, clientele, wages, income, wealth and politics. However, the structural-functional concept takes for granted a rather dubious assumption that if professional autonomy, self-governance and self-regulation of lawyers are guaranteed, they will use their knowledge in the client's interest rather than in their own interest. [...] For lawyers, deciding the fate of people's most cherished values – life, health, freedom, dignity, security, prosperity – first and foremost should themselves be distinguished by the highest level of morality. Contrary to these dreams of lawyers as a moral elite – an ethocracy, in many cases the morale of lawyers reaches the ethical bottom – a level that could be described as etho-commoners", for as L.L. Fuller noted, there is a fundamental difference between professional duty based on „duty" and „aspiration" different from it. While duty focuses on compliance with norms and what should be done, aspiration expresses more positive terms, encouraging professionals to develop a style of practice that inspires ethical behavior rather than merely avoiding unethical behavior"[7].

Among the legal professions, the office of a judge is prominently featured, often referred to as the „crown of the legal profession". Those appointed to the office of judge must keep in mind the social and political realities in which lawyers work, and they must constantly confront the consequences of their choices as to whom they represent, how they represent them, and with what results. They can only achieve this by balancing the morality of their professional roles with personal morality. This approach to legal ethics indicates that it has the closest relationships with the practically situated reasoning, interests, goals, consequences and contexts of lawyers' activities. The approach recommended here encourages continuous reflection, which matter that a lawyer is better prepared to deal with difficult situations. Linking the practice of law with sensitivity to moral issues is an important ethical quality that all lawyers should possess at the risk of the law's duty to man.

Among the necessary and desirable qualities of a judge's personality are: high ethical behavior on and off duty; civil courage in the exercise of judicial independence, treated as a duty and not a privilege; impartiality in making jurisdictional decisions; intelligence, wisdom, reasonableness; responsibility for words – spoken and written; capacity for general

7 Roman Tokarczyk, *Etyka prawnicza* (Warszawa: Lexis Nexis, 2007), 13.

reflection; decision-making without emotional involvement; sense of justice; sensitive conscience; love of truth[8].

A judge should be characterized above all by high personal culture, objectivity and impartiality in the presentation of own's thoughts, as well as knowledge and competence and conformity of conduct in professional and private life. A judge should implement the values and standards of conduct on an individual and institutional basis, i.e. in the workplace, and at the same time present the silhouette of a scientific professional as a person with an open mind, possessing internal discipline, intellectual honesty, criticality, civil courage, observing research methodology and procedures, being responsible for own's word and committed to integral development. Such a person must be characterized by legal thinking, based on the simultaneous use and cooperation of three cognitive mechanisms – intuition, imagination and reasoning in language, as described by Bartosz Brożek[9].

It should be remembered that the development of sciences provides us with a new vision of the human being allowing us to look at its complexity from new points of view. Not only the findings of cognitive sciences, but also the philosophical argumentation[10] resulting from the vision of mental mechanisms emerging simultaneously from several research paradigms of neuroscience and experimental psychology[11] takes into account research devoted to unconscious decision-making[12]; insight[13] the concept of mental simulations (developed in the paradigm of so-called

8 Tadeusz Ereciński, Jacek Gudowski, Józef Iwulski, *Komentarz do Prawa o ustroju sądów powszechnych i ustawy o Krajowej Radzie Sądownictwa* (Warszawa: Lexis Nexis, 2002), 91.

9 Bartosz Brożek, „Architektura umysłu prawniczego", [in:] *Prawo i nauki kognitywne*, ed. Bartosz Brożek, Łukasz Kurek, Jerzy Stelmach (Warszawa: Wolters Kluwer, 2018), 45.

10 Bartosz Brożek, *Umysł prawniczy* (Kraków: Copernicus Center Press, 2018), 9 et seq; see also: Bartosz Brożek, *Normatywność prawa* (Warszawa: Wolters Kluwer, 2012), 1 et seq; Brożek, *Granice interpretacji* (Kraków: Copernicus Center Press, 2014), 3 et seq; Bartosz Brożek, *Szósty zmysł* (Kraków: Copernicus Center Press, 2016), 5 et seq; Bartosz Brożek, *Myślenie. Podręcznik użytkownika* (Kraków: Copernicus Center Press, 2016), 5 et seq.

11 Mateusz Hohol, *Wyjaśnić umysł. Struktura teorii neurokognitywnych* (Kraków: Copernicus Center Press, 2017), 11.

12 Daniel Kahneman, *Pułapki myślenia. O myśleniu szybkim i wolnym*, tłum. Piotr Szymczak (Poznań: Media Rodzina, 2012), 75; Gerd Gigerenzer, Wolfgang Gaissmaier, „Heuristic Decision Making" *Annual Review of Psychology*, No 62 (2011): 51.

13 Robert Weisberg, *Creativity: Understanding innovation in problem solving, science, invention, and the arts* (Hoboken: John Wiley, 2006), 27.

embodied cognition)[14]; and the evolution of language[15] . In the opinion of Brożek, these concepts make up a coherent picture of the functioning of the human mind; but it is not a psychological theory, but a philosophical one. Brożek points out that modern cognitive science shows that in addition to unconscious intuition and abstract linguistic constructions, the lawyer possesses something else – he has the ability to mentally simulate things and events. It is this ability, which would traditionally be described as imagination, that seems to be a somewhat forgotten dimension of the legal mind. I believe that thinking in law is a constant interplay between intuition, imagination and language. This thesis has far-reaching implications, which I try to present in the pages of this publication[16].

Human beings are distinguished by the complexity of regulatory systems and the ability to become aware of their existence. According to the theory of systems, the whole (system) is more than the sum of its parts: the personality is not just the sum of structures that form emotions, carry out thought operations, plan, but an active subject, experiencing its actions.

Personality is considered as a functioning whole – as a part of a larger whole – a human being. It consists of smaller wholes – subsystems, performing functions of producing, recording and processing emotions, judgments, actions[17]. The function of personality is to regulate behavior

14 Beniamin Bergen, *Latające świnie. Jak umysł tworzy znaczenie,* tłum. Zuzanna Lamża (Kraków: Copernicus Center Press, 2017), 47; Lawrence Barsalou, „Perceptual Symbol Systems" *Behavioral and Brain Sciences*, No. 4 (1999): 577; see also: Lawrence Barsalou, „Grounded Cognition" *Annual Review of Psychology*, 59 (2008): 617; Lawrence Barsalou, „Situating Concepts", [in:] *The Cambridge Handbook of Situated Cognition*, ed. Philip Robins, Murat Aydede (Cambridge: University Press, 2009), 236.

15 Michael Tomasello, *Kulturowe źródła ludzkiego poznawania*, tłum. Joanna Rączaszek (Warszawa: Państwowy Instytut Wydawniczy, 2002), 38; Tomasello, *Origins of Human Communication* (Cambridge MA: MIT Press, 2008), 78; Michael Tomasello, *Constructing a Language. A Usage-Based Theory of Language Acquisition* (Cambridge MA: Harvard University Press, 2003), 91.

16 Brożek, *Umysł prawniczy*, 27 et seq.

17 Janusz Reykowski, „Obraz własnej osoby jako mechanizm regulujący postępowanie" *Kwartalnik Pedagogiczny* No. 3 (1970), 45-57; see also: Janusz Reykowski, *Osobowość a społeczne zachowanie się ludzi*, red. Janusz Reykowski (Warszawa: Książka i Wiedza, 1980), 5 et seq. Janusz Reykowski, Grażyna Kochańska, *Szkice z teorii osobowości* (Warszawa: Wiedza Powszechna, 1980), 9 et seq; Maria Jarosz, *Psychologia i psychopatologia życia codziennego* (Warszawa: Państwowy Zakład Wydawnictw Lekarskich,, 1975), 3 et seq; Kazimierz Obuchowski, *Psychologia dążeń ludzkich* (Warszawa: Państwowe Wydawnictwo Naukowe, 1972), 5 et seq; Anna Brzezińska, „Struktura obrazu własnej osoby i jej wpływ na zachowanie" *Kwartalnik Pedagogiczny*, No. 3 (1973): 87-97; Karen Horney, *Neurotyczna osobowość naszych*

in order to maintain the integrity of the individual, meet his needs in contact with the environment, and to adapt to changes in the biological and social environment.

In the regulatory theory of personality, personality is defined as the central system of regulation and integration of human activities (behavior). Within it, certain subsystems can be distinguished: regulatory and integrative mechanisms. Two main levels of organization of these mechanisms are the drive-emotional level (basic or primary regulatory mechanisms) and the level of cognitive structures (higher regulatory mechanisms). The existence of needs is a higher stage of the development of the drive-emotional mechanisms, as in addition to the needs that determine the survival of an individual, needs have been formed that promote the survival of the species, the cluster, the group, the family. These include the needs for connection: love, friendship, acceptance, recognition. At the same time, the presence of these needs presupposes the need for mechanisms to regulate interference in their satisfaction; ways to circumvent contradictions in the pursuit of individual pleasures and communal benefits. These mechanisms link pro-social action with positive emotions. In the course of socialization, drive-emotional mechanisms become subjected to the overarching guidance of higher regulatory mechanisms, namely the cognitive system. This occurs after the formation of a cognitive network. The term „network", used here instead of system or subsystem, emphasizes the complex nature of the connections between elements. They remain in complex cause-and-effect relationships with each other and with elements of other subsystems. These relationships carry the character of feedback. The cognitive network is organized in two ways: in an order that reflects the surrounding world and an individual himself in logical terms (operational network), and in a value order – in terms of the importance and meaning that an individual attributes to himself and the surrounding world (value network). Central in most people, the structure „dealing with" the descriptions and relationship of the individual to himself is referred to as the structure of the Self. The structure of the Self contains both elements of the operational network and the value network.

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czasów (Warszawa: Państwowe Wydawnictwo Naukowe, 1976), 10 et seq; Horney, *Nerwica a rozwój człowieka* (Warszawa: Państwowy Instytut Wydawniczy, 1978), 7 et seq; Andrzej Jakubik, *Histeria* (Warszawa: Państwowy Zakład Wydawnictw Lekarskich, 1979), 5 et seq; Stanisław Siek, *Rozwój potrzeb psychicznych, mechanizmów obronnych i obrazów siebie* (Warszawa: Krajowa Agencja Wydawnicza, 1984), 5 et seq.

The important need for self-realization, raised by Maslow, is realized in the development of each of the structures mentioned here: in the drive-emotional sphere as the drive for more refined consumption; in the structure of the Self in the tendency to expand, to give the environment its mark; in the operational network it will be expressed in the pursuit of skill improvement and in the form of creative works; in the value network in the form of the development of supra-personal and pro-social aspirations.

The history of the system – the history of an individual, his stock of experiences, the strategies he has used so far, the ways he has met his needs and dealt with difficulties so far – is yet another factor determining the type, strength and extent of the system's regulatory behavior. Observations indicate that an individual often prefers previously learned and frequently repeated modes of behavior. General solutions adopted in childhood: approaching, attacking or avoiding in a crisis situation are stereotypically and almost involuntarily repeated. Often a "rational" ideology is later added to these behaviors.

There are also ways of regulating cognitive network disruptions that occur mainly in people with neurosis, but are also used by healthy people. They are referred to as personality defense mechanisms. Among the most important personality defense mechanisms, specialists include rationalization, projection, introjection, suppression and repression, conversion, compensation and overcompensation, aggression, aggression with transference, escape, resignation, fantasizing, regression, identification.

Thinking, including legal thinking is deeply rooted in human personality, including defense mechanisms, attitudes, values, emotionality. Also Artur Kozak draws attention to the professional legal pragmatics formed mainly on the basis of achievements of the analytical theory of law, calling them „legal reasoning"[18]. Andrzej Bator writes: „lawyers with their analytical 'reason' fit into the post-modern diagnosis of local narratives and the power struggle hiding behind them". When it comes to the circles of Polish lawyers and politicians, of course, matters have already gone beyond the postmodern sensitivity to oppressiveness hidden behind the veil of legal cognitive categories and entered the stage of overt conflicts (after all, let us remember the recent battles between politicians and judges of the Constitutional Tribunal or law corporations). What differs Kozak from thinkers from the circle of postmodernism is that the former generally do not make

18 Artur Kozak, *Myślenie analityczne w nauce prawa i praktyce prawniczej* (Wrocław: Wydawnictwo Uniwersytetu Wrocławskiego, 2010), 15 et seq.

any illusions about the prospects of getting out of the isolation created by this kind of outlook on the world, while the Author of this publication still seems to trust in the fact that, as he writes, „the gap between the universality of the law's action and the exclusivity of the skills that allow to retain influence on this action, generates a strong political tension that must somehow be discharged". Underlying such confidence is probably the belief that the law, along with the „legal reason" that co-shapes it – by virtue of its power of social influence – cannot simply be relegated to the circle of some one of many narratives about the world. However, the question of how to get out of this loop is, according to. Kozak, already purely political and socio-technical in nature, rather than scientific or philosophical[19].

Each of us lives in a particular political culture. The political correctness that clearly dominates the world of Western culture limits human freedom on the one hand, and imposes a strict limit of acceptable axiology on the other. It destroys the social order in which one of the constitutive elements should be the principle of solidarity. This principle prescribes respect for man for the sake of his humanity, but this order does not extend to his behavior or the concepts he preaches. As we refer to culture, and political culture in particular, it is necessary to take into account its close relationship with society and, above all, with man. Valuing is one of the basic elements that make up the political culture of a community, in our case the individual legal profession. It is primarily a moral evaluation of political actions and behavior.

In the colloquial sense, political culture is sometimes reduced to diplomatic culture. Its absence is equated with quarrelsomeness, extremes of opinion, lack of good manners, and even bad taste when it comes to external appearances. On the other hand, the poisoning of the mind, the distortion of language, the falsification of concepts, and the distrust of citizens toward authority develop.

Noteworthy is the thought of Gabriel Almond that political culture is the totality of individual attitudes and orientations of people living in a given political system. Several layers can be distinguished in attitudes and orientations: – cognitive, related to some portion of knowledge about political ideas and processes in a given society; – affective, related to feelings of connection, commitment, sympathy or aversion to various phenomena

19 Andrzej Bator, „Wstęp", [in:] *Myślenie analityczne w nauce prawa i praktyce prawniczej*, ed. Artur Kozak, (Wrocław: Wydawnictwo Uniwersytetu Wrocławskiego, 2010), 7-12.

involving politics; – evaluative, expressed in ethical valuations of behavior and events in the political world[20].

The functional approach emphasizes the consciousness sphere rather than the behavioral sphere of political behavior. „Political culture is that part of social consciousness, both group and individual, which is capable of eliminating, modifying or ordering political behavior and political decisions as well as ways of thinking about politics"[21]. Consciousness includes political ideas, values, norms, habits, traditions, patterns, as well as emotional reactions to politics, and evaluations of political facts, phenomena and processes[22]. Political culture acts as a filter between the stimulus demanding political action and the actual political behavior of both the rulers and the ruled. In this complex situation, the person who holds the office of judge must be able to behave with full awareness of the office, independence, autonomy, free from interference and ignorance, free from pressure and influence, free from own preferences or entanglement in politics.

The legal state theorist Klaus Stern defines a legal state as the state in which the exercise of public power is permitted only on the basis of the Constitution and laws that are formally and substantively consistent with it in order to protect human dignity, freedom, justice and legal certainty[23]. A special place is occupied by the personal dignity of man, mentioned first, which also has a prominent place in the Constitution of the Republic of Poland of 1997, where in the preamble there is an indication for those applying the Constitution to do so, taking care to preserve the inherent dignity of man, his right to freedom and his duty of solidarity with others. It is noteworthy that prior to the entry into force of the Constitution of the Republic of Poland of 1997, the principle of protection of human dignity was derived from the principle of a democratic state of law and from acts of international law ratified by Poland[24].

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20 Gabriel Almond, Bingham Powell, „Kultura polityczna", [in:] *Elementy teorii socjologicznych*, ed. Włodzimierz Derczyński, Aleksandra Jasińska-Kania, Jerzy Szacki (Warszawa: Uniwersytet Warszawski, 1975), 577-582.

21 Zbigniew Blok, „Czynniki determinujące kulturę oraz model kultury politycznej", [in:] *Teoretyczne i metodologiczne problemy badań nad kulturą polityczną*, red. Zbigniew Blok (Poznań: Uniwersytet im. Adama Mickiewicza, 2005), 13-28.

22 Blok, *Czynniki determinujące kulturę oraz model kultury politycznej*, 52-53.

23 Klaus Stern, *Das Staatsrecht der Bundesrepublik Deutschland* (Munchen: C.H. Beck, 1984), 52.

24 Ferdynand Rymarz, „Zasada ochrony przyrodzonej i niezbywalnej godności człowieka w orzecznictwie Trybunału Konstytucyjnego"*Przegląd Sejmowy*, No. 6 (2003): 3-10.

The human personal dignity is perceived as the highest good[25], the supreme value[26], „the supreme value of the axiology of law"[27], the basis of justice, the tool and axiological keystone of specific provisions[28], the idea through which all constitutional values should be integrated. The personal dignity of man in the Constitution of the Republic of Poland appears not only in the preamble, but also in Article 30, where it is recognized as a source of freedom, human and civil rights, and in Article 233. Comparing the concept adopted in the preamble regarding human dignity with Article 30, it is crucial to assume that the article imposes an obligation on public authorities to respect and protect the inherent dignity of man. This norm is a general principle, just like freedom and equality. The preamble emphasizes that all citizens should take care to preserve it[29]. It is advisable to pay attention to the dignity of the office held, in our case the considered office of a judge of the Republic of Poland. Basically, an office is a certain legal institution, something that exists by virtue of the applicable legal norms. Therefore, from an ontological point of view, the dignity to which a person is entitled by virtue of the office he holds would be grounded in the norms in force (these can be norms that are not only legislated), as well as – usually – in the corresponding actions of others (conventional actions) that result in the assumption of office. Usually, as there can be offices (dignities) held hereditarily, and then we can refer to a certain type of „inheritance"; there can also be dignities for life, and in this sense „inalienable". However, it should be emphasized that „inherent" or „inalienable" is not then something innate, „intrinsic."

On the one hand, dignity is as much as some high office, such as state or church, a distinguished social position. It is possible to speak of holding or being elevated to the dignity of a consul, president or cardinal, professor,

25 Hubert Izdebski, *Fundamenty współczesnych państw* (Warszawa: C.H. Beck, 2007), 23.

26 Zygmunt Ziembiński, *Wartości konstytucyjne* (Warszawa: Wydawnictwo Sejmowe, 1993), 55.

27 Marzena Kordela, *Zarys typologii uzasadnień aksjologicznych w orzecznictwie Trybunału Konstytucyjnego* (Poznań: Uniwersytet im. Adama Mickiewicza, 1999), 64.

28 Lech Garlicki, „Wolność i prawa jednostki w Konstytucji RP z 1997 roku. Bilans pięciu lat", [in:] *Pięć lat Konstytucji Rzeczypospolitej Polskiej. Materiały z konferencji na Zamku Królewskim w Warszawie 17 października 2002*, ed. Henryk Jerzmański (Warszawa: Wydawnictwo Sejmowe, 2002), 62.

29 Zdzisław Kędzia, „Uwagi o aksjologii Konstytucji", [in:] *Prawa człowieka w społeczeństwie* obywatelskim, ed. Andrzej Rzepliński (Warszawa: Helsińska Fundacja Praw Człowieka, 1993), 34-48.

judge. On the other hand, it is possible to speak of dignity as a trait of a person due to the office he holds. Because of this type of dignity, legal or customary norms may be adopted granting such a person special powers of freedom or competence. Accordingly, it should be pointed out that dignity, which is the source of rights, is characterized by the fact that it is innate (inherent and inalienable), equal and inviolable. In relation to the fact that the term „dignity" is an ambiguous term the need to distinguish dignity among other types of dignity, which do not have the indicated characteristics.

Every judge, in addition to possessing the dignity of his office, has the dignity characterized above, according to the prevailing custom in the subject literature, referred to as personal dignity[30]. From the personal dignity it is necessary to distinguish the personality dignity, which is based on the moral excellence of the subject. The classic definition is adopted as the one proposed by Maria Ossowska[31]: „the one who knows how to defend certain values recognized by him, the defense of which is connected with his self-esteem, has dignity". It is claimed, for example, that someone has lost his dignity due to his shameful conduct.

There is also such a dignity, which is a correlate of how a person is perceived in the community. Like personal dignity, it can be greater or lesser, but unlike dignity, it essentially depends not on the subject, but on others. A typical example of a violation of dignity understood in this way is publicly insulting someone or unjustifiably spreading false information about someone. This type of dignity would thus be something similar to a good name, and can be referred to as personal dignity. It is subject to multiple legal protections. Understood in this way, personal dignity is a protected good both under Polish law (Articles 23 and 24 of the Civil Code, Articles 212 and 216 of the Criminal Code) and internationally (e.g., Article 17 of the International Covenant on Personal and Political Rights, concerning the protection of honor and good name; Article 12 of the Universal Declaration of Human Rights).

The ancient jurist Ulpian, without megalomania, took the liberty of writing that lawyers should call themselves priests: „for we uphold justice and preach the knowledge of what is good and right, distinguishing the just

30 Marek Piechowiak, *Filozofia praw człowieka* (Lublin: Wydawnictwo KUL, 1999), 344.

31 Maria Ossowska, „Normy moralne w obronie godności człowieka" *Etyka*, No. 5 (1969): 16.

from the unjust, the permitted from the forbidden, wishing to make people good, not only by fear of punishment, but also by showing them the possibility of benefit, pursuing, I believe, a true, not an apparent, philosophy"[32].

Many of us do not remember that in his search for the imperishable in law, he reaches back to the experience of antiquity in Franciszek Longchamps de Bérier, cited the definition of law by Celsus (and this is the only definition of law we know from Roman antiquity): *ius est ars boni et aequi* – „law is the art of what is good and just". In it, he particularly appreciated the jurist's pointing to law as an art. He stressed that „the science of law has most similarities with medicine, which studies man and at the same time evaluates its own actions towards him – most similarities in this respect, that both sciences are so close to art"[33].

Too little attention is paid to the proposals of Longchamps de Bérier regarding the study of legal life, especially since in Celsus' definition the author appreciated not only paying attention to ars. Assigning to the legal sciences the task of dealing with values in law, he pointed to bonum and aequum – aware that they are understood differently in different times and societies[34]. In his publication „From the problems of cognition of law" he writes that law has a dual structure: conceived and actual. Taking it as a subject of legal science, it is necessary to remember that as a subject it is also „simply fashioned by scientific reflection, which consciously or unconsciously affects it"[35]. „Real structures, normative elements, and reflections of science – these three essentially so different planes are connected here by countless threads." However, the central observation is that the dual „normative and socially present structure still has the property [...] that in its content and in its continuance are entangled certain basic human values: justice, order, humanism"[36].

The judge, in fulfilling his social mission, must demonstrate his readership, inquisitiveness, legal mind using the knowledge of a bit of linguist, historian, mathematician, inventor, musicologist, sociologist, educator, economist, psychologist, information technologist, learning skepticism

32 Ulpian, „D. 1,1,1,1 Instytucje, ks. 1", [in:] *Digesta justyniańskie. Księga pierwsza*, tłum. Bartosz Szolc-Nartowski (Warszawa: Wydawnictwo Prawnicze, 2007), 3-15.

33 Franciszek Longchamps de Bérier, „O prawniku w Rzeczypospolitej nauk" *Zeszyty Naukowe Uniwersytetu Wrocławskiego. Prawo IV*, 15 (1958): 12-18.

34 Longchamps de Bérier, *Z problemów poznania prawa* (Wrocław: Zakład Narodowy im. Ossolińskich, 1968), 46.

35 Longchamps de Bérier, *Z problemów poznania prawa,* 14.

36 Longchamps de Bérier, *Z problemów poznania prawa*, 13.

in these fields (sometimes feeling the bitter taste of the truth) to meet the expectations of modern society, in which are reflected new professional options for lawyers or a new generation court (virtual courts, online courts, out-of-court dispute resolution and others)[37].

Each field, discipline and specialty of knowledge and human activity is complex and multifaceted, and therefore only a consciously and deliberately applied cognitive procedure is able to provide the function of cognition.

4

From the point of view of the judicial office and conscience, the judge using the Aristotelian principle must act with prudence and practical wisdom, i.e. personal wisdom, social wisdom, including professional wisdom.

Bogusław Banaszak, discussing Article 53 of the Constitution of the Republic of Poland, states that

> the Constitution treats freedom of conscience and religion as a human freedom and guarantees it to everyone under the authority of the Republic of Poland. Freedom of conscience means the autonomy of an individual in the sphere of philosophical, axiological, moral, as well as political and religious views, enabling him to define his own intellectual identity [...] is therefore a conscience broader than freedom of religion, but at the same time closely related to it[38].

It should be emphasized that in the Constitution of the Republic of Poland, freedom of conscience is closely related to the personal definition of a person, and respect for it is rooted in personal dignity (Article 30). The evaluations and moral norms necessary for the formation of judgments of conscience as in any human being, the judge derives from the concrete circumstances occurring in his life and resulting from the inference and

37 Richard Susskind, *Prawnicy przyszłości* (Warszawa: Wolters Kluwer, 2019), 25 et seq.

38 Bogusław Banaszak, *Konstytucja Rzeczypospolitej Polskiej. Komentarz 2nd* ed. (Warszawa: Wydawnictwo C.H. Beck, 2012), 323.

application of value judgments. These, among others, take part in the moral-creative role in the formation of the personal image of acting man. Conscience becomes the actual norm of practical conduct. The dimension of the processes of legal socialization is important, it is these processes that determine the conception of law that is important for legal socialization. These ideas, social norms and values forming the order of everyday life called by Schitz and Luckmann[39] as the reality of everyday life, constituting the intersubjective "world of common sense" given directly and accepted unreservedly common to many people are important for the formation of the rule of law.

Karol Koniński pointed out that „fidelity to values – is a probe I venture into the depths of my psyche to find out whether it is substance or appearance, an accidental event. I exist actually, metaphysically, substance-wise, spiritually, insofar as I have (some fragment of) value in me – insofar as I am faithful to that value. [...] Appearance passes, substance does not pass"[40]. It is noteworthy that in everyday situations it seems not to be bothered by the fact that conscience in other people, as a subject, we never perceive directly, but always infer it only on the basis of certain signs. Conscience is a mental construct, an auxiliary one, which is supposed to explain certain particular, and of interest to us, features of behavior, attitudes. It can consist in the fact that the internal states aimed at the realization of the will, a certain goal of aspiration, hopes, desires, intentions justified internally by reason and the like, including their effect on motivational behavior, are known to us from our own aspirations, the ability to distinguish truth from falsehood, reality from imagination, right from wrong. This judgment, subjected to the test of rational criteria, is conditioned by freedom of conscience while freedom of conscience, and with it the dignity of the human person, is threatened both by blind obedience and any form of servitude, and by self-righteous willfulness[41].

Conscience plays one of the important roles in interpersonal coexistence, giving rise to a variety of approaches from an experiential and scientific point of view. People approach the issue of conscience in different ways, calling conscience the „voice of God," internalizing group norms, superego

39 Alfred Shitz, Thomas Luckmann, *Strukturem der Lebensweld*, Vol. I (Frankfurt am Main: Suhrkamp, 1984), 11.

40 Karol Koniński, *Uwagi 1940-1942*, red. Bronisław Mamoń (Poznań: Uniwersytet im. Adama Mickiewicza, 1987), 203.

41 Eugen Biser, *Glaubensprognose. Orientierung in postsäkularistischer Zeit* (Gras: Styria, 1991), 34.

or considering their self-will as an expression of the conviction of their conscience, or linking conscience with freedom, and with it the dignity of the human person, different currents, views and positions on conscience. Extremely rich reflections highlight the richness and interdisciplinary diversity of the issue of conscience.

Conscience should undoubtedly be understood as a complex reality. For an integral science of conscience, the philosophical, ethical, psychological, sociological and behavioral aspects of conscience are extremely important, as long as they are treated as ideology-free partial aspects. *Conscientia* (Latin) means: awareness (of something), conscience, message, knowledge of something, familiarity with something, consciousness, *est mille testes* – conscience is a thousand witnesses[42]. In the ethical dictionary there is an explanation of the concept of conscience stating that it is a moral consciousness

> the ability to make evaluations regarding the moral value of human acts, especially the conduct of the subject himself (moral sense). Depending on the approach, conscience is attributed a primary (natural) or derivative[43] character (a consequence of the individual's socialization process). In modern conceptions of personality, conscience is sometimes identified with the concept of superego. With regard to the temporal sequence, a distinction is made between: pre-doctrinal conscience – anticipating the moral consequences of an act and urging (or discouraging) its fulfillment, and doctrinal conscience – approving acts of good and condemning acts of evil (so-called remorse). Christian ethics further distinguishes between actual conscience and habitual conscience (preconscience), true conscience and false conscience, and certain conscience and doubtful conscience.

Related to the human conscience are the issues of the autonomy and freedom of the judge. In philosophical terms, conscience is perceived in the context of „the very raison d'être of a person in the axiological order", concretized in an act of duty involving a judgment of value as the ability to make such a judgment. The concepts of „autonomy" and „freedom" are related to the issue at hand. Etymologically, the name „autonomy" is derived

42 Jerzy Pieńkos, *Słownik łacińsko-polski* (Warszawa: Wydawnictwo Prawnicze, 1996), 95.

43 Stanisław Jedynak, *Mały słownik etyczny* (Bydgoszcz: Oficyna Wydawnicza Branta, 1994), 218.

from two Greek words: *autos* (alone) and *nomos* (law). When combined, the sense of these words means self-regulation or self-determination. Freedom of conscience is related to human autonomy. Autonomy is a philosophical concept that plays a role in various segments of applied ethics, especially professional and political ethics. It always refers to some rational choices under conditions of freedom between competing values, moral values. The intellectual autonomy of human person is expressed in maximizing a person's control over his acceptance and application of norms proposed to him by others. The concept of autonomy has been attributed different meanings in various philosophical concepts and in practice. Noteworthy is the analysis of the concept of moral autonomy by Ronald Dworkin, who recognized its sixfold sense found in philosophical discourse and practical applications. According to him, a person is morally autonomous when: – he is the source and author of moral principles; – he chooses his own moral principles independently; – the ultimate authority of moral principles is his will; – he decides which moral principles to choose and accept as not binding on him; – he bears responsibility for the moral theory he accepts and the moral principles he applies; – he refuses to accept other people as moral authorities without independently considering whether their judgments are morally correct[44]. In modern applied ethics, the concept of „autonomy" co-creates the mental foundations of many deontologies, biojurysprudence, bioethics, biotechnology. As Leszek Kołakowski emphasizes, „freedom is given to people along with their humanity, it is the foundation of this humanity, it creates a person as something in being itself distinguished", in another sense, „freedom" in this sense is the area of those human activities in which the social organization does not forbid or command anything, in which, therefore, people can choose what they want, to do something or not, without being exposed to repression[45].

It is necessary to pay attention to the concept of Arthur Kaufmann, who answers the question „what is the ultimate basis of what we call right"? What is this reality, this subject, on account of which the law is just, right? In the opinion of Kaufmann, this sought after „can only be a person, but not an empirical person, but a person as a human being", i.e. as „a set of relations in which a person finds himself among other people or things".

44 Ronald Dworkin, *The Theory and Practice of Autonomy* (New York: Cambridge University Press, 1988), 17.

45 Leszek Kołakowski, *Mini wykłady o maxi sprawach. Trzy serie* (Kraków: Znak, 2009), 82.

The relational concept of person presented by Kaufmann reveals a slightly different view of the human person than the traditional understanding of him as an individual substance of rational nature, and the basis of legitimacy of law – what determines its justice – is „the granting to everyone of what is due to him as a person"[46]. He defines his theory as „a procedural theory of justice grounded in the person", claiming that „The idea of law is the idea of the personal person – or it is nothing". He says that „law is an arrangement of relations that all depend on each other and condition each other"[47] . However, an entity such as a person is a particular human being, where the entity basis for the recognition of basic characteristics is personal dignity, reasonableness, subjectivity of law, etc. He advocates the rejection of concepts that oppose law to morality, deeming incorrect the justification of the opposition referring to the dissimilarity of the subject matter of these fields. He points to what, according to him, is specifically personal, characterizing as „the capacity for spiritual self-consciousness and for the resulting self-possession". He stresses that man is a person, i.e. „he is a being directed toward self-determination and self-realization". He adds that „to be a person means the ability and task of advocating for oneself". Presenting the person in this way is not incompatible with the author's previously presented view of the person in the context of legal analysis. Indicated here is the indispensability of a human being in the process of realizing the law and his role of self-understanding and self-realization of the person. The author has repeatedly emphasized that „law is thus directed towards a moral goal [...]. The law can and must create external freedom to such an extent that the internal freedom of fulfilling moral duty can develop". Elsewhere, he adds that „the law can enable the moral fulfillment of duty and must do so as well". This thesis can and should be perceived in the context of conditions under which the process of realization of the law takes place.

The thought expressed by Cicero seems worth mentioning: „there is [...] one justice that is the bond of human society: the justice established by the only law, which is the right reason in the precepts and prohibitions. And it

46 Arthur Kaufmann, „Rozważania wstępne nad logiką prawniczą i ontologia relacji. Założenia personalistycznej teorii prawa", tłum. Grażyna Skąpska *Colloguia Communia*, No. 1 (1988/1989): 83-92.

47 Arthur Kaufmann, „Problemgeschicht der Rechts Philosophie", [w:] *Einfuhrung in Rechts Philosophie und Rechts Theorie der Gegenwart*, red. Arthur Kaufmann, Winfried Hassemer, 5th ed. (München: C.H. Beck, 1989), 89-145.

is all the same whether this law is written down somewhere or not"[48]. He stressed that selfless love for the homeland should prevail over personal life: „However, the greater love we must give to that which, under the name of the Republic, is the homeland of all citizens. It is for this country that we should devote our lives, give ourselves completely to it, put everything in it and offer everything to it"[49].

According to Aleksander Mogilnicki,

> a judge, at the time of performing his judicial actions, should be alien to all external influences. Only the act, the conscience and the circumstances of the case can be the basis of a judgment. No superior, or minister, or president, or judge of a higher court, has the right to order or even instruct a judge to rule one way or another in a case. Apart from the few cases, indicated in the acts of judicial procedure, when a judge is bound by the decision of a higher court in a case, he is completely independent of any authority. No authority can tell a judge what kind of ruling he is to make, cannot reproach him for this or that ruling, as long as the ruling was made in accordance with the act and the judge's conscience. [...] A judge whose fate is, if only partially, dependent on the president and the minister may have, sometimes subconsciously, a tendency to reckon with their wishes when sentencing, and a judge who, when sentencing, is guided not only by the act and conscience, but also by someone else's wishes – is a travesty of a judge[50].

The guarantee of a judge's independence is the independence of the courts, i.e. the separation of the judiciary from other authorities (Article 173 in relation to Article 10 of the Constitution). The independence (separateness) of the courts is the justification for non-interference (directly or indirectly) of other two powers (primarily the executive power) in the judicial activity of courts, i.e. non-influence on the way justice is served. Independence of the courts as a separate authority from other authorities should serve primarily to ensure that the judge is free from any improper pressure and interference in his jurisdictional decisions, in order to be able to think and act independently and therefore be guided by his own

48 Marcus Tullius Cyceron, „I 15", [in:] *Pisma filozoficzne*, tłum. Wiktor Kornatowski, Vol. II (Warszawa: Państwowe Wydawnictwo Naukowe, 1960), 221-222.

49 Cyceron, „I 15", 239.

50 Aleksander Mogilnicki „Sędzia a urzędnik" *Gazeta Sądowa Warszawska*, nr 9 (1931): 116-117.

knowledge, his own life and professional experience, his own conscience, his own sense of justice. Not to succumb to the influence of others, or even the appearance of succumbing to such influence. On the other hand, doubts about a judge's impartiality are a statutory ground for his exclusion in all court procedures (e.g., Article 49 of the Civil Procedure Code, Article 41 of the Criminal Procedure Code).

A judge adjudicates „in accordance with his knowledge and his own inner conviction"[51] because he takes an oath, a pledge, according to which he vows to administer justice in accordance with the law and impartially according to his conscience (Article 66 of the Civil Procedure Code and Article 27 of the Civil Procedure Code).

„To speak of conscience means to speak of human dignity [...]. We are able to become independent of our subjective momentary interests and become aware of the objective hierarchy of values relevant to our actions". And as Spaemann expresses it in his arguments, „conscience is the making present of the absolute point of view in its emotional structure. As through this the universal, objective and absolute is made present in the individual human being, this is why we speak of human dignity, and for no other reason"[52]. On the other hand, Ewa Schwierskott-Matheson points out that „conscience is a subjective feeling about right and wrong, justice and injustice [...] it is the ability existing in an individual to recognize moral values and precepts and to behave accordingly in various life situations"[53].

Deference to reality, meaning a mistake, is reflected in an erroneous judgment of conscience and can turn into a permanent state, a life spent in delusion and dreams. Where the principles of reality have been supplanted by the principles of pleasure and lust[54]. Actually, nowadays, on the one hand, a scientific revolution in various disciplines of science is proclaimed, but the literature lacks knowledge of the intertwining of its biological, sociological and psychological determinants, and on the other hand, a spiritually free vision of responsibility that take place in the court of conscience.

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51 Bogdan Bladowski, *Metodyka pracy sędziego cywilisty* (Warszawa: OpenLex, 2008), 28.

52 Robert Spaemann, *Moralische Grund Bergriffe* (Munchen: C.H. Beck, 1972), 74-75.

53 Ewa Schwierskott-Matheson, *Wolność sumienia i wyznania w wybranych państwach demokratycznych* (Regensburg: d-iure-pl, 2012), 154-155.

54 Spaemann, *Moralische Grund Bergriffe,* 24.

It should be noted that moral sensitivity depends among other things on mental structure, upbringing, repetitive factors and life circumstances. Conscience can be suppressed or distorted, you can explain your transgressions if you want to. Considering the problem of conscience, Kołakowski points out that „conscience does not consist of principles, it is not a doctrine or ideology, it is rather a field of sensitivity, an inner instance the presence of which we know, because it reveals itself in experience, and which commands something or forbids something". Doctrines can be true or false, right or wrong, injunctions and prohibitions, on the other hand, simply they are events that happen in our consciousness. Who issues these injunctions and prohibitions? The sociologist will probably say: society, which lives in us, which we have internalized. A Freudian: superego. Rather, the theologian will say: voice of conscience is that which is present in us through the natural law implanted in us by God. A follower of an ideology that calls itself sociobiology will probably say: „All or almost all animal species are equipped with brakes that make it difficult to do harm and kill individuals of their own species; in the human species", he will add,

> these mechanisms are considerably weakened, hence clever nature, in support of the species interest, had humans invent for themselves various moral doctrines or religion and God – various forces to intimidate us and act as imperfect substitutes for these dead brakes [...] but conscience does not exist if there is no such thing as guilt, remorse and the mere presence of these proves that we could have acted differently or at least that we so believe we are free. Remorse is repulsive evidence of our freedom of will [...] it is certainly also true of everyday experience that conscience or a significant part of it can be lost through habit. I imagine that an executioner who tortures and murders prisoners for some power may have a conscience at first, although he suppresses it in the name of some ideology and has excuses for his profession, but over time he loses this sensitivity and treats his job as if he were exterminating mosquitoes[55].

In a clear and simple way Antoni Kępiński formulated sentences modeling the essence of the matter concerning conscience – „conscience is the most sensitive part of self-portrait"; „the highest system of self-control, felt by man as conscience, thanks to which we distinguish between good and bad, is located in the essence of animate nature"; „our conscience

55 Kołakowski, *Mini wykłady o maxi sprawach. Trzy serie*, 180 et seq.

is not a homogeneous whole, it is clearly dynamic in nature consists of various elements, acting sometimes antagonistically; the final evaluation is the resultant of these various forces of self-control acting above as well as below the threshold of consciousness"; „the highest integrative level in man is felt as the voice of conscience"[56].

Conscience is undoubtedly individual in character, but it is based on universal norms which, by their very nature, can be professed, lived and realized collectively by a group of people, such as certain professions.

5 Conclusion

There is no basis in the Constitution for assuming the supremacy of any of the authorities listed in Article 10(1). The legislative, executive and judicial authorities are equivalent to each other. In the literature, it is emphasized that „generally speaking, in order to effectively control the exercise of political power, judges must not only be independent but also capable of intervening in significant matters"[57]. S. Holmes, on the other hand, points out that translating the principle of the rule of law into acceptable interpretative standards involves providing the judiciary with active tools to counteract the arbitrariness of political power in the legislative sphere—primarily by ensuring a strong constitutional position for constitutional courts and by reducing all features of continental legal culture that contribute to legal uncertainty for the addressees of legal norms[58].

Within the separation and balance of powers, the judiciary has a special position in relation to the legislative and executive powers, as stated in Article 173 of the Constitution: Courts and Tribunals shall be a separate and independent authority from other authorities.

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56 Antoni Kępiński, *Autoportret człowieka (myśli, aforyzmy)* (Kraków: Wydawnictwo Literackie, 1993), 125-126.

57 Carlo Guarnieri, „Sądy jako narzędzie odpowiedzialności prawnej. Przypadek Europy Łacińskiej", [in:] *Demokracja i rządy prawa,* ed. Jose Maria Maravall, Adam Przeworski (Warszawa: Wydawnictwo Scholar, 2010), 218.

58 Stephen Holmes, „Rodowody koncepcji rządów prawa", [w:] *Demokracja i rządy prawa,* red. Jose Maria Maravall, Adam Przyworski (Warszawa: Wydawnictwo Scholar, 2010), 28.

The legislature speaks of the independence of courts in Article 186 of the Constitution, stating that the National Council of the Judiciary is the guardian of the independence of courts and the independence of judges, while the independence of courts is closely related to the independence of judges. The legislature generally refers the concept of independence to courts and tribunals, and the concept of independence to judges. However, Article 45(1) refers to an independent court.

The office of a judge in the Republic of Poland is associated with judicial power and requires that it be held by persons who demonstrate freedom from the negative and freedom to the positive aspects of it, and who will be faithful as expressed in the oath of office and service. A lawyer receives his professional status through legal and ethical regulations. Thus, he must become a defender of the dignity of a person and human rights being a rational and free person.

Observation of life leads to the sad observation that the modern world is governed primarily by market laws, a certain policy, and not by human rights, and ethics is considered to as a limitation of the possibility of action, the chance of success (career). In the modern system of social relations, professional ethics becomes necessary primarily as a reminder of decency and integrity, responsibility for words and deeds as fundamental principles.

In the literature it is possible to find the statement that conscience is the unifying factor of law and freedom, because it gives us the ability to bind with freedom for the benefit of others and the common good.

English philosopher Francis Bacon said: „A judge should be more learned than ingenious, more trustworthy than flattering, and more prudent than confident in his own strength".

Disregarding the requirements of moral sensitivity for lawyers means the collapse of both professional and personal responsibility, impoverishing both the profession and personal behavior. Those who are of impeccable character may be appointed to the position of judge (e.g., Article 61 of the Law on the System of Common Courts, Article 6 of the Law on the System of Administrative Courts, Article 22 of the Supreme Court Act).

The issue of a judge's impeccability of character is not only an ethical, psychological issue, but also a legal one, as impeccability of character is a qualification requirement posed by the provisions of constitutional acts, although the legislature did not specify what is covered by this issue. The concept of character belongs to the issues of psychology, where various authors point to the elements of the personality structure, calling them temperament, character, attitudes, habit systems, intellect, aptitude, moral

attitudes, psychophysical systems, will, belief and expectation systems, self-image, ego systems, orientations, emotions, feelings, needs, drives, instincts, defense mechanisms, physiological and morphological characteristics of the body, values, energy and life force of the individual.

The aforementioned elements of the personality structure constitute large part of the organization called personality, and to emphasize their size it is common to use the name components of the personality structure. Each of such large components or elements of the personality structure is in turn divided into various smaller parts „built" from different sets of response tendencies and specific groups of reactions.

There are different varieties, types and traits of temperament, different varieties and types of character, different varieties and types of mental needs, drives, aptitudes, different systems of attitudes and values. There are different groups of tendencies operating in the ego, different varieties of orientations, various characteristics of self-image. Therefore, it is necessary to rather refer to personality predispositions to perform a specific profession because every profession, including law, requires specific predispositions.

Assessing the individual powers of the Minister of Justice in relation to judges and common courts, it can be considered that most of them fall within the constitutional balancing of powers. However, the multiplicity of these powers is so great that the independence of the common courts from the executive power is questionable. The most important ones arise from the Common Court System powers of the Minister of Justice in relation to courts and judges. Moreover, by virtue of a special act, the Minister of Justice supervises the training of judges, both initial and continuing education. Among others, the Minister of Justice creates and abolishes courts and determines their seats and areas of jurisdiction (Art. 20(1) of the Common Court System), appoints and dismisses presidents and vice presidents of courts (Arts. 23, 24, 25 and 27 of the Common Court System) and directors and financial managers of courts (Art. 32 §1 of the Common Court System), delegates judges to perform duties outside of the court that is the judge's place of duty (Article 77 §1 of the Common Court System), abolishes or assigns judgeships to courts after they are vacated (Article 56 §2 of the Common Court System), creates and assigns new judgeships to courts (Article 56 §1 of the Common Court System), and may demand that disciplinary action be taken against judges (Article 114 §1 of the Common Court System).

The weakness of this system is revealed in a crisis of democracy, where guarantees the judicial independence and the independence of judges may prove inadequate. In public life, it is noted that the world is governed more by emotions than by reason and wisdom, and in this relationship there is a lack of social and political dialogue. Emotion dominates reason and intellect, as many social psychologists and sociologists point out. It is reason that is synonymous with wisdom, and just as it has no relation with education, so it does with intellect.

To conclude, it is appropriate to quote the thought of Paul-Henry Holbach (1979, p. 60) philosopher of the Enlightenment

> a judge should gain authority only by his impeccability, diligence and boldness [...] derive respect and fame not from the mere ability to judge citizens, but to judge them according to justice [...]. The dignity of a judge lies in his reasonableness, justice and virtue; he is great if he rises above the pettiness of narrow-mindedness [...] free from passions just like the law he applies, a judge should not be guided by his own interest, his own inclinations and motives that could deceive him[59].

Therefore, modern society should face with the task of rebuilding social consensus on the ethical and legal ideas.

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59 Paul-Henry Holbach, *Etokracja czyli rząd oparty na moralności* (Warszawa: PWN, 1979), 60.

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