

Political Role of Courts and Judges from a European and Comparative Perspective

Zuzana Vikarská

The submitted dissertation examines European apex courts (i.e. the Court of Justice of the European Union and the European Court of Human Rights) and aims to answer the research question whether these judicial institutions are *political* and, if so, in what sense. The author puts forward five perspectives from which the *political role of courts and judges* can be analysed.

The first dimension perceives judges as human beings who are influenced not only by legal rules but also by various non-legal influences, including political ones. In the first dimension, the notion of *politics* therefore stands in contrast to a certain idea of legal purity and separation of law from politics. This first dimension covers various jurisprudential perspectives on judicial decision-making, but also issues such as transparency of judicial institutions or the quality of judicial reasoning. The second dimension looks at the nomination procedures that lead to judicial appointments at the European apex courts. In this case, *politics* means the participation of political actors in the process of selecting candidates for the judicial functions. In this meaning, the notion of *politics* stands in opposition to the notion of expertise.

The first two dimensions focus on individual judges: their personalities (first dimension) and the procedures of appointing them into their function (second dimension); these two dimensions are closely connected and intertwined. The remaining three dimensions focus on the *political* agenda of the judicial decision-making (third dimension), the impact of this decision-making on other political actors at the European level (fourth dimension) and the impact on the Member States (fifth dimension).

The understanding of *politics* differs in these individual dimensions; yet, all the dimensions are interconnected, and they influence each other. The central thesis of this dissertation is a claim that if courts and judges are *political*, it is not necessarily a negative phenomenon. However, it is crucial for their legitimacy to be able to identify the political elements in all five dimensions and to discuss openly its appropriateness. In other words, it is important to admit that courts and judges are political actors (because

they *cannot not be political*), that this claim can mean various things and that if these questions are discussed openly, it can contribute to the courts' legitimacy.

This central argument can be divided so that it reflects the five dimensions of the notion of *political*. (1) If judges are influenced in their decision-making by political or other non-legal aspects, it is not by itself a problem, but for the sake of their legitimacy it is preferable to disclose these aspects in the reasoning, rather than to disguise them. (2) If the judicial selection process is political at some point, it is desirable to complement it with an apolitical stage which can correct the political part of the process and which can assure that the candidates are of sufficient expertise. (3) If courts are entrusted with an agenda which is deeply political or even *mega-political*, it is important to acknowledge this openly. In other words, if courts have been designed so that they are responsible for political agenda, they should not be criticised for answering political questions. (4) Similarly, if courts are endowed with the power of judicial review, it cannot be seen as controversial that they use this power to strike down legislative measures. (5) Lastly, if the Member States have taken up the obligation to respect the case law of the European courts, it is only a logical consequence that in case of a conflict between national legal rules and European case law, national rules must be disapplied and national legislators are expected to act upon the situation.

These arguments on the political role of courts and judges are explored in detailed in the individual chapters of the submitted thesis.

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