

Theories of Judicial Decision-Making confronted the Functioning of Czech Courts

Abstract

Judicial decision-making in hard cases is not a rationalisation which legitimates a choice made based on non-legal grounds, but a relatively predictable, determined and just process which draws legitimacy from the rationality of legal thinking and is significantly influenced by the judge's effort to make the best decision possible considering his conception of law and general training. Based on this proposition the dissertation thesis explores the effect of the judge's conception of law and his judicial function on his legal argumentation and his decision-making in hard cases. The main concept the thesis thus being the judicial philosophy.

The dissertation thesis firstly analyses the concept theoretically and subsequently tests the theory on real judicial practice. The hypothesis is that judges of apex courts have different judicial philosophies and that their opposing views on grounds of law and their judicial function exhibits itself in their decision-making in hard cases. The disagreement between judges may be characterised as reasonable disagreement. In situations of reasonable disagreement, the opposing parties are incapable of reaching a compromise despite perfectly sound and grounded positions and mutual effort to understand each other's position. The empirical part of the dissertation thesis thus analyses all the decisions of the Grand Chamber of the Supreme Administrative Court with an appended dissenting opinion and explores which are the cases that give rise to legal disagreements between members of the chamber, and which are the grounds for the disagreements. The analysis of judicial decisions and the appended dissenting opinions is then confronted with a description of concrete judicial philosophies of individual members of the Grand Chamber.

The significance of the dissertation thesis lies partly in a theoretical analysis of a concept which has not yet been elaborated by the Czech legal academia, partly in unique data obtained through qualitative analysis of the judicial decisions of the Grand Chamber of the Supreme Administrative Court and in-depth, semi-structured interviews with judges who, based on the erudition and highly sophisticated and abstract legal thinking, may be considered the elite of the Czech judiciary.

Key words

Grand Chamber of the Supreme Administrative Court; judicial philosophy; theoretical disagreement about law; formalism; pragmatism, substantialism; judicial activism; and judicial self-restraint