

This doctoral dissertation is devoted to an enquiry in what sense and under what conditions adjudicatory decisions and all other legal judgements may be objective, as well as clarifying the relationships between the ambiguous notion of objectivity and the notions of arbitrariness and determinacy. The first chapter presents basic definitions stipulated for the purposes of the entire dissertation and discusses in detail the relations that hold between them. A legal judgement is understood as a judgement about how legal dispute should be resolved and every judgement made in order to justify the judgement about resolution of disputes. With the proviso however, that not only judgements made and justified by an authorised body deciding a case, whose judgment has legal effects, are to qualify as legal judgements, but also of a person not having such authority (a legal scholar, a legal practitioner or a layperson) who makes claims about what the content of a decision should be or should have been. On such occasions, the person also makes and justifies a legal judgement, however ones which are not binding. The notion of a legal judgement also includes more abstract statements, unrelated to specific factual circumstances: legally binding legal judgments of the latter type might be made by bodies who rule about law in abstract manner (e.g. the Constitutional Tribunal), and legally non-binding by legal theorists and other legal scholars, e.g. making claims about acceptable methods of interpretation and rules of their precedence, the validity of certain provisions or the correct way to understand them.

Legal judgements defined in this way are normative, not predictive or descriptive: they are not statements about what decision will be taken in a given case or what methods of interpretation actually are used by court or will be used, but about which decision should be taken, which methods should be used. On account of the above, determinacy is not equivalent to predictability. It is however, a concept related to the notion of justification understood as a trait of a legal question or a legal problem: the more determined a legal problem is, the fewer different solutions to the problem can be properly justified, therefore the less leeway is left to the person who is making the legal judgement about the problem. The highest degree of determinacy of a legal problem is a situation in which only one legal judgments is justifiable (only one resolution of a given problem is correct).

The second chapter is devoted to examination of potential bearing for the problem of determinacy and objectivity of legal judgements of debates about the concept and the

nature of law pursued in the analytical theory of law. The concept of law reconstructed by legal theorists and concepts used in adjudicatory practice are distinguished as concepts used for different purposes, respectively: description of adjudicatory practice and justification of adjudicatory decisions. The significance of inquiries regarding the concept and the nature of law for the issues discussed in the thesis will be reduced the role of conceptual clarifications.

The third chapter discusses the problem of discrepancies in the methods of legal interpretation, broadly understood, and their consequences for the possibility of determinacy of legal problems. In order for a legal judgement to be justified the content of the sources of law indicated by a recognition rule is not enough, methods for interpreting these sources and other methods of legal reasoning are needed as well (the distinction between interpretive and non-interpretive methods of legal reasoning is also briefly discussed). A question is posed: what makes a legal judgement properly justified: whether the fact that it has been justified by means of methods commonly used in a given legal system is sufficient or methods of legal reasoning must satisfy other types of criteria as well. Especially interesting case is constituted by circumstances in which there is no consensus on the details of interpretive methodology: the question arises whether in such circumstances legal judgements are always indeterminate or one can resort to criteria other than the common practice of law enforcement authorities. The limits of the approach which rigidly links the proper interpretative methodology to the actual practice of courts and other bodies authorised to adjudicate disputes is examined in detail.

Some of the answers to the questions asked in chapter 3 assume that among reasons justifying legal judgements, reasons that cannot be derived from social facts might be found – namely the reasons of moral nature. Chapter 4 attempts to examine normative theories of adjudication which aim to preclude the use of moral reasons (such theories may be motivated by the fact that we do not have unquestionable methods of resolving moral disputes). The consequences and limitations of two theories of this type are discussed in detail. The conclusions that can be drawn from the considerations of this chapter incline to the thesis that the admission of moral reasons in the justifications of legal judgements may, under certain conditions, diminish indeterminacy of law.

The preceding observation the examination of another issue: if moral reasons were to somehow limit the indeterminacy and arbitrariness of legal judgement, they would themselves have to be, at least to some extent, non-arbitrary. The fifth chapter is devoted to examination whether adjudication and other instances of formulating and justifying legal judgements which relies on moral reasons become arbitrary and if so to what extent. An appropriate means to achieve this goal is to refer to the discussions about the objectivity of morality conducted in moral philosophy, and more precisely in metaethics. The chapter, however, begins with consideration of the opposite thesis, which reads that the problem of the objectivity of morality is irrelevant to the objectivity of adjudication. A partial rejoinder to arguments advanced in favour of this thesis serves as a point of departure to demonstration that legal judgements based partially on moral reasons can be objective in the epistemic sense to a significant extent.

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