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Reflexivity and the Codification of Legal Ethics. Remarks on the Basis of Paul Ricoeur’s “Little Ethics” Theory

Codes of legal ethics encounter constant waves of criticism. It is pointed out that their disadvantage is, on the one hand, the excessive casuistry, limiting the possibility of taking independent decisions in cases of ethical and professional conflicts, and, on the other hand, the exaggerated declarative character of perfectionist ethical and professional virtues. The gap between the abovementioned perspectives, easily perceived in such codes, results in a dysfunctionality of professional ethics in the actions undertaken by members of the legal profession. The article, apart from the critical-comparative part, includes a proposal of reading and interpreting the content of the codes in a way that transgresses the above opposition. The theoretical basis of the presented position is provided by the concept of “little ethics” formulated by Paul Ricoeur in his work *Oneself as Another*. The ethical theory developed by Ricoeur combines the elements of Aristotelian ethics of virtues with Kantian ethics of duty. For this reason, it sets a uniform perspective for opposing elements, namely: subordination to the norm of the code and pursuit of ethical and professional self-improvement by legal professionals. The proposed solution belongs to the “reflexive” paradigm of the lawyer’s professional ethics proposed on the basis of Ricoeur’s onto-ethical theory.

**Keywords**: legal ethics, codification, reflexivity, Paul Ricoeur, teleological ethics, deontological ethics, “little ethics”

1. Introduction

Jurisprudential discourse revisits the question of the codification of legal ethics. At the same time, in spite of the theoretical dilemmas, legal corporations around the world

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1 Project financed by the Research Fund of the Andrzej Frycz Modrzewski Kraków University.  
make an effort to create sets of rules of professional ethics. Today, the phenomenon is so common that it is no exaggeration to speak of “saturating” legal corporations with ethical-professional issues both on a local and a global scale. On the other hand, in the opinion of a number of lawyers, the codes of ethics remain peculiarly impotent colossuses – an ineffective tool for professional conflict prevention and resolution. The sources of this phenomenon should be sought among other things in the unclear status of corporate legal ethics, which is neither positive law nor a living morality. The consequence of legal ethics being torn between law and morality – reinforced by the assumptions of legal positivism – is a low sense of the binding nature of ethical and professional norms. Its visible manifestation is the discrepancy between the prevalence of codification and limited respect for the norms of legal ethics. The universality of the regulation seems to confirm the scale of the problem signaled. What is more, the very codes tend to be regarded as a source of low efficiency of professional ethics. One can even get the impression that the criticism of professional ethics is focused on the sets of principles. This argument has the purpose, inter alia, to assess whether this criticism is justified and whether the content of the existing codes is the cause of the weakness of legal ethics in practice. Therefore, these considerations are not based on a priori theoretical assumptions, but rather on the conclusions derived from the analysis of the content of a number of codes of legal ethics.

2. Code content analysis – the critical part

Generally speaking, the drawback of the sets of principles of legal ethics is, on the one hand, their quasi-legal normativity, limiting the possibility of taking independent decisions in cases of ethical and professional conflicts, and, on the other, the exaggerated declarative character of professional virtues. This gap is visible in the content of legal ethical and professional codes, both in the common law and civil law tradition. This phenomenon can be illustrated by sample regulations taken from the Polish and the American sets of rules of legal ethics.

The basis for the codification of legal ethics in the US are the ABA Model Rules of Professional Conduct. In their essential part Model Rules have the character of

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3 For example, the member organisations of Conseil Consultatif des Barreaux Européens adopted 30 codes of legal ethics in total. Available online at: http://www.ccbe.eu/. As for the examples of the globalisation of the codification of lawyer’s ethics, see the entry Kodeksy etyki zawodowej [Eng. Codes of Professional Ethics], in: P. Skuczynski, S. Sykuna (eds.), Leksykon etyki prawniczej. 100 podstawowych pojęć [Eng. Lexicon of Legal Ethics. 100 Basic Concepts], Warszawa 2013, pp. 202–203.


