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**GLOBALIZACIJOS ĮTAKA TEISEI: VISUOMENINĖ IR PROFESINĖ TEISININKO ATSAKOMYBĖ**

**IMPACT OF GLOBALISATION TO LAW: THE SOCIAL AND PROFESSIONAL RESPONSIBILITY OF A LAWYER**

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**PRANEŠIMŲ SANTRAUKOS / PRESENTATIONS' ABSTRACTS**

## FORENSIC PSYCHIATRY AND THE JUDICIAL DUTIES OF INDEPENDENCE, IMPARTIALITY, DILIGENCE AND COMPETENCE

**Eric Janus**

*Abstract*

Across the globe, judges are charged to render judgments independent of outside authority or influence, impartially, with diligence and a high level of professional skills. This talk will examine the ways in which the role of forensic science – particularly the testimony of mental health professionals – challenges these ethical mandates. Focusing particularly on the expert opinions of forensic psychiatrists, the issues raised in this talk have relevance to the role of other forensic sciences in the courtroom.

Forensic psychiatry plays an important role in judicial proceedings. Psychiatrists (and other mental health professionals) render opinions on criminal responsibility and competence to stand trial, on dangerousness and amenability to treatment, on guardianship, parenting ability, and the eligibility of citizens to form contracts, enter into marriages, and vote. Each of these areas involve highly valued civil rights, and the denial of those rights must be governed by the rule of law. Yet the nature of forensic testimony poses a threat to the rule of law. For a variety of reasons, judges abdicate their duty of independence to forensic experts, opening the door to bias and decisions that are based not on the rule of law, but on the individual predilection of the experts. Only by the exercise of diligence and competence, by learning about the science involved, can judges reclaim the independence that is necessary to preserve the rule of law in these areas. This talk will explore the reasons why judges tend to abdicate their independence to forensic experts, and suggests remedies.

## LIETUVOS TEISMAMS IR TEISĖJAMS KYLANTYS IŠŠŪKIAI GLOBALIZACIJOS PROCESE

**Algis Norkūnas**

*Santrauka*

Globalizacijos procesai pasaulyje neabejotinai daro įtaką ir teisei, kuri kinta tiek savo turiniu, tiek forma. Globalizacija, skatinanti ekonominių santykių vystymąsi, asmenų mobilumą, išteklių apjungimą, siekia teisės universalumo, dėl to įtaką patiria nacionalinė teisė, kartu sparčiai vystosi regioninė ir tarptautinė teisė. Išplėtus asmenų, prekių ir paslaugų judėjimo galimybes, teisiniai santykiai ir iš jų kylantys ginčai tampa žymiai sudėtingesni, taip keldami reikalavimus šiuos ginčus sprendžiančių teismų (teisėjų) kvalifikacijai ir profesionalumui. Teismas globalizacijos sąlygomis negali apsiriboti teritoriniu savo jurisdikcijos ribose veikiančios teisės ir kitų socialinių veiksnių žinojimu. Žymi teisės vystymosi sparta įpareigoja teismus (teisėjus) domėtis, dalyvauti ir gauti informaciją apie aktualias teisės tendencijas tiek regioniniu, tiek tarptautiniu lygiu, žinoti naujus teisės šaltinius, juos taikyti sprendžiant ginčus. Aktualus tampa nacionalinių teismų praktikos suderinamumo su regioninių, tarptautinių teismų praktika klausimas, taip pat atsiranda poreikis siekti skirtingų valstybių teismų taikančių tas pačias teisės normas vienodumo. Bylų sudėtingumas, teisės šaltinių gausa ir aukšti teisingumo vykdymo standartai kelia teismų (teisėjo) pasirengimo ir gebėjimo įgyvendinti šiuos uždavinius klausimus. Neabejotina, tam, kad visus šiuos iššūkius įveikti būtina atitinkama teismų ir jų personalo struktūra su pakankamu finansavimu, atsiranda poreikis specializacijai, krūvių perskirstymui, papildomų žmogiškųjų resursų atsiradimui, technologinių naujovių teismuose įdiegimui. Visa tai, kas padėtų teisėjui atsakingai, operatyviai ir profesionaliai vykdyti teisingumą globalizacijos sąlygomis.

## JUDICIAL ACCOUNTABILITY AND THE MOTIVATION OF COURT DECISIONS

**Philip Langbroek**

*Abstract*

Judicial decisions need to be motivated by reasoning, taking into account the facts, the applicable law and related arguments and proof delivered by the parties. The connection between the court decisions and the law is in the motivation of the court decision. The motivation of court decision has the function to persuade the party that looses the case to accept the judgment. In practice, however the construction of the motivation has the function to help the judge to rationalize (and correct) the judge's intuition on the decision. There are differences between legal traditions as to how motivation of court decisions is being shaped. In this essay the relations between motivations of court decisions and different types of accountability (e.g. legal, professional, societal, political) and their consequences for the judicial position in state and society will be described. The subject of globalisation will be marginally addressed, as it is of marginal relevance for the subject chosen.

## TEISININKŲ ATSAKOMYBĖ UŽTIKRINANT TEISMO NEPRIKLAUSOMUMO IR NEŠALIŠKUMO ĮGYVENDINIMĄ

**Mindaugas Šimonis**

*Santrauka*

Teismo nepriklausomumas ir nešališkumas – vienas iš esminių demokratinės teisinės valstybės principų, todėl visuomeninė atsakomybė už jo įgyvendinimą tenka visai teisininkų bendruomenei. Teisme teisės principai, normos, vertybės, idėjos virsta faktine realybe. Teisminiai procesai ir procesai aplink juos savo masiškumu ir intensyvumu tiesiogiai įtakoja teisinės valstybės būseną. Teisminis procesas yra multifunkcinis, apimantis ne tik teisinį procesą, kaip teisininkų profesinę veiklą, bet ir sudėtingą psichologinę, etinę, socialinę, komunikacinę, intelektinę ir net kultūrinę žmogaus veiklą.

Visuotinai pripažinta pamatinė žmogaus konstitucinė teisė į nepriklausomą ir nešališką teismą, tačiau ar kiekvienas teisininkas savo profesinėje veikloje prisideda prie šio principo įgyvendinimo, ir siekia, jog žmogus, gaudamas teisinę paslaugą, susidurdamas su teisine sistema būtų saugus, pasitikėtų konkrečiu teismu ir teismais apskritai.
Pranešime pagrindžiama, kad nors didžioji atsakomybės dalis užtikrinti teismo nepriklausomumo ir nešališkumo principo įgyvendinimą tenka patiems teisėjams, teismams, teismų sistemai, tačiau už tai proporcingai yra atsakingas ir kiekvienas teisininkas bei teisininkų profesinės grupės atskirai ir visa teisininkų bendruomenė visuomeniškai. Pranešime analizuojami pagrindiniai veiksniai, įtakojantys šio konstitucinio principo įgyvendinimą.

## JUDICIAL FUNCTION: *POPULAR* EXPECTATIONS AND MODERN LEGAL THOUGHT

**Tomas Berkmanas**

*Abstract*

Article 2 of the Constitution of the Republic of Lithuania declares: “Sovereignty shall belong to the Nation”. How this constitutional poetics could be elucidated – if at all – in the context of the modern legal thought and what could be the function of the judiciary in the light of this lucidity? Can sovereignty and also, in some respects, its derivative – law – really *belong* to someone as a piece of property? Do the judges have any role in the phenomenon called “sovereignty” or, maybe, there is nothing to have the role in, even in the form of a constitutional drama? Contemporary scholar Martin Loughlin states that “sovereignty has been given such a variety of ambiguous and confused meanings that many have suggested that, in the interests of precision and rigour, the concept should be altogether abandoned” (Martin Loughlin, *The Idea of Public Law* (Oxford University Press, 2005), p. 72). However Loughlin himself provides with a rather clear *relational* concept of sovereignty: sovereignty “is a product of the relation between the people and the state” (*ibid*., p. 63). This presentation lingers on the aforementioned issues and the relational concept of sovereignty this way rearticulating the role of the judiciary in, using Loughlin’s term, the architecture of public law.

## THE LONG SHADOW OF THE STATE: AUSTRIAN AND GERMAN LAWYERS IN THE SHORT 20TH CENTURY. 1914-1991

**Roman Puff**

*Abstract*

Between the Great War and the end of the Cold War, Germany and Austria, whose legal cultures show strong parallels and can be understood as one until 1945, saw eleven or twelve fundamentally different regimes, depending on the interpretation of Austria’s status from 1938-45. These regimes comprised monarchies, dictatorships, the rule of foreign powers with no state at all, a “people’s democracy”, as well as democracies that can be described as western style according to the standards of their respective periods.
Lawyers often ensured the legal functioning of these regimes and felt pressed to legitimize their existence. This again affected their notions of law, legality, and justice, and of the principles underlying these concepts, as well as their personal preferences and societal roles. Because of its close interaction with the surrounding social, political, and constitutional systems, this holds true especially for lawyers working in the field of public law.
This contribution in a first step summarises briefly the major challenges for Austrian and German lawyers deriving from regime changes for illustrative purposes.
Secondly, based on the analysis of about two hundred biographical sketches of Austrian and German lawyers from the academia and administrative and judicial practice, of over 2,000 contributions to the leading “Zeitschrift für öffentliches Recht” (ZOR – Journal of Public Law) from 1914 to 1945, and of the respective legal history-literature that flourished in the German speaking academia in the last two decades, typical patterns are outlined, how Austrian and German lawyers reacted to regime changes, supporters and opponents alike, as well as those suffering from them.

Concluding from this analysis, it is finally shown that the relation between lawyers and state affected the development of Austria and Germany to stable, functioning democracies at the end of Eric Hobsbawm's "Age of Extremes", thus – hopefully – contributing to the understanding of the social and professional responsibility of lawyers that is the overarching theme of the conference.

**ETHICS AND THE POLISH LEGAL PROFESSION: STORY OF THE PAST, FACTS OF THE PRESENCE, QUESTIONS FOR THE FUTURE**

**Izabela Krasnicka**

*Abstract*

The aim of the presentation is to provide an overview of the structure and specificity of the Polish legal profession with special emphasis on the unique division into the advocates and legal advisors in the light of legal ethics. The division is rooted in the past and based on the "old" concept of legal ethics. Further the presentation will deal with the 2005 reform of the access to legal profession which ended the era of the limited, protected and unethical access to the bar associations and possibility to become an advocate/legal advisor/public notary in Poland. Finally, proposals for further reforms and deregulation of profession will be introduced, as well as the law school programs beginning to offer legal ethics courses and struggling with teaching methodology for such courses.

**FREEDOM OF SPEACH AND APPLICATION OF LAWYER'S ETHICS – DANGEROUS RELATIONS: ISRAELI EXPERIENCE**

**Eran Lev**

*Abstract*

1. The system of application of Lawyers' Ethics in Israel is comprised of 4 instances:
a. Regions Tribunal of the Israeli Bar.
b. Appellate high Tribunal of the Bar which tries only legal issues.
c. Second appellate instance of the state's District Court (of Jerusalem) which tries only legal issues, as well.
d. Third appellate instance of the state's Supreme Court that tries on the basis of Certiorari (permission to Appeal).
2. According to Israeli Legislation, a lawyer, convicted for committing an ethical Offence, is subject to a sanction, varying from admonition, till a pecuniary penalty, temporary suspension from the Bar (up to a period of 10 years) and even permanent deprivation of the right to practice law.
3. The relevant Legislation that applies to Lawyers' Ethics (The Bar Act, The Lawyers ethics Regulations, etc) does not mention specifically improper expression, conducted by a Lawyer, as an ethical offence, however, the case Law of the abovementioned judicial instances interpreted general sections of the Legislation (namely those which forbid general Misconduct of Lawyers) as forbidding improper expressions, as well.
4. The relevant Israeli case law has divided Lawyers' improper expressions cases (both written and oral) to 3 major groups:
a. Expressions which have no connection to the speaker's (or writer's) position as a Lawyer (hereinafter: .the outer circle).
b. Expressions made by a Lawyer in the framework of legal (or semi legal) proceedings, which however inadequate are not considered as improper conduct (hereinafter: the middle circle).
c. Expressions made by a Lawyer in the framework of Legal (or semi legal) proceedings which are considered as improper, Per Se (hereinafter: the inner circle).
5. According to the case law, expressions, belonged to the "Outer circle", fall outside the scope of the application of Lawyer's ethics. The Supreme Court (as well as the lower instances) has ruled that in those cases the value of protection of freedom of speech prevails over the competing value of protection of the integrity of the Legal profession in the public arena.

6. A serious debate follows the distinction between the “middle circle” and the “inner circle”. From one hand, those who are mainly concerned with the protection of the dignity of the Legal profession, define the “inner circle”, as broadly as possible. Those who adhere to this approach, consider every offensive expression towards the Court or any of the other litigants, however correct or relevant to the legal proceedings in question, as an ethical offence.
7. From the other hand there is a second approach (to which the undersigned adhere) which defines the "inner circle" as narrowly as possible. According to this approach, only offensive expressions, which are entirely irrelevant to the legal proceedings in question, may be deemed as unethical.
8. Therefore, according the undersigned's view, only racist, sexist or homophobic expressions, may be deemed as unethical Per Se. The same is true with expressions that concern irrelevant physical or mental qualities of any person, as well as irrelevant personal data. All other expressions, however offensive, should be judged on the basis of their relevance to the legal proceedings in the framework of which, they were made.
9. The undersigned consider that any further broadening of the “inner circle” may entail not only an excessive limitation of the constitutional protection of the freedom of speech, but may also create “chilling effect” on lawyers' professional work. It is needless to say that such an outcome may be extremely damaging to the lawyers' clients. It also undermines against the mere essence of the Legal profession as a liberal profession.

## *PRO-BONO* WORK VS. LEGAL AID: APPROACHES TO ENSURING ACCESS TO JUSTICE AND THE SOCIAL RESPONSIBILITY OF THE ATTORNEY

**Edita Gruodytė & Stefan Kirchner**

*Abstract*

In many jurisdictions middle- and lower- income individuals obtain only a relatively modest share of lawyer’s services. But in a society which is ruled by law, every person should be able to expect key principles of justice to apply. Among the most important dimensions of a right to a fair trial is the right to equal access to an attorey. After all, the attorney is not merely a commercial actor but also represents the legal system. Access to an attorney is a key step in providing justice in practice. In order to do so, many states have developed programs of legal aid which aim at providing those who are in need of legal assistance but cannot afford to pay for legal services with a way to receive legal services. Scientific literature distinguishes various forms of legal aid: the court appointment of lawyers, free or low cost legal aid provided by public agencies and charitable and fraternal organizations (example, such as Caritas in Lithuania, providing lawyers for victims of human trafficking) and the free services of lawyers who are serving *pro bono publico*. During their presentation the authors will present existing systems of legal aid in Lithuania and Germany, evaluate their advantages and shortcomings in order to answer the question if social responsibility of attorneys and access to justice is obtained.

## POSITIVISTIC LEGAL SYSTEMATIZATION AS THE FUNDAMENTAL ACT OF LEGAL ETHICS

**Markku Kiikeri**

*Abstract*

Today’s globalized legal world requires very much from the globalized lawyer. Just the amount of legal orders and their rules is an obstacle for an intelligent legal systematization.
Thus, the skill of a lawyer does not only consist of knowing the rules but rather knowing how to approach this complexity of rules. There is also the need to understand the limits of this legal systematization.
Indeed, the “idea of global justice” must be based on understanding the very basics of law and how do the global courts, like European courts, conduct their legal systematization work.
Inspired by the contemporary positivist legal theory and its critics, author of the paper tries to give an outline of how the systematization of global legal orders and their rules is be made, with

examples, and how one constructs the global legal system and what is the meaning of this skill for the ethics of the globalized lawyer.

## POLITIKOJE DALYVAUJANTYS TEISININKAI IR ETIKA: AR POLITIKA APSKRITAI GALI IR TURI BŪTI ETIŠKA?

**Elena Masnevaitė**

*Santrauka*

Kokia politika yra etiška? Šis klausimas, matyt, egzistuoja tiek, kiek egzistuoja pati politika. Kaip ir klausimas, ar politika apskritai turi būti etiška? O kaip tuo atveju, kai politikoje dalyvauja specifinis subjektas, t. y. teisininkas? Dviejų, t. y. politiko ir teisininko, vadinkime, statusų susidūrimas arba, tiksliau, sinergija sukelia papildomų klausimų, kurie ir bus keliami ir bandomi atsakyti pranešime.

## SKIRTINGI TEISININKŲ ETIKOS MODELIAI IR JŲ ĮTAKA VISUOMENĖS PASITIKĖJIMUI TEISINE VALSTYBE

**Julija Kiršienė & Vygantas Malinauskas**

*Santrauka*

Tarp įvairių veiksnių bei faktorių lemiančių visuomenės pasitikėjimą teisine valstybe svarbų vaidmenį vaidina teisininkų etika. Teisininkai ne tik aptarnauja teisinės sistemos institucijas bei reprezentuoja atskirų visuomenės narių interesus santykiuose su teisinėmis institucijomis. Jie taip pat atstovauja pačią teisinę sistemą visuomenėje. Todėl jų profesinės savybės ir etinės nuostatos tampa lemiamu veiksniu formuojančiu visuomenės santykį su teisine valstybe. Vykdydami savo profesines pareigas teisininkai praktikoje neišvengiamai susiduria su etinėmis ir moralinėmis dilemomis, kurios negali būti pašalinamos ar išsprendžiamos remiantis vien tik etikos kodeksų taisyklėmis. Taisyklės, nors daugeliu atveju nepamainomos nustatant profesinės etikos standartus, negali pakeisti paties teisininko asmeninių bei profesinių nuostatų. Pačios etikos taisyklės dažnai konkuruoja tarpusavyje, o jų taikymas priklauso nuo to, kokiu teisininkų etikos modeliu remiamasi. Taip pat nuo pasirinkto etikos modelio priklauso ar labiau orientuojamasi į tai ką teisininkas konkrečiose situacijose turi daryti (nedaryti), ar į tai kokias dorybes bei charakterio savybes jis turi turėti. Atsižvelgiant į tai, kad skirtingi teisininkų etikos modeliai siūlo skirtingus etinių bei moralinių dilemų sprendimus bei tų sprendimų pagrindimą, galima daryti pagrįstą prielaidą jog ir jų poveikis visuomenės pasitikėjimui teisine valstybe bus nevienodas. Svarbus faktorius lemiantis didesnį ar mažesnį skirtingų teisinės etikos modelių veiksmingumą yra ir tai, kokia teisinės valstybės samprata vyrauja visuomenėje. Todėl skirtingi teisininkų etikos modeliai negali būti analizuojami izoliuotai nuo pačios teisinės valstybės sampratos. Pranešime apžvelgiami konsekvencialistinio, deontologinio ir dorybių etikos modelių taikymo teisininkų profesinėje veikloje ypatumai bei vertinamos jų galimybės patenkinti visuomenės lūkesčius tiek teisininkų profesijos, tiek teisinės valstybės atžvilgiu.