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SOME REFLECTIONS ON THE JUDGE'S RIGHT TO CONSCIENTIOUS OBJECTION

The objective of the article is to explore the legal viability of the judge's right to conscientious objection. As a potential legal basis of such a right are considered the fundamental right to freedom of conscience, religion and belief, as well as statutory provisions on disqualification of a judge from adjudicating on a given case. Furthermore, the author deals with the question of whether the judge's right to conscientious objection is compatible with the principle of their subjection to the law in force.

Key words: conscientious objection of the judge, freedom of conscience, subjection of the judge to the law, independence and impartiality of the judge.

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ДЕЯКІ МІРКУВАННЯ ПРО ПРАВО СУДДІ НА ВІДМОВУ

Мета статті полягає в тому, щоб дослідити правову природу права судді на відмову. Як потенційну правову основу такого права розглядають основоположне право на свободу совісті, релігії і переконань, а також законодавчі положення про відвід судді під час винесення рішень у цій справі. Крім того, автор розглядає питання про те, чи право судді на відмову сумісне з принципом його підпорядкування закону.

Ключові слова: відмова з міркувань совісті, свобода совісті, підпорядкування судді закону, незалежність та неупередженість судді.

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НЕКОТОРЫЕ РАЗМЫШЛЕНИЯ О ПРАВЕ СУДЬИ НА ОТКАЗ

Цель статьи заключается в том, чтобы исследовать правовую природу права судьи на отказ. В качестве потенциальной правовой основы такого права рассматриваются основополагающее право на свободу совести, религии и убеждений, а также законодательные положения об отводе судьи при вынесении решений по данному делу. Кроме того, автор рассматривает вопрос о том, право судьи на отказ совместимо с принципом его подчинение закону.

Ключевые слова:отказ по соображениям совести, свобода совести, подчинения судьи закона, независимость и беспристрастность судьи.

Introduction. The objective of this paper is to examine whether it is legally possible to exempt a judge from adjudicating on a case or from making a decision when they object to apply a law by claiming that they cannot reconcile its substance with dictates of their conscience, that is, when they claim to

experience an inescapable conflict between the law on the basis of which the case is to be decided and their deeply-seated moral convictions. Such objection is sometimes lodged by a judge who is assigned a case involving a controversial moral problem related, for instance, to abortion or homosexual marriages (in countries where such marriages are recognised). Undoubtedly, the main obstacles on the way to the legal recognition of the right to conscientious objection of the judge is the constitutional principle according to which judges are subjected to the law in force, Nevertheless, the conclusion that the judge under no circumstances can exercise this right would be too hasty. As it will be shown, the assumption that in case of a conflict between the moral duty to follow one's conscience and professional duty to apply the law the latter must always prevail does not correspond to the axiology of modern constitutionalism based on the respect for human dignity and fundamental rights. Furthermore, there is a threat that an absolute denial of the right to conscientious objection may lead to violations of the principle of impartiality of judges that may result in unacceptable distortions of the proper administration of justice.

The principle of the judge's subjection to law and limits to its application. In order to solve conflicts between law and conscience some judges overtly refuse to apply the challenged law by claiming 'the right' to conscientious objection. However, as noted above, such a course of action seems to be in contravention of the principle that judges, within the exercise of their office, are subjected to law (at least to the law of the constitutional and statutory rank). Within the framework of legality there are some mechanisms that allow the judge to evade or at least mitigate the conflict of conscience they may experience. First of all, the judge is allowed to adopt an interpretative option of a provision that to the greatest extent possible corresponds with his or her moral beliefs, provided, of course, that the option in question is sustainable within the commonly accepted hermeneutic rules. Furthermore, when a judge does not agree with a verdict of the bench, they have a possibility to lodge a dissenting opinion, where they may express their views in accordance with the dictates of their conscience. What the judge is never allowed to do is to impose their moral beliefs on anybody by placing them over axiological choices unequivocally made by the democratically elected Parliament. In other words, even if statutes governing the organisation and functioning of the judiciary concede that judges shall perform their functions in conformity with their conscience, this obviously does not mean that they are allowed to refraining from applying the law they regard as unjust or immoral.

The principle of the judge's subjection to statutory law serves, among other things, the purpose of strengthening the legal certainty and security. Furthermore, it is supposed to prevent the other state authorities from interfering with the administration of justice. Last, but not least, it affords a guarantee for litigants that decisions of judges will not be arbitrary, but that they will constitute the result of proper application of the law viewed as the emanation of the will of the sovereign [15, p. 288 et seq.]. Thus, the significance of the principle in question cannot be overestimated; it has the character of both legal and deontological obligation, which means that the judge must not resolve a case by placing the dictates of their conscience above the law, otherwise they would betray their function.

The subjection of the judge to law, however, does not seem to be absolute and unconditional. It is rather to be assumed that the ethically sensitive judge cannot submit to each and every law; in each legal system there is a threshold whose overstepping by the lawgiver would be tantamount to enacting norms that violate fundamental principles and values, in particular human rights. Such norms would have to be regarded as negation of the very idea of law that is why no honest judge can apply them [17, p. 272; approvingly: 6, p. 35]. The quoted view is reminiscent of the famous Radbruch formula that could be boiled down to the maxim: *lex iniustissima non est lex* (the glaringly unjust law is not law at all). According to G. Radbruch the conflict between justice and reliability of the law should as a rule be solved in favour of the positive law. More precisely it means that law enacted by proper authority should prevail, even when it is unjust in terms of its content or if it is incapable of reaching the stated objectives, unless the discrepancy between the positive law and justice reaches a degree so unbearable that the statute in question has to be considered "erroneous law**"** and for that reason it has to make way for justice. It is impossible, Radbruch goes on, to draw a sharper line of demarcation between cases of legal injustice and statutes that are applicable despite their erroneous content. Nevertheless, another line of demarcation can

be drawn with rigidity: Where justice is not even strived for, where equality, which is the core of justice, is consciously renounced in the process of enacting of the positive law, then such a statute is not just 'erroneous law'; in fact, it is devoid of legal nature. That is because law, including the positive law, cannot be defined otherwise as an order and set of rules that by its nature is designed to serve justice [16, p. 107].

The Polish prominent scholar and politician Alicja Grześkowiak noted that although this approach outlined above was used in order to criticise the Communist legal system, which stood in flagrant contradiction to fundamental principles of human rights, it is still valid today. It can namely be employed with regard to official activities of a judge related to the right to life or to rights of the family. The judge, Grześkowiak continues, as every human being has the right to follow the mandates of their conscience not only in their private life, but also in the course of their professional activities. In case of an inescapable conflict between a legal norm applicable to cases where universal human rights are at stake and the judge's conscience, the judge should be afforded the option to refuse to adjudicate on the basis of such a law. The judge's right to conscientious objection should therefore be recognised in the legal order [6, p. 35].

According to Grześkowiak's approach the scope of such a right seems to be confined to situations where there is a conflict between statutory law and universal human rights. However, provisions on human rights are laid down in constitutions and international treaties that in case of a conflict take precedence over statutes. In consequence, before resorting to conscientious objection a judge should consider referring the statute in question to the Constitutional Court for reviewing its conformity with the law of a higher rank. In most cases of conscientious objection, however, the recourse to human rights arguments does not seem to be a suitable instrument to solve the conflict of conscience in a satisfactory way from the perspective of the individual judge in question. It is so because constitutional provisions that regulate fundamental rights and freedoms are often framed in a general and imprecise manner, which at the level of their application to a given case permits the adoption of various, sometimes diverging, interpretative options. The constitution or human rights treaties (sometimes deliberately) do not provide an unequivocal legal answer to controversial moral problems. For instance, it is not possible to determine the precise scope of protection to unborn life and make unequivocal inferences concerning the scope of prohibition of abortion solely on the basis of the general constitutional provisions that guarantee the right to life. The competence to legislate on these issue has therefore been left to the discretion of the ordinary lawgiver. Since the constitutional safeguards of the right to life are wide enough to permit various approaches to the issue of abortion, the judge who objects to issuing an authorisation to carry out a termination of pregnancy on a minor can hardly ever win their case by arguing that the statute they consider immoral is also unconstitutional. What is even more important, laws that are flagrantly unjust or that constitute a gross violation of human rights are more likely to be enacted under a dictatorial regime rather than in a democratic state. The cases where the judge should refuse to apply a law as referred to in the Radbruch formula are therefore extremely exceptional. Furthermore authors who plead for recognition of the right to conscientious objection by resorting to reasoning propounded by Radbruch point to universal, hence objective moral standards rather than to subjective judgments of an individual conscience. The discussed approach is thus too narrow in order to constitute a sufficient basis for recognition of the judge's right to conscientious objection.

Freedom of conscience as the legal basis for the right to conscientious objection. There is no legal system where the judge's right to conscientious objection is expressly guaranteed at the statutory level. It should therefore be examined whether it can be derived from the right to freedom of conscience, religion and belief as enshrined in constitutions and international instruments for the protection of human rights. Many scholars of constitutional law and human rights point out that if freedom of conscience is to have any practical meaning, its scope of protection should not be limited to the sphere of internal beliefs. This freedom should rather be interpreted in a broad manner, i.e. as embracing the right to act in conformity with one's conscience and the right not to be forced to act against its dictates [5, marginal number 49]. The freedom of conscience is therefore exercised by means of externalised behavior. As the Spanish Constitutional Court has rightly noted, freedom of conscience (inherent in the freedom of religion and belief) protects not only the intimate cloister of beliefs and the internal space of autonomous self-determination vis-à-vis questions concerning the right and wrong, linked to individual personality and

dignity. It also includes "the external sphere of *agree licere* which authorises individuals to act in accordance with their own convictions and to maintain them vis-à-vis third parties" [Judgments of the Spanish Constitutional Court: 19/1985, point of law 2; 120/1990, point of law 10; 137/1990, point of law 8; 141/2000, point of law 4; 154/2002, point of law 6; 101/2004, point of law 3; 34/2011, point of law 3]. Some scholars even hold that the freedom of conscience by its very nature is designed to protect only the manifestations of one's conscientious beliefs in the outer world, i.e. the communication of the precepts of one's conscience to others and conduct in accordance with one's moral convictions. It does not cover, however, the inner phenomenon of conscience itself, since it pertains to the sphere of human spirit that lies beyond the regulatory possibilities of a lawgiver and by its very nature does not need any legal protection at all [10, p. 258; 7, p. 77; 9, p. 9].

Even if one assumes that the freedom of conscience does cover the right to behave in accordance with one's moral convictions, it is not clear whether this right can be interpreted so widely as to encompass the general (comprehensive) *prima facie* right to conscientious objection whose holder is every human being, including judges. The doubts as to the scope of the right to freedom of conscience can be illustrated by presenting two diverging approaches to that issue adopted by the Spanish Constitutional Court. In the judgment 161/1987 the Court held that "a right to conscientious objection of a general character, that is a right to be exempted from the performance of constitutional or legal duties due to the fact that their performance results contrary to one's convictions is not recognised and one cannot imagine that it could be recognised in our law or in the law of any other country. Such a recognition would amount to the very negation of the idea of the state". At the same time, the Court does not rule out that the right to conscientious objection be explicitly recognised in a statute with regard to a specific legal duty. In other words, the lawgiver is free to introduce into a statute a 'conscience clause', that provides for a definite exception to the general rule to abide by the law in force.

The Spanish Constitutional Court changed its view as to the right to conscientious objection in the judgment 154/2002 where it expressed the opinion that such a right is to be perceived as a manifestation of the freedom of conscience, religion and belief. In particular, the Court held that the occurrence of conflicts between law and conscience should not be viewed as a surprise in a society that on one hand guarantees the individuals' and communities' freedom of beliefs and worship and on the other hand safeguards the principle of secularism and neutrality of the State. The constitutional response to the critical situation caused by individual claims to be exempted from complying with legal duties, made in the attempt to adapt their conduct to the ethical guide or life plan which stems from their religious beliefs, can only result from a pondered decision which deals with the specific circumstances of each case. Such a decision has to establish the scope of the right – which is not unlimited or absolute – in view of the impact that its exercise may have over other holders of constitutionally protected rights and goods and over the elements of public order protected by the law. The believer's right to behave in accordance with their convictions is thus not subject to more limitations than those that are imposed by respect for the fundamental rights of others and other constitutionally protected interests [Judgment of the Spanish Constitutional Court 154/2002, points of law 7].

The latter approach to the right to conscientious objection to a greater degree corresponds to axiological foundations of modern constitutions. In particular, it conforms to the assumption that the inalienable dignity of the human being constitutes the superior purpose of the state and the inviolable constitutional value, which is to be respected and protected by public authorities. The core of the human dignity is made up of the moral autonomy of the human being resulting from the fact that they are endowed with the capacity of reasoning and free will. In consequence, due to their dignity the human being should enjoy the freedom to self-determination, i.e. the freedom to choose one's moral values and to live accordingly [13, p. 224]. At the legal level the space for moral sefl-determination and self-realisation is afforded by the fundamental right to freedom of conscience. Precisely by means of their conscience the human being experiences that he or she is endowed with dignity [2, p. 185]. This accounts for the functional connection and axiological affinity of the human dignity clause and the right to freedom of conscience.

Furthermore, it should be noted that constitutional provisions proclaiming human dignity as the supreme constitutional value and even the source of individual rights and freedoms determine the manner in which these rights and freedoms are to be interpreted and realised by state authorities [1, p. 169]. In other words, constitutional references to human dignity serve as interpretative guidelines with regard to provisions that guarantee specific rights and freedoms; when interpreting a fundamental right or freedom, one should choose the interpretative option that to the greatest extent possible incorporates values inherent in the concept of human dignity [12, p. 206].

The interpretation of the right to freedom of conscience in the light of the state's obligation to respect and protect the human dignity corroborates the assumption that it covers the *prima facie* general right to conscientious objection whose holder is every human being. Obviously, this does not mean that this right can be exercised in an unrestricted manner by everyone in every situation, especially when the individual who invokes it performs a public function. It should therefore be examined whether it is legally viable to recognise such a right to judges without a considerable detriment to their functions, as well as to other interests protected by law.

The positive obligation of public authorities to protect the right to freedom of conscience of the judge vis-à-vis the proportionality test. A state that has undertaken a duty to respect and protect human dignity is obliged to guarantee the social, cultural and legal framework within which the individual is afforded a real possibility to act in accordance with their will and values [5, p. 8]. This general and abstract directive is accorded specific content when it is taken into account when determining the scope of protection of a given fundamental right or freedom. The interpretation of the freedom of conscience in the light of the said directive results in the assumption that state authorities are obliged to afford, whenever possible, the individual invoking the right to conscientious objection an alternative course of action (e.g. an alternative legal duty to be performed instead of the objected one). The objective of such a measure is to preclude conflicts between legal duties and duties of conscience or to defuse unavoidable conflicts as sparingly as possible for an individual and as frictionless as possible for the community [4, p. 100 et seq.]. "Whenever it is possible to find a way to satisfy both the law and the individual's conscience, this option must always be chosen" [20, marginal number 52]. It should be emphasized that the endorsement of this view entails a shift in significance of functions to be fulfilled by the right to freedom of conscience; preventing the emergence of moral conflicts by providing the individual with the opportunity of an alternative course of action so that they do not need to resort to socially 'troublesome' conscientious objection becomes its primary role. At the same time, the function of the freedom of conscience consisting in protecting moral identity and integrity of the individual by allowing them to act in accordance with the dictates of their moral convictions recedes into the background. As a consequence, the direct protection afforded by the freedom of conscience is activated only in cases where the emergence of a conflict of conscience turned out inescapable.

When referring to the concept of alternative courses of action to cases involving holders of public offices, it should be noted that it is inapplicable to situations where a functionary's performing of an action is legally irreplaceable, i.e. when solely the office-holder in question is competent to carry it out. The only legally workable way for the functionary to maintain their moral integrity is to resign from the office. Such cases include, for instance, a head of the state who objects to sign a statute because they find its norms incompatible with their conscience. A Polish theorist of law W. Lang suggests applying this solution to judges too. In his view the only solution for a judge refusing to perform their functions for reasons of the conscientious objection is to resign from the post [8, p. 257].

Nevertheless, when viewed from the perspective of a positive duty of state authorities to provide the conscientious objector with an alternative course of action, the quoted opinion does not seem to be acceptable. Adjudicating on a case likely to trigger in a judge a conflict of conscience can as a rule be entrusted to another judge who does not experience any moral dilemma. The emergence of conscientious objection cases in courts can therefore be avoided by adopting organistional measures, i.e. by assigning the controversial cases to non-objecting judges or by transferring the objecting judge to another court department.

Furthermore, when examining the issue of whether the judges can enjoy the right to conscientious objection, it should be taken into account that modern constitutions do not contain any general limitation clause referring explicitly to holders of public offices. The starting point is therefore that judges in principle enjoy the same fundamental rights as the other citizens. On the other hand, when striking a balance between the competing interests, it should be considered that judges take up their carrier voluntarily. This suggests their implicit consent to restrictions on their human rights that will prove necessary for the appropriate functioning of the judiciary and appropriate operation of the administration of justice. The voluntary pursuing of the carrier of the judge justifies the imposition of wider restrictions on their right to conscientious objection in comparison to cases where a legal duty objected to on grounds of moral beliefs has been imposed on the individual without their consent. When determining whether the exercise of the judge's right to conscientious objection in a given case passes the test of proportionality, one should also take into account the competing constitutional principles and values, such as the subjection of the judge to statutory law or the protection of public order, reflected *inter alia* in the proper and smooth functioning of public institutions. Thus, the recognition of the right to conscientious objection depends on the outcome of balancing the conflicting interests in a given case.

The application of the proportionality principle to the issue of the conscientious objection of judges may, however, result in divergent solutionsn For instance, G. del Moral argues that the recognition of the general right of conscientious objection of a judge would be inconsistent with their subjection to statutory law. A generalised conscientious objection would occur e.g. where a judge assigned to the criminal department of a court lodged conscientious objection to a particular type of punishment, say, to the punishment of deprivation of liberty, or where a judge assigned to family law department raised the conscientious objection to divorces based on religious grounds. Given that the judge in question accepted their function of one's own accord, the only sustainable solution to their conflict is to change the court department or to relinquish the judge's carrier. This type of cases can be contrasted with situations where the objected law enters into conflict with one of the essential judge's moral conviction, but the objection appears only sporadically so that recognising it would not entail any significant disturbance to the working order of a court. In such a case the refusal to award the right to conscientious objection to a judge would amount to a breach of the proportionality principle. The examples of such situations include: conscientious objection to sentence a person to prison for an offence perpetrated out of ideological motivations; an objection to issue an expulsion or extradition order, because such a measure in a given case is regarded by the judge as inhumane or blatantly unjust; conscientious objection to issue a judicial consent for a minor to have an abortion; a hypothetical conscientious objection to euthanasia, should a statue legalising euthanasia be enacted by virtue of which some competences would be assigned to courts. Moreover, as the quoted author notes, the access to judicial functions of second and third generation immigrants who adhere to values and traditions sometimes considerably differing from the Western ones, enriching and desirable as it may be, is likely to generate new incidents of conscientious objection [11, p. 265 et seq.].

A different approach has been adopted by G. Escobar Roca, who situates the issue of the conscientious objection of judges in the broader context of the conscientious objection of the holders of public offices. The quoted author has distinguished the following categories of cases [3, p. 252 et seq.]:

a). cases where there is an intimate link between the public function and the objected duty and at the same time recognising the right to conscientious objection would entail a serious detriment to a general interest. Given that in such cases the public interest in performing the objected legal duty considerably outweighs the interest of the objector in preserving their moral identity and integrity, instances of conscientious objection should be sanctioned. Nevertheless, when administering a penalty for the functionary's refusal to comply with the law, a minimal consideration should be taken in favour of the right to freedom of conscience, which should result in a remission of the penalty in question. According to the quoted author, the discussed category of case concerns, for instance, holders of political posts and judges.

b). cases where there is no intimate connection between the public function and the objected duty and at the same time the exercise of the right to conscientious objection would not cause any excessive detriment to objectives pursued by public administration. This category includes instances where the

objected duty cannot be clearly or unequivocally derived from provisions that regulate the status of the office-holder in question, which This concerns, above all, employment law relationships. The quoted author suggests that in this category of cases the employee invoking the right to conscientious objection should be assigned tasks compatible with their moral convictions. Unless such a solution is possible, the objector can be dismissed.

c). Cases where the connection between the public function and an objected legal duty is very indirect and there is no danger of a detriment to a public interest. In these circumstances the right to conscientious objection should be recognized. The main example of this category of cases is the conscientious objection of doctors to carry out abortions. The potential prejudice to the competing interests of a patient could be precluded by replacing the objector with a person who does not experience any conflict of conscience.

The above discussion has shown that the attempt to derive the right to conscientious objection of judges directly from the constitutional provisions that enshrine the freedom of conscience may not be successful. Even if one assumes that freedom of conscience in principle includes the right to conscientious objection, its recognition in a given case may be denied on the basis of the arguments that it would pose a disproportionate danger to other interests. The outcome of the proportionality test depends on the importance accorded to each conflicting interest by the assessing agent. However, regardless of the result of the proportionality test in a specific case, the reference to the axiology of human rights, that is the interpretation of the freedom of conscience in the light of the requirement to protect and respect human dignity, provides solid arguments in favour of the recognition of the right to conscientious objection of judges. As will be shown below, this point of view will prove more elaborate and convincing when placed in the context of the independence and impartiality of the judge.

Conscientious objection of judges vis-à-vis the principle of impartiality of the judge. Apart from the entrenchment of the right to conscientious objection of the judge in provisions of constitutional rank, it can also be inferred from statutory provisions on disqualification of a judge from the proceedings on the ground of their alleged partiality. This claim is based on the assumption that behind each apparently neutral interpretative option of legal provisions there is a definite set of beliefs concerning law and society, which renders the interpretation process susceptible to infiltration of the subjective convictions of the interpreter. The impact of the judge´s ethical and other beliefs on judicial decision-making is therefore inevitable, nevertheless its absolute control is neither possible nor desirable. On the other hand, it should be borne in mind that decisions made under influence of one's beliefs that are situated within the framework of interpretative options determined in application of rules of interpretation commonly accepted in a given legal culture, are valid and by no means can be regarded as instances of the perversion of justice. This accounts for the fact that instances of conscientious objection emerges only when a judge overtly refuses to apply the challenged law to the adjudicated case by arguing that the substance of legal provisions to be applied to the adjudicated case is incompatible to the mandates of their conscience. Allowing a judge to make a decision on the basis of the precepts of their conscience and in contravention to legal provisions would, of course, be tantamount to the negation of the very nature of law, it is therefore inadmissible. The only possible way for the viability of the conscientious objection of judges is its indirect exercise by means of provisions governing the disqualification of a judge from the particular proceedings.

It should be noted that recognition of conscientious objection as a valid ground for disqualification of a judge from participating in given proceedings or from making a particular decision by virtue of pertinent procedural provisions would not amount to endorsement of the supremacy of individual and subjective conscience over the objective and generally binding law. It would rather mean that in a particular case it is possible to weigh and perhaps reconcile the general interest in the application of the law with the individual interest in protecting the inviolability of their conscience. In other words, the examination of whether it is admissible to disqualify a judge from particular proceedings on the ground of conscientious objection does not imply a claim that the law should be subjected to individual conscience. It rather provides the opportunity to consider whether such a disqualification remains permissible within the procedural law in force.

From the constitutional principle of the independence of judges within the exercise of their office stems the requirement of their effective impartiality vis-à-vis the parties to the proceedings and in relation to the subject-matter of the adjudicated case. It also implies the prerequisite of their independence of extrajudicial factors and institutions. However, the effective impartiality of the judge is not possible without their subjective conviction that they are capable of adjudicating on a case in a fully autonomous and self-directed manner [18, p. 392]. Moreover, the requirement of impartiality presupposes the judge's duty to refrain from appraisals of the adjudicated case that flow from their stereotypes and prejudices. The requirement of impartiality of the judge has therefore two facets; the interior and the exterior one. Whereas the former is met when the judge is subjectively convinced of their impartiality, the latter refers to the perception of the judge's impartiality by persons outside the judiciary, for instance, by the parties to the proceedings; it is satisfied when objective observers outside the judicial system do not have any justified doubts as to their impartiality.

It is also noteworthy that the partiality of the judge is a psychological category, that is why it is subject to exteriorisation only to a limited extent. Reasons for a judge's partiality are varied and to some degree indefinable, since the human psyche renders each person partial in different situations, regardless of whether they are aware of this fact or not. In consequence, threats to judge's impartiality are objectifiable only to a limited extent too, that is why the examination thereof necessarily has to be restrained to identifying situations where the probability of such a threat is considerably high. In order to preserve the impartiality of the judge it is crucial to neutralise the psychological threat related to the judge's emotions. Obviously, emotions are a natural element of human life and the judge is inescapably liable to them. However, "unless the judge oversteps the threshold of their dislike or disinclination, they will not pass a just verdict" [1, p. 885].

On the other hand, the judge can be qualified as independent when they are capable of making decisions only on the basis of the law in force and, which is of paramount importance, but at the same time in conformity with their conscience. The independence of the judge has therefore to be referred to their internal experiences [19, marginal number 30]. Moreover, the principle of judge's independence and impartiality enshrines first and foremost a legal duty addressed mainly to judges themselves. The judge is obliged to undertake all appropriate measures in order to protect their independence and impartiality from threats of all kinds. Thus, the effective maintenance of the judges' independence largely hinges on themselves [19, marginal number 26].

Considering the conscientious objection as a possible ground for disqualification of a judge from their participation in a given proceedings affords the opportunity to examine it from the perspective of the requirement to protect their impartiality. Indeed, the fact that a judge whose moral convictions are bound to influence their decision to such a degree that they perceive themselves subjectively incapable of making a decision in conformity with the law is to be regarded as a circumstance which adversely affect their impartiality. A judge influenced by their conscientious objection may, consciously or not, be inclined to manipulate the legal provisions in an attempt to save their moral integrity. For instance, they may be inclined to adopt a narrow interpretation of the objected provisions, which may result in imposing on a participant in the proceedings some excessively strict evidentiary or other requirements allegedly provided by law as a condition for being awarded a vindicated right or claim [11, p. 268]. In consequence, the exercise of the right to conscientious objection by a judge cannot be perceived as an usurpation of a privilege, but rather as a valid ground for disqualification from the proceedings that guarantees the impartiality of their decisions [15, p. 310].

Concluding remarks. Viewing this issue of the conscientious objection of the judge in the light of the freedom of conscience one has to conclude that granting them such a right is much more preferable to making them recant their moral beliefs or allowing them to surreptitiously place their moral convictions above the law adopted by the Parliament. A denial to grant a disqualification from the proceedings on the ground of conscientious objection may generate situations where a judge twists the rules of interpretation of law in order to adopt decisions consistent with mandates of their conscience. That is why, it is much more consistent with the idea of a state governed by the rule of law to adopt measures that aim at

facilitating, whenever viable, the judge's exercise of the right to conscientious objection than to tolerate a judge who believes that they are a depository of an objective justice and tries to impose their convictions on others, even at the expense of legality. One could counter that judges should by no means allow their moral convictions to influence the performance of their judicial function and unless a judge is not able to meet this requirement, he or she lacks a fundamental quality of independence, indispensable for pursuing the judge's carrier. Such a positivist model of the judge operating only as mouth that pronounces the words of the law is, however, neither possible nor desirable.

Last, but not least, allowing a judge to refrain from adjudicating on cases covered by their conscientious objection is undoubtedly advantageous for participants in the proceedings, since they gain certainty that the judge is impartial in a sense that the decision-making process will not be excessively affected by subjective principles of their conscience. In particular, the participants in the proceedings can be sure that the judge will not resort to interpretative subterfuges or that they will not abuse their discretionary powers, which might happen when they were forced to apply the provisions they object to. Indeed, it would be counterproductive to the interests, for instance, of a homosexual marriage seeking an adoption, if their case were to be dealt with by a judge who in their conscience repudiates 'double maternity' or 'double paternity'.

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