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Niespójność sankcji penalnych. Ograniczenia kognitywne w procesie wymierzania kary przez sędziów. Analiza uwzględniająca badania empiryczne.

The doctoral dissertation presents the results of the empirical research carried out by the author on the cognitive limitations of judges' thinking in process of the criminal punishment decision-making. The presentation of the empirical research results was preceded by the philosophical part, the methodological part and the criminal law part.

In the philosophical part, the author described the philosophic differentiation between the context of discovery and the context of justification and its impact on the philosophy of law. This issue is related to the problem of the appropriate methods of the examining the law (only logical-linguistic methods or also empirical methods?). The research carried out by the author is also involved with the philosophical dispute on the concept of the value commensurability. According to these conception, all the values are comparable and there is a common standard of value measurement, by which they can be put in order. The proponents of the value incommensurability idea consider that at least some values are incomparable or incommensurable and they do not share a common standard of measurement or cannot be compared to each other. The conception of value commensurability has a substantial impact on the judicial imposition of the criminal penalty. According to the conception of the retributive justice, the punishment must be proportional to the crime. The value incommensurability concept leads to the situation, where the wrong done against society (which can not be expressed in numbers) must be compared with the measurable punishment (such as imprisonment for a certain period of time). The author defends the empirical approach in jurisprudence and the thesis of the value incommensurability.

In the methodological part, the author described the methods used in modern empirical (psychological and sociological) sciences and the specificity of their application in jurisprudence.

In the criminal law part, the author identified the normative factors (the values) considered by judges in the judicial imposition of criminal penalty. The main factor is the social noxiousness of an act (the amount of wrong against society), which is a component of the criminal offence definition. The nature of the criminal law is protection of the particular goods (the values). But social noxiousness is not the only factor determining the choice of the sanction. This part included the interpretation of the appropriate provisions of the Polish Penal code (Article 53 and the following) based on the doctrine beliefs and the case law. The identification of all the normative factors

considered by judges allowed to identify the non-normative factors, which play role in process of the criminal punishment decision-making (the cognitive limitations).

The main research subject was the empirical falsification of the statement that judges can perform the coherent decisions in spite of some cognitive limitations of the human cognition. The philosophical problem of the value incommensurability has been transferred to the cognitive science by a Nobel prize winner Daniel Kahneman, an American legal scholar Cass R. Sunstein and their research team. They discovered two cognitive limitations of the human decision-making in a situation of value incommensurability. They observed that the people's thinking is category bound. The second significant source of the incoherence was what the Kahneman-Sunstein's research team called „the translation problem”, which we can observe in translating a moral judgment into the measurable terms used by the legal system. The empirical analyze was carried out by the Kahneman-Sunstein's research team on unselected group of non-lawyers which had to evaluate cases as if they were judges. It was a basis of discovering two mentioned above cognitive limitations of the human cognition: the category-bounded human reasoning and the translation problem. The result was generalized by the Kahneman-Sunstein's reaserch team on the professional judges. The author do not analyze the judgments made by ordinary people pretending to be professional judges in the simulated laboratory conditions. The main subject of the analysis carried out by the author was the real judgments made by real judges in real cases. The object of the investigations had to be relativized to the selected values protected by the criminal law and consequently to the selected type of crimes. The essence of the empirical analysis was the values of health, wellbeing and life of animals.