

Emotions and motivation in the law

Selected issues

Abstracts

Julia Stanek

Emotions in legal theory

Despite the many intersections between emotions and law, the study of emotions in the context of legal issues is much neglected, especially in legal theory. The first attempt to embrace all aspects of the correlations between law and emotions was made at the beginning of the 20th century by Leon Petrażycki. Petrażycki's theory of law is based on concept of legal emotions. In this approach, emotions are understood as motives of behaviour, containing within itself an representation of a certain conduct and an appulsive ethical emotion or a repulsive one. In the light of development of psychology on which Petrażycki's innovative theory of law is based, it has become outdated, especially in the context of understanding its key element – emotions. The goal of this study is to consider how emotions in the framework of the specified theory of law should be comprehended presently. The author suggests to focus on analysing of the concept originated from the so-called motivational tradition of emotion studies – the theory of constructed emotion (L.F. Barrett). The fundamental assumption of this theory is that the emotions are not triggered, but are constructed by the brain based on experiences primarily induced by the environment. The application of the constructed theory of emotions in legal theory context can lead to developing an updated – based on modern scientific knowledge – psychological theory of law.

Keywords: emotions, legal emotion, the constructed theory of emotions, psychological theory of law, Leon Petrażycki

Aleksandra Partyk

Judges on emotions – considerations in light of empirical research

Do judges have „the right” to emotions? For ages the issue of emotions in adjudication has been a perpetual subject of interest of academics occupied with different branches of science. While rendering a judgment, a judge should act in an objective and impartial manner. It does not mean, however, that they do not experience any feelings of emotions. In this context, it is worth asking the question about how judges themselves recognize their emotions and how they try and cope with them. It is worth noting that this weighty topic has not been comprehensively analyzed in the literature. Statements by judges relating to the psychological aspects of their profession are not often presented in literature. Thus, the purpose of the article was to provide an overview of this issue. This text presents considerations relating to the emotions accompanying adjudication, based in particular on empirical research. In particular, the analyses were based on surveys conducted on a group of Polish judges and on anonymous interviews with a few Polish judges. The results of these surveys provide insight into the issue of emotions perceived by judges in connection with their work. The text emphasizes that the state in which an individual does not feel any emotions differs from a situation when he or she tries not to show them. The text presents an analysis relating to the emotions that judges themselves perceive in themselves. The chapter also presents considerations relating to whether there are certain categories of court cases when judges recognize above-average emotional intensity. The analysis is enriched by a section relating to the problem of judges’ coping with emotions. The considerations presented show the importance of the problem of how judges cope with their emotions, which – in the author’s opinion – needs to be taken into account during the process of training judges.

Keywords: emotion management; judges; impartiality; decision making

Katarzyna Witek-Mioduszevska

Emotions and their influence on the decision-making process. Research in the area of family law

The issue of emotions is undoubtedly important from both a cognitive and a pragmatic point of view. This area is universal because emotions affect the life of every human being.

Most issues related to the discussed subject matter constitute a complex issue that is evolving mainly on the basis of the development of psychological sciences. Due to their dynamics, it was reasonable to present in the work a short history of emotions, starting from antiquity and the first research on this phenomenon by philosophers, up to the present day. In addition, the publication deals with the subject of the basic functions of emotions, as well as potential examples of their use. Moreover, the paper presents a short description of issues related to the contemporary psychology of emotions. The fundamental aspect of the work in question, taking into account the size and nature of these psychological phenomena, it is rational to examine whether and how they can be used to influence individual areas of law. Family law, due to the subject of the cases that are often very difficult for the party, evokes a lot of different kinds of emotions, that is why the author deals with issues related to the influence of emotions on the decision-making process based on her own research in this area of law. They are pilot studies that constitute an introduction to further research in this field. The research was carried out on two research groups – lawyers and non-lawyers – i.e. people practicing other than legal professions. The work presents and discusses the results of research, which indicate that emotions have a real impact on making judgments in family and custody law.

Keywords: emotions, motivation, family law, psychological phenomena

Katarzyna Jasińska

Credibility without emotion – written testimony and e-hearings

In this chapter I will discuss: the analysis of the course of the examination of the witness (party), in terms of the non-verbal behavior and paralinguistic phenomena, including his / her reaction to the questions asked, as important elements of assessing the credibility of evidence from the examination of the witness. Next, I will try to answer the question of whether, and if so what, they should have an impact on the interpretation of the new provisions in the Polish civil procedure on the written testimony of a witness and provisions on remote hearings. Firstly, I will consider the stage of making decisions about using the above-mentioned procedural institutions. In the context of e-hearings, the analysis at this stage will cover the positive premise of the possibility of withdrawing from such a procedure, namely the premise of “necessity” to proceed in the traditional mode or – in the European Small Claims Procedure – the premise of “specific circumstances of a given case”. Next, I will analyze the impact of the above aspects of assessing the credibility of testimonies of witnesses on the possibility of repeating the testimony given in writing and possible violation of the party’s right to defend its rights in connection with the decision taken by the court to proceed in a remote mode in a situation where this makes it difficult to properly assess the testimonies of witnesses. I will also pay attention to technical problems during remote hearings, which cause, inter alia, that the testifying witness can only be heard.

Keywords: the non-verbal behavior, paralinguistic phenomena, written testimony, e-hearings, right to defend its rights, credibility of evidence

Adam Strzelec

On abortion. Some remarks on the affirmative-motivational function of criminal law

The chapter presents selected issues related to the affirmative and motivational function of criminal law. Criminal law is a tool for the state's reaction to behaviors that are unacceptable in a given community, in the form of crimes. It plays a special role in the legal system. Due to the specific nature of the standards of criminal law, both at the stage of establishing and applying it, the functions assigned to them should be taken into account, in particular the protective, guarantee, justice or compensation functions. The value system applicable in a given environment cannot be ignored. When creating legal norms, one must bear in mind that they will function in a given society in which certain moral and ethical norms are in force. Legal norms should not, therefore, impose a system of values detached from the generally accepted in a given society. The detachment of legal norms from the system of fundamental socially acceptable values leads to the phenomenon of anomie, which is characterized by a sense of not being bound by norms with which their addressees do not identify. In connection with the above, it should be assumed that the greater social acceptance of criminal law norms, the greater will be their respect. The goals of criminal law outlined in this way are reflected in the affirmative-motivational function, which allows the addressees of norms to identify with the orders or prohibitions specified in them (affirmative fiction), which helps to increase the degree of their observance and social acceptance (motivational f.). In addition to the repressive aspect of criminal law, its preventive and educational nature is also very important, which is to constitute a specific motivation towards compliance with the law both for the perpetrator of the crime (individual prevention) and for the entire society (general prevention).

Keywords: functions of criminal law, motivational function of law, affirmation of the value system, punishment as a motivation

Kinga Piwowska

Motivation to commit offenses and crimes in labor law with regard to the choice of employment

The article entitled “Motivation to commit offenses and crimes in labor law with regard to the choice of employment” refers to the legal, psychological and sociological aspects of making decisions by the employing entity on the basis of establishing a legal relationship. The motivation and factors that lead to avoiding employment and replacing it with civil law employment (i.e. employment costs, ensuring employment stability, the need to comply with numerous employee rights) were examined. In practice, employing entities make a specific profit and loss balance. As part of this, they make a choice as to whether or not to comply with the given legal norms. Usually, employing entities choose what is most profitable for them. Therefore, the most favorable procedure from the point of view of the specified goal is chosen. The above assumptions and the concept of motivation based on the modern model of human behavior were used to analyze whether the introduction of certain employment law regulations (including the Code of Employment Ethics – as a soft law) could effectively influence the behavior of employing and employed entities. It has been shown that there is a need for greater legal awareness of the society as to their status and legal situation on the labor market. The most important crimes and offenses committed against employees (including the legal basis of employment) were also discussed, because the motivation may also be based on the fear of sanctions (especially financial or imprisonment for the committed act). Then, the employing entity, presenting the attitude of legalism, respects the principle of *dura lex, sed lex* and complies with the regulations. The article indicates the most important reports on the activities of the National Labor Inspectorate in the field of inspections carried out on the grounds of violating the standards of art. 22 § 1¹ and 22 § 1² of the Labor Code. The question was asked

whether the motivation to commit the above-mentioned crime and offenses would be lower if the employment costs were lower, and the state would not impose further technical, organizational, legal and tax burdens on the employing entities.

Keywords: offenses, crimes, employee, employer, employment contract, civil law contracts

Agnieszka Bednarczyk-Płachta

Factors influencing citizens' motivation for active participation in public life. Selected aspects

The changes taking place within administrative law are the result of the motivation which determines the citizens' actions to participate in the public life and the impact of the legal norms being created on the possibilities of active participation by the society in the performance of public administration tasks. Legal competence to use the instruments and institutions of administrative law in an easy way for every citizen, access to public information and other forms of action used within administrative law, help performing the tasks of providing administration, causing a change in the behavior of particular social groups, motivating them to exert the influence on public life. The possibility of exercising social (civic) control over the activities of public administration bodies motivates citizens to become more involved in social disputes, in particular in the activities of the communes closest to them. Raising the awareness of residents as to their rights to exercise civic control over the activities of public administration influences their sense of empowerment and motivates them to act. The motivational function of the law is manifested on this basis in a number of normative regulations constituting the means of social control, which are more and more willingly used by citizens, especially in the age of the information society and the possibility of using remote communication with public administration for this purpose. The possibility to contact administrative authorities and administrations electronically, via email or dedicated platforms, not only gives the citizen the possibility to deal with matters without leaving home, but also makes public administration seem close to them. The accessibility of the administration to the citizens means that they are not afraid to ask about public matters and to control the actions of the administration, as it becomes part of their functioning in the legal system rather than

a distant 'office' they attend. The study will discuss selected aspects of civic control guaranteed on the basis of generally applicable law and its impact on social motivation to influence the manner of providing public administration.

Keywords: civic control, public life, motivation, access to public information, participation

Paweł Klimek

Tax psychological function

The tax psychological function should be distinguished from other tax functions, because taxation shows problems of two opposite interests, although the tax authority should focus on providing budgetary revenue from the imposed tax, on the other hand “by the old tradition, and partly by the selfish human nature, each taxpayer considers the public treasury as an enemy against which one should be defended by all means”. This does not mean, that unequal legal and tax relations should lead to the conflict. Therefore, the tax authority must take into account not only the economic, social and political, but also psychological aspects of the tax. As a result, it can be said that the psychological function is fulfilled when the imposition of the tax is accepted by the taxpayers and they consider paying it as justified. In this context, the psychological function is related to the functions of justice, equality or evenness, equal treatment, classiness, conflictuality, equivalence and the fiscal and budgetary functions such as sufficiency and efficiency, as well as the ability to pay and fiscalism and the socio-economic function of efficiency. However, it should be mentioned that tax law is accepted, mostly if the taxpayers are aware of the consequences of their actions and are supported by the tax authorities in carrying out the obligations imposed on them. The psychological function is therefore also related to another justice and ethics function, namely the ethical function, as well as to technical functions such as legality, protection, permanence, transparency, determinacy and certainty.

Keywords: tax, income, solidarity, psychology, society