ANP Newsletter

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First Advice

We lawyers, we know court law and theoretically we should persuade our clients to go to court when necessary.

Meanwhile, our first, best piece of advice we've given our clients for many years is just: don't go to court. Avoid the court. Seek any other solution, NOT THE COURT.

And that lawyer who tells you something else, dear client, he does it for his own interest. So he's cheating on you. Or out of stupidity. Or he doesn't understand your situation, so much so that you'd better find another lawyer.

Courts are inefficient and therefore costly. Courts are unfriendly and rude. Courts are incompetent. They understand law semantically, outside the social and economic context.

Of course, not all, and not always, intelligent people who speak to intelligent people do not have to make such reservations every time. We are talking about general, even statistical, phenomena. Unfortunately, however, this type of closure and marginalization of courts in terms of the sense of their role and social task has been going on for years. And it has nothing to do with the Zibist coup on independence. For the courts, unfortunately, are not made better by the mere fact that they are independent.

Therefore, it is difficult to accept the current level of discussion on the judiciary, which focuses only on the current threats, but does not see the deep, structural and intellectual problems of the judiciary and courts.

Dear client, don't go to court, that's our best advice.

Left turn signal and awareness of law

How should society's attitude to law be examined? In declarations, polls, interviews? No no no. The attitude to the law, or to the regulatory mechanisms of society in general, must be tested in action. That is, in mechanical, repetitive, unintentional acts, in the first system according to the Kahneman and Tversky typology.

What do we do universally, unknowingly, applying the rules of law at the same time? We drive cars.

The symbol of understanding the law by Poles is the use of a direction indicator. Especially the left indicator The subject requires a doctorate, but we recommend it to the widespread observation of our newsletter readers.

When approaching a junction in the left lane, every second car does not turn on the turn signal, although as it turns out, it turns left. However, it turns on the indicator when it turned left. In fact, it shows not that it intends to execute, but that it has completed the maneuver.

From the point of view of the understanding of the law (i.e. the law on switching on the indicator in this case), such usus means, among other things, that:

- I am completely not interested in what this recipe exists for;
- I am especially not interested in the fact that the one behind me thought that I was going straight, I don't care about it;

- I use it (turn on the indicator) only because I have to, and so that someone does not get stuck.

It is a relatively common standard of law application in Poland. Not everyone's traffic law. The law is not perceived as a mechanism that facilitates our life with ourselves, but a formal rule imposed from the outside, to which I must comply, but whose regulatory meaning is completely indifferent to me.

The perspective of the indicator will be a starting point for us to analyze the understanding of law in Poland, anno domini 2021. To be continued.

Strasbourg

Two great European courts, the European Court of Human Rights in Strasbourg and the Court of Justice of the European Union based in Luxembourg are the last hope for many Europeans, especially for societies and nations injured and exposed to authoritarians from bygone eras in power.

However, while the Court in Luxembourg is an EU court, which thus benefits from the institutional and jurisdictional integrity of the EU legal system, which allows for correspondingly higher requirements, the Court in Strasbourg assesses the rule of law in countries belonging to the Council of Europe.

It is an organization that also includes countries that are clearly undemocratic, at least in the sense of Western European standards, such as Russia. This is probably the main reason why the standard of human rights protection and evaluation of undemocratic institutions is rather low. It results not only from those cases examined by the Tribunal and in which it adjudicates, but above all from those which it does not accept for examination, because, which in itself is the essence of the problem, it has complete, uncontrolled freedom in this respect.

This is why, for example, the application of pre-trial detention or, in general, the functioning of the prosecutor's office in Poland, which in many respects does not meet the conditions that we would consider civilized in the Western sense of the word, does not experience any real limitation thanks to the jurisprudence of the Tribunal.

Simply put, the Tribunal must limit itself according to the actual state of democracy in the member states. Usually – to the lowest common denominator of the rule of law. And this is a tendency in a way beyond the influence of the judges.

On the other hand, at the level of judgments, there is a very strong tendency to issue far-fetched, ideological judgments that are to promote particularly progressive European values, such as individual rights and non-discrimination. The problem is that in judgments that are often exemplary, at the same time disregarding or ignoring traditional or "even more basic" values, such as honesty and decency. These are the sentences that show that if you are discriminated against, you can steal and cheat, and nothing will happen to you. This conclusion follows, inter alia, from the case of Barbulescu v. Romania (61496708), Lopez Ribalda v. Spain (1874/13 and 1874/13) or recently Jurcic v. Croatia (54711/15).

There is more harm than good of such judgments, assuming that someone reads them. The only thing that protects them is the fact that they are several dozen pages long and are intended for those who write their doctorates on this basis, not for ordinary Europeans.