

Abstract

This thesis deals with dissents to judicial decisions, i.e., dissenting opinions of the judges which are published along with the decision. In the Czech context, these are mainly dissenting opinions of the Constitutional Court judges, which (despite the lack of direct binding force) occupy a significant space not only in academic discussions but can also become the basis for future changes in legal opinion. Despite this practical significance of the dissenting opinions, however, they have received rather little attention or, with a few exceptions, have not been dealt with in a broader context in any text to date. This was the main motivation for writing my thesis.

The most important context in relation to the existence of dissents is their impact on the legitimacy of decisions. There are views that consider dissenting opinions to be beneficial to the legitimacy of courts and their decisions, as well as views that are quite the opposite. Thus, the primary goal of this paper is to analyze the role of dissenting opinions in terms of their impact on the legitimacy of decisions. This is an aspect that runs throughout the whole text.

The thesis begins by defining the terms dissent and dissenting opinion and seeks to introduce both foreign and Czech legislation. Along with this, the text presents some of the major dilemmas associated with dissents. These are not only the disputes concerning the impact of dissents on the legitimacy or quality of decisions. At the same time, it is shown that without a closer examination of what is the subject of dissents, how they are practically created or what their linguistic form is, it is impossible to draw a conclusion about what their role really is.

The most significant passages of my text are therefore those in which I try to compare the general premises and arguments associated with dissents with the practice of writing dissenting opinions at the Constitutional Court of the Czech Republic. Thus, the case law of the Constitutional Court and its analysis, or the analysis of dissenting opinions, constitutes an important source from which the thesis draws, and it is also the main subject of my research.

The individual chapters then show that the theoretical lessons about the impact of dissents on judicial decision-making may not be valid in all circumstances. In the course of the text, I try to demystify some of the arguments associated with dissents, or rather, I try to confront them with the reality of case law, and thus continuously arrive at what conditions are appropriate for introducing dissents in different types of courts and what demands should be put on their procedural regulation.

Throughout my work, it also becomes apparent how closely dissents are linked to the personality of the judge or, better said, how practical a tool dissents are in terms of exploring judicial philosophy, e.g., in terms of judicial restraint and activism.

All the conclusions presented in this thesis can then serve to suggest specific changes to the law, which I present in the final chapter. However, the implicit aim of this thesis is also, above all, to highlight and illustrate the increasing importance of dissenting opinions and to direct more attention to their study by the academic community, and perhaps even by the legislature, which could proceed to regulate them in more detail.