

Cognitive Biases in Legal Thinking

Abstract

This diploma thesis addresses the phenomenon of cognitive biases in legal thinking, i.e., it connects the latest findings in psychology and behavioural economics with various areas of law. It aims to introduce selected illusions of mind to the reader, especially those most significantly affecting not only judges, forensic experts or attorneys, but also legislators and policy-makers, as well as general public when they come into contact with law. The thesis also presents ways of eliminating the negative influence of biases on law and justice (to the extent possible), and even suggests appropriate use of them for the benefit of the society as a whole. The thesis is therefore a review study, mostly based on the analysis of dozens of empirical studies, which on one hand informs the readers about the errors resulting from the cognitive biases, and on the other hand encourages application of the proposed methods of eliminating the negative impact of errors in readers' own legal practice – or at least encourages them to take the analysed biases into account.

The introduction briefly explains why lawyers should take the latest findings in the field of cognitive and behavioural sciences into account. Furthermore, it explains what heuristics and cognitive biases are, and why they occur in our minds in the first place. The first chapter then introduces the reader to the history of the research of the bounded rationality and evaluates the problematic rational choice theory and the myth of *homo economicus* in classical economics, which still continues to have a significant position in other social sciences as well – including law. Subsequently, the chapter also explains the concepts of logical and heuristic thinking, the theory of dual thinking and the error management theory. These theories bring the principles and the development of biased human thinking to the reader's attention through both theoretical and practical examples. Chapters two through seven then discuss the most common errors arising from the representativeness heuristic, the availability heuristic, the anchoring effect, the memory bias, the confirmation bias, and the framing effect.

In summary, the thesis concludes that, based on an analysis of dozens of research studies, it is clear how much of a problem cognitive biases pose for law and justice. In addition, it also considers the study and application of above-mentioned findings to be insufficient in the Czech legal environment and therefore encourages to do so.

Key words: heuristics and cognitive biases in law, representativeness heuristics, availability heuristics, anchoring effect, hindsight bias, confirmation bias, framing effect