

Argument from expert authority by the example of court expert institution in Polish litigation

Abstract

The main purpose of the dissertation is to use tools and methods developed by argumentation theory for the description and evaluation of arguments from expert authority used during civil and penal litigation and on this basis to draw conclusions *de lege lata* and *de lege ferenda*. In the modern age of dominance of technical way of thinking and overabundance of information judges, as never before, without having necessary assessment tools at their disposal, have become dependent on court experts. Legal dogmatics, especially that of civil law procedure and penal law procedure with data feedback from argumentation theory could be used to augment and change existing legal order concerning court expert institution to provide basis for developing techniques that could help lay people in the court environment in evaluation of experts and their opinions in a way inaccessible for legal dogmatics alone. On the other hand it is stressed that every theory of legal argumentation should always take into consideration a given legal culture with its traditions, values, rules and legal science. Without taking into account social and even wider cultural context legal argumentation theory is bound to be almost useless practically. The dissertation can be considered as written in the field of legal logic understood in Perelman's way, being closely connected to argumentation theory and in that capacity integrating informal logic, psychology, sociology, legal theory, rhetoric philosophy and informatics.

The first chapter introduces the concept of authority and argumentation. Authority is an idea that has different meanings depending on context, era and, most importantly, the author. The difference between transcendental and materialistic view on authority is emphasized. Finding the source of particular authority is especially important to define and describe this particular phenomenon. The present dissertation is based mostly on Douglas Walton's logical argumentation theory but with major changes involving transposition from common law to civil law setting, a critical analysis and a strong tendency towards return of argumentation theory to its informal roots expressed in Chaim Perelman's Legal Logic - New Rhetoric.

The second chapter describes historical development of thought concerning the argument from expert authority and its recent descriptions. The most important paradox concerning the argument from expert authority was formulated by Plato: how lay people, not being experts themselves thus not having necessary knowledge, can make assessment of expert opinions. The process of formation of the modern concept of argumentum ad verecundiam as fallacy is based on misinterpreting John Locke's thought. The argument from authority is differentiated from *argumentum ad verecundiam*. Types of argument from authority in legal practice are formed particularly on the basis of deontic and epistemic authority J. M. Bocheński's concept. Bocheński's deontic and epistemic authority allotment is critically analyzed as not having taken into account other types of authority such as celebrity, or reverence authority. This chapter also deals with psychological aspects of using argument from authority.

The third chapter is focused on the Polish court expert legal institution, but in view of the fact that the dissertation is not in the field of legal dogmatics comparative and dogmatic legal methods are used only to outline court expert institution and to extract legal criteria of choosing court experts and evaluation of their opinions. Proposals of legal reforms concerning court experts formulated by legal scholars and nongovernmental organizations are also presented in this chapter.

The fourth chapter focuses on tools used to evaluate arguments from expert opinion in dialectical court setting. The epistemological problems associated with court experts are outlined. The tools used are based on Douglas Walton's logical argumentation theory, Bayesian probability and the weakest link in argumentation conception, but they are used in a critical manner and in consistence with the Polish legal system, legal science and the author's own understanding of legal argumentation. The author's own way of combining Bayesian nets with Walton's critical questions method is viewed as a promising tool, using questionnaire to gather data to be subsequently used in Bayes theorem calculations. Potential practical applications of this method depend on the scope of legal reforms, because the degree to which the argumentation theory tools prove to be useful depends on the amount of data gathered during the argumentation evaluation and the number of opportunities when dialectical critical testing can be performed. Argumentation theorist should abandon technical way of thinking and remember that at least at present it is living people who decide what argument they can accept.

Keywords : legal logic, argumentation theory, court expert, argument from authority, bayes theorem

