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A judge must not be influenced by fear. Must a judge be brave? The duty of judges to defend judicial independence and the rule of law

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Abstract

It is not acceptable that a judge because of "fear" hands down a wrongful judgment. This was mentioned already by Isidore of Seville in his Sententiae and is part of the oaths of judges in many jurisdictions, from the 1230s onwards until this day. The "fear" that is relevant could relate to one of the parties but also other persons in power. Thus, it relates not only to impartiality but – above all – to independence. Fear is often paired with favour, meaning that a judge should not try to please those in power through his judgments. In this paper I discuss whether the obligation of the judge not to be influenced by fear is only to be understood in the negative sense, or also in the positive – that is, does a judge have to be brave and, for example, oppose actions by persons in power that aim at undermining independence and impartiality? In other words, what are the ethical requirements when a judge perceives a risk that only avoiding being influenced by fear in individual cases will not be enough to protect independence and impartiality for the future?

Key words

Fear; courage; judges; impartiality; independence

Resumen

No es aceptable que un juez dicte una sentencia errónea por "miedo". Esto ya lo mencionaba Isidoro de Sevilla en sus *Sententiae* y forma parte de los juramentos de los jueces en muchas jurisdicciones, desde la década de 1230 hasta nuestros días. El "temor" pertinente puede referirse a una de las partes, pero también a otras personas en el poder.

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Por lo tanto, no sólo se refiere a la imparcialidad, sino, sobre todo, a la independencia. El temor suele ir acompañado de favor, lo que significa que un juez no debe tratar de complacer a los poderosos con sus sentencias. En este artículo discuto si la obligación del juez de no dejarse influir por el miedo debe entenderse sólo en sentido negativo o también en sentido positivo, es decir, ¿tiene que ser valiente y, por ejemplo, oponerse a las acciones de las personas en el poder que pretenden socavar la independencia y la imparcialidad? En otras palabras, ¿cuáles son los requisitos éticos cuando un juez percibe el riesgo de que sólo evitar dejarse influir por el miedo en casos individuales no sea suficiente para proteger la independencia y la imparcialidad en el futuro?

Palabras clave

Miedo; valor; jueces; imparcialidad; independencia

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1. Introduction

In order to safeguard a fair trial and judicial independence and impartiality, judges must not be influenced by fear. This is relevant when judges decide individual cases, but also when the independence of judges is threatened by changes through which the rule of law and the right to a fair trial start backsliding. Recent statements from the European Court of Human Rights indicate that judges not only have a freedom of expression in such circumstances, but also a duty to speak out in defence of the constitutional order, democracy, rule of law and judicial independence. In a society where these values are under attack, judges have to do this notwithstanding the fact that they probably feel fear in doing so. Such fear can relate to the risk of losing one's position as a judge and thus also one's income, and it can also relate to the risk of being the target for campaigns in media or social media.

The obligation of judges not to be influenced by fear has a close connection with the virtue of being courageous. In this article, I discuss this latest development of the duty of the judge to speak out, and I do this based on the very old principle that judges must not be influenced by fear and that courage is one of the cardinal virtues. I start in Antiquity and analyse the origins of these concepts, and I show how they spread over Europe during the Middle Ages and formed the basis of a legal culture. I then discuss how the traditions in this legal culture come to the surface in the ongoing rule of law crisis in some European countries. The contemporary obligation for judges to be brave, or at least avoid feeling fear, has its roots in centuries-old basic ethical principles of judges, principles that now have been brought to new life.

2. Fear

Fear is an emotion that was defined by Aristotle (384-322 B.C.) in his *Rhetoric,* 2.5, as "a kind of pain or disturbance deriving from an impression of a future evil that is destructive or painful" (Konstan 2006, 130). The future evil can, for example, be anger or enmity from people who have the power to inflict harm or pain. To feel fear, we must understand the nature of someone else's anger or hatred (Konstan 2006, 132), and thus fear results from "complex judgments concerning the state of mind and intentions of others" (Konstan 2006, 154). Fear is related to something that is known, a "determinate object that one can confront" (Konstan 2006, 149).

It has long been held that fear is not an acceptable reason for a judge to hand down a wrongful judgment. This was mentioned already by Isidore of Seville (c. 560-636) in his *Sententiae* (book 3, chapter 54.7), where he wrote that:

> There are four ways in which human judgment is perverted: by fear, greed, hatred and love. By fear when we are afraid to speak the truth out of fear of someone's power; by greed when we are corrupted by the reward of some bribe; by hatred when we are stirred up to be an adversary of someone; by love when we strive to prefer a friend or family member. In these four ways, equity is often violated and innocence is often harmed. (Isidore of Seville 2018, 207)

Burchard of Worms (c. 950-1025) repeated the text with minor changes in his *Decretum,* book 16, chapter 28 (Burchard of Worms 1880, 914). A very similar text is later found in the *Decretum Gratiani,* C. 11 q. 3 c. 78 (Friedberg 1879, 665; Winroth 2022, 464) even though Gratian omitted the last sentence and replaced it with another. He also changed

some words in relation to both Gratian's and Burchard's versions.[1] Alcuin of York (c. 735-804) had a similar text in his *De Virtutibus et Vitiis* (chapter 21) but with slight elaborations (Alcuin of York 1863, 629-629).[2]

There is also a similar text in *Rhetorica Ecclesiastica* from about 1160, one of the procedural treatises in the *ordines judiciarii* category (Fowler-Magerl 1984, 46; 1994, 26). According to that text, perversity and ignorance (*perversitas et ignorantia*) obstruct the office of the judge. Perversity originates from four causes: fear, partiality (greed), hatred and love. Fear is defined as fear of a higher power (*superioris potestatis*), which often forces someone to remain silent about an opinion of what is true (Wahrmund 1906/1962, 6).

That fear is to be avoided by judges is part of the oaths of judges in many jurisdictions, from the 1230s onwards until this day. According to Fredrick IIs Constitutions of Melfi, or *Liber Augustalis,* it was included in the oaths of judges that justice is to be administered without fear (Powell 1971, 38). In this respect, the oath for the imperial judge according to the *Reichslandfrieden* at the diet in Mainz in 1235, issued by the same Frederick II (Buschmann 1991, 453-460), was similar (Weiland 1896, 247 and 262).

The same standard for judging was mentioned in many oaths and other texts defining the desirable behaviour of judges. To mention some examples: In oaths of judges (*podestà*) in Montevoltraio in 1245 (Nicolini 1955, 45), in Firenze in 1311 (Nicolini 1955, 43-53 and 191-199) and in Bergamo in 1331 (Storti Storchi 1986, 104), fear is mentioned as something the judges should avoid. The same goes for the oaths of judges in Part III, tit. IV, law VI of the *Siete Partidas* from the 1250s-1260s (Burns 2001, 566-567), in the Scottish *Leges Quattuor Burgorum* from about 1270 (Ancient Laws and Customs of the Burghs of Scotland 1868, 34), in Bracton's *De Legibus et Consuetudinibus Angliae* from 1250-59 (Bracton 1883, 248-249), in Swedish town and land laws from the 1340s and 1350s (Kung Magnus stadga 1344; Holmbäck and Wessén 1962, 37-38; 1966, 3 and 23-24), and in the Danish town law from the late fifteenth century (Kroman 1961, 72-73). Fear is in these texts often paired with favour, meaning that a judge should not try to please those in power through his judgments either.

In the law code of Magnus the Law-Mender in Norway in 1274, IV. *Mannhelgebolken,* 18, there is section "about all judgments", which also recurs in his law code of the towns of 1276 and the Icelandic *Jónsbók* of 1281 (Schulman 2010, 61-65, Øyrehagen Sunde 2014, 131-132 and 164). Here, the ethical standards of judges are developed further. There are rules about how the judge should not decide punishments too severely or too leniently. The judges who please "the four sisters" – or the four daughters of God – should be blessed. These are *mercy,* who sees to that anger or hatred will not come into the judgment, *truth,* who sees to that the judgment is not based on lies, *justice,* who sees to that the judgment will not be unjust, and *peace,* who sees to that the judge does not adjudicate too fast and too severely. Wrongful judgments, on the other hand, are caused by *fear* for the one the judge is about to sentence, *greed,* when the judge takes bribes,

1 The changes are a matter of nuances, for example Isidore and Gratian have "pervertitur" for "is perverted" whilst Burchard has convertitur, and Isidore and Burchard have "pavescimus" for "we are afraid" whilst Gratian has "pertimescimus".

2 The text is similar to Isidore and Burchard (see above) but with other additions and changes, for example, where Isidore and Gratian have "pervertitur" and Burchard has "convertitur" for "is perverted", Alcuin has "subvertitur".

hatred, when the judge hates the one he is about to sentence, or *friendship*, when the judge wishes to help a brother of his guild.[3] These four aspects are described as "bastards", who should not be allowed to chase away the four sisters (Taranger 1915, 58-60).

Jørn Øyrehagen Sunde has analysed the text on God's four daughters. It stems from a King's Mirror written in Norway probably in the 1260s, and it aims to "map out the fields of good and poor judgment, and to show that awareness of these must always be present in major court cases, when much is at stake" (Gløersen 1972, Øyrehagen Sunde 2014, 163). According to Øyrehagen Sunde, the story of the four daughters is a way to improve communication between the professional judge and the jurors; this communication was even "the key to changing the entire legal culture, because it extended communication on justice from the legal elite to a much wider group of participants in the legal life of the Norwegian realm" (Øyrehagen Sunde 2014, 164). The Jewish tradition in Psalm 85[4] is the source of inspiration, and that psalm is also quoted in the *Siete Partidas* (Gløersen 1972, 71, Øyrehagen Sunde 2014, 164).

There is a reference in the edition of the law code to the section on the four "bastards", that one should compare with a book on medieval preaches where there is a translated quote from *De Virtutibus et Vitiis* of Alcuin of York: "In four ways human judgment is perverted: by fear and by greed and hatred and love" (Unger 1864, 39-40, Taranger 1915, 60). Neither Øyrehagen Sunde nor Absalon Taranger, editor of an edition of the law code, discusses this part further, even though Øyrehagen Sunde more generally discusses influences from the *Decretum Gratiani* (Øyrehagen Sunde 2014, 170). To this should be added the view that the law code could have been inspired by knowledge of the *Liber Augustalis* (Rindal 2024, 23). However, it is clear that the part in the law code about fear, greed, hatred and friendship stems from the above mentioned tradition of texts by Isidore of Seville, Alcuin of York and Burchard of Worms and the *Decretum Gratiani*. Fear, greed and hatred are mentioned explicitly in the law, and friendship as mentioned there is closely connected to love. Indeed, in Aristotelian terminology, the same word *philia* was used for love and friendship (Konstan 2006, 4).

I think this suffices to conclude, that during the Middle Ages, there was a widespread understanding in European law, that a judge should not let fear influence judging. It formed part of the legal culture. Through texts by Isidor of Seville, Burchard of Worms and – not least – the *Decretum Gratiani*, the view that judges should not be influenced by fear was spread over Europe. The Norwegian example is important in this regard. Also phrases in oaths of office of judges must have been used as inspiration for oaths elsewhere.

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[3] The original text in modern Norwegian: 'Men naar man skal vogte sig vel for vrange domme, da kan man vanskelig vogte sig for det onde, uten at man kjender det; og derfor skal man erindre, at vrange domme blir til paa fire maater: enten av frygt, naar man frygter den, som man skal dømme; eller av pengegriskhet, naar man tilsniker sig en eller anden bestikkelse; eller av fiendskap, naar man hater den som man skal dømme; eller av venskap, naar man vil hjælpe sin lagsbroder; og da er det ilde stelt, naar disse horebarn faar indgang, mens hine egtefødte søstre, som før er nævnt, blir jaget bort; ti ilde mon den dom ansees i gode mænds øine og aller værst i Guds øine; og derfor er det altid bedst, at dette kapitel oftere blir oplæst, naar dom skal avsiges i store saker.'

[4] Psalm 85 verse 11, in the Latin Vulgate edition Psalm 84 verse 11: '*Misericordia et veritas obviaverunt sibi; justitia et pax osculatæ sunt*' (Mercy and truth have met, justice and peace kiss each other).

The “fear” that is relevant can of course be fear in relation to the parties. The Norwegian text is explicit in this regard. Hence, this type of fear can be placed under the headline “impartiality”. But equally relevant is fear in relation to powerful people outside the court room. I think this is clear from Isidore’s way of speaking about when we are afraid to speak the truth out of fear of *someone’s* power. This is even clearer when the author of *Rhetorica Ecclesiastica* speaks about fear of a *higher* power, which often forces someone to remain silent about an opinion of what is true.

This means that the “fear” that is relevant relates not only to impartiality but – above all – to independence. This is before the time of the institutional guarantees of independence. But before those guarantees, there was already a requirement that a judge should be independent “as a state of mind” (Sunnqvist 2022), to use a modern phrase from the case law of the European Court of Human Rights (*Khrykin v. Russia*, app. no. 33186/08, 19 April 2011, and *Baturlova v Russia*, app. no. 33188/08, 19 April 2011, identical §§ 28-30 in both cases).

3. Fearlessness and Courage

Is showing courage an effect of not feeling fear or of acting despite feeling fear? According to Aristotle, “it is for the sake of what is noble that the courageous man stands fast and does what courage requires” (*Nichomachean Ethics* 3.7; Konstan 2006, 134). In the discussion on Aristotle’s *Nichomachean Ethics*, one difficult point of analysis has been the relationship between being courageous and fearless, and being courageous despite the fear that one feels (Brady 2005, Vigani 2017). To put this in the context of judging, we could discuss fearlessness and courage thus: Fearlessness is that a judge does not feel fear and acts according to his or her duties, whilst courage is that a judge does feel fear but still acts according to his or her duties. Courage implies that a judge, who understands the nature of someone else’s anger or hatred and thus fears someone who is in higher power,[5] still hands down a lawful judgment. However, also a judge that does not feel fear fulfils his or her duty as a judge.

Courage (or fortitude) is one of the four cardinal virtues; prudence (wisdom), justice, and temperance being the three others. This thinking derives from the philosophy of Plato (428-348 B.C.), and Aristoteles combined them with further virtues (Bautz 1999, 11). Since the four cardinal virtues are especially important for judging, I will discuss them. Zeno of Citium (c. 334 – c. 262 B.C.) and the Stoics developed the thinking on the cardinal virtues, and the four virtues found their way into the Book of Wisdom of Solomon (8:7) in the Bible and the model was also adopted by Cicero (106-43 B.C.). His thinking further influenced Christian ethics, especially through St. Ambrose (340-397), who coined the term “cardinal virtues”. Also Isidor of Seville discussed them and paved the way for their importance for Alcuin of York (c. 735-804) and in the context of the Carolingian Renaissance (Bautz 1999, 11-12).

The cardinal virtues have to a great extent been communicated through iconography in the form of various symbols or attributes, separately or in the hands of a goddess. This iconography developed from about the Carolingian Renaissance until the sixteenth century when important collections of iconography were printed. Prudence commonly

[5] Cf. the references to Aristotle’s *Rhetoric*, 2.5, and Konstan’s comments quoted at the beginning of this text.

has a book, a snake, or a mirror (Bautz 1999, 261-272). Justice is since the thirteenth century onwards most commonly symbolised through the sword and scales (Bautz 1999, 273-281, Ostwaldt 2009, Resnik and Curtis 2011, Sunnqvist 2014). Courage or fortitude is commonly symbolised by weapons, a lion, a tower, or a pillar (Bautz 1999, 283-290). Temperance can be symbolised through fire and water or water and wine in two cups (Bautz 1999, 293-301).

The fact that courage or fortitude is symbolised by weapons, a lion, a tower, or a pillar, merits some explanation. Even though fortitude did not primarily concern physical but rather psychological strength, the symbols often related to physical strength, presumably because it is easier to find suitable symbols that way. Among weapons, swords and shields were frequent. The lion could function as a symbol in its own right or on a shield. A tower could be a symbol of fortitude in the sense of firmness and ability to resist and defend. A pillar, finally, could be a symbol of fortitude in the sense of stability, perseverance and resilience (Bautz 1999, 283-290). Especially the tower and the pillar thus function as symbols for a type of courage or fearlessness that relates to protecting the other virtues from attack and being able to resist and endure that attack.

When judging is discussed in terms of fortitude or courage, the attention turns from the case as such to the judge as a person. The judge could have acted neutrally, not influenced by fear, but also not in an especially courageous way. In some cases, the judge has for example interpreted the constitution or the law in a way that can be characterised as brave (Zahle 2003, 125-127). There are Swedish examples from the Second World War, when the district judge Andreas Cervin opposed direct attempts from the government to influence his judging (Graver 2020, 127-137 and 231-232). His courageous actions can be contrasted to the Supreme Court, which was on the one hand neutral and independent and thus in a sense fearless, but which did not fully meet the standard of courage that Cervin set, especially as the court did not see to the effects beyond the application of positive law in an international context (Wallerman 2018, 2019).

A brave person can be labelled a "hero". Hans Petter Graver has discussed not only Andreas Cervin but also other courageous judges in *Jussens helter* (Graver 2020). He has discussed the cardinal virtues and highlighted the fact that the ethics of judges must be developed and maintained through the behaviour of judges rather than through ethical rules and guidelines (Graver 2020, 227-241). To take this one step further – if we want the judge to be courageous in hard cases or difficult situations, independence as a "state of mind" must be prepared for that also in less hard cases and less difficult situations, it must be part of the self-understanding of the judge at all times.

4. The duties of a judge in a rule of law crisis

Recently, the ECtHR has had reason to discuss the rights and duties of judges in a rule of law crisis. The background is well known by now. In Poland, judicial independence and the rule of law have backslidden since the so-called Law and Justice party (PiS) came to power in 2015. The Constitutional Tribunal, the National Council of the Judiciary and all independent judges have been under attack. In 2017, Polish judges realised that they had to react and how important it is to maintain a dialogue with civil society. They have struggled since then (for an overview, see e.g. Zabłudowska 2022), and after the elections in October 2023, the work with re-establishing the rule of law has begun.

In *Baka v. Hungary* (app. no. 20261/12, 23 June 2016), the ECtHR recognised that it can be expected of public officials serving in the judiciary to show restraint in exercising their freedom of expression in order to preserve their image as impartial judges. On the other hand, the growing importance attached to the separation of powers and the importance of safeguarding the independence of the judiciary, and the public interest in questions concerning the functioning of the justice system, could make it legitimate for judges to use their freedom of expression even in politically sensitive contexts.

In *Żurek v. Poland* (app. no. 39650/18, 16 June 2022), the ECtHR referred to the Baka case but took the discussion one step further. The court found that a judge – Waldemar Żurek – who was a spokesperson of the Polish National Council of the Judiciary "had the right and duty to express his opinions on legislative reform affecting the judiciary" (§ 220). The court added:

> In the present case, the Court is assessing the situation of an applicant who was not only a judge, but also a member of a judicial council and its spokesperson. However, the Court would note that a similar approach would be applicable to *any judge* [italics added] who exercises his freedom of expression (…) with a view to defending the rule of law, judicial independence or other similar values falling within the debate on issues of general interest. When a judge makes such statements not only in his or her personal capacity, but also on behalf of a judicial council, judicial association or other representative body of the judiciary, the protection afforded to that judge will be heightened.
>
> Furthermore, the general right to freedom of expression of judges to address matters concerning the functioning of the justice system may be *transformed into a corresponding duty to speak out in defence of the rule of law and judicial independence when those fundamental values come under threat* [italics added]. (§ 222)

The court referred to that this duty has been recognised, inter alia, by the Council of Europe Consultative Council of European Judges (CCJE), the United Nations (UN) Special Rapporteur on the independence of judges and lawyers and the General Assembly of the European Network of Councils for the Judiciary (ENCJ) (*Żurek v. Poland* §§ 103, 111 and 112). This is interesting especially as the CCJE opinion from 2015 begins by saying that in "its dealings with the other two powers of state, the judiciary must seek to avoid being seen as guarding only its own interests and so overstating its particular concerns". Further: "Judiciaries must also take care not to oppose all proposed changes in the judicial system by labelling it an attack on judicial independence." But, importantly, "if judicial independence or the ability of the judicial power to exercise its constitutional role are threatened, or attacked, the judiciary *must* [italics added] defend its position fearlessly." (Opinion no. 18 (2015) on the position of the judiciary and its relation with the other powers of state in a modern democracy, § 41).

Similarly, the UN Rapporteur Diego García-Sayán stated in 2019 that as a general principle, judges should not be involved in public controversies. But in "situations where democracy and the rule of law are under threat, judges *have a duty* [italics added] to speak out in defence of the constitutional order and the restoration of democracy" (Report of the UN Special Rapporteur on the independence of judges and lawyers on freedom of expression, association and peaceful assembly of judges, 2019, § 102). And the General Assembly of the ENCJ in its Sofia declaration 2013 stated that:

> The prudent convention that judges should remain silent on matters of political controversy should not apply when the integrity and independence of the judiciary is threatened. There is now a collective duty on the European judiciary to state clearly and cogently its opposition to proposals from government which tend to undermine the independence of individual judges or Councils for the Judiciary. (Sofia Declaration on judicial independence and accountability, 2013, § (vii))

This approach is especially interesting in the context of the Repubblika (Maltese judges) judgment from the CJEU (C-896/19 Repubblika 20 April 2021 ECLI:EU:C:2021:311). The court made clear that it

> follows that compliance by a Member State with the values enshrined in Article 2 TEU is a condition for the enjoyment of all of the rights deriving from the application of the Treaties to that Member State. A Member State cannot therefore amend its legislation in such a way as to bring about a reduction in the protection of the value of the rule of law, a value which is given concrete expression by, inter alia, Article 19 TEU (…). The Member States are thus required to ensure that, in the light of that value, any regression of their laws on the organisation of justice is prevented, by refraining from adopting rules which would undermine the independence of the judiciary. (§§ 63-64)

If these statements are taken together, a development can be seen in recent years: The need to protect the rule of law from backsliding has increased, and the right and duty of judges to speak out in defence of the constitutional order, democracy, rule of law and judicial independence has been emphasized.

Late in 2022, the CCJE issued a new opinion on the freedom of expression of judges (Opinion no. 25 (2022) on freedom of expression of judges). There, defending judicial independence is discussed as a legal or ethical duty of judges, associations of judges and councils for the judiciary (§§ 58-62). The earlier – in the 2015 opinion – hesitation because of the risk that judges could be seen as guarding only its own interests is no longer as prominent as before. Conversely, it is made clear that "judges may address threats to judicial independence both at national and international level" (§ 59). And:

> If judicial independence or the ability of the judicial power to exercise its constitutional role are threatened, or attacked, the judiciary must be resilient and defend its position fearlessly. This duty particularly arises, when democracy is in a malfunctioning state, with its fundamental values disintegrating, and judicial independence is under attack. (§ 60)

It is added that since "the duty to defend flows from judicial independence, it applies to every judge" (§ 61). Still, the protection afforded to a judge that makes such statements not only in his or her personal capacity, but also on behalf of a judicial council, judicial association, or other representative body of the judiciary, will be heightened (§ 61). It is clear from the references that the *Żurek* judgment has been important for the new CCJE opinion.

It was problematic that the CCJE opinion from 2015 stated that judiciaries "must take care not to oppose all proposed changes in the judicial system by labelling it an attack on judicial independence." That statement was too unconditional: It did not attach enough weight to the fact that judges need to protect independence at all times – if independence is destroyed step by step, it will be too late to react at the final step.

Admittedly, there must be some sort of argument against judges trying to use independence as a reason to stop procedural reforms aiming at, for example, promoting the right to a fair trial in a reasonable time. But the key to the solution lies exactly in what is at stake, namely the right to "a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law" (art. 47 of the EU Charter, similar in art. 6 ECHR). The CJEU has confirmed that independence is part of the essence of that right (See e.g. C-216/18 PPU LM 25 July 2018 ECLI:EU:C:2018:586 §§ 63-64), and when judges protect their independence it is (and should be) to safeguard a fair trial.

5. Conclusions

A cornerstone of judging is that the judge does not hand down a wrongful judgment because of fear in relation to the parties or in relation to powerful people outside the courtroom. This is a well-established principle in European law since the Middle Ages and is now part of the right to a fair trial. It can be discussed whether this requires that the judge is fearless (does not feel fear), or that the judge is courageous (feels fear but does not let that influence him or her). Be that as it may, the effect is that same: the judge has to do his or her duty. Perhaps it is suitable to connect to the tower and the pillar as symbols of fortitude, indicating firmness, stability, perseverance, and resilience, which are aspects of judging beside justice, prudence and temperance.

There are situations in which judges have to step forward and have a duty to speak out in order to protect the rule of law and the independence of the judiciary. Such situations have been clearly visible in Europe in recent years. Through this development, centuries-old cardinal virtues and basic ethical principles of judges have been brought to new life. Through the *Żurek* judgment and the 2022 CCJE Opinion, it has been made clear that every judge has a duty to speak out and must be resilient and defend judicial independence fearlessly. This is a far-reaching duty, going well together with the principle that the rule of law should not be allowed to decline. Active protection of the independence must be part of the self-understanding of the judge at all times. What should be in the mind of the judge is not the independence in its own right, but the reason for independence: to guarantee a fair trial in a state where the rule of law prevails.

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