SUMMARY

The Judge’s Ideology

This book contains an explorative inquiry of the jurisdiction, from which non-judicial enunciations were taken, with the help of which one tries to reconstruct a judge’s ideology, and this more particular in relation with the family. The empirical material is the total jurisdiction of the civil chambers of the Court of Appeal at Ghent in the year 1972.

In a comprehensive methodological introduction the author criticizes two other inquiries in the same direction, by justifying the purpose of this article. The procedure followed here, i.e. the substantial analysis of non-selected material, seems, because of theoretical and of practical reasons, to be preferred to other methods, as the substantial analysis of the published jurisdiction or of the judicial publications, the interviews or the observation of the sessions of the courts.

The used notions are defined (the empirical, evaluating, estimating and normative enunciations). The ideology is defined as the factual, estimating and normative vision on man and society. The hypotheses which have served for the examination as a guideline for the inquiry are looked at in a critical way and seem now to be accepted as working hypotheses.

The methodological instruction ends with a short consideration about the role of the judge as a decider, who ends not (not: solves) the raised disputes according to a fixed procedure within a reasonable term, whereby he is bound by rules and disposes of limited working-instruments. The judge has a function of social control whereby he expresses and applies not only legal rules but also non-judicial value judgements and rules.

In the jurisdiction empirical enunciations are regularly considered as proved without any motivation or reference to sources. One can presume that the judges rely on their experience, which is nevertheless a distorted experience because of the social provenance of the magistracy and of the process of socialization which they undergo in the education and in their professional career. Also the professional experience doesn’t produce representative information: the judge doesn’t stand in the daily life but handles only as an outsider pathological cases. A systematic appeal to other disciplines seems therefore desirable: sociology, psychology, a.o.

By the evaluating enunciations the empirical test is only possible after the fixing of the scale of references, which itself cannot always be fixed in accordance to objective criteria.

By the value judgments the possibility of control lies not in a reference to empirical material, but in a deepened substantial motivation. Now it seems not only that in the jurisdiction the value judgments are rarely motivated, but that they are also formulated under the neutral form of a descriptive enunciation.

Extra-judicial rules are often applied in decisions by juridical notions, such as fault, good faith, a.o. The way in which the judges hereby proceed seems to show that they don’t see the relativity of the rules set up by them, but that they consider these as objective, indisputable rules. Mostly the attitudes are prescribed in a compelling way with reference to a preconceived pattern of conduct of the „normal and careful citizen “.

If we take now the rules, the value judgments and the (non-verified) empirical enunciations, which all are formulated in the jurisdiction, than it will be possible to puzzle together the ideology of the judges. This is elaborated here round the family.

The judges maintain the traditional cast between husband and wife (the mother at the hearth/the father working outside the house). In this way the education of the children is practically always trusted to the mother. Especially on this point the prejudices come up, for similar and even identical objections are estimated irrelevant with respect to the mother, but nevertheless sufficient, in order to declare the father incapable to educate his children. The judges assume a negative attitude towards the divorce. This finds expression by the estimation of the facts which are invoked as a ground of divorce and by the grant of alimony.

In a next chapter some considerations are dedicated to the logics of the submit of evidence as it appears in the decisions of the Court of Appeal at Ghent: concealed premises, sufficient/insufficient conditions, probability which is identified with security, value judgments which implicitly do emerge by the acceptance of presumption. Also the discovery of the law is discussed for a while. There are also some cases of remarkable interpretation of language. Further the interpretation of some notions is criticized: to break at once, severe fault, error, indemnity for the court costs, and one refers to some citations in which the paragraphs of the law are interpreted.

In the last chapter a number of statistical data is reproduced and discussed, with respect to the examined jurisdiction of the Court of Appeal at Ghent (1.051 decisions). Against 2,3% of the decisions an appeal to the Court of Cassation has been made. 96% of the actions in appeal have been admitted, 44,5% were considered as well-founded. In 19,8% of the cases the prosecutor gave an advice. Only 4% of the given advices differed from the final decision. In 14,4% of the decisions an assessment has been ordered. Further is ascertained that the Court of Appeal preserves a certain distance with respect to the first judge (only in 7,5% of the decisions one goes extensively into the first sentence, whereas in almost half of the cases this sentence has been reformed).