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The Fundamental Premises of Judicial Communicative Competencies

The most current debates in the state of the art underlie two apparently contradictory problems, namely, (i) moral responsibility of a judge for improving law through the process of application of this law and (ii) judges' commitment to protect certain values, fundamental to a (certain) system of law. In my view, however, the two problems recall the third and much more basal as well as fundamental issue of judicial communicative competencies. The concept of communicative competencies, in particular, discursive-democratic competencies refers to interpreting a certain legal text but also to understanding, interpreting and articulating moral norms and ethical or political values as well as potential conflicts between them which one may always find out behind the legal text and a certain branch. More important is even their relevance to, and condition for, the full participation in the discursive community of judges, the community that constructs 'a chain novel', that is the leading interpretative strategy of the judiciary with regard to the most fundamental principles. Crucial, however, seem to be discursive-democratic competencies of judges, which in this case could be even called a most profound condition, for their possibility in partaking in a broader institutional setup design for law making activity.