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Underrättsdomaren

En rättsvetenskaplig studie om underrättsdomarens rättstillämpande roll och förhållande till den nationella lagstiftaren

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Sammanfattning

In the Swedish constitutional system, lower-court judges play a central role in the application of law, yet little is known about how they understand this role in relation to the role of the national legislator. This thesis explores how Swedish lower-court judges understand their role in legal application, with particular attention to its relationship to the role of the national legislator in the constitutional system. The study focuses on judges' own conceptions of what it means to apply the law, rather than on their actual practices or the outcomes of judicial decisions.

The research is based on interviews with currently serving lower-court judges, capturing how they view and reflect on the application of law and use of different legal sources. Using thematic analysis, three ideal-type roles are constructed to illustrate variations in these conceptions: The Civil Servant, The Guardian, and The Creator. The Civil Servant emphasises strict application of legislation and loyalty to the legislator. The Guardian highlights responsibility for maintaining the integrity of the legal system, including adherence to principles and to the hierarchy of norms. The Creator expresses a conception of the judge as also contributing to the development of law through judicial law-making.

The constructed roles are analysed in relation to institutional and constitutional conditions and prior discussions about the role of the Swedish judge, as well as compared to each other. The analysis shows how the different role conceptions can be understood as expressions of different ways of relating to the institutional and constitutional conditions shaping the Swedish constitutional system. Furthermore, the comparison between the roles demonstrates that the different role conceptions can be seen as positioned within a tension between tradition, change, and the practical realities of everyday judicial work, ranging from a view of the judge as primarily serving the legislator to one of acting as a guardian of the legal system or, to some extent, its co-creator.

Overall, by constructing, analysing, and comparing these role conceptions, the dissertation contributes to a nuanced view of the diversity of the self-understandings of Swedish lower-court judges regarding their role in legal application.

Nyckelord: lower-court judges, legal reasoning, legal sources, role conceptions, judges´ self-understandings, constitutional law, interviews, thematic analysis, Sweden

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