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On Justice in Judicial Application of Law

O sprawiedliwości w sądowym stosowaniu prawa

ABSTRACT

The article addresses the issue of justice in the judicial application of law. The discussion is focused on justice understood in substantive terms. The traditional formula "to render to everyone his or her own" (*suum cuique tribuere*) was adopted, filled with the content of natural, innate rights of the human person. The study identifies difficult cases and particularly difficult cases (referred to as truly difficult cases) in the judicial application of law. Difficult cases are situations where the legal provisions (normative act) that are to be the basis for the decision are unjust, immoral, wrong. Various possibilities of reaching a fair decision in such situations are identified, based on "legal instruments", and therefore within the legal framework, focusing on the validation decision (establishing the normative basis for the law applying decision) and on practical (operative) interpretation. Particularly difficult cases (matters) are situations where a legal regulation is manifestly unjust, and thus morally grossly defective, wrong, while the law (the legal system) lacks "instruments" that would give the possibility of making a just decision. The possibilities available in such extraordinary, particularly exceptional and difficult situations of making a just decision, but which are necessary for the sake of justice, have been pointed out. The question of truth has also been tackled. The judge/court administers justice based on the truth. Learning about what has occurred in reality and establishing the facts in accordance with reality is the starting point, the precondition and basis for a just decision, while the basic (main) purpose of court proceedings is a just decision, which requires, in difficult cases and particularly difficult cases, to include in the legal (juridical) basis of the decision the normative requirements of justice (carriers of a just decision), which value is commitment-generating, obligation-making, and which "demands" that "everyone be given his or her own".

Keywords: justice; substantive justice; truth; difficult cases and particularly (i.e. truly) difficult cases in judicial application of law

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INTRODUCTION

The category of justice is one of fundamental moral values and is an underlying value of law. Justice brings together the moral and legal spheres; it is a bond of the moral and legal order. This value, as it is usually adopted, is the most fundamental, rudimentary for the processes of applying the law. Cases of violation of justice in the application of law are subject to moral opposition and sometimes provoke strong moral indignation. It is worth reminding the words of Socrates: "Only he who unjustly put some one to death, (…) I called him pitiable",[1] and let us emphasize at this point that we refer this thought to material, substantive justice.[2]

Referring back to classical distinctions in acts of applying the law, it is about compensatory justice. This kind of justice involves a certain offset, when the judge in a situation of dispute is supposed to compensate for,[3] as if to "straighten out" – and thus "render to everyone his due". It was Aristotle to first pointed out that the judge's responsibility was to find a middle ground with what had become unequal as a result of a breach. Essentially, then, it is a matter of rectifying something and restoring equality between the parties.[4] Compensatory justice[5] is traditionally referred to as the justice of judges.

We are going to try to approach the issues as demarcated by the title of this paper more fully, more deeply.

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[1] Plato, *Gorgias*, [in:] *Plato in Twelve Volumes*, vol. 3, Cambridge–London 1967, https://www.perseus.tufts.edu/hopper/text?doc=Plat.+Gorg.+469b&fromdoc=Perseus%3Atext%3A1999.01.0178 (access: 9.4.2025), 469b.

[2] We emphasize this because a distinction is made in relation to the application of the law between, among others, formal and procedural justice, but also legal, legalistic justice.

[3] The etymology of the term *iustitia* is sometimes associated with the term *ius* – law (in common language *ius* meant "to fit", "to correspond to something in size", "to adjust", "to match") and with the verb *iustare*, which meant in vernacular Latin "to be adjusted", "fitted", "matched". Cf. K. Wroczyński, *Ius*, [in:] *Powszechna encyklopedia filozofii*, vol. 5, Lublin 2004, p. 115.

[4] Cf. W. Dziedziak, *Przyrodzona godność człowieka podstawą sprawiedliwości. Znaczenie oraz kilka racji uzasadniających*, "Prawo i Więź" 2023, no. 1, pp. 28–29.

[5] It is sometimes stated in the literature that there are also elements of distributive justice in the judicial application of law, but this (not an indisputable position and distinction) is irrelevant when we consider judicial justice as such.

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NOTION OF JUSTICE

In Polish law, the obligation (imperative) expressed in Article 2 of the Polish Constitution[6] to implement the principles of social justice should be understood as one related to the universal value: justice expressed in the initial part of the Preamble of the Polish Constitution.[7] Justice as a universal value is a pre-legal, meta-juridical category, prior to positive law. This value is supposed to be embodied in (through) law. The order expressed in Article 2 applies not only to legislation, but to all authorities, including courts. Justice is supposed to genuinely affect the creation (making) of law, its understanding (interpretation) and application. This value must be at the heart of the judicial application of the law and be pursued in its practice.[8]

But what is justice? Justice as a universal value? How should it be understood? The idea is "to render to everyone his or her own" (*suum cuique tribuere*).[9] We have already mentioned this saying, but it is often claimed in literature that it is an empty formula, or just a "strictly formal" one, and even considered preposterous by some. One cannot agree with this.

Justice demands that "everyone be given his due". *Suum cuique* – to give "to everyone his or her own". But what to give, what is one's own? What is mine, what is my own, what is due? It's about the rights of man. A human person has powers, rights derived from their innate human dignity. These rights derive from the ontological human structure. These are natural rights. The formula of "rendering to everyone their own" is associated with a natural right, a subjective right, a right to something, and thus giving "something to which one has a right". And since there are rights (man has rights, he/she is entitled to), then someone has obligations. These rights are correlated with obligations of others.[10] As a starting point, these natural powers, the rights vested in every human being, oblige the legislative authority to ensure, safeguard, guarantee and make them real.[11] However, in terms of the

[6] Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws 1997, no. 78, item 483, as amended). English translation of the Constitution is available at https://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm (access: 10.6.2025).

[7] The Polish constitutional legislature invokes justice in the Preamble of the Polish Constitution, rightly placing it among universal and all-human values, and also stating that the Polish Constitution is based on the respect for freedom and justice.

[8] Cf. W. Dziedziak, *O prawie słusznym (perspektywa systemu prawa stanowionego)*, Lublin 2015, pp. 219–224.

[9] We, thus, refer to the classical approach underlying European reflection on justice and law.

[10] Cf. W. Dziedziak, *Justice as Relations in Social Life*, "Studia Iuridica Lublinensia" 2023, vol. 32(2), pp. 103–115.

[11] This is about affirming them, enshrining them in positive law and a system of guarantees and protection of these rights, which also involves determining and providing conditions that allow people to exercise their due rights, and requires the cooperation of other authorities as well.

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application of law, the obligation of others not to infringe these rights is important. Essentially, it is a negative obligation (to abstain from acting).

Naturally, the principle of "rendering to everyone his or her own" (*suum cuique tribuere*) may be respected by the legislature, in which case the entitlements/rights unspoiled by a "false" interpretation and supra-modern narrative are enshrined in positive law. It should be stressed that human rights have been aptly read and expressed in the Universal Declaration of Human Rights of 1948[12] and "reaffirmed" in the two Covenants on Human Rights of 1966,[13] they were also essentially properly expressed in the Polish Constitution[14] and are based on the same source – the inherent (innate) dignity of the human being – from which they were derived.

It should also be borne in mind that in a multitude of more specific issues, the title to give someone his/her due will be found precisely in positive law, if its regulations comply with the more general directives of justice.[15] Positive, statutory law in many normative regulations (laws, ordinances) concretizes and details these entitlements, we can say that completes them in a certain way. However, it is not always the case that the rights that are prerequisites of justice are respected by a given legal system, as they are not always inscribed in legal norms. It happens sometimes that the provisions contained in laws and secondary legislation are incompatible with constitutional regulations.

It should be emphasized that justice as a universal value and as a principle-norm imposes a moral-legal obligation to render to everyone their fundamental, basic rights. Justice is commitment-generating.

In this study, we focus on judicial justice,[16] understood – as can be seen in view of the above considerations – in substantive, material terms.

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[12] Universal Declaration of Human Rights, adopted and proclaimed by General Assembly resolution 217 A (III) of 10 December 1948.

[13] Cf. International Covenant on Civil and Political Rights, New York, 16 December 1966, UNTS vol. 999, p. 171; International Covenant on Economic, Social and Cultural Rights, New York, 16 December 1966, UNTS vol. 993, p. 3.

[14] However, with regard to social rights, the Polish Constitution imposes on the state an obligation to create the conditions for their exercise, rather than declaring them as vested, e.g. the lack of right to labour.

[15] It should be strongly stressed that these are real, undeformed, natural rights and not entitlements that are the result (outcome) of some ideological pressure or even manipulation. Therefore, these are innate, objective rights. This is because there is a risk of considering as human rights some apparent rights, called human rights or even inherent rights. Nowadays, the inflation of human rights leads to their trivialisation, when manifested different needs become new rights. The term "right" now covers an increasingly wide spectrum of human behaviours, needs, individual wishes or just preferences.

[16] Cf. W. Dziedziak, *Kilka uwag o dyskrecjonalności sędziowskiej nakierowanej na sprawiedliwość*, [in:] *Omnia sunt interpretanda. Teoria i dogmatyka prawnicza. Księga jubileuszowa dedykowana Profesorowi Leszkowi Leszczyńskiemu*, eds. A. Korybski, B. Liżewski, Lublin 2023, pp. 85–95.

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In the processes of judicial application of law, it is possible to distinguish difficult cases and particularly difficult cases, and the latter can also be described as truly difficult. We do not consider as difficult cases (which does not rule out the fact that, due to other contexts than strictly normative, especially concerning factual findings, the decision will prove to be complex, difficult or very difficult to make) the situations where the law itself is substantively fair, justice is inscribed in the normative act,[17] in the norms being applied, and the court (judge) acts on the basis of such a law, naturally with the adherence to relevant competence and procedural requirements. It is easier to make a fair decision when the law itself is just in terms of its content, and the procedures are clear and fair (although this does not yet predetermine that the decision will indeed be fair, regardless of the question of factual findings). Before we move on to the situations outlined above, let us emphasize that making a fair decision by a judge in difficult, and especially in particularly difficult cases there is an art to it; or let's even put it more strongly: it is actually an art. Let us start from difficult cases.

DIFFICULT CASES IN JUDICIAL APPLICATION OF LAW

Let us consider what if the legal provisions that are supposed to form the basis for the decision are unfair, immoral and wrong? And, consequently, the decision would also be like that? Should an unfair, immoral, wrong decision be made? Is it necessary to look for a just, morally appropriate and therefore good decision? But how?

Before we try to answer this questions, let us emphasize that the freedom of decision is something inevitable in the law application processes. A universal feature (property) of these processes is the existence of discretion margins (freedom of decision).[18] We can talk about margins in terms of validation, interpretation, evidence or even legal subsumption, as well as in terms of determining legal consequences. Due to the framework of this study, we will focus on the interpretative margin and validation margin.

[17] But also in such cases the "argument from justice" may be relevant in linguistic interpretation, when it allows for the selection of one of the sets of linguistically admissible meanings – the meaning that is in line with justice. The argument from justice may also confirm the result(s) of linguistic interpretation and reassure the law applying entity as to the appropriateness (reasonableness) of the linguistic meaning.

[18] Cf. A. Korybski, L. Leszczyński, *Stanowienie i stosowanie prawa. Elementy teorii*, Warszawa 2015, pp. 174–178. Margins of discretion are a manifestation of discretionary power in the application of law by courts.

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1. Reaching justice at the stage of practical interpretation (operative, decision-making interpretation)

One may as the question: How to interpret it, what should be the guiding principle? The answer is both simple and clear: In accordance with justice. The law is to be interpreted as required by justice. And this is the fundamental, central role of justice in judicial interpretation, i.e. the guiding function that controls the entire interpretation process. To be more specific, a fair decision should be sought through systemic and axiological rules, and this is in particular the compliance with the constitutional meta-principle of law as expressed in Article 2 of the Polish Constitution, and it is also necessary to refer to the following constitutional meta-principles: the principle of the common good (from Article 1 of the Polish Constitution) and the principle of inherent human dignity (from Article 30 of the Polish Constitution), which, of course, is the fulfilment of the requirement of pro-constitutional interpretation (the imperative of interpreting the law in accordance with constitutional meta-principles and meta-contents), but also to maintain the axiological coherence of the legal system at the level of fundamental meta-axiology (i.e. these three meta-principles, meta-values).

As an auxiliary means, a fair decision should be sought through teleological interpretation, which involves taking into account the *ratio legis* and *ratio iuris*. *Ratio legis est anima legis*. Neither objectives of a specific branch of law nor objectives of a given regulation may be freely determined. The intended purpose of a piece of legislation must not contradict the purpose of law as a whole. The purpose of law cannot be ignored in the process of its interpretation. When it comes to *ratio iuris*, it is not a short-term objective, it is a supreme objective. All objectives remain (to some extent) interdependent in achieving the overarching objective. The *ratio iuris* of the whole system of law is man.[19] As M. Piechowiak writes, the principle of the common good stated in Article 1 of the Polish Constitution indicates that "the integral development of individuals constitutes the *ratio iuris* of the entire legal system".[20]

[19] Therefore, there is a departure from linguistic interpretation, even a clear and unambiguous one, when the linguistic meaning is contrary to the fundamental value of justice. We reject the linguistic meaning if, on the basis of that kind of interpretation, the final law application decision would be unjust, and instead we attribute to the legal text (legal provision) an intrinsic meaning consistent with justice that differs from its linguistic meaning. It is necessary to look for the sense of the law beyond the linguistic wording of the provisions, extracting from the law the content that has the characteristics of justice, if the law contains such content.

[20] M. Piechowiak, *Dobro wspólne jako fundament polskiego porządku konstytucyjnego*, Warszawa 2012, p. 281. In this monograph, M. Piechowiak comprehensively analysed Article 1 of the Polish Constitution, referring to the perspective determined by the preparatory work on the Polish Constitution. The addressee of the principle expressed in Article 1 of the Polish Constitution is the public authorities covered by the obligation (order) to shape the state and its law in such a way as to serve people, their development and the communities created by them. Of course, this obligation is addressed directly to entities interpreting and applying the law.

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Moreover, this objective can also be read from Article 30 of the Polish Constitution. And it is the natural (innate) dignity of man that is the foundation of justice,[21] the general formula of which is *suum cuique tribuere*. An interpretation consistent with the norms (principles) of public international law and a pro-Community interpretation may also be helpful.[22] The interpretative influence of previous judicial decisions (including the so-called interpretation precedent) should also be considered possible.

2. Validation decision (establishing the normative basis for the law application decision) and justice

Of course, along with interpretation, a fair decision may also be a result of validation choices[23] (validation decision),[24] where the co-basis (basis) for the decision may be the constitutional meta-principle of social justice (from Article 2 of the Polish Constitution) and, not necessarily as an auxiliary means (because also as a strengthening means), the following meta-principles: of the common good (from Article 1 of the Polish Constitution) and of the inherent and inalienable dignity of the human being (from Article 30 of the Polish Constitution).[25]

Moreover, when aiming at a fair decision, the meta-clauses referring to the principles of social justice (Article 2 of the Polish Constitution) and the common

[21] The innate human dignity, being a strictly legal category, is the basis of justice. However, the attitude of justice can be seen and analysed in a much deeper dimension. In our civilization and cultural sphere, human dignity is supported above all in Christian philosophy and theology. For Christians, the dignity of the human person has not only a natural (innate) dimension, but also a supernatural one. John Paul II wrote: "Man has been given a *sublime dignity*, based on the intimate bond which unites him to his Creator: in man there shines forth a reflection of God himself" (John Paul II, *Evangelium vitae*, 34, 1995, https://www.vatican.va/content/john-paul-ii/en/encyclicals/documents/hf_jp-ii_enc_25031995_evangelium-vitae.html, access: 9.4.2025). In the encyclical *Sollicitudo rei socialis*, we can read: "Thus man, being the image of God, has a true affinity with him" (John Paul II, *Sollicitudo rei socialis*, 29, 1987, https://www.vatican.va/content/john-paul-ii/en/encyclicals/documents/hf_jp-ii_enc_30121987_sollicitudo-rei-socialis.html, access: 9.4.2025). When we take into account this dimension, where human dignity has its ultimate source in the creation of man in the image and likeness of God, and where the Incarnation and Redemption through Christ add splendour to man, it immeasurably strengthens the basis for justice and elevates justice.

[22] Specifically, it is a question of compliance with the standards set out in international human rights norms.

[23] At this stage, the authority selects provisions and may choose the right provision(s). Thus, the role of justice may involve the selection of the appropriate provision(s).

[24] It may be the case that the circumstances of a particular case cause the need to stretch or narrow the scope of application or regulation of a different norm than the one that has "routinely" been applied in similar, typical situations.

[25] Article 30 of the Polish Constitution requires from public authorities to respect and protect human dignity. Also the Preamble "calls upon" all those applying the Polish Constitution "to do so, paying respect to the inherent dignity of the person" and to consider the respect for it as the unshakeable foundation of the Republic of Poland.

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good (Article 1 of the Polish Constitution) may be helpful; also the referring clause on the legitimate interest of citizens (from Article 7 of the Administrative Procedure Code)[26] may be of significance, of course primarily to administrative courts. It is worth noting that the general clauses intended to guarantee a ruling that is fair in terms of substantive justice are referred to as "royal paragraphs". Let us emphasize that principles and clauses can mutually overlap, support and reinforce, and this is related to values, intra-legal axiology and external values. The content of decisions to apply the law may be reinforced by the criteria of referring clauses and the criteria of constitutional principles.

Striving towards a just decision may involve the direct application of international law, including the principles of this law, as well as the regulations concerning fundamental human rights and freedoms. As far as the sources of international law are concerned, international custom may also be important. Relevant norms of EU law may also be used as a basis for decisions.[27] A complementary element may be previous law application decisions (the argument *per rationem decidendi*); it is about the case law of national,[28] international and supranational courts.[29]

Of course, this is only a brief outline of existing possibilities.

PARTICULARLY DIFFICULT, THAT IS TRULY DIFFICULT CASES (MATTERS) IN JUDICIAL APPLICATION OF LAW

However, what if the normative act not only were devoid of justice "inscribed" in it, but the regulation were manifestly unfair, wrong, and the law (the system of law) – the constitution, normative regulations, provisions or case law – contained no "instruments" that give the opportunity to make a fair decision? We are considering a hypothetical situation and we are arriving at the most difficult and contentious issue. In such a situation, the judicial decision should also be (must be) fair, based on values not expressed in legislation, but existing as external values, which requires great skills (indeed a manifestation of an art). Justice is a universal,

[26] Due to the criterion of equity, this reference should be understood not as related to benefits or utility, but aimed at the good of man (a specific good of man). Undoubtedly, this construct may refer to a citizen, although the provision refers to the interest of citizens.

[27] The obligation to refuse to apply a national provision incompatible with EU law is also more and more recognised by administrative courts. Cf. A. Szot, *Swoboda decyzyjna w stosowaniu prawa przez administrację publiczną*, Lublin 2016, pp. 196–198.

[28] This especially regards decisions (rulings) of the courts of highest instances: the Supreme Court, the Constitutional Tribunal, the Supreme Administrative Court, but also national higher courts, although decisions of courts of equal or even lower instances may be helpful.

[29] These are mainly the rulings of the European Court of Human Rights and the Court of Justice of the European Union.

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objective, pre-legal value and, as we have said before, an obligation-generating value. Human dignity is also a universal and objective value. Dignity – natural (innate), inalienable, non-losable, indestructible, related to the very essence of the human being, inseparable from them, which by virtue of very human existence is a source of freedom and human rights – is of a pre-legal nature. These values are prior to positive law; they are pre-state, pre-constitutional, supra-constitutional, supra-positive. These values "call" for respecting, adhering to them.

In that case, they will be values from outside the legal system, externally influencing the final outcome of the court's action. But also here one can speak of an element of legality in the form of basing the decision-making process on the applicable legal provisions (the competence norm and procedural norms). Furthermore, in such extremely difficult situations, one could look for the backing (support) for the decision – namely a validation choice and interpretative influence – on the unarticulated carriers of law in the form of unwritten rules (not formalised in regulations), but inherent in the culture of positive law, rooted in tradition, principles of law, as well as on principles-postulates (understood e.g. as the purpose which the law should serve, manifested in acts of law application). Basic, universal moral principles and norms can also be of assistance.[30]

Moreover, it would be possible to additionally "concoct" the grounds for the decision by referring to the values (principles) constituting international law.[31] The Universal Declaration of Human Rights of 1948[32] can also be relied upon (although it is not an international treaty), since it articulates natural rights and invokes[33] the category of inherent human dignity,[34] and was conceived as a "common standard of achievement for all peoples and all nations".

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[30] Positive law cannot abolish moral law. And, let us recall, justice is a strictly moral category.

[31] Such a role can be played by reference to universally recognised principles of international law. Cf. L. Leszczyński, M. Zirk-Sadowski, *Wybrane zagadnienia szczegółowe i porównawcze*, [in:] *System Prawa Administracyjnego*, vol. 4: *Wykładnia w prawie administracyjnym*, eds. R. Hauser, Z. Niewiadomski, A. Wróbel, Warszawa 2015, p. 442.

[32] Jacques Maritain, a French personalist philosopher, when speaking in the United Nations, put the dignity of every human person at the centre of the discussion and contributed to the recognition of this category as the basis of the international system of human rights protection. For the influence of Maritain's personalist philosophy on the Universal Declaration of Human Rights, cf. F.J. Mazurek, *Godność osoby ludzkiej podstawą praw człowieka*, Lublin 2001, pp. 128–130.

[33] The very name of the document: "Declaration", indicates that the rights expressed therein exist in reality, and its content is declaratory, not constitutive. The Declaration does not establish nor create human rights, but merely confirms, simply declares. As H. Waśkiewicz (*Prawo naturalne – prawo czy norma moralna*, "Roczniki Filozoficzne" 1970, vol. 18(2), p. 15) writes, the Declaration "is based on natural law and is binding by the force of natural law".

[34] The Preamble of the Declaration begins as follows: "Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world (…)", and Article 1 states: "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act

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The possibility of reaching a fair decision could also involve, e.g., functional interpretation. According to some scholars, this type of interpretation offers the possibility of recourse to extralegal normative systems. The functional context, as J. Wróblewski wrote, "contains also extra-legal assessments and social rules".[35] Functional interpretation, as it is sometimes stated in the literature on the subject, gives the opportunity to take into account extra-legal assessments and values. It can be assumed that extra-legal assessments, norms and values are a component of the functional context. Thus, it can be assumed that functional interpretation may refer to the values that are not attributable to the legislator (in the absence of such a possibility due to their absence in the legal system) but to the "values of the interpreter" (values adopted by the interpreter, i.e. the entity applying the law).

In such extraordinary situations of necessity, a judge applying the law should go beyond the area governed by positive law,[36] taking into account the fact that this law is not an end, but a means, and if this means fails, he is to make a just decision for the sake of the human person, respecting the universal rights and freedoms of the human person and at the same time being an expression of the affirmation of this person's inherent dignity.

In addition to the issues discussed above, there is also the problem of factual findings.

TRUTH IN LAW APPLICATION AS A CONDITION AND PREREQUISITE FOR JUSTICE (FAIR DECISION)

Substantive justice, occurring at the stage of application of law, is of a concrete nature, dependent on the facts of the case. Compensatory justice is understood as substantive justice taking into account correctly established facts. The administration of genuine justice requires knowledge of the truth.

It should be stressed that in the processes of applying the law, there is only one truth (referred to as material, objective,[37] actual truth) and "the so-called truth" (i.e.

towards one another in a spirit of brotherhood". It should also be emphasized that the Declaration in the Preamble states that human rights should be "protected by the rule of law". The Preamble in its further part also refers to dignity: "Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person".

[35] J. Wróblewski, *Sądowe stosowanie prawa*, Warszawa 1988, p. 145.

[36] We need to break through, go beyond the positivist paradigm.

[37] The term "material truth" comes from Western European scholars, while the name "objective truth" comes from Soviet scholars. Let us emphasize that truth (referred to as material truth, objective truth) is not a specific kind or type of truth, but simply truth. As T. Gizbert-Studnicki (*Prawda sądowa w postępowaniu cywilnym*, "Państwo i Prawo" 2009, no. 7, p. 7) aptly puts it: "There is a relationship of equivalence between the scope of the term 'material truth' and the term 'truth', just as there is a relationship of equivalence between the scope of the term 'fact' and the term 'actual fact'. This author also

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judicial, formal, legal truth), but the latter does not refer to the concept of truth in its basic classical, epistemological sense. The adjectives given to it (material, objective) are either redundant or do simply relativise it. This so-called formal, judicial, file truth deserves, at most, to be defined as "the factual state established by the court, not as truth".[38] Let us reiterate: there is one truth in the processes of applying the law (and not the appearance of truth or some fiction of it); it is about truth in the cognitive sense.

A requirement for justice in the application of law is the coherence of factual findings with reality. If one deviates from the truth, then reality (elements of the factual state) essentially becomes a matter of some convention, negotiation; it is like an "agreed reality", which can be very far from the truth. In the case of the so-called "formal truth", something that has been accepted, deemed or agreed upon as true somehow misleads (or can mislead) as to the actual state of affairs, so how can it form the basis of justice, in the sense of giving everyone his due.

The judge administers justice based on the truth. When passing judgment, the judge determines the consequences of the truth. It is not possible to issue a right, fair ruling without a thorough examination of the facts and without a correct determination of the facts in accordance with reality. The court is supposed to get to the truth. Can we speak of a fair decision without this "foundation"?[39]

The starting point is the truth, and if this truth is not established, how can one speak of a fair decision, in the sense of giving everyone his or her due? If the truth is not established, how can one administer justice in the sense of rendering to everyone what is due to him/her? And it is precisely the judge whose responsibility, when administering justice, is to give to people what is due to them.

Knowing what has occurred in reality and establishing the facts in accordance with reality is the starting point, condition and basis of a fair decision. Thus, the truth is the starting point, condition and prerequisite on the way towards a fair decision, and the essential (main) goal of judicial proceedings is a fair decision. Truth makes it possible to read what is fair. But, of course, it does not predetermine the fair decision, and for various reasons.

To conclude this part of the discussion, it should be noted that a fair decision must only be based on facts that were correctly established according to reality. The rendering of justice, the administration of justice, depends on truth. The direction is

writes: "There is a relation of equivalence between the terms 'truth' and 'material (objective) truth'. The same relation exists between the terms 'true statement' and 'objectively true statement'."

[38] Cf. A. Górski, *Orzecznictwo Sądu Najwyższego w kwestii dowodu z urzędu jako szansy ustalenia prawdy w procesie cywilnym*, [in:] *Prawda w postępowaniu cywilnym. Quid est veritas?*, eds. M. Strus-Wołos, M. Wieczorek, Radom 2021, p. 153.

[39] H. Dolecki (*Ciężar dowodu w polskim procesie cywilnym*, Warszawa 1998, p. 95) writes that "the learning about truth, free from ideology, must be a basis of our process. This can be expressed more emphatically that there is no alternative for truth. Untruthful findings of the court cannot be the basis for a fair and correct decision".

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as follows: from the state of affairs being decided (i.e. the facts found) towards the text (or texts[40]) or, even more broadly, just for the sake of justice, towards the carriers of a fair decision. Let us recall that justice requiring "to render to everyone what is due to him or her" is commitment-generating, obligating. The normative requisites of justice (carriers of a fair decision) may need to be incorporated into the legal (juridical) basis of the decision when difficult cases and particularly difficult cases arise in the judicial application of law, although this incorporation itself is of a varied nature.

It sometimes happens that justice understood in substantive terms, conditioned by the factual state, requires, "demands" supplementation, correction of deficiencies in statutory law, which is done (should be done) by the court (the judge) competent to rectify these deficiencies, compensate for them, and thus "render to everyone what is due to them".[41] Sometimes, in order to restore the right order of things, to repair deficient social relations, to restore balance, to equalize, to "straighten out", it is necessary to resort to the "moral, normative force, the power of justice", and this is based on the necessary link with the truth.

CONCLUSIONS

As a conclusion, let as emphasize that the court (and the judiciary as a whole) is expected and required to adhere to justice. Any judge should be the "guardian" of justice. It is worth adding that Aristotle emphasized that "to go to a judge is to go to justice, for the ideal judge is so to speak justice personified".[42] Let us also quote the old maxim: *Iustitia non novit patrem nec matrem, solam veritatem spectat* ("Justice knows neither father nor mother, but regards truth alone"). Let us also recall Socrates' statement that "justice and every other form of virtue is wisdom".[43] Let us also add that every judicial ruling, decision in the application of law, as we can metaphysically say, leaves a mark on the universe.

[40] For example, because of the importance of the constitution and the role of pro-constitutional interpretation.

[41] It should be stressed that judicial application of law has also its moral dimension. Acts of law application are not indifferent to the moral law. The application of an unjust law, strict obedience to the law (*lex*) does not justify the evil done through it, while justice is aimed at good and is opposed to evil. It must be remembered that man is a moral being, and is not exempt from responsibility of this kind (i.e. moral responsibility) by the veil of legal regulations. Let us add that moral responsibility is often referred to as "ethics of conscience", and the judge is also supposed to rely in adjudicating on his/her own conscience, which is "reminded" by the wording of the judges' oath. Conscience is a manifestation of the judge's internal sovereignty and his/her moral autonomy.

[42] Aristotle, *Nicomachean Ethics*, vol. 19, Cambridge–London 1934, https://www.perseus.tufts.edu/hopper/text.jsp?doc=Perseus:text:1999.01.0054 (access: 9.4.2025), 1132a.

[43] Xenophon, *Xenophon in Seven Volumes*, Cambridge–London 1923, https://www.perseus.tufts.edu/hopper/text?doc=Perseus:text:1999.01.0208 (access: 9.4.2025), p. 156.

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ABSTRAKT

W artykule podjęta została problematyka sprawiedliwości w sądowym stosowaniu prawa. Prowadzone rozważania ukierunkowują na sprawiedliwość rozumianą substancjalnie. Przyjęto tradycyjną formułę „oddać każdemu to, co mu się należy" (*suum cuique tribuere*), wypełnioną treścią naturalnych przyrodzonych uprawnień/praw człowieka. W opracowaniu modelowo wyróżniono trudne przypadki i szczególnie trudne przypadki (określone jako rzeczywiście trudne sprawy) w sądowym stosowaniu prawa. Trudne przypadki to sytuacje, gdy przepisy prawne (akt normatywny), które miałyby być podstawą decyzji, są niesprawiedliwe, amoralne, złe. Wskazano różne możliwości dochodzenia do decyzji sprawiedliwej w takich sytuacjach w oparciu o „instrumentarium prawne", a zatem w ramach prawa, koncentrując się na decyzji walidacyjnej (ustalającej podstawę normatywną decyzji stosowania prawa) oraz na wykładni praktycznej (operatywnej). Szczególnie trudne przypadki (sprawy) to sytuacje, gdy regulacja prawna jest oczywiście niesprawiedliwa, a tym samym moralnie rażąco wadliwa, zła, a w prawie (w systemie prawa) nie ma „instrumentów" dających możliwość podjęcia decyzji sprawiedliwej. Wskazano, jakie są możliwości w takich nadzwyczajnych, szczególnie wyjątkowych i trudnych, lecz koniecznych z uwagi na sprawiedliwość sytuacjach podjęcia decyzji sprawiedliwej. Podjęto także problem prawdy. Sędzia/sąd w oparciu o prawdę wymierza sprawiedliwość. Poznanie tego, co zaistniało w rzeczywistości oraz zgodne z rzeczywistością ustalenie faktów jest punktem wyjścia, warunkiem i podstawą decyzji sprawiedliwej, natomiast zasadniczym (głównym) celem postępowania sądowego jest rozstrzygnięcie sprawiedliwe, co wymaga w trudnych przypadkach i szczególnie trudnych przypadkach włączenia w podstawę prawną (jurydyczną) decyzji normatywnych wymogów sprawiedliwości (nośników decyzji sprawiedliwej), która to wartość jest powinnościorodna, zobowiązująca i „domaga się", by „oddać każdemu to, co mu się należy".

Słowa kluczowe: sprawiedliwość; sprawiedliwość substancjalna; prawda; trudne przypadki i szczególnie (tj. rzeczywiście) trudne przypadki w sądowym stosowaniu prawa