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Andrzej Korybski
Maria Curie-Sklodowska University
andrzej.korybski@poczta.umcs.lublin.pl

Application of Law as an Object of Study: Key Concepts, Issues and Research Approaches

Stosowanie prawa jako przedmiot badań: podstawowe pojęcia, zagadnienia i podejścia badawcze

ABSTRACT

This article contains a comprehensive presentation of main research problems, approaches and proposals concerning the application of law in the contemporary Polish legal literature. One may assume that there are issues typical, at least in substantial sense, to the analysis of processes of application of law conducting from the perspective of statutory legal culture. The most promising research approach to the processes of application of law is the decision making approach.

Keywords: application of law, the statutory legal culture perspective, research approaches, decision making approach, application of law as the decision making process, decision of the application of law and its implementation

1. APPLICATION OF LAW AS AN OBJECT OF STUDY IN LEGAL RESEARCH

Application of law, understood as a multi-phase decision making process that takes place within public authority structures and that ends with a unique (concrete and individual) legal decision based on the relevant general and abstract foundation interpreted from the binding legal provisions, has been as important part of studies in jurisprudence for a number of decades now.[1] Scholars interested in the subject area of application of law and interpretation of legal provisions, legal argumentation and its outcomes include both the representatives of the so-called dogmatic legal sciences who research the particular domains and branches

[1] Cf. L. Leszczyński, *Zagadnienia teorii stosowania prawa. Doktryna i tezy orzecznictwa*, Zakamycze 2004, p. 15. Along similar lines of thinking: A. Bator (ed.), *Wprowadzenie do nauk prawnych. Leksykon tematyczny*, Warsaw 2012, p. 305.

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of binding law, and the representatives of the general study of law (including, in particular, legal theory).

The extent of interest in investigating the processes of application of law and their outcomes in the form of decisions to apply law depends on the cultural perspective within which the processes are perceived. Processes of application of law, as a separate area of study, are a natural research area for legal cultures based on the differentiation between lawmaking and application of law as two separate fields (cultures based on the statutory law). The fields are different in terms of the authority, organisation and procedures and, partially, in terms of the subjects (the decision making entities) of decision making processes. A further subject of study is to define the particular relationships between the two fields of decision making processes. In statutory law cultures (also referred to as the continental legal culture) the relationships are characterised by indicating the necessity to interpret the normative basis for the decision to apply law from the relevant sources of statutory law by public authorities that are equipped with lawmaking authority. In the precedent-based legal culture (also referred to as the Anglo-Saxon legal culture), separating the processes of lawmaking and application of law is of secondary importance due to the specificity of the system of sources of law and the lawmaking aspect of court rulings. According to Leszek Leszczyński, the notions of lawmaking and application of law in the Anglo-Saxon culture merge and the basic form of lawmaking (in particular with reference to private law) is court decision in particular and individual cases that forms the practice of precedent.[2] Consequently, the research questions in interpretation of law, legal argumentation and reasoning (that constitute an integral part of application of law as a separate are of study for both general and specific legal studies in the continental legal culture) are simply part of mainstream jurisprudence in the Anglo-Saxon culture where lawmaking and application of law are not differentiated.[3] In the jurisprudence based on the principles of the Anglo-Saxon legal culture the matter of application of law is dispersed: it is not covered by a single term or notion, and it is combined with research on court decisions and the functioning of the justice system.

No wonder therefore that separate treatment of application of law as an at least partially autonomous object of study of the contemporary jurisprudence is characteristic of the continental jurisprudence, i.e. statutory law jurisprudence. The questions related to application of law have been a distinct field of legal studies (including studies in theory and philosophy of law) for a few decades now. Tradi-

[2] Cf. L. Leszczyński, *op. cit*., p. 17.

[3] With reference to the British legal order as the contemporary exemplification of the Anglo-Saxon legal culture compare e.g. G. Rivlin, *Understanding the Law*, Oxford Univ. Press 2009, in particular pp. 4−8, 11−15, 19−33, 39−42. Compare also C.F. Stychin, L. Mulcahy, *Legal Method: Texts and Materials*, London 2003, pp. 283−364 (with reference to legal reasoning in search of the basis for judge's decision and its justification).

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tionally, in the continental jurisprudence we can distinguish the area of interpretation of law as one of the key research areas in the study of processes of application of law and their outcomes, both in general and specific legal studies. Currently, these questions pertain to, in particular, application of law in courts and are combined with the research associated with different threads of legal argumentation. It must be emphasized at this point that the tendency to narrow down the study of application of law to interpretation of law and legal reasoning/argumentation leads to the logical-linguistic method as the principal research method (the so-called dogmatic legal research method as the method specific for legal sciences). Also, in the general legal science (including the theory of law) the questions pertaining to interpretation of law and legal reasoning are the basic area of study of processes of application of law. In the traditional approach, application of law is researched predominantly from the point of view of reasoning applied in the establishment of the normative basis for the decision to apply law, and in the performance of the so-called subsumption as well as decision making procedures and justification of the decision to apply law. A characteristic feature of the legal-theoretical description and explanation of application of law is that it presents an appropriate model of application of law (including different types of application of law). This mode of study of processes of application of law is linked with research in application of law in specific legal sciences and often consists in an appropriate utilization of the binding legal norms (including the binding procedural solutions) to model the process of application of law. Approaches other than the dogmatic-legal one are a minority. Moreover, in the traditional jurisprudence paradigm they are often regarded as approaches beyond (or not entirely within) the scope of studies in jurisprudence.

When we discuss the study of processes of application of law, we can refer to universal phases of the process of application of law, universal notions that describe and explain the activities of particular legal subjects in particular phases (including reasonings that constitute the interpretation of law). A significant part of the description and explanation of the processes of application of law is the construction of the models of application of law, as well as the construction of the typology of application of law. A characteristic feature of application of law is, however, individualisation and specification of abstract and general legal norms: this means law understood not as an entire system of law (law in general) but as an application of a separate norm or legal institution in a concrete factual state, and with reference to a particular legal subject (subjects). Such a description and explanation of processes of application of law refers to concrete, legally qualified cases and requires both individualised reasoning that translates into an interpretation of law and empirical research. Application of law, therefore, contains *implicite* the operation of interpretation of law understood as decoding the norm/norms from the binding legal provisions and other sources of law. In the relevant legal

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literature a popular approach is to present application of law as establishment of legal consequences of the particular factual state, resulting from legal/authorised use of legal instruments by public authorities when the latter deal with legal subjects (this includes application of means of coercion).

Establishment of legal consequences of the given factual state is possible thanks to the construct of authority understood as authorisation granted to the particular legal subject/entity in accordance with the binding legislation. The content of the authorisation is the capacity/obligation to shape the legal situation of the decision's addressees i.e. the rights and obligations of the addressees in the legally defined situation. The question of authority in law is therefore a part of both the general and the individualised description of the process of application of law. A broader reference to this issue can be found in further parts of this volume. At this point it must be noted, however, that the subject area and the character/types of the authority contained in the binding law are a contentious issue.

2. APPLICATION OF LAW PROBLEMS IN THE CONTEMPORARY POLISH LEGAL LITERATURE

The classic approach to application of law in the literature is intricately linked with legal reasoning leading to issuance of decisions to apply law and their appropriate justification. A rich body of legal-theoretical literature in the field refers predominantly to the so-called judicial type of application of law and is based on the notion of subsumption (and, in the layer of legal reasoning – on the so-called legal syllogisms). It is therefore justified to refer to this type of description and explanation of application of law as the syllogism-subsumption approach. The focal point of the syllogism and subsumption-based description of application of law is subsumption, understood as approximation of the factual state to the relevant legal norm interpreted from the binding legal provisions. This understanding of application of law has so far dominated in specific legal sciences, but also (partially) in the theory of law.[4] In the contemporary Polish theory of law the question of application of law has been present in its developed form since the second half of 20th century. Earlier remarks concerning application of law are sporadic and fragmentary and constitute complementary comments to the major area of study i.e. interpretation of law.

[4] The handbooks in legal theory available in the Polish legal literature, syllogism and subsumption-based description of application of law is a rule, even if it is combined with other types of description (cf. J. Wróblewski, *Sądowe stosowanie prawa*, Warsaw 1988, *passim*; A. Redelbach, S. Wronkowska, Z. Ziembiński, *Zarys teorii państwa i prawa*, Warsaw 1982, pp. 250−268). Interestingly, the subsumption and syllogism-based description has been widely adopted despite the author's approach to the essence of law (in particular, despite the legal-natural stance or the positivist approach to law studying).

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We owe the introduction of the problem of application of law as a well-developed and systematic area of study to a few groups of researchers of the Polish theory of law. The first studies appeared soon after World War 2 and gained importance in the second half of 20th century. These groups included theoreticians and sociologists of law who continued the legal-sociological heritage of Leon Petrażycki and Jerzy Lange (with Maria Borucka-Arctowa) who proposed an original development and application of the Anglo-Saxon concept of analytical jurisprudence in the continental legal culture and legal reality of a people's democracy state (Zygmunt Ziembiński), as well as researchers of universal background who transposed various solutions and research proposals from Western legal theories onto legal theories of socialist states (Kazimierz Opałek and Jerzy Wróblewski). At the end of the previous century there appeared yet another group of researchers who studied the process of application of law in conjunction with the concept of the so-called operative interpretation of law and application of the so-called decision making approach to application of law (Leszek Leszczyński).

Referring to the first group of researchers, one of the basic problems was the position of application of law in jurisprudence. The position was dependent on the status of sociology of law for which the question of application of law (and its empirical study) became a natural research area. If we include legal-sociological problems in the general legal science, application of law naturally fits in the latter, particularly as regards the theory of law. It must be firmly emphasized at this point that the empirical dimension of research in the processes of application of law is currently associated predominantly with legal-sociological research linked to the dogmatic research area and the research of application of law in individualised processes, with consideration of the current legal status quo applied in the particular case.

In Zygmunt Ziembinski's approach and the so-called Poznań school of jurisprudence, the construct of authority is of key importance for the study of application of law. The construct is based on the concept of the so-called conventional activities. Conventional activities are culturally determined behaviours that lead to outcomes defined in particular institutions or norms of conduct that are considered binding in the community. "A conventional activity occurs when certain psycho-physical activities acquire a new social and cultural meaning by means of certain clearly defined or customarily shaped rules".[5] Among these rules (the "rules of meaning") there are, among others, the rules of granting meaning and the rules of performance of conventional activities. The rules of meaning state that performance of certain conventional activities results in certain cultural outcomes. The rules of performance, in turn, define the manner of performance of certain conventional activities that conditions its cultural effectiveness. This means that

[5] S. Wronkowska, Z. Ziembiński, *Zarys teorii prawa*, Poznań 1997, p. 30.

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a convention adopted in a given community/culture defines in a quasi-causal way the conditions of performance of the psycho-physical activity with a significant cultural outcome in the given community. The relationship between performance of the psycho-physical activity and the cultural outcome is of quasi-causal nature as it resembles the cause-and-effect relationship that occurs in nature, although it does not clearly refer to the causal phenomena or effects (outcomes) of certain natural phenomena or processes.

In the legal system that is an orderly collection of appropriately related binding legal norms a significant role is played by authority-related norms containing a definition of authority directed both to public authorities (including courts and public administration bodies) and to other legal subjects (not only from the domain of public law but also subject from the domain of broadly understood private law). The content of authorisation may be not only a definition of the public body's authority to define the legal situation of the addressee of the decision to apply law, but also performance of an appropriate conventional activity by the relevant legal subject/entity that shapes the rights and obligations of other legal subjects/entities (as in the case of drawing up a will, for example) or that updates an area of authority of a public administration body (as in the case of a lawsuit or an appeal filed with a court). Consequently, the process of application of law is appropriate for each case of authority application by the given public authority or public administration body or legal subject, provided that the authority has been granted to the entity/subject by the relevant authority-related norms within the legal system. Such a broad understanding of the subject of application of law is, however, not widely spread in the contemporary Polish theory of law. Other concepts of application are much more widespread. These concepts narrow down application of law to activities performed by public authorities (and other institutions/organisations with vested public authority) and their products in the form of legal decisions as decisions concerning the legal status (right or obligations) of addresses of these decisions.

The concepts with a narrowed down scope of subject (limited to public authorities and administrative bodies) include the theoretical works by Jerzy Wróblewski, Kazimierz Opałek and Leszek Leszczyński. In Jerzy Wróblewski's concept of application of law the characteristic feature is modelling the process of application of law, combined with an orderly description of the application as a decision making process comprising structurally interrelated cause-and-effect phases. Each phase ends with a partial decision that influences the launch and course of the subsequent phase of the process of application of law. The last phase of the process ends with a final decision (the decision to apply law) that is concrete and individualised. Although Wróblewski did not negate the possibility of application of law by "private entities"[6], he did not include the possibility of final

[6] Cf. J. Wróblewski, *op. cit.*, p. 7. The first edition of the volume was in 1972.

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decision making by the appropriate "private entities" as entities that are not public authorities in his models of application of law (the so-called descriptive and normative models). Wróblewski also performed an extensive theoretical analysis of application of law by courts and introduced the notion of ideology of judicial application of law to Polish legal literature. Despite his successful attempts at introducing concepts and solutions from many different areas of scientific reflection on legal issues, the core of Wróblewski's concept remained the traditional syllogism and subsumption-based perspective on description and explanation of the process of application of law.

In the joint volume by Kazimierz Opałek and Jerzy Wróblewski the question of application of law constitutes one of the major research domains in jurisprudence.[7] The authors list a catalogue of issues that fit within the field discussed jointly as the "Interpretation and application of law". They also distinguish the following basic research approaches to the question: the dogmatic approach, the comparative approach, the historical approach and the general approach. Within the dogmatic approach they see space for an analysis of law application practice conducted through empirical studies (legal-sociological studies). According to the authors, "in line with the material model of application of law the analysis pertains to the validation decision, the interpretative decision, the evidence decision and the decision concerning the choice of the consequences, as well as the metdecision on the sources of law. According to the decision making process model, the [analysis] pertains to the decisions delineated by procedural provisions".[8] The characteristic of application of law is based on dividing or even juxtaposing the processes of lawmaking and application of law, with indication of the mutual interactions and feedback loops between these two types of legal processes. Lawmaking pertains to normative acts that contain legal norms encoded in provisions, including the so-called material norms (i.e. norms that define types of rights or obligations directed to particular classes of addressees) and authority-related norms (i.e. norms containing the definition of authority directed to the relevant public authority, with a description of concrete and individualised rights or obligations of the given legal subjects). This understanding of the essence of application of law and the feedback loop between lawmaking and application of law seems to be still widespread (possibly – dominant) in the contemporary Polish jurisprudence.[9] It is reflected in the approach in which the decision to apply law (as a concrete and individualised legal decision) is made by an authorised body or administrative entity (including a court as a judiciary body as a central or local government

[7] Cf. K. Opałek, J. Wróblewski, *Prawo. Metodologia – filozofia – teoria prawa*, Warsaw 1989, in particular pp. 18, 35, 41–42.

[8] *Ibidem*, p. 41.

[9] See more: L. Morawski, *Wykładnia w orzecznictwie sądów*, Toruń 2002; M. Zieliński, *Wykładnia prawa. Zasady, reguły, wskazówki*, Warsaw 2008.

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institution) based on the general abstract legal norm interpreted from the binding legal provisions by means of the so-called operative legal interpretation.

For the thread of analysis of application of law represented by Leszek Leszczyński the key issue seems to be the application of the decision making approach to the description and explanation of the phases of the process, whereby the phases are linked through the organisation and cause-and-effect relationships, and lead to issuance of final decision to apply law (the concrete and individualised decision to apply law).[10] The author also bases his ideas on the findings pertaining to the judicial type of application of law (and, consequently, takes over the accumulated theoretical achievements in the theory of law as regards the syllogism and subsumption-based model of application of law). However, he also includes in the problems of administrative application of law in his theoretical analysis.

A significant contribution by Leszek Leszczyński consists in creating a broader perspective of the analysis of processes of application of law that goes beyond the description and models of application of law in the Polish legal order that have so far been dominant. This leads to the proposed need of perceiving the application of law as a broader group of decision making processes that take place not only within particular states and their legal orders but also in associations and organisations of states. The European Union is such an organisation, which means that any analysis of national application processes used in the particular member states should be combined with a broader analysis, capable of describing and explaining the processes of the institutional and decision making structures of the EU as an international and transnational organisation. Another important feature of L. Leszczyński's concept is also a clear reference to operative interpretation and indication of its different impact on the process of application of law; in the concepts presented earlier, the findings concerning interpretation of law were based on the general characteristic of interpretation and did not include an extensive description of operative interpretation and its different nature (when compared against the general normative and descriptive concepts of interpretation of law). A consequence of application of the concept of operative interpretation are, among others, innovative findings pertaining to reconstruction of the basis of the decision to apply law, and introduction of the concept of the semantic reduction of the norm in the process of application of law. The reduction matches the overall content of the norm to the requirements of the decision to apply law in the particular case.[11]

The research area of the processes of application of law proposed by Leszek Leszczyński encompasses both the subject and the object of application of law, the types of application of law (judicial, administrative and managerial), the axiology

[10] Cf. L. Leszczyński, *op. cit*.
[11] *Ibidem*, pp. 151–239.

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of application of law (divided into particular types), organisation of the process of application of law as a decision making process (with particular emphasis on application by court), the rules of reasoning applied to reconstruct the basis for the decision to apply law, as well as the so-called decision making discretion and non-legal criteria in the process of application of law, acceptability of *per rationem decidendi* reasoning in application of law that takes place in the legal orders of statutory law cultures.

3. RESEARCH APPROACHES AND PERSPECTIVES IN THE STUDY OF PROCESSES OF APPLICATION OF LAW

In the traditional research approach, the analysis of processes of application of law is at least partially based on subsumption and syllogism that focus on describing and explaining the reasoning and activities undertaken by public authorities in order to qualify the given factual state (case) from a normative point of view in such a way that it is possible to establish the rights and obligations of the addressee/addressees of the decision to apply law in the case, or to project an appropriate future factual state. It is characteristic of this approach to narrow down the area of study to a single act of application of law, performed by a state authority that executes its legal authority and establishes (based on general and abstract legal norms) the legal consequences of the existing legal situation. The approach, consequently, creates favourable conditions for the study of the judicial type of application of law. However, it does not facilitate specification of legal decision making in the other types, i.e. the administrative and managerial types. In these types the subsumption model sometimes cannot be applied as the essence of administrative decisions is not a normative qualification of the factual state but rather a projection of a future state that is to meet the conditions specified in the content of the administrative decision. Studies in application of law conducted within the general legal sciences (including theory of law) should be able to change the situation by introducing varied notions and tools for the description of the decision making process in each of the types of application of law listed above.

It seems that in order to describe the process of legal decision making, the decision making approach seems to be particularly useful. In the popular concepts of application of law, the decision making approach presents application of law as a multi-phase "process of reaching the act of application of law".[12] The process includes: 1) simultaneously occurring phases of fact finding/reconstruction (through evidentiary proceedings that ends with a decision to close evidentiary proceedings) and establishment of the legal status (i.e. the sources of law to be applied in interpretation of the relevant legal norm – the normative basis for the validation

[12] A. Bator (ed.), *op. cit*., p. 305.

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decision and the decision to apply law), 2) interpretation of the legal norm and possible reduction of the norm's meaning to match the particular case through interpretation (this phase ends with the so-called interpretative decision), 3) subsumption i.e. reasoning based on ascertaining that the proven factual state is in line with the premises in the interpreted legal norm (subsumption-based decision), 4) establishment of legal consequences of behaviours of legal entities included in the proven factual state due to the norm regarded as the basis for adjudication/decision (the decision to select legal consequences), 5) issuance of the final decision to apply law.

The above approach based on multiple phases has, however, its weak points. The first weakness has already been indicated: the description matches the nature of the judicial type of application of law but does not take into account the different features of the administrative and managerial types of application of law. Another weakness is limitation of the process of application of law to the phases ending with the final decision to apply law. If we apply the model of decision making analysis from political studies to describe the process of application of law[13], we can propose complementing the traditionally indicated phases with at least two further phases: the control phase and the implementation phase. It seems that the addition of the phases is fully justifies by the assumed complexity of legal provisions. Projection of solutions within material law, procedural law and executive law should not be treated as separate legislative undertakings. In order to ensure the solutions' effectiveness and consistency, they must be theoretically included in a single, complex decision making process.

Another weakness of a majority of the concepts of application of law proposed in the relevant legal-theoretical literature is the fact that the concepts are narrowed down to singular processes of application of law. Although such studies are also necessary, in particular if they apply empirical research methods and inductive reasoning, modelling of the processes of application of law should facilitate a description and explanation of the relationships between the particular processes of application of law within broader legal decision making structures (in particular, the relationships between the administrative and the judicial-administrative types of application of law). It should also facilitate a description of the transformation capacity of the process within the particular phases (currently with particular reference to various attempts at including negotiation and mediation models to the traditional authority-based procedures of legal decision making.)

A contentious issue worth discussing is utilization of the achievements of other social sciences, anthropological and environmental studies (apart from the traditionally considered sciences such as political sciences, management, economics, sociology and social psychology we might consider sourcing input from biology,

[13] Cf. J. Pietraś, *Decydowanie polityczne*, Warsaw – Cracow 1998, esp. pp. 57–174.

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biotechnology, neurolinguistics, IT studies, psychology and its modern offshoots such as neuropsychology, etc.). Attempts at using the body of knowledge accumulated by other disciplines to explain the processes of application of law meets the postulate of the so-called external integration of jurisprudence. Moreover, such attempts force us to formulate scientific description of legal phenomena and processes as a fragment of a larger whole that results from human activity and the way humans shape their environment. It seems that the attempts at extracting the phenomenon of discourse and communication in legal orders follow the described direction of modelling processes of application of law.[14] Undoubtedly however, the syllogism and subsumption-based model of describing and explaining the processes of application of law of law by courts should retain its significance as the model is particularly useful from the point of view of particular processes of application of law analysed to satisfy the needs of specific legal sciences. It seems that we should appropriately use the model of multi-faceted analysis of law in order to investigate these processes. Syllogism and subsumption-based research as well as research performed with the logical-linguistic method certainly form a significant platform for the study of law. However, they are only one of the many aspects of the complex decision making process i.e. the process of application of law. Other aspects such as the economic aspect (that takes into account the benefit-cost analysis of decision implementation), psychological conditions of legal decision making performed by judges or civil servants, correctness of decision making structures within the administrative mechanism and the judiciary should not be treated as elements positioned beyond the scope of interest of legal sciences. To what extent and in what form representatives of legal sciences should cooperate in such multidisciplinary research of the processes of application of law remains an open-ended question.

The complexity of the study of processes of application of law must be taken into account, as it has been indicated earlier, not only in particular legal orders of states but also on a multinational scale in organisations of countries and their legal orders. This requires a matching body of terminology aimed at describing not only the particular phases of the process of application of law as a decision making process, but also at identifying the key variables that influence the process and partially stem from beyond the legal order of one state. The description of decision making structures must take into account not only the state's decision making bodies but also their organisational and procedural bonds with the decision making bodies in the larger organisations and their legal orders. For European states it is particularly important to link the decision making centres (including courts) with European courts and tribunal (including the European Court of Human Rights and

[14] More on this issue: A. Kotowski, *Modele dyskursów prawniczych*, Toruń 2013, esp. pp. 81–292.

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the Court of Justice of the European Union). All of the above leads to characterising the processes of application of law as complex, multi-entity and multi-layer decision making processes. The scope of these processes already goes beyond the decision making structures of particular states and includes the multinational decision making centres that operate in regional legal orders such as the European legal order (the legal order of the Council of Europe) and the legal order of the European Union.

LITERATURE

Bator A. (ed.), *Wprowadzenie do nauk prawnych. Leksykon tematyczny*, Warsaw 2012.
Kotowski A., *Modele dyskursów prawniczych*, Toruń 2013.
Leszczyński L., *Zagadnienia teorii stosowania prawa. Doktryna i tezy orzecznictwa*, Zakamycze 2004.
Morawski L., *Wykładnia w orzecznictwie sądów*, Toruń 2002.
Opałek K., Wróblewski J., *Prawo. Metodologia – filozofia – teoria prawa*, Warsaw 1989.
Pietraś J., *Decydowanie polityczne*, Warsaw – Cracow 1998.
Redelbach A., Wronkowska S., Ziembiński Z., *Zarys teorii państwa i prawa*, Warsaw 1982.
Rivlin G., *Understanding the Law*, Oxford Univ. Press 2009.
Stychin C.F., Mulcahy L., *Legal Method: Texts and Materials*, London 2003.
Wronkowska S., Ziembiński Z., *Zarys teorii prawa*, Poznań 1977.
Wróblewski J., *Sądowe stosowanie prawa*, Warsaw 1988.
Zieliński M., *Wykładnia prawa. Zasady, reguły, wskazówki*, Warsaw 2008.

SUMMARY

Application of law constitutes a significant research area in Polish jurisprudence. This article is an overview of the basic notions and research approaches that the Polish legal literature has proposed over the last decades. The authors of the quoted notions, concepts of application of law and research approaches are Zygmunt Ziembiński, Kazimierz Opałek, Maciej Zieliński, Lech Morawski, and Leszek Leszczyński. The article contains a concise characteristic of the approaches and concepts, with particular emphasis on the theoretical assumptions of Leszek Leszczyński's concept and vision of the so-called operative interpretation of law. The assumptions are a point of departure for a presentation of results of research into decision-based processes of application of law.

STRESZCZENIE

Problematyka stosowania prawa jest w polskiej literaturze prawniczej obecna od co najmniej połowy ubiegłego stulecia. Wśród teoretycznych propozycji opisu i wyjaśnienia stosowania prawa należy wyróżnić analityczną koncepcję Z. Ziembińskiego opartą na konstrukcji kompetencji, a także eklektyczną koncepcję K. Opałka i J. Wróblewskiego, zmierzającą do całościowego opisu i wyjaśnienia stosowania prawa jako całości normatywno-instytucjonalnej i decyzyjnej. Na uwagę zasługuje imponująca próba wieloaspektowego modelowania stosowania prawa, wysunięta przez J. Wróblewskiego. Wśród koncepcji podejmujących poszczególne zagadnienia badawcze pozostające w ramach stosowania prawa należy wyróżnić rozbudowane analizy wykładni prawa dokonywane przynajmniej częściowo z punktu widzenia organizacji i przebiegu procesu sądowego stosowania

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prawa (M. Zieliński, L. Morawski, L. Leszczyński), a także pogłębione i oparte na materiale orzeczniczym studia nad klauzulami generalnymi (zwłaszcza L. Leszczyński). Dla holistycznego opisu i wyjaśnienia procesów stosowania w dwóch powszechnie rozróżnianych typach (sądowym i administracyjnym) szczególnie użyteczne wydaje się podejście decyzyjne, pozwalające na uchwycenie złożonej, wielopoziomowej i wielopodmiotowej struktury procesów stosowania prawa w strukturach władzy i administracji publicznej. Podejście to jest zwornikiem przedstawionych rezultatów prac badawczych; właściwości metodologiczne tego podejścia oraz jego zasadnicze założenia zostały przedstawione w ostatniej części artykułu.

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