DOI: 10.52694/ThPSR.120.16

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From Reasoning to Legal Reasoning

Od rozumowania do rozumowania prawniczego

My main purpose is to explore the idea of reasoning in philosophical, logical and rhetorical perspective, and then to investigate the concept of *legal reasoning*, showing multiplicity of legal methods in contemporary legal theory. I am focused on defining the meaning of *legal reasoning* in the context of Anglo-Saxon and European legal cultures, showing the difference depending on the language in which it is expressed.

Key words: reasoning**,** legal reasoning, Aristotle, rhetoric, logic, legal methods, argumentation.

Moim głównym celem jest zbadanie idei rozumowania w perspektywie filozoficznej, logicznej i retorycznej, a następnie zbadanie koncepcji rozumowania prawniczego, ukazując wielość metod prawnych we współczesnej teorii prawa. Skupiam się na zdefiniowaniu znaczenia rozumowania prawniczego w kontekście anglosaskiej i europejskiej kultury prawnej, pokazując różnice w zależności od języka, w którym jest ono wyrażane.

Słowa kluczowe: rozumowanie, rozumowanie prawnicze, Arystoteles, retoryka, logika, metody prawnicze, argumentacja.

Introduction

The basic context for outlining the issues of reasoning and legal reasoning is the concept of reason. Therefore, it is not possible to conduct further considerations of reasoning without a few remarks on epistemology. This is because reason precedes reasoning. Well, in fact, it is

impossible not to do any reasoning at all. Reasoning is something that accompanies us constantly – suffice it to say that every day we carry out hundreds of different reasonings At the same time, the very concept of reasoning poses a number of terminological difficulties. First of all, it has a wide denotational scope, since it denotes both the activity of the mind itself and the accompanying result of it.

According to what Chaïm Perelman (1912-1984) notes in his book *Logique juridique. Nouvelle rhétorique,* the mental activity of a reasonable person can be the subject of psychological, physiological, social and cultural studies[1]. They make it possible to detect the intentions and motives of this person, as well as any influences acting on him. This makes it possible to know the studied phenomenon in context. But reasoning as the result of an intellectual activity can be studied separately from the conditions under which it takes place: attention is then paid to the way it is formulated, the nature of the premises and conclusions and the correctness of the relationship that connects them, the structure of the reasoning and its compliance with certain previously recognized rules or schemes. On the other hand, Tadeusz Kotarbiński (1886-1981) distinguishes in his book *Elements of Theory of Knowledge, Formal Logic and Methodology* of the Sciences (Elementy teorii poznania, logiki formalnej i metodologii nauk) three basic meanings of the word *reasoning*: in the broadest sense, *reasoning* means all mental work, any activity of the mind opposed to physical work; in a narrower sense – imposed by rationalists in their dispute against empiricists – *reasoning* is used to describe all mental activities with the exception of observation, which belongs to the sphere of experience and is not of a rational nature; finally – in the narrowest sense – *reasoning* is perceived in a strictly logical sense, i.e. as a transition from one judgment to another[2].

In addition, the word *reasoning* can occur not only on its own, but also as the first part of a juxtaposition consisting of two semantic members, but together forming a coherent whole of meaning. The best example here would be the concept of *legal reasoning*, for it has – despite its centuries-old roots in the epistemological and logical tradition – a peculiar meaning developed over the course of the development of the legal theory

[1] Ch. Perelman, *Logique juridique. Nouvelle rhétorique,* Paris, 1976. This book was translated into Polish and published in 1984 with a preface written by Jerzy Wróblewski. See: Ch. Perelman, *Logika prawnicza. Nowa retoryka*, transl. T. Pajor, Warszawa 1984, p. 29.

[2] T. Kotarbiński, *Elementy teorii poznania, logiki formalnej i metodologii nauk*, Warszawa 1986, p. 212.

and philosophy of law. So, this is why, my main purpose is explore the idea of reasoning in philosophical, logical and rhetorical perspective, and then to investigate the concept of *legal reasoning*, showing multiplicity of legal methods in contemporary legal theory.

Reasoning and Aristotelian tradition

In Aristotle's philosophical system, man constitutes an animate being with the ability to speak, as well as to form judgments and concepts[3]. It is the cognitive power that allows Aristotle to consider human not as an *animal*, but as an *animal rationale* – a rational human being that possesses the capacity of reason, which makes it possible to understand the world by actually knowing the ideas that define the essence of things[4]. Aristotle distinguishes two forms of cognitive power, one of which he calls intellect and the other reason. According to Aristotle, the activities of the intellect are called thinking, while the activities of reason are called reasoning. To think means as much as to grasp some mental truth, while to reason is – having relied on previous cognition within the intellect – to move from one cognition to another with the aim of obtaining some mental truth[5]. Thus, rational knowledge is the goal of the process of reasoning, while sense knowledge is its basis. This is why, in Aristotle's system, the rationalism and sensualism are combined, for both the senses and reason play a peculiar role in the process of cognition.

Departing from considerations of the essence of mental cognition, Aristotle moves on to the question of the proper use of concepts, forming the framework of logic understood as the science of the principles of thought. For in Aristotle's philosophy, every entity is understood as a certain concept, the basis of which is a definition. Interrelated concepts, in turn, form judgments, or otherwise true or false statements. A series of such judgments can then, based on certain definite rules on the basis of which proof is carried out, form an inference, the simplest example of

[3] *The Complete Works of Aristotle: The Revised Oxford Translation vols. I and II*, eds. J. Barnes, Princeton: 1984.

[4] I.C. McCready-Flora, *Aristotle on Reasoning and Rational Animals*, "Australasian Journal of Philosophy" 2023, no 101(2), pp. 470-485.

[5] C.F. Goodey, *On Aristotle's 'animal capable of reason'*, "Ancient Philosophy" 1996, no. (16)2, p. 389-403.

which is a syllogism (*syllogismos*) consisting of two premises, i.e. sentences whose truth is self-evident, and the resulting conclusion.

Aristotle's syllogistic model of reasoning can be reconstructed based on his famous example with Socrates. The judgment 'Socrates is a man' subsumes the concept of Socrates to the concept of man, and the judgment 'man is mortal' subsumes the concept of man to the still more general concept of a mortal being. The relation of subsumption is transitive: if mortality characterizes man, then it characterizes Socrates, who is man. This is the basis of inference, as well as proof, which is nothing other than inference from true judgments. A simple form of it-called a syllogism-is inference from two judgments having one common concept.

The modern visions of reasoning also owe Aristotle another fundamental division, according to which there are analytical reasoning, which is based on relationships of logical result, and dialectical reasoning, which does not have to meet the criteria of formal correctness; moreover, while the task of analytical reasoning is to demonstrate the truth of a particular judgment, so dialectical reasoning only serves to convince someone of the rightness of taking a particular position by presenting certain arguments in favor of it, while the weight of these arguments may vary and depend on who they are addressed to. Shaped by Aristotle, the set of views on human reason and methods of reasoning permanently entered the canon of European philosophical tradition. Among other things, the medieval Christianization of the classics of antiquity also contributed to this state of affairs, thanks to which they survived in the intellectual circulation of ideas despite the collapse of ancient civilization. In the Middle Ages, for example, St. Thomas was an Aristotelian, who took his views on human reason from Aristotle.

Reasoning and contemporary logic

In contemporary logic there are a number of classifications of reasoning. This is due, among other things, to the legacy of the so-called Lviv-Warsaw school, one of the pinnacles of which in the field of formal logic are the classifications of reasoning[6]. In the literature, the term rea-

[6] See, among others: J. Łukasiewicz, *O nauce*, [in:] *Poradnik dla samouków. Wskazówki metodyczne dla studiujących poszczególne nauki*, t. I, Warszawa 1915, pp. XV-XXXIX.; K. Ajdukiewicz, *Klasyfikacja rozumowań*, "Studia Logica" 1955, t. II, pp. 279-299; T. Czeżowski, *Klasyfikacja rozumowań*, „Studia Logica" 1955, t. II, pp. 254-262.

soning is used to describe such reasoning thinking, by means of which one recognizes that certain judgments have certain logical values (they thus form the premises of reasoning), and then on the basis of these judgments one arrives at the conviction of certain logical values of other judgments (that is, the conclusions of reasoning). Reasoning, therefore, is such a mental operation that, using the methods of formal logic, verifies the truth of certain sentences[7]. Therefore, they can be divided into reliable reasoning, that is, reasoning in which the conclusion follows logically from a set of premises, and unreliable reasoning, which does not guarantee the absolute correctness of the conclusion.

At the same time, it should be borne in mind that reasoning – in addition to its direct application in mathematics or formal logic – can also go beyond the content previously expressed in the premises, if it is assumed that the conclusion of this reasoning may be false; then the possible value of such reasoning – despite being formally incorrect (unreliable) reasoning – is determined by its adherence to the rules of thinking contained in such resultant relations, in which the rationale will not be connected to the consequence by a strictly logical result[8].

The aforementioned notion of a resultant relationship – understood as a relationship formulated and evaluated for truthfulness by a person – has a significant impact on reasoning itself, as it can be based on either an accurate or an incorrect resultant relationship. Therefore, a basic understanding of resultant relations is indispensable for efficient reasoning – regardless of whether one uses fallible or infallible reasoning. At the same time, however, it should be remembered that the resultant relations are completely independent of the person applying them, for they are a consequence of previously accepted concepts and principles. Often the value of the resultant (in addition to the logical result) depends on the context of place, person, time[9]. Some pair of sentences in one context will form a rationale-sequence relationship, while in another it will not.

The basic division of reasoning used in contemporary logic is the division into deductive (reliable) and reductive (unreliable) reasoning: the former proceeds from a rationale to a corollary, while the latter proceeds from a corollary to a rationale that was previously found to be

[7] T. Kotarbiński, *Elementy teorii poznania, logiki formalnej i metodologii nauk*, Warszawa: 1986, p. 212.
[8] P. Łukowski, *Logika praktyczna z elementami wiedzy o manipulacji*, Warszawa 2012, p. 235.
[9] P. Łukowski, *Logika praktyczna z elementami wiedzy o manipulacji*, Warszawa 2012, p. 240.

true. Deductive reasoning includes: result and inference, while reductive reasoning includes: checking and explaining.

The first of deductive reasoning – inference (in other words: matching a corollary to a rationale otherwise known to be true) – involves recognizing the truth of a sentence in order to then draw conclusions from it. The second – proving – involves matching a rationale otherwise known to be true with a given as yet unknown fact as a true corollary.

In contrast, among reductive reasoning, proving is matching a corollary otherwise known to be true to a rationale unknown as true, while translating is matching a rationale to a corollary otherwise known to be true. Thus, translation – despite the fact that it occurs so often in the natural sciences – usually has the character of only one of the imaginable options when it comes to finding the cause of an event, since actually the event could occur for a completely different reason than the one being analyzed.

A certain special case of translation – referred to as generalizing translation – is, in turn, inductive reasoning. Induction consists in recognizing the truth of a general sentence on the basis of the truth of specific sentences. According to what Tadeusz Kotarbiński notes in his book *Elements of Theory of Knowledge, Formal Logic and Methodology* of the Sciences (Elementy teorii poznania, logiki formalnej i metodologii nauk) an overly simple opposition between deduction and induction is often made[10].

The most important difference between induction and translation is quantitative, for inductive reasoning proceeds not on the basis of a single implication, but on the basis of a whole class of them. Therefore, inductive reasoning can be reliable. For this it is sufficient that the class of implications considered in reasoning exhausts all possible cases.

Regardless of whether the reasoning takes the form of infallible or unreliable reasoning, if it is based on a questionable relationship of result, it may ultimately lead to an erroneous conclusion, since the concept of reliability applies only to the structure, not the content, of the reasoning.

[10] As Tadeusz Kotarbiński notes: 'School logic, namely, when treating inference, distinguishes within it deductive inference, or deduction, and inductive inference, or induction. In doing so, the former is characterized as inference from the general to the particular, while the latter is characterized, conversely, as inference from the particular to the general. However, such a representation of things turns out to be flawed due to the particularity of formal logic'. T. Kotarbiński, *Elementy teorii poznania, logiki formalnej i metodologii nauk*, Warszawa 1986, p. 224.

Thus, only the combination of formal correctness and substantive correctness of the reasoning proves the veracity of its conclusions.

Staying with the assessment of the correctness of reasoning, it is necessary to go to the assumption of its rationality, which states that only beliefs formed through correct reasoning are rational. And since on the basis of logic only the rationality of beliefs that have been verbalized is evaluated, the condition for reasoning to be considered rational is its verbalization. The individual sequences of such verbalized reasoning form an argumentation, that is, a complex statement that aims to persuade someone to accept a given belief. At the same time, however, it should be remembered that the effectiveness of an argumentation understood in this way is not evidenced only by the correctness of the reasoning, but also by other factors that are no longer dealt with by logic, but by rhetoric. However, this does not change the fact that it is the correct reasoning that is the basis for conducting argumentation, while any eristic tricks do not belong to the proper art of rhetoric.

Reasoning and rhetoric art

According to Chaïm Perelman, Aristotle's delineation of analytic reasoning and dialectical reasoning marks a turning point in general reflection on reasoning, for it made it possible to begin a systematic analysis of sentences formulated in concrete language[11]. Aristotle's remarks on analytic reasoning from the *Prior and Posterior Analytics* earned him the name of the father of formal logic[12]. Although, as Chaïm Perelman notes in his famous book *L'Empire rhétorique. Rhétorique et argumentation*, it has escaped the attention of modern logicians – because they failed to recognize its importance – that in the *Topics*, *Rhetoric* and *On Sophistical Refutations*, Aristotle studied dialectical reasoning, which also makes him the father of argumentation theory[13].

Unlike the analytical reasoning found in scientific evidence, the dialectical reasoning studied by Aristotle is applicable to all kinds of disputes

[11] Ch. Perelman, *Logika prawnicza. Nowa retoryka*, transl. T. Pajor, Warszawa 1984, p. 29.
[12] I.C. McCready-Flora, *Aristotle on Reasoning and Rational Animals*, "Australasian Journal of Philosophy" 2023, no 101(2), p. 470.
[13] Ch. Perelman, *L'Empire rhétorique. Rhétorique et argumentation*, Vrin, 1977. This book was translated into Polish and published in 2004. See: Ch. Perelman, *Imperium retoryki. Retoryka i argumentacja*, transl. M. Chomicz, Warszawa 2004, p. 13.

or deliberations[14]. This is because the premises of dialectical reasoning are, in fact, made up of commonly held opinions, or beliefs, which are recognized either by all, or by many, or by philosophers, that is, by all, by most, and among them the most eminent and famous[15].

The purpose of dialectical reasoning is to persuade and convince, for, starting from what is already accepted, it serves to induce others to accept certain views pushed by means of arguments that may themselves, however, be contentious: both reasonable and not very persuasive. In Aristotle's terms, rhetoric, or argumentation by means of dialectical reasoning, constitutes the skill of methodically discovering what can be persuasive with regard to any subject[16]. This means, then, that dialectical reasoning "is neither a formally correct deduction nor an induction going from the particular to the general, but is any kind of argumentation whose purpose is to induce listeners to recognize the theses that are presented to them for acceptance"[17].

Aristotle's *Rhetoric* distinguishes three types of persuasive speech: advisory, judicial and show-off. Aristotle carries out this division according to the roles played in Athenian practice by the speaker and the hearer. Thus, the speaker's purpose in the advisory type is to advise or advise against a particular move by evaluating its usefulness. In the judicial kind, the role of the speaker is either to accuse or defend a party, conducted from the standpoint of equity. In contrast, the show-off type is used by the speaker to praise or rebuke someone, referring to his noble or wicked motives. According to Chaïm Perelman, the first two types stem from Aristotle's observations of political assemblies, while the third is based on the long tradition of eloquence contests during the Olympic Games[18]. Great works were also devoted to the art of rhetoric understood in this way by Aristotle's Roman successors, including Cicero and Quintilian.

With the decline of ancient civilization came the disappearance of rhetoric understood as the art of persuasion. Among the reasons for this state of affairs, Chaïm Perelman sees first the death of Roman republican institutions, resulting in the disappearance of the advisory and showpiece types as speeches associated with particularly important elements of civic

[14] *Human Beings as Rational Animals* [in:] *Aristotle's Anthropology*, eds. G. Keil & N. Kreft Cambridge 2019, pp. 23-96.
[15] Arystoteles, *Topiki*, transl. K. Leśniak, [in:] Arystoteles, *Dzieła wszystkie*, t. 1, Warszawa 1990, pp. 30-31.
[16] Arystoteles, *Retoryka. Retoryka dla Aleksandra. Poetyka*, transl. H. Podbielski, Warszawa 2004, s. 47.
[17] Ch. Perelman, *Imperium retoryki. Retoryka i argumentacja*, transl. M. Chomicz, Warszawa 2004, p. 6.
[18] Ch. Perelman, *Imperium retoryki. Retoryka i argumentacja*, transl. M. Chomicz, Warszawa 2004, p. 31.

life, then the influence of Plato, who in his works attacked the masters of rhetoric on a par with the sophists, accusing them of distancing themselves from the Socratic love of truth, and finally the erroneous reception of Aristotle dating from the Middle Ages.

Thus, for many centuries then, Aristotle's distinction between analytical and dialectical reasoning was rejected, while the rhetoric he formulated was limited to the art of good speech only. Nevertheless, the links between rhetoric, dialectics and philosophy are undeniable, and the element that links them together is the problem of reasoning.

Legal reasoning and its characteristics

Legal reasoning (in French: *raisonnement juridique*) – depending on the language in which its definition was formulated – can take various forms and concern various aspects of legal culture[19]. Legal reasoning can be discussed both in the context of the law-making process and in the framework of law application. Hence, legal reasoning can seem like something extremely ephemeral and unverifiable, a strange and sometimes ambiguous dispute among lawyers over words

In the practice of applying the law, it can be observed that legal reasoning is accompanied by constant disputes over its concrete applicability in a given case. These disagreements arise both in doctrine and the accompanying case law, while they are resolved by an authoritative decision of the majority or a higher authority. According to Chaïm Perelman, this is also how legal reasoning differs from the reasoning found in philosophy and the humanities, where, in the absence of consensus, everyone remains with their views, since there is no judge authorized to end disputes by issuing a judgment[20]. Legal reasoning is almost always contentious in nature and therefore, unlike purely formal deductive reasoning, only very rarely can it be considered correct or incorrect, so to speak, impersonal[21]. Legal reasoning, therefore, is a special kind of reasoning, while its peculiarity is most clearly manifested in the space of the judge (the entity

[19] G. Samuel, *A Short Introduction to Judging and to Legal Reasoning*, Cheltenham:2016, pp. 1-3; G. Timsit, *Raisonnement juridique* [in]: *Dictionnaire de la culture juridique*, eds. D. Alland, S. Rials, Paris: 2003, pp. 1290-1297.

[20] Ch. Perelman, *Imperium retoryki. Retoryka i argumentacja*, transl. M. Chomicz, Warszawa: 2004, p. 35.

[21] Ch. Perelman, *Imperium retoryki. Retoryka i argumentacja*, transl. M. Chomicz, Warszawa: 2004, p. 35.

issuing the decision). However, difficulties are presented by the attempt to define them comprehensively.

The first divergence in the understanding of legal reasoning stems, for example, from the two distinct intellectual traditions at the root of modern law; the Anglo-Saxon common law system is assumed to be based on the law of precedent, while the most important pillar of continental law is the legacy of Roman law with the idea of the code and statute law. This dissimilarity underlying the two legal orders was noted as early as the 19th century by Max Weber (1864-1920), who, on the margins of his sociological theory, also studied legal reasoning in terms of its rationality.

According to Max Weber, the differences between the Anglo-Saxon and continental legal systems are primarily due to the historically different model of acquiring legal education, which in continental Europe was based on university coercion, thus leading to the gradual codification and systematization of legal norms, while in England it consisted in training lawyers through continuous contact with individual cases, which allowed it to retain its empirical and strictly pragmatic character. On the other hand, however – when analyzing the approach to legal reasoning – one should also not forget the progressive phenomenon of the convergence of legal cultures. The traditions of legal reasoning in the common law system and the continental law system, which had been different for centuries, began to intermingle.

Therefore, legal reasoning is not unambiguous. This is because it contains a number of different intellectual traditions within which it was formed. At the same time, however, it is possible to distinguish several basic meanings that it always carries in legal discourse. Thus, in French, the term *raisonnement juridique* denotes a certain scheme of rational operations carried out to apply a legal rule in the process of applying the law, referring, however, not only to the understanding and justification of a judicial decision, but also to the level of rationality and consistency of the entire legal system[22].

In turn, the English term legal reasoning is most often used to describe the totality of intellectual means used by a judge to make a decision, that is, to decide the case entrusted to him. Thus – in common law countries such as England and the United States – legal reasoning is sometimes

[22] G. Timsit, *Raisonnement juridique* [in]: *Dictionnaire de la culture juridique*, eds. D. Alland, S. Rials, Paris 2003, p. 1290.

equated with the act of judging, since it represents a certain way of acting by a judge during the process of making and justifying a particular decision[23]. In addition, it is the subject of numerous theoretical studies, resulting, for example, in the number of studies devoted to the concept of legal reasoning in English and American legal theory and philosophy[24].

The Anglo-Saxon interest in the problem of legal reasoning, however, has no direct translation in Polish debate on law. This is evidenced, for example, by the absence of the concept of legal reasoning in the works of such legal theorists as Zygmunt Ziembiński (1920-1996), Sławomira Wronkowska (born 1943), Jerzy Stelmach (born 1954) or Lech Morawski (1949-2017)[25]. On the other hand, when the concept of legal reasoning appears in the literature, it is most often in a very narrow sense, emphasizing its formal application in the field of legal logic.

All this allows us to agree with the general diagnosis presented by Tomasz Stawecki (born 1957). He states that legal reasoning as an independent and at the same time comprehensive subject of research is relatively rarely analyzed in Polish jurisprudence[26]. This does not mean, however, that legal reasoning does not appear in it at all. It is just that they are most often included in the description of the various phases of the process of applying the law and in considerations devoted to the interpretation of the law, logic and legal argumentation or theories of discourse.

Therefore, in order to formulate the general meaning belonging to legal reasoning, it is necessary to refer to the work of Jerzy Wróblewski[27]. In the theoretical model proposed by him, legal reasoning consists of all those intellectual activities that are used to make and justify certain legal decisions. This means that legal reasoning includes both interpretive

[23] According to J. Dickson: 'There are thus three things (…) which legal theorists could mean by legal reasoning: (a) reasoning to establish the existing content of the law on a given issue, (b) reasoning from the existing content of the law to the decision which a court should reach in a case involving that issue which comes before it, and (c) reasoning about the decision which a court should reach in a case, all things considered'. J. Dickson, *Interpretation and Coherence in Legal Reasoning*, The Stanford Encyclopedia of Philosophy, eds. E.N. Zalta, URL = <https://plato.stanford.edu/archives/win2016/entries/legal-reas-interpret/>, 30.07.2023.

[24] See: P. Wahlgren, *Legal Reasoning – A Jurisprudential Model*, Scandinavian Studies in Law, no. 40, 2000.

[25] See among others: Z. Ziembiński, *Problemy podstawowe prawoznawstwa*, Warszawa 1980; S. Wronkowska, Z. Ziembiński, *Zarys teorii prawa*, Poznań 1997; L. Morawski, *Główne problemy współczesnej filozofii prawa. Prawo w toku przemian*, Warszawa 2003; J. Stelmach, *Współczesna filozofia interpretacji prawniczej*, Kraków 1999.

[26] T. Stawecki, *O celowości rozumowań prawniczych w polskiej teorii prawa i praktyce prawniczej* [in:] *Rozumność rozumowań prawniczych*, eds. M. Wyrzykowski, Warszawa 2008, p. 39.

[27] See: J. Wróblewski, *Sądowe stosowanie prawa*, Warszawa 1988; J. Wróblewski, *Rozumowania prawnicze w wykładni prawa* [in:] *Studia prawno-ekonomiczne*, t. IV, Łódź 1970.

reasoning, which consists of establishing a legal norm on the basis of the rules being interpreted, and justificatory reasoning, which aims to justify legal decisions already made[28]. In turn, the two types of reasoning must be considered independent of each other, since their correctness must be measured either by the formal value of the interpretive directives used in the reasoning or by adopting a certain value scale. In the case of evaluating interpretive reasoning, it is a question of its logical inconsistency, while in the case of reasoning that justifies legal decisions, it is also required to establish such values that would allow the correct axiological choices to be made.

It should be borne in mind, however, that Jerzy Wróblewski does not formulate a developed concept of legal reasoning of the Anglo-Saxon type, but remains faithful to the idea of legal interpretation dominant in the Polish literature, in relation to which reasoning is only accessory[29]. This means, therefore, that legal reasoning in the process of applying the law is – in the tradition of Polish jurisprudence – a concept with a rather undefined range of meaning, since it can be perceived both in the narrow sense a) *legal reasoning in the interpretation of the law* and in the broad sense, b) *reasoning of the subject making a legal decision*. This is why, according to Tomasz Stawecki, legal reasoning, included in the theory of Jerzy Wróblewski as the reasoning of a subject making a legal decision, e.g.: a judge, has a narrower scope of meaning than the concept of legal discourse, which requires a process of communication, i.e. the participation of at least a second participant, but nevertheless broader than the concept of legal interpretation, as it also concerns the justification of decisions made[30].

Pluralism of legal methods and legal reasoning

Problems of legal reasoning have become an important topic of legal theory and philosophy of law. At the same time, considerations of legal reasoning in legal theory and philosophy are inherent in the particular

[28] T. Stawecki, *O celowości rozumowań prawniczych w polskiej teorii prawa i praktyce prawniczej* [in:] *Rozumność rozumowań prawniczych*, eds. M. Wyrzykowski, Warszawa 2008, p. 42.
[29] J. Wróblewski, *Rozumowania prawnicze w wykładni prawa* [in:] *Studia prawno-ekonomiczne*, t. IV, Łódź 1970, pp. 7-8.
[30] T. Stawecki, *O celowości rozumowań prawniczych w polskiej teorii prawa i praktyce prawniczej* [in:] *Rozumność rozumowań prawniczych*, eds. M. Wyrzykowski, Warszawa 2008, p. 44.

legal methods used by lawyers in thinking about the law. This is evident if only from the linguistic meanings attached to both concepts in different legal cultures. The work of Bartosz Brożek (born 1977) and Jerzy Stelmach, published in Polish, is titled *Legal methods* (Metody prawnicze) while the English translation appears under the title *Methods of legal reasoning31*. Thus, it is clear that in Anglo-American culture the semantic scope of the term legal reasoning definitely goes beyond the narrowly understood notion of legal reasoning, also defining a specific way of thinking of a lawyer, i.e. the legal method chosen by him. This does not mean, of course, that one should put – on the grounds of the Polish language – a sign of equality between these terms, however, it is worth being aware that the performance of legal reasoning is directly influenced by the previous choice of legal method.

However, in jurisprudence one cannot speak of a methodological identity, on the contrary, there are many methods drawn both from other sciences, such as mathematics, philosophy, logic, biology, linguistics, as well as developed within the law itself. Therefore, Jerzy Stelmach and Bartosz Brożek pointed out that there is no single universally valid legal methodology, nor is there any particular legal method[32]. Applying these remarks to the issue of legal reasoning, it should therefore be stated that just as there is no single legal method, there is no single – only right – theory of legal reasoning. Moreover, the various concepts of legal reasoning belong – or at least relate intellectually – to the various research perspectives used in legal studies[33]. Therefore, as Chaim Perelman notes that it is reflection on the development of law that seems to be an indispensable prelude to considering the techniques of reasoning inherent in the discipline[34].

Expanding on the findings presented above, it must be said that the first historical, and still basic, consequence of adopting different methodological stances in the theory of legal reasoning is the distinction between

[31] See: J. Stelmach, B. Brożek, *Metody prawnicze*, Kraków 2004; J. Stelmach, B. Brożek, *Methods of legal reasoning*, Dordrecht, 2006.

[32] J. Stelmach, B. Brożek, *Methods of legal reasoning*, Dordrecht, 2006, p. 36.

[33] For example famous Neil MacCormick's theory of legal reasoning is based on the findings of two of his books: Legal Reasoning and Legal Theory (hereinafter: LR&LT) and Rhetoric and the Rule of Law. See: M. Sopiński, *Neil McCormick's Theory of Legal Reasoning and Its Evolution*, „Archiwum Filozofii Prawa i Filozofii Społecznej" 2019/1 https://doi.org/10.36280/AFPiFS.2019.1.63ENG; M. Sopiński, *Ewolucja teorii rozumowania prawniczego Neila MacCormicka*, „Archiwum Filozofii Prawa i Filozofii Społecznej" 2019/1, pp. 63-78.

[34] Ch. Perelman, *Logika prawnicza. Nowa retoryka*, transl. T. Pajor, Warszawa 1984, p. 34.

the formalist position and the anti-formalist position. According to Jerzy Wróblewski, these two different attitudes do not refer only to the theoretical considerations of lawyers, but also assume certain ideals regarding what the law should be and how it should be applied[35].

The formalist position derives from the traditional view of the role of legal theory. Thus, characteristic of the formalist view is, as Kazimierz Opałek (1918-1995) notes, the statement that the mental operations in the process of applying the law and interpreting the law are reasoning in the strict sense, namely operations based on the rules of legal logic[36]. Thus, legal reasoning is reduced to certain logical accounts, the correctness of which derives from the fulfillment of the criteria of rational reasoning, and the validity of which consists in the existence of a relationship of logical result between the premises and the conclusion. The use of legal syllogism in the process of interpretation and application of the law guarantees the certainty of the law and the predictability of the decision made on its basis.

Such a formulation dominated legal studies until the beginning of the 20th century, and was related to the then-dominant ideology of the judge's decision-binding in the process of applying the law within the framework of legal positivism. As for the reasoning itself, such a formulation had its consequences in the choice of means for carrying it out. Indeed, according to Tomasz Gizbert-Studnicki's (born 1943) opinion, 19th century legal theory emphasized the peculiarity of legal reasoning and interpretive operations, such as analogy, arguments *a fortiori* or arguments *a contrario*, or reduced legal inferences to simple syllogistic inferences, grounded in Aristotelian logic[37].

The anti-formalist position emerged in legal theory and philosophy in the early 20th century with the advent of legal currents critical of positivism such as the German *Freirechtsschule*, American *legal realism* and French *libre recherche scientifique*. In its basic assumptions, it was a response to the limitations of the syllogistic approach to legal reasoning. This is why Tomasz Gizbert-Studnicki notes that supporters of the anti-formalist position claim that legal reasoning is essentially

[35] J. Wróblewski, *Rozumowania prawnicze w wykładni prawa* [in:] *Studia prawno-ekonomiczne*, t. IV, Łódź 1970, p.7.
[36] K. Opałek, *Teoria rozumowania prawniczego – między logiką i aksjologią* [in:] K. Opałek, *Studia z teorii i filozofii prawa*, Kraków 1997, p. 64.
[37] T. Gizbert-Studnicki, Język prawny z perspektywy socjolingwistycznej, Warszawa-Kraków 1986, p. 19.

informal in nature[38]. Their legitimacy does not rely on the occurrence of a relationship of logical result between premises and conclusion. The correctness of these reasonings cannot be equated with their fulfillment of the requirements imposed by formal logic.

Summary

The division of reasoning by the choice of a formalist or anti-formalist stance outlined above can be summarized in the opinion of Jerzy Wróblewski, according to whom the formalist stance is characterized by the assertion of the necessity of formal logical reasoning in law[39]. The anti-formalist stance, on the other hand, is characterized by an emphasis on the role of more-or-less loose value judgments and argumentative techniques, which are supposed to ultimately determine the outcome of legal reasoning.

At the same time, it should be strongly emphasized that over the course of the 20th century, the previous achievements of jurisprudence were confronted with other scientific fields, among which we could mention, for example, the philosophy of language, logic, or metaethics or hermeneutics. This thus led to a redefinition of the traditional view of logic. The most important result of this activity was its distinction of two basic types: formal logic (*classical logic, modal logic, deontic logic*) and informal logic (*topics, argumentation theory, new rhetoric*). Any pronouncement on the superiority of either of these, however, makes no sense, for in legal discourse there is room for both logic from a formalist and anti-formalist point of view[40].

In addition, the word *logic* is also used in a distinctive sense[41]. An example of such an approach is the concept of legal logic occurring in jurisprudence, which consists of three basic meanings: logic of justification, logic of heureasis and system logic. Referring to the earlier division into formalist and anti-formalist approaches, it should be said that in anti-formalist concepts, legal logic usually means heuristic logic, while

[38] T. Gizbert-Studnicki, Język prawny z perspektywy socjolingwistycznej, Warszawa-Kraków 1986, pp. 19-20.
[39] J. Wróblewski, *Rozumowania prawnicze w wykładni prawa*, [in:] *Studia prawno-ekonomiczne*, t. IV, Łódź 1970, p. 7.
[40] J. Wróblewski, *Rozumowania prawnicze w wykładni prawa* [in:] *Studia prawno-ekonomiczne*, t. IV, Łódź 1970, p. 28.
[41] G. Kalinowski, *Y a-t-il une logique juridique?*, *Logique et Analyse*, Paris 1959. p. 53.

in the formalist approach, legal logic is rather referred to as system logic and logic of justification.

Summarizing the above terminological remarks, it should be noted that it is the ever progressive reflection in the field of formal and informal logic, together with the gradual reference to axiology and valuation in law, that no single model of legal reasoning has been developed nowadays. Thus, this can lead to disputes about how decisions are made in the process of applying the law, since it is the initial methodological position (formalist or anti-formalist) that influences the positive or negative answer to the question of the presence of logic, especially the role of the legal syllogism in legal reasoning.

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