RUCH PRAWNICZY, EKONOMICZNY I SOCJOLOGICZNY
Rok LXXVIII – zeszyt 1 – 2016

ANDRZEJ GOMUŁOWICZ

THE PRINCIPLE OF *AEQUITAS* AND THE TAX JURISDICTION OF THE ADMINISTRATIVE COURTS*

I. *AEQUITAS* AND LAW

The Roman jurist Ulpian (second/third century CE), in his elucidation of the substance and meaning of the maxim *res iudicata pro veritate accipitur*,** argued that truth is not decided by virtue of anything being stated in the adjudication—it approaches the truth (*accipitur*—it grasps or embraces it), as long as it is founded on true premises.[1] The question of the ruling and its supporting arguments is what may divide judges in the course of a judicial process, as they face the dilemma of resolving a legal issue which is often both complex and highly consequential. The virtues of a judge, which according to Ulpian are the mainstay of each judicial process, include wisdom, prudence, composure and a quest for justice.

At the heart of jurisprudence there lay a value which Roman jurists referred to as *aequitas*. They believed that the value and the strength of the law was not only contingent upon the fairness of instituted laws, but also on the fairness of court rulings. If legislation and the application of law concur in their substance, such a state of affairs indicates that *aequitas* is in fact attained in social life, as both obligations and the rights of an individual are shaped in accordance with the standards of fairness.

To Ulpian, the maxim stating that *ius est ars boni et aequi*** is not merely a rhetorical assertion. It possesses a profound significance because it treats law as an art—a skill understood as a contribution to good law, the application of which respects the standards of fairness.

The Greek philosopher Socrates (fifth/fourth century BCE), one of the most eminent thinkers of antiquity and creator of political ethics, assumed that no individual acts wrongly on purpose. An error may be committed only by a per-

* Translation of the paper into English has been financed by the Minister of Science and Higher Education as part of agreement no. 541/P-DUN/2016. Translated by Szymon Nowak. (All footnotes marked with asterisk by the editor.)

** A thing adjudged is to be taken for truth.

[1] S.J. Karolak, *Sprawiedliwość. Sens prawa. Eseje*, Cracow, 2005, 15: 'Law, in order to do justice to its dignity, must be based on knowledge, on the skill of discerning of what is good and fair, which will then be put to use. Judgements delivered by judges do possess a certain truth value. It would be an ideal situation if they always reflected the truth. However, if this is not the case, it is presumed that they approach the truth'.

son who lacks cognition.[2] Moral preferences will always be determined by the awareness of the good, or knowledge. And this knowledge, Socrates asserts, should guide the judge, especially since life is governed by inviolable ethical principles.

To Socrates, a judge was the embodiment of justice, while a just judge possessed qualities which made him a guarantor of a fair judiciary. Among such qualities, Socrates enumerated those he found fundamental: 'to hear courteously, to answer wisely, to consider soberly, and to decide impartially.'

Marcus Tullius Cicero (second/first century BCE) drew attention to the fact that when law is administered, it does happen that 'existunt etiam saepe iniuriae calumnia quadam et nimis callida sed malitiosa iuris interpretatione', or 'injustice often arises also through chicanery, that is, through an over-subtle and even fraudulent construction of the law'.[3] Cicero thus suggests that the concept of the judiciary as well as the forging of its authority should be viewed from the standpoint of the universal good which the profession of a judge serves, namely justice. In so doing, the author makes it evident that judges are also responsible for the world in which we live.

The crucifix placed in the chamber of the erstwhile Crown Tribunal in Lublin bore an inscription in Latin which read: *iustitias vestras iudicabo*;[4] the adage may now be found on the columns of the Supreme Court in Warsaw. It reminds one of the fact that although law came from the Capitoline Hill, another hill, namely Golgotha, made us aware that the substance of law must represent certain universal values.

Seeking an answer to the question about the r i g h t and w r o n g in law, which is intended to result in the f a i r n e s s of a judicial decision, has divided and will continue to divide judges; when analysing the circumstances of a particular case, especially when pertinent legal regulations are equivocal, judges may formulate the holding of the judgement while relying on a variety of arguments. They do so with a strong inner conviction that this is the correct construction of the law, because it is supported by more cogent substantive reasons than the reasons invoked by judges who advance other holdings and provide a different rationale.

Every judge strives for a just adjudication, since each 'cherishes the light of truth'. In this, judges take heed of the maxim *nihil est veritatis luce dulcius* ('nothing is sweeter than the light of truth'). However, judges are not infallible, which is also reflected is a sentence originating from Roman jurisprudence, namely *errare humanum est*. 'To err is human,' just as it is human to learn from one's mistakes (*errando discimus*).

** Law is the art of goodness and fairness.

[2] See: A. Krokiewicz, *Sokrates*, Warsaw, 1958; I. Krońska, *Sokrates*, Warsaw, 1985.

[3] Marcus Tullius Cicero, *O powinnościach* [*De officiis*], in: idem, *Pisma filozoficzne*, vol. 2: *O państwie. O prawach. O powinnościach. O cnotach*, trans. W. Kornatowski, Cracow, 1960, 343-344.

[4] I shall judge your justice (editor's note). W. Wołodkiewicz (ed.), *Łacińskie inskrypcje na kolumnach Sądu Najwyższego Rzeczypospolitej Polskiej*, Warsaw, 2001; S.J. Karolak, *Sprawiedliwość. Sens prawa*, Warsaw, 2007, 186 f.

II. *DUBITANDO AD VERITATEM PERVENIMUS*[*]

The judge, in formulating the holding according to which 'a party to administrative court proceedings which motions to set another deadline for the payment of a filing fee incurred by a complaint (Article 87 para. 1 PBAC[5]), where the latter has been dismissed due to failure of timely payment (Article 220 para. 3 PBAC), is not subject to obligation of a filing new complaint with the aforesaid motion',[6] demonstrates that the application of law does not only involve the competence associated with knowledge and professional expertise, but also understanding of the reasons and axiological foundations underlying legal culture. Thus the judge arrived at a single cohesive whole, which convincingly combined legal reasons with evident axiological reasons; this clearly manifests that the authority of the judge is established through the just application of law.

The legal constructions adopted in the Act on Proceedings before Administrative Courts demonstrate the necessity of perceiving their axiological aspect. In their decisions, the judge must not shy away from evaluations of legal solutions, since moral sensibility to law constitutes a trait which is an inseparable element of the judiciary. Moral sensibility to law was a sufficiently potent argument to enable the judge to adopt and validate the holding that under the Act on Proceedings before Administrative Courts there exists neither a need nor a purpose to adopt a construction requiring repeated submission of a previously dismissed complaint with the motion to set another deadline. The motion to set another deadline for the submission of a complaint or appellate instrument which has been previously dismissed, 'denotes implicitly that the party files a repeated complaint or an appellate instrument whose contents are identical with the originally submitted'. The party is obviously entitled to file a new plea—including the motion to set another deadline—and change the conclusions and the content of the rejected submissions. 'If a party does not do so, the validity of the previous complaint is restored. The same applies to the previous appellate instrument'.

The judge who delivered the ruling was thus aware of the legal and axiological consequences arising from the formulated holding. This bolsters the authority of the judge and the administrative court as well, contributing to the increase of social confidence in the judiciary.

The judges who formulated the holding to the effect that 'in the light of Article 127 of the Tax Ordinance Act of August 1997 (JL RP No. 137, item 926, as amended)[7] it is inadmissible that an appellate body should repeal the decision of a first-instance body and rule as to the substance of the case (Article 233 para. 1(2)(a) Tax Ordinance Act) if the former body determined the tax base by means of assessment, employing a different method than the method adopted

---

[*] Though doubt, we arrive at the truth.

[5] Act of 30 August 2002 on Proceedings before Administrative Courts, Journal of Laws Republic of Poland (JL RP) 2002, No. 153, item 1270, as amended (hereinafter PBAC).

[6] Judgement of the Supreme Administrative Court of 25 January 2008, II FZ 646/07.

[7] Hereinafter TOA.

by the latter', recalled the importance and the meaning of the maxim *ius est a iustitia appellatum* ('law derives its name from justice').[8] They proved that the decision of an appellate tax authority, issued under Article 233 para. 1(2) (a) TOA creates a situation where law fails to comply with *recta ratio*. Also, the judges aptly argued that the discrepancy between the tax authority's construction and the application of the legal norm expressed in the provision of Article 233 para. 1(2)(a) TOA and *recta ratio* leads to the annihilation of law, in a very broad sense.

The premise of the ruling and its supporting reasoning—clear and precise in its arguments—draw attention to the importance of the general rules governing tax procedures. After all, the judges approached the interpretive dilemma of Article 233 para. 1(2)(a) TOA in the following context: the rules dictating the two-instance procedure, the rule of sustained confidence in the tax authorities, and the rule of the taxpayer's active participation in the proceedings. Thus, they underscored the meaning of the principle of the certainty of tax law, and elucidated how this principle should be understood.

Article 233 para. 1(2)(a) TOA does not entitle the appellate body to alter the grounds for a decision by adopting a method of assessing a tax base that differs from the one employed earlier by the first-instance authority, with simultaneous repeal of the decision and ruling as to the substance of the case. If, in a decision relating to tax liability, the appellate body takes into account those elements which remained outside the scope of the first-instance proceedings, it evidently violates the rule stipulating the two-instance procedure.

The essence of the latter procedural mode also consists in that the appellate body is obligated to examine the case in its substance only when at the first-instance stage necessary findings have been made regarding the state of fact, while potential deficits in that respect could not have been rectified under Article 229 TOA for reasons attributable to the first-instance body.

Each material change in the substance of a decision must be effected in such a way that the taxpayer is entitled to an appeal measure within the instance-based procedure. Therefore, if the appellate body significantly modifies the findings of the first-instance authority, the rule of two-instance proceedings is infringed and there is a breach of two other rules relating to the subjective rights of the taxpayer, namely the rule of confidence in the tax authority (Article 121 para. 1 TOA), and the rule dictating active participation of the taxpayer in the proceedings (Article 123 para. 1 TOA).

Rescinding a decision made by a first-instance body in its entirety or in part, and thus ruling as to the substance of the matter, is only possible when the appellate body has no doubt as to the facts and finds that there is no need to conduct additional proceedings in order to supply the lacking evidence and material. The premise of the ruling and its rationale convey a warning against the unthinking and mechanical application of Article 233 para. 1(2)(a) TOA.

Saint Ives, the patron of lawyers, gained renown as a fair judge, as 'in each case he would diligently search for truth, and when he found it, being an ar-

[8] Judgement of the Supreme Administrative Court of 6 May 2009, II FSK 1794/08.

dent advocate of justice, administered justice to everyone, regardless of their social standing'.[9]

The judges who formulated the aforesaid holding had ascertained the truth and demonstrated that the ideas of *Iustitia* and *Veritas* are vital for the judicial process.

One of the major issues in jurisprudence is the legitimacy of excluding a judge from adjudicating in a given case. One of the momentous holdings states that the 'exclusion of a judge referred to in Article 19 of the Act on Proceedings before Administrative Courts of 30-08-2002 (JL RP No. 153, item 1270, as amended) is intended to ensure the objectivity of the court and must not be treated as an opportunity to eliminate such judges from the proceedings which a party considers inexpedient given their subjectively understood interest'.[10]

The impartiality of the judge leads directly to objectivity in resolving a given case; it also has to provoke reflection on the emotional attitude towards the case in progress or an emotional attitude towards a party.[11] The impartiality of the judge also means that a 'judge is unencumbered by passion' and 'should not be guided by his own interest, his own inclinations and personal motives which could deceive him'.[12] An important aspect of that impartiality is the judge's self-exclusion from hearing a particular case. Whether and when a judge should thus proceed in order to remain objective will be dictated by the judge's conscience, in which the entirety of the legal and factual conditions are weighed and examined. A judge must adhere to the standards of judicial ethics, first and foremost with a view to issuing a fair judgement. A judge who contravenes the principle of impartiality and objectivity tends to be perceived as a '[...] judge unfair and immoral'.[13] Such a judge, '[...] being unworthy of trust would exercise a heinous power in a society, a tyranny, which would command obedience only through fear'.[14]

The judge who formulated and justified the holding of the decision, resolved the dilemma associated with the application of Article 19 PBAC. The relative premises for the exclusion of a judge have a very broad context, therefore said judge had to consider a vast range of reasons, with the constitutional right to thorough and fair proceedings before an administrative court as the foremost among them. It is an asset safeguarded by the constitution in the same degree as the sovereignty of judges. Here, the judge had to resolve in the matter of the relationship between these two values. It was also necessary—to effect an in-depth analysis of the *ratio legis* for the applicability of the exclusion of a judge in view of the relative statutory grounds (and this the judge did).

In the reasoning which supported his ruling, the judge relied on four arguments. First of all, he found that the circumstance which may have given rise to reasonable doubt concerning the impartiality of the judge in a given

---

[9] E. Waliszewska, *Św. Iwo patron prawników*, Poznań, 2003, 13.

[10] Ruling of the Supreme Adminitrative Court of 22 February 2008, II FZ 60/08.

[11] Z. Tabor, T. Pietrzykowski, Bezstronność jako pojęcie prawne, in: *Prawo a wartość. Księga Jubileuszowa profesora Józefa Nowaka*, Cracow, 2003, 273 f.

[12] On that issue see: P.H. Holbach, *Etokracja*, Warsaw, 1979, 60 f.

[13] Ibidem, 57 f.

[14] Ibidem.

case must be real, as opposed to potential. Furthermore, suspicions of a party with respect to the impartiality of the judge, resulting from delusive notions or oversensitiveness, cannot be sufficient arguments for exclusion of such a judge. The allegation of partiality must be supported by material reasons, which would objectively lead to a loss of confidence in the judge's impartiality. It is also important that reservations regarding the impartiality of a judge be justified, which involves the necessity of formulating pertinent arguments.

The impartiality of the judge must be a canon of proceedings; it is a prerequisite of a fair proceeding before an administrative court. Impartiality is a quality involving numerous aspects. Above all, it means that while discharging their duties the judge cannot show favour, bias or dislike. Impartiality also denotes the judge's unemotional approach. And yet, emotions are a natural element of human life, therefore a judge, just as every other person, is susceptible to their effect.[15] However, 'a judge is a great one if he rises above the pettiness of narrow minds'.[16] It does happen that a taxpayer, in view of all the circumstances of a case, may provoke the judge's aversion or anger, and reinforce the judge in their conviction—albeit often subconsciously—that the taxpayer is no paragon of civic virtue and that they act negligently or dishonestly where their tax liabilities are concerned. What then must a judge do to surmount that 'barrier of dislike'? It is a major problem, because if judge fails to do this, they are likely to issue an unjust ruling.[17] Freedom from emotion must characterise the judge throughout the entire course of judicial administrative proceedings. Therefore the judge, respecting the legal reasons as well as the ethical reasons associated with a fully sovereign and impartial judicial process, mindful of the standards judicial objectivity and probity, has to turn to their conscience, and consider withdrawing from adjudicating in the case.

The *ratio legis* underlying exclusion of a judge is obvious: it is a form of exercising the constitutional right to a fair trial. As such, it has to be interpreted as an elimination of all the circumstances which may result in any doubts concerning the impartiality and objectivity of the judge in their examination of a given case.[18] The impartiality of the judge with respect to the parties is a prominent trait of judicial sovereignty.[19]

The reservations of the complainant concerning the impartiality of the judge were aroused by the fact that the judge had chaired the adjudicating panel in cases where the factual and legal states were similar. The complain-

---

[15] E. Łętowska, Dekalog dobrego sędziego, in: Ł. Bojarski, *Sprawny sąd. Zbiór dobrych praktyk*, Warsaw, 2008, 231 f.

[16] P.H. Holbach, *Etokracja*, 60.

[17] E. Łętowska, op. cit., 232: '[...] it is most difficult to administer justice to someone who causes us to feel unmitigated aversion. However, only when one manages to do so, can one consider themselves a true judge.'

[18] See: B. Dauter, *Zarys metodyki pracy sędziego sądu administracyjnego*, Warsaw, 2008, 17 and 50-51; A. Mudrecki, Prawo strony do rzetelnego procesu przed sądami administracyjnymi, *Zaszyty Naukowe Sądownictwa Administracyjnego* 2007, no. 3, 45 f.; Judgement of the Constitutional Tribunal of 20 July 2004, SK 19/02, OTK ZU 2004, no. 7/A, item. 67.

[19] Judgement of the Constitutional Tribunal of 24 June 1998, K 3/98, OTK ZU 1998, no. 4, item 52.

ant found that the view expressed by the judge concerning an issue relating to the subject matter of a decision taken in another case represented sufficient grounds to exclude that judge from the proceedings under Article 19 PBAC. The complainant's argumentation was supported by a presumption that the judge strove to issue a ruling which would be identical as in another case concerning a similar or the same subject matter, due to the human disinclination to admit their own mistakes.

The allegations formulated by the complainant adopt the assumption expressed in the Latin maxim *consuetudo est altera natura*.* The complainant held that since habit is second nature, the judge, yielding to a certain pattern and acting without consideration, would issue a ruling identical to the one whose justifiability the complainant contested.

The judge who heard the arguments of the complainant aptly found that the fact of the judge's expressing a legal view in cases where the factual and legal state were similar or identical to the states present in the complainant's case cannot be deemed a circumstance justifying exclusion of the judge under Article 19 PBAC.

The nature of the relative premises pertaining to the exclusion of the judge is conveyed in such a fashion that an individual assessment of case-specific circumstances is necessary. The automaticity of action resulting in the exclusion of a judge each time when an appropriate motion is submitted under Article 19 PBAC would contravene the reasons for which the institution of exclusion was established. Flexible evaluation of case-specific circumstances is intended to preclude superficial assessment of the situation in which the judge finds themselves. This obviates the danger consisting in a potential transformation of the institution of exclusion into a procedural mode which may impede or even paralyse judicial administrative proceedings. The right to a fair process before an administrative court must be combined with the principle of the judge's sovereignty. The nature of both constitutional assets always has to be judiciously and prudently considered *ad casum*. Respecting the sovereignty of the judge must be comprehended as such an exercise of judicial power which prevents (eliminates) opportunities to exert pressure on the judge, both by the public authority and the taxpayer.

The judge who issued the decision acted in accordance with the maxim of *fundamentum iustitiae est fides*.** His ruling demonstrates that justice is founded on the judge's diligence, reliability and probity.

It happens extremely rarely that emotions of any kind are expressed in the judgement's rationale. This was the case with a ruling, in the reasoning of which the judges included the following assessment: 'dismissal of the cassation appeal […] does not relieve the adjudicating panel of a sense of shame and embarrassment occasioned by the outrageous circumstances of the examined case.' The above was associated with a holding stating that 'Provision of Article 1 of the Act on Exemption of Payments Received in Respect of Nazi Persecutionfrom Taxes and Duties and Exclusion of such from Taxable Income (JL RP

* Custom is a second nature.

** The foundation of justice is good faith.

No. 93, item 1028, as amended) introduces an autonomous regulation stipulating that "Payments made to victims and their inheritors in respect of persecution by the Nazi Germany during World War II, including slave and forced labour, are exempt from taxes and duties.'"[20]

Legal reasoning is supported by ethical arguments which demonstrate the judges' moral sensibility to law.[21] The judges argue that:[22]

— The humanitarian nature of the benefit precludes it from being taken over in any form by the treasury of the state.[23]

— The complainant would never have received the disputed benefit if it had not been for his forced labour in a camp and his being prisoner there.

— Performance of slave labour certainly sets that group of persons apart from the body of the employed, in a manner which justifies a certain privileged position; these affairs are so obvious that they do not require additional argumentation.

— The argumentation presented as rationale of the cassation appeal is a vivid example of how the noblest intentions of the legislator can be distorted by an 'appropriate' interpretation of the legal norm.

The holding of the judgement and its reasoning warrant the formulation of four important observations:

— The authority of the judge engenders public confidence in the judiciary and its moral strength.

— The judge does indeed perform the function of a guardian of rights and freedoms of the individual granted in the constitution.

— The judge guarantees effective protection of the subjective rights of the individual.

— The judge is a genuine, effective guarantor of the rule of law which derives from constitutional standards.

The judges who formulated the holding and provided it with a humanistic rationale showed how to serve the good of justice. It became possible because in that particular instance they were capable of discerning and then administering that which was good, right and just. This was what the ancient Romans referred to as *aequitas*.

Wherein lies the particular value of that holding and its rationale?[24] The ruling draws attention to a number of important issues. Firstly, the obligation to

---

[20] Judgement of the Supreme Administrative Court of 29 September 2010 r., II FSK 777/09.

[21] T. Romer, M. Najda, *Etyka dla sędziów*, Warsaw, 2007, 14: 'To a judge, moral sensibility […] opens up a different perspective than literal knowledge of law. Theoretical knowledge […] is thus complemented by a dimension of values, which enables one to situate facts on a moral map and perceive their full meaning and import'. See also R. Tokarczyk, *Etyka prawnicza*, Warsaw, 2007, as well as Z. Ziembiński, *Zarys zagadnień etyki*, Poznań and Toruń, 1994; idem, *Podstawy nauki o moralności*, Poznań, 1981; idem, *Wstęp do aksjologii dla prawników*, Warsaw, 1990.

[22] See pages 7–8 of the rationale to the Judgement of the Supreme Administrative Court of 29 September 2010, II FSK 777/09.

[23] The benefit in question is an invalidity pension in the amount of EUR 33.08, awarded on account of a period spent as prisoner in Nazi concentration camps and slave labour in Steyer Armaments Factory.

[24] Such value may also be found in the ruling of 10 December 2008, I SA/GL 891/08, issued by the Regional Administrative Court in Gliwice. In the reasoning, the judges invoked the following arguments: 1) the Court finds the opinion advanced by the body of second instance to be errone-

resolve difficult and complex cases in a morally responsible manner, in accord with conscience rather than against it, is inherent in the very concept of law.

Secondly, a judge will not accept a legal solution which results in lawlessness.

Thirdly, a judge is required to possess moral sensibility to law; legal knowledge and moral sensibility become integral elements of a judge's personality, a personality that cautions one against the thoughtless, mechanical application of law, which can be 'dry' in its substance or 'letter'.

Fourth, Solomon's request for a 'judge's discerning heart'[25] had been heard; professional actions of the judge, focusing on just administration of law, require both a morally thorough and responsible discharge of duties, as well as systematic and continual contribution to and consolidation of the judge's authority.

Fifth, Cicero's observation, stating that law is a phenomenon which 'whether it enjoins or forbids, the good respect its injunctions, and the wicked treat them with indifference', still remains relevant and valid.

Sixth, the ultimate goal of the judiciary, and therefore the ultimate purpose of a judge's action is the human being. Hence the profession of a judge requires them to listen to the reasons and arguments formulated by people, as no responsible decision can be taken if the argument and reasons formulated by those whose case the judge happens to adjudicate are not attentively listened to.

The holding of the judgement and its rationale are in line with that judicial dimension of law of which Cicero wrote: 'it is the reason and mind of a wise being'.[26]

Scepticism, as far as the judicial decisions of an administrative court are concerned, is often related to the legal meaning of justice, since in order to explain that notion an interpretive key is required. The resolution adopted by the judges, stating that 'in the light of the laws in force in 2008, the income (profit) of a capital company which possesses the status of a shareholder in a limited joint-stock partnership is subject to income tax on the day of receiving a dividend payable to shareholders under a resolution of the general meeting concerning division of profit, i.e. pursuant to Article 5(1) of the Act on Corporate Income Tax of 15 February 1992 (JL RP 2000, No. 54, item 654, as amended),'[27] demonstrates that the judges found such a key. This is an indisputable asset of the resolution. It contributes to the authority of law, because it endorses the values on which law should be based, values which must always be at the foundation of law.[28]

---

ous, namely that only income listed in Articles 21, 52, 52a and 52c are exempt from tax. Adoption of such a thesis would mean that the provisions of the on Exemption of Payments Received in Respect of Nazi Persecution from Taxes and Duties and Exclusion of such from Taxable Income is dead; 2) the complainant had been a prisoner of concentration camps and on that grounds was granted the status of veteran and victim of repression.

[25] On assuming power, king Solomon asked God to grant him a singular gift: 'So give your servant a discerning heart to govern your people and to distinguish between right and wrong.'

[26] Marcus Tullius Cicero, *O prawach* [*De legibus*], in: idem, *Pisma filozoficzne*, vol. 2, 208; see also: K. Kumaniecki, *Cyceron i jego współcześni*, Warsaw, 1950.

[27] Resolution of the Supreme Administrative Court of 16 January 2012, II FPS 1/11.

[28] S.J. Karolak, *Sprawiedliwość* [2005]; J.M. Kelly, *Historia zachodniej teorii prawa* [*A Short History of Western Legal History*], Cracow, 2006; D. Lyons, *Etyka i rządy prawa* [*Authority of Law*], Warsaw, 2000; J. Raz, *Autorytet prawa*, Warsaw, 2000.

Article 1 of the Napoleonic Code, in section 4, provides that: 'The judge who shall refuse to determine under pretext of the silence, obscurity, or insufficiency of the law, shall be liable to be proceeded against as guilty of a refusal of justice'.[29] Hence, adjudication is to be founded on a law which should be complete (it is not 'silent' about important aspects), lucid (law is not 'obscure'), and satisfactorily specific (as opposed to 'insufficient').

The judges who adopted the aforesaid resolution certainly did not 'refuse to determine', but resolved a complex problem concerning the mode of taxation of income (profit) of a limited liability company which possessed the status of a shareholder in a joint-stock partnership. In doing so, they did not commit a 'refusal of justice'.

The resolution of the judges asserts that a limited joint-stock partnership is not a payer of corporate tax, but that the tax liability rests with the limited liability company which is a shareholder in the latter. In principle, taxable income is determined by means of cash accounting (Article 12 sections 1-3 and 3c and section 4b ACIT[30]), which means that the income becomes taxable when funds or moneys are received by the taxpayer. Meanwhile, the income yet to be received, in other words due earnings, is subject to tax only when it is associated with the business activity and special sectors of agricultural production. The income resulting from shares in a company does not represent income from a business enterprise, as the income consists in having a property right in the form of shares, which entitles the shareholders to a portion of the company's profit.

The judges aptly argued that the tax obligation imposed on the income which a shareholder receives through a title to partake in the profits of a limited joint-stock partnership is dependent on the outcomes of actions undertaken by that company. The shareholder becomes entitled to the dividend only upon meeting specific requirements which grant them the right to obtain a portion of profit in a given fiscal year. Then the liability may become concrete in the subjective and objective sense. The title to payment of profit comes into effect on the day the resolution is adopted, unless a particular date for the dividend has been established. This means that until a suitable resolution concerning the division of profit between shareholders is adopted, a shareholder does not hold a claim to be paid their portion. The shareholder cannot be deprived of the right to share in the profit, but they may not receive the dividend because the company has made no profit or the generated profit is not allocated for dividends. The important point is that as long as legal grounds for the division of profit among shareholders and the resulting claim of the limited liability company cannot be ascertained, there is no income that could be subject to tax.

Both the substance and the form of the resolution, as well as the mode of legal argumentation demonstrate yet another value. They show that it is

---

[29] The issue is discussed more broadly in K. Sójka-Zielińska, *Kodeks Napoleona. Historia i współczesność*, Warsaw, 2012.

[30] Act on Corporate Income Tax and Amendment of Acts Governing Rules of Taxation of 15 February 1992, JL RP 1992, No. 21, item 86, as amended.

worthwhile drawing on jurisprudence of administrative courts to know: 1) what given tax solutions are oriented towards; 2) what objectives they seek to accomplish and how they do it; 3) what can be expected of them in particular conditions.

The resolution also makes one aware that taxation involves not only complex legal problems but also issues of an ethical nature, which manifest themselves as law is applied. It may happen that tax law lapses into its opposite when rigorous adherence to the letter of the law begins to ignore social context. It is in those instances, in view of 'malicious legal explanations' (Cicero) that judges of administrative courts have a particular role to play. This is also attested to in the adopted resolution.

A judgment of the Supreme Administrative Court holds that: 'Neither internal regulations of the tax authorities nor the provisions of applicable law provide for appointing an acting Deputy Head of Tax Office and acting Vice Director of Tax Chamber. In the opinion of the Supreme Administrative Court, the fact that internal regulations and statutory laws, in particular Article 134 of the Tax Ordinance Act, were silent in that respect, cannot be treated in the circumstances in question as an authorisation for the respective appointments of acting Deputy Head of Tax Office and acting Vice Director of Tax Chamber. In fact, both of these appointments resulted in circumventing the above provision of the Tax Ordinance Act and particular provisions of internal regulations. In consequence, the action was in breach of Article 7 of the Constitution of the Republic of Poland, which obligates bodies of public authority to act pursuant to the statutes.'[31]

The holding of the judgement and its reasoning prove that in a democratic state the 'impudence of the tax authority' relies apparently on a legal regulation, yet in a manner which mocks laws, shows disregard for the procedural guarantees afforded to the taxpayer and, above all, expresses disdain for the constitutional principle of a democratic legal state.

The holding of the judgement, together with its cohesive, relevant and logical rationale demonstrates that effective protection of taxpayer rights can be found primarily, if not exclusively, in the administrative judiciary.

This contemporary act of 'impudence of the tax authority' consisted in the appointment of a deputy head of a tax office to the function of acting vice director of a tax chamber, whereby the person was not dismissed from their previous post, and continued to hold that function. That notwithstanding, the acting director of the tax chamber appointed a new person to assume the duties of a deputy head of the tax office (although internal organisational regulations provided only for one such position, already occupied). The deputy head of the tax office was appointed as acting vice director of a tax chamber in a situation where, according to the internal regulations of that tax chamber, there were only three such positions, and again, these had already been filled. The judges had to resolve whether, given the legal situation, the appointments were effective, and thus entitled such persons to issue tax-related decisions. They argued fittingly

[31] Judgement of the Supreme Administrative Court of 16 April 2013, II FSK 410/11.

that 'the function of an acting officer may be appointed only when a given position in the organisational structure of a given office is free to be filled'.

The 'impudence of the tax authority' assumed the form of reprehensible practice, as it infringed the constitutional principle stating that such bodies have to function on the basis of and within the law. Consequently, it violates the principle of maintaining confidence in the state and the law it enacts. A brilliant Scotsman (Adam Smith) argued that 'the principle of certainty is so important in taxation that even a greatly disproportionate distribution of tax which defies the principle of equality, is not as great an evil as "a small degree of uncertainty' in that respect'.[32] Naturally, what engenders this uncertainty is action without legal grounds.

What protected the taxpayer from the unlawful action of the tax authority? This protection is owed to the extensive interpretive knowledge of the judges, their inquisitiveness and perspicacity, to the moral sensibility of the judges and the reliability of judicial review.[33]

The professional ethics of the judges[34] who issued the judgement led to

— A meticulous, critical assessment[35] of an apparently straightforward and 'run-of-the-mill' type of case.

— Moral sensibility to law, experience and legal refinement[36] enabled them to perceive and articulate the mechanism behind the licence which the tax authorities allowed themselves with respect to the mode and form of appointing deputy heads in tax offices and tax chambers.

— Concern about the authority and prestige of the profession of a judge resulted in a judgement which had been subjected to a 'test of conscience',[37] whose steps show how to translate—after careful deliberation—law into practice, in line with the requirements of justice.[38]

The holding of the judgement and its rationale reveal the meaning of the Latin maxim *nemo audiatur turpitudinem suam propriam allegans* ('a per-

---

[32] N. Gajl, *Teorie podatkowe w świecie*, Warsaw, 1972, 46-52.

[33] These judicial qualities were lacking in the judgement of the Regional Administrative Court in Rzeszów, issued 25 November 2010, I SA/Rz 600/10.

[34] T. Romer, M. Najda, *Etyka dla sędziów*, 14: 'Professional ethics should not be construed as a strict rule with which judges have to comply or which is intended to guide them by the hand, but rather as a source of personal development, a pretext for reflection, akin to a mirror into which they can look at any point in their career and answer the question: am I a good judge?'

[35] More broadly on respecting the dignity of the taxpayer in tax-related proceedings, see J. Małecki, Obowiązek podatkowy a godność podatnika, in: P. Fundowicz, F. Rymarz, A. Gomułowicz (eds.), *Prawość i godność. Księga Pamiątkowa w 70. rocznicę urodzin Prof. Wojciecha Łączkowskiego*, Lublin, 2003, 135-143.

[36] The issue is addressed more broadly in J. Potrzeszcz, Immanuela Kanta i Matthiasa Mahlmanna próba humanistycznego uzasadnienia godności człowieka, in: A. Dębiński (ed.), Abiit, non obiit. *Księga poświęcona pamięci Księdza Profesora Antoniego Kościa SVD*, Lublin, 2013, 273-299.

[37] T. Romer, M. Najda, *Etyka dla sędziów*, 14: 'The role of professional ethics of judges consist in sensitizing one to all moral aspects of action, in making a judge aware of the moral consequence of decisions they take and in helping one to validate that decision through a test of conscience, which always has the last word.'

[38] See Z. Ziembiński, *Sprawiedliwość społeczna jako pojęcie prawne*, Warsaw, 1996, 52-89; idem, *O pojmowaniu sprawiedliwości*, Lublin, 1992, 173-184; idem, *Analiza pojęcia czynu*, Warsaw, 1972, 40-68; see also C. Kosikowski, *Podatki. Problem władzy publicznej i podatników*, Warsaw, 2007.

son who pleads their own turpitude shall not be heard'), and underscore the significance of the constitutional norm expressed in Article 175, according to which 'The administration of justice in the Republic of Poland shall be implemented by [...] administrative courts.' The judgement is a reminder addressed to public authority that law has its origins in justice.

The jurisprudence of administrative courts may happen to involve the 'correction of statutory law'. This is the case in the holding according to which 'under Article 3 para. 2(4) PBAC, a taxpayer is entitled to file a complaint with the regional administrative court against the decision of the head of the tax office concerning an extension of deadline for the refund of tax charged in excess of due tax, issued in the course of fiscal audit under Article 87(2)(2) of the Act on Goods and Services Tax.'[39]

The judge who delivered the ruling had to resolve whether the taxpayer is entitled to file a complaint with the administrative court against a decision regarding an extension of the deadline for the refund of excess tax issued by the head of tax office during a tax audit.

A decision to the above effect may be issued in the course of the verification procedure, fiscal audit and tax-related proceedings. At the same time, the Tax Ordinance Act does not grant a taxpayer the right to file complaints against a decision to extend the deadline for a refund of excess tax when such a decision has been made as part of a tax audit or tax-related proceedings.

Thus the judge was confronted with a difficult case and, having found no applicable standard on which to base his adjudication among the legal rules arising from the Tax Ordinance Act, he drew upon Article 3 para. 2(4) PBAC. The judge determined that the decision of the head of the tax office to extend the deadline for a refund of excess tax on goods and services meets the criteria which follow from said article. This means that the scrutiny of the activities of the public administration undertaken by administrative courts encompasses adjudication in the matter of complaints against other acts and actions of public administration, relating to rights and obligations under law, than those specified in sections 1–3 of the Article.

Such a holding meets the standards of fairness, but the reasoning of the judge requires reinforcing by arguments rooted in the humanistic tradition of legal culture,[40] in universal axiological values[41] and constitutional norms.[42]

---

[39] Decision of the Supreme Administrative Court of 10 July 2013, I FSK 1133/13.

[40] J. Trzciński, Prawotwórcza funkcja sądów, in: B. Banaszak, M. Jabłoński, S. Jarosz-Żuchowska (eds.), *Prawo w służbie państwa i społeczeństwa. Prace dedykowane prof. K. Działosze z okazji 80. urodzin*, Wrocław, 2012, 261; also B. Czech, Wykładnia praw i niezawisłość sędziowska a zdrowy rozsądek (zagadnienia wybrane), in: J. Gudowski, K. Witz (eds.), Aurea praxis aurea theoria. *Księga pamiątkowa ku czci Profesora T. Erecińskiego*, vol. 2, Warsaw, 2011; E. Łętowska, K. Pawłowski, *O prawie i mitach*, Warsaw, 2013; T. Romer, M. Najda, *Etyka dla sędziów*.

[41] On that issue see Z. Ziembiński, *Podstawy nauki*, 1; idem, *Wstęp do aksjologii*; idem, *O pojmowaniu sprawiedliwości*, Lublin, 1992; idem, *O stanowieniu i obowiązywaniu prawa. Zagadnienia podstawowe*, Warsaw, 1995; see also M. Kordela, *Zasady prawa. Studium teoretycznoprawne*, Poznań, 2012; also eadem, Kategoria norm, zasad oraz wartości prawnych. Uwagi metodologiczne w związku z orzecznictwem Trybunału Konstytucyjnego, *Przegląd Sejmowy* 2009, no. 5.

[42] See R. Hauser, J. Trzciński, O formach kontroli konstytucyjności prawa przez sądy, *Ruch Prawniczy, Ekonomiczny i Socjologiczny* 70(2), 2008; eidem, *Prawotwórcze znaczenie orzeczeń Trybunału Konstytucyjnego w orzecznictwie Naczelnego Sądu Administracyjnego*, Warsaw, 2008;

Aristotle (fourth century BCE) observed that law must mean 'good order', since it is a 'creation of reason and deliberation'.[43] In his turn, Cicero added that law is made first and foremost 'for the good of the citizens; the purpose of law is 'to preserve the state', while law's underlying intention is to ensure the 'safe, peaceful and happy life of the people'.[44]

Law has to reify a particular system of values, where human dignity and freedom count among the most prized and the most important ones.[45] The dignity and freedom of the individual, in setting limits to legislative activity, determine the fairness-related boundaries of law; law is 'evil' if its norms dictate doing injustice.[46]

Therefore in difficult, ambiguous cases, the judge can delve into the text of the legal provisions in a deliberate search for an 'idea of law'. They are looking for an 'interpretive code', a code which is corroborated by universal axiological values as well as by assets and values protected by the constitution. The judge cannot be merely an 'echo of law', and this means that doubts regarding issues to which positive law does not apply or applies in a flawed, defective manner, have to be resolved while taking indisputable axiological values into account.[47]

Naturally, one of the problems which emerges here is the relationship between ethical norms derived from axiological values and legal norms. These relationships are as follows: legal norms should possess axiological legitimacy, whereas ethical norms require no juridical legitimization.[48] Consequently, indisputable axiological values (good, dignity, justice, equality, freedom) remain binding irrespective of the legislative conventions adopted at a given time.[49]

---

see also J. Trzciński, O znaczeniu Konstytucji jako ustawy zasadniczej państwa, *Zeszyty Naukowe Sądu Administracyjnego* 2010, no. 5-6; idem, Bezpośrednie stosowanie zasad naczelnych Konstytucji przez sądy administracyjne, in: A. Bałaban, P. Mijal (eds.), *Zasady naczelne Konstytucji RP z 2 kwietnia 1997 r.*, Szczecin, 2011; P. Tuleja, Klauzula państwa prawnego w orzecznictwie Trybunału Konstytucyjnego. Kontynuacja czy zmiana?, in: K. Skotnicki (ed.), *Demokratyczne państwo prawne w teorii i praktyce w państwach Europy Środkowej i Wschodniej*, Łódź, 2010.

[43] P. Rybicki, *Arystoteles. Początki i podstawy nauki o społeczeństwie*, Warsaw, 1964; J.M. Kelly, *Historia zachodniej teorii prawa*, Cracow, 2006, 130 f.

[44] J.M. Kelly, *Historia zachodniej teorii prawa*, 78-85.

[45] More on that issue in J. Małecki, Obowiązek podatkowy; idem, *Aequum et bonum est lex legum* (*sędzia podatkowy a ustawa*), in: W. Miemiec (ed.), *Stanowienie i stosowanie prawa podatkowego. Księga jubileuszowa prof. R. Mastalskiego*, Wrocław, 2009, as well as Z. Kmieciak, Procesowe gwarancje ochrony interesu podatnika, *Przegląd Podatkowy* 2000, no. 1; idem, Standardy ochrony praw jednostki w orzecznictwie sądowoadministracyjnym, *Zeszyty Naukowe Sądownictwa Administracyjnego* 2010, no. 5-6.

[46] C. Znamierowski, *Prolegomena do nauki o państwie*, Warsaw, 1947; idem, *Oceny i normy*, Warsaw, 1957; idem, *Rozważania wstępne o moralności i prawie*, Warsaw, 1964, as well as W. Lang, *Prawo i moralność*, Warsaw, 1989; idem, Aksjologia prawa, in: B. Czech (ed.), *Filozofia prawa a tworzenie i stosowanie prawa*, Katowice, 1992; J.S. Karolak, *Sprawiedliwość. Sens prawa* [2007].

[47] A. Gomułowicz, *Aspekt prawotwórczy sądownictwa administracyjnego*, Warsaw, 2008; idem, Sędzia a „poprawianie" prawa – zasadnicze dylematy, *Zeszyty Naukowe Sądownictwa Administracyjnego* 2012, no. 1(40); see also Z. Kmieciak, Precedens sądowy – istota i znaczenie, *Zeszyty Naukowe Sądownictwa Administracyjnego* 2011, no. 5; J. Małecki, *Lex falsa lex non est?*, in: A. Gomułowicz, J. Małecki (eds.), Ex iniuria non oritur ius. *Księga jubileuszowa ku czci prof. W. Łączkowskiego*, Poznań, 2003.

[48] See Resolution of the Constitutional Tribunal of 17 March 1993, W 16/92.

[49] W. Łączkowski, Wymiar sprawiedliwości a stosowanie prawa, in: A. Dębiński, A. Grześkowiak, K. Wiak (eds.), Ius et lex. *Księga jubileuszowa ku czci prof. A. Strzembosza*, Lublin, 2002; idem, Prawo a sprawiedliwość, in: A. Dębiński (ed.), Abiit, non obiit.

Thus they always become a component of a state's legal system. Positive law has its origins in the compromise between those political and social forces which play a substantial role in public life. Therefore positive law cannot fully reflect universal axiological values. Hence there are differences in scope between the legal system in force and the system of ethical norms stemming from universal axiological values.[50]

In his *Philosophical Dictionary* (*Dictionnaire philosophique*), Voltaire argues that 'all laws should be clear, uniform and precise: to interpret laws is almost always to corrupt them'.[51] Therefore a judge, mindful of Voltaire's postulate, should in certain particular cases depart from the literal tenor of a provision, so that law may be endowed with just substance in the process of its application. This kind of judicial activism may be supported by a legal argument advanced by Aristotle: 'So whenever the law makes a universal pronouncement and a particular case arises that is contrary to the universal pronouncement, at that time it is correct (insofar as the legislator has omitted something, and he has made an error in pronouncing unconditionally) to rectify the deficiency—to pronounce what the legislator himself would have pronounced had he been present and would have put into his law had he known about the case'.[52]

If a judge uses axiological interpretation, it means the necessity of adjusting positive law given the significance of the principle of *aequitas*.

The judge should also bear in mind that the Article 2 of the Constitution, which sets forth that Poland is a democratic state ruled by law and which implements the principles of social justice, meaning that in a state ruled by law there exists a system of norms which is autonomous with regard to legislation.[53] At the same time, the norms which a judge is capable of inferring from that autonomous system in difficult, non-standard cases justify a 'correction of the enacted laws'. It is all the more legitimate that the principle of a democratic legal state comprehends the prohibition of instrumental law-making as well as the prohibition of instrumental application of law. Law has to be effective in fulfilling the function it has been assigned, therefore it must efficaciously regulate social relationships. Respecting that function is the task of the judge, as it is thanks to them that law is truly 'alive'.[54]

The judge who issued the ruling found that which is fair is also just in the case at hand. He extended the scope of application of an enacted statute,

---

[50] W. Łączkowski, Aksjologiczne podstawy praworządności, in: J. Chaciński, H. Cioch, A. Dębiński (eds.), Iustitia civitatis fundamentum. *Księga pamiątkowa wydana ku czci prof. W. Chrzanowskiego*, Lublin, 2002; E. Łętowska, Trudności w przyswajaniu w Polsce praktyki państwa prawa, in: S. Wronkowska (ed.), *Zasada demokratycznego państwa prawnego w Konstytucji RP*, Warsaw, 2006.

[51] J.M. Kelly, *Historia zachodniej teorii prawa*, p. 313.

[52] Arystoteles, *Etyka nikomachejska* [*Ethica Nicomachea*], trans. D. Gromska, in: idem, *Dzieła* wszystkie, vol. 5, Warsaw, 2000, 189.

[53] W. Łączkowski, Aksjologiczne problemy stosowania prawa, *Roczniki Nauk Prawnych KUL* 3, 1993; idem, Spór o wartości konstytucyjne, in: F. Rymarz, A. Jankiewicz (eds.), Trybunał Konstytucyjny. Księga XV-lecia, Warsaw, 2001; idem, Są wartości wyższe niż prawo, in: M. Libicki (ed.), *Cywilizacja u progu trzeciego tysiąclecia. Konstatacje i przestrogi*, Poznań, 2003.

[54] J. Finnis, *Prawo naturalne i uprawnienie naturalne*, Warsaw, 2001; D. Lyons, *Etyka i rządy prawa* [*Ethics and the Rule of Law*], Warsaw, 2000; J. Raz, *Autorytet prawa*; see also W. Łączkowski, Prawo naturalne a prawo stanowione, *Ethos* 1999, no. 45-46.

that is Article 3 para. 2(4) PBAC, in accordance with the requirements of the indisputable axiological values and reasons expressed in Article 2 of the Constitution. As a result, he formulated a general rule establishing a course of action which has hitherto been lacking, and arrived at a substance which has not been in evidence either.[55] It is obviously an element of normative novelty,[56] meaning that the judge 'amended legal justice', thus contributing in the spirit of *judicial justice*.

III. *UBI SOCIETAS IBI IUS*[*]

'We cannot live pleasantly without living wisely, honourably, and justly': the thesis formulated by Epicurus[57] means that a wise person enjoys an advantage in choosing the right things and avoiding the wrong ones. These qualities should also distinguish a judge, by virtue of the essence and nature of the function they hold.

Thoroughness, deliberation, as well as integrity enable the judge to make a comprehensive evaluation of the legal solutions to be applied; these are the crucial premises of a f a i r adjudication, which simultaneously underscore the personal responsibility of the judge for the substance of a judgement. Panels comprising several judges gather greater intellectual potential, since such a body accrues the wisdom and experience of many judges. However, a majority as well as a minority of judges may be mistaken as to the fact and the law. Considering that the substance of a judgement hinges on the vote of the majority, there is a certain danger inherent in such a situation, one which could be termed as a 'psychological pitfall'.[58] The phenomenon consists in an understandable inclination rooted deeply in the vital sphere of the psyche, which manifests itself in 'shifting' responsibility away from oneself when a judge is not wholly convinced (or certain) about the f a i r n e s s of a judicial decision about to be taken. In doing so, they place confidence in other judges who are

[55] More broadly on that issue, see A. Gomułowicz, *Podatki a etyka*, Warsaw, 2013.

[56] M. Zirk-Sadowski, Problem nowości normatywnej, *Studia Prawno-Ekonomiczne* 1979, no. 22; see also A. Murecki, Działalność uchwałodawcza Naczelnego Sądu Administracyjnego w sprawach podatkowych, in: J. Głuchowski, A. Pomorska, J. Szołno-Koguc (eds.), *Podatkowe i niepodatkowe źródła finansowania zadań publicznych*, Lublin, 2007.

[*] Wherever there is society, there is law.

[57] Epicurus (fourth/third century BCE), Greek thinker, creator of the philosophical system known as Epicureanism, attended the Platonic Academy. Epicurus founded his own philosophical school, which was located in the vicinity of the Grove of Akademos; the school later gained the appellation of 'The Garden'.

[58] T. Romer, M. Najda, *Etyka dla sędziów*, 105: 'The awareness that the decision I will take does not translate directly into effects which will ensue, as the latter depend on the majority of votes, easily leads to a conviction that responsibility will also be divided and distributed. Logically speaking, everything is fine, but the problem is that moral responsibility is governed by a different order than ordinary logic'; and 108: 'The psychological pitfall […] consist in that ballot encourages riskier behaviours. We allow ourselves a position whose rightness is doubtful, hoping in the back of our minds that our colleagues will show more sense.'

believed to have considered the problem in greater detail and with greater insight, noting what other judges might have missed.

Scholarly approaches, doctrines and views concerning the rules of applying law are numerous. Therefore the choices made by the judge, evinced subsequently in the substance of their ruling, contribute to the authority of law. A judge, expressing their view on fiscal obligations and rights, also indicates the desired—in other words lawful—conduct of the tax authority and behaviour of the taxpayer. This is vital in taxation, because the content of tax rights and obligations vividly reflects the conflict of two goods of equal status, namely the public and private good. Both are safeguarded by the constitution, although public good enjoys somewhat greater protection. Neither public good nor the good of the individual are absolute. Both are relative, because they are subject to limitations. The role of judges is often to determine the fairness and the nature of the imposed limitations. In spite of the complexity of legal solutions, when the meaning of a legal norm is to be established there is one truth, as a rule. However, *quantum scimus, gutta est, ignoramus mare*—what we know about law is a drop, whereas what we do not know is a sea. Critical remarks, as well as observations of a polemical nature, may encourage reflection on the aptness of a holding adopted by judges. At the same time, such critical and polemical remarks may justify the admission that there are reasons which speak cogently against the commented holding.

The holding of an adjudication is always a form of conveying information which, first of all, enables one to find their bearings in the intricacies of legal issues, and secondly, offers the certainty—in view of the authority of the judges—that the legal norm has been decoded correctly. It does happen that the holding formulated by a judge coincides with the expectations and assessments expressed by the addressees of tax obligations and rights. In such a case, taxpayers are reassured that the attitude adopted with regard to those obligations and rights is an appropriate one. Due to the ambiguity of articles of law, it may also happen that the norms of conduct arising from its provisions cannot be unequivocally ascertained. The ruling of the judge—especially in such cases—can induce the taxpayer to accept the judge's approach to resolving a legal issue by the force of argument, even though it differs from the expectations and assessments of the former.

Andrzej Gomułowicz
Adam Mickiewicz University in Poznań

THE PRINCIPLE OF *AEQUITAS* AND THE TAX JURISDICTION OF THE ADMINISTRATIVE COURTS

Summary

Taxation is not only associated with complex legal problems but also with ethical ones, which become apparent in the process of applying legal regulations. When rigorous application of the letter of the law ignores social context, tax law degenerates into its opposite. In such situations, owing to *malicious legal explanations* (Cicero), a vital role is played by the judges of administrative courts.

Protection against the unlawful actions of tax institutions derives from the great interpretive knowledge of the judges, their inquisitiveness and insight, their moral sensibility to legal issues as well as the soundness of judicial review.

The problem which arises here concerns the relationship between ethical norms which derive from axiological values and legal norms. This relationship can be defined as follows: legal norms ought to have axiological legitimacy but ethical norms do not require judicial legitimacy. This means that undisputed axiological values (such as good, dignity, justice, equality, freedom) are valid independently of the legal conventions of law being applied at a given time. They are always incorporated into the legal system of a state. Positive law is a consequence of a compromise between the political and social forces which play a vital role in public life. This is why positive law cannot be a full reflection of universal axiological values. This explains why there are differences of scope between the legal system in force and the system of ethical norms which derive from universal axiological values.