1. The Concept of Equity in Polish Law

Similarly to other civil law countries, there was never a separate field of equity in Poland. The duality of law and equity did not exist and the court system was uniform. Considerations of equity could serve as correctives to the established legal rules but did not constitute a well developed body of precepts applicable in given situations. References to equity were frequently found in Polish prewar statutes and judicial decisions as well as legal writings. In particular, the great Polish legal philosopher Leon Petrażycki, the founder of the psychological school of law, attached great importance to "emotions" (along the lines of feelings of equity) as a necessary element in every legal system. With the advent of communism, the application of equitable considerations became, on many occasions, different from what it used to be previously, but the concept itself survived the political upheaval and change in the governmental and legal structure of the country. Some of the important postwar legislative enactments, such as the Statute on State Liability resorted to the concept of equity.

An historical examination of the scope of the concept of equity and its application to concrete situations presented to the courts would be an interesting undertaking. However, in a short study devoted to the present state of the law, emphasis should be laid on the thinking of the jurists and the court practice in Poland of today.

The best recent contribution on equity and its "socialist" counterpart—the principles of community life—has been made by Professor Jerzy Wróblewski. Although the author invokes natural law, his basic premise, in accordance with the fundamental tenets of Marxist doctrines, is that equitable considerations must conform to the general ideology expressed in the law and guiding its application.

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“Therefore, for the law in the Polish People's Republic, it will be the ideology of a socialist type: of a socialist law, socialist (communist) morality and socialist politics.”

From the theoretical viewpoint, there are two main approaches to the application of equity. One may be termed the “independent” theory: equity should be a corrective to the legal norms regulating concrete factual situations. *Summum ius-summa iniuria*. The harshness and rigidity of the law should yield to considerations which individualize a given case and distinguish it from other, more typical situations contemplated by the legal rules in force. In this sense, equitable considerations do not lend themselves to any generalizations. The invocation of equity is the result of a sense of morality, or maybe a choice of the best from a few possible alternatives. In another sense, by an “equitable decision” may be meant a judgment which is in line with either other decisions or rules of written law whose merits are taken for granted. This approach may be termed as “relativist.” In the light of this restrictive understanding of equity, a decision which does not run parallel to a statute but modifies it may not be considered as equitable.

Resort to equity may have a double effect: laying down new rules and setting the way of applying and interpreting the pre-existing legal norms. According to Wroblewski, this should go in the direction of goals set by political forces which enact the laws. These goals, in the contemporary politico-legal ideologies, contemplate the achievement of definite relations in the society. In the Polish People's Republic, the preamble to the Constitution, which sets out the directions in which a socialist country should develop, must serve as the guiding light. Inherent in the concept of equity is approval—a conviction that whatever is equitable is proper, and that the goals it helps to promote are right.

In a broad sense, all decisions and orders of the courts and state agencies should be equitable, even in the absence of any special references to equity in legal texts. In particular, considerations of equity should determine the answer to a given problem where more than one solution is possible. Sometimes, previous determinations and the way the written law has been interpreted will set the direction in which future decisions should be geared in the light of given circum-