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Life and Death
The Legal Dimension of Truth

Abstract: Referring to the encyclical of John Paul II *Fides et ratio*, the article addresses the problem of truth in its legal dimension. That is, what is truth for law? What truth does law serve? In other words, does truth that law aims at correspond to the real and natural order of things, i.e. is it possible to reach the absolute truth by means of speculations and legal constructs? On the contrary, even the most existential experiences, such as 'life' and 'death', will not agree with the truth as a result of certain legal actions, creating a different nature and reality. The analysis carried out showed that law uses a specific category of truth, i.e. a formal and procedural truth which does not necessarily correspond to the absolute truth about which Pope John Paul II writes in his encyclical. If this specific, formal and procedural legal truth is subordinated to the implementation of the guiding principle of achieving the absolute truth, then such a situation should not raise concern. It will be worse if law starts to deviate from the pursuit of absolute truth, succumbing only to some *ad hoc*, pragmatic criteria based on erroneous beliefs that everything should be subordinated to technology and the will of the majority because fundamental standards common to all people do not exist or cannot be indicated.

Keywords: truth, formal truth, procedural truth, legal fiction, legal presumptions, prohibitions of evidence, *res judicata*

Introduction

The fundamental keynote of John Paul II's encyclical *Fides et ratio* is the question of truth – the question of how to attain, recognise and cherish it. As Joseph Ratzinger once aptly put it: "Can a person recognize the truth – the fundamental truths about themselves, their origin, and their future – or do they live in darkness and ultimately have to return to the question about usefulness?"[1] Thus, the dimension of truth

[1] Joseph Ratzinger, *Wiara – prawda – tolerancja. Chrześcijaństwo a religie świata*, trans. Ryszard Zajączkowski (Wydawnictwo Jedność–Herder, Kielce 2004), 147–167.

the Pope refers to is utter, absolute, and even divine, because the fullness of truth is God revealing himself to the men.

How does one reach this truth which is absolute, which constitutes the foundation and a point of reference, and which has a specific form and name for Christians? The Pope observes that we arrive at that truth either through rational (philosophical) speculation, i.e. *ratio*, or through faith in the revelation, which is *fides*: "Faith and reason are like two wings on which the human spirit rises to the contemplation of truth; and God has placed in the human heart a desire to know the truth – in a word, to know himself – so that, by knowing and loving God, men and women may also come to the fullness of truth about themselves."[2]

Drawing on that papal thought, let us contemplate the idea of truth and pose questions concerning truth, specifically its legal dimension. In other words, what does truth mean for law? What truth does law pursue? What truth does it serve? After all, it would seem evident that law should be consonant with truth, that is with the real and natural order of things. This is evident even in the etymological affinity between these Polish terms: 'prawo' (law) and 'prawda' (truth); both are closely and strictly related. In the Middle Ages, the verb 'prawić' meant 'to speak the truth' and 'to support a case in court', while the school of legal glossators argued that the law should be interpreted according to truth.[3] Therefore, the principle of truth appears to be an essential premise of the legal system.

Meanwhile, there is no single notion of 'truth' in the legal system. In fact, one could argue that truth has many facets, including material, objective and factual truths, as well as formal truths based on fiction and legal presumptions, and procedural truths built on *res judicata*, evidentiary prohibitions and limitations, consent of the parties or moral certainty. Which truth is it then? Does the truth that the law strives to attain align with the actual and natural order of things? In other words, can absolute truth be reached through speculation and legal constructs? Or, conversely, might certain legal acts (e.g. pronouncing a missing person dead under Polish law or declaring a presumed death in canon law) result in even the most existential experiences, such as 'life' and 'death', without corresponding to the truth, creating an alternative (and therefore untrue) nature and reality?

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[2] Jan Paweł II, „Encyklika Fides et ratio," in *Encykliki Ojca Świętego Jana Pawła II* (Kraków: Dom Wydawniczy „Rafael"), 699.

[3] Wacław Uruszczak, „Prawo a prawda, czyli o fikcjach prawnych uwagi historyka prawa," *Z Dziejów Prawa* 13 (2022), 25–35.

Legal Fiction and Legal Presumptions

The discrepancy between absolute truth and the truth that the law leads to or even creates is most evident in the so-called formal truth, which is constructed on the basis of legal fiction or legal presumptions. The concept of formal truth is not new. Even in ancient times, there were paradigms and norms prescribing the recognition of legal facts that had not actually occurred. For example, a Roman citizen was deemed deceased if he was taken captive by his enemies (i.e. the moment of capture was recognised as the moment of death). However, if such a citizen returned to his homeland, his period of captivity was treated as if it had never taken place. Under applicable law, his original legal status and property would be restored.[4]

Roman law was also familiar with other legal fictions. For example, when it came to financial matters, such as inheritance, children were considered to have been born even if they had not been born yet. If they were born after the death of their parents, they were treated as if they had been born during their parents' lifetime.[5] Similarly, adoption – understood here as a legal recognition of someone else's child as one's own – is a legal fiction too.

Canon law elaborated on legal fictions. Here, one could refer to the institution of legal representation and the power of attorney in particular. This essentially involved empowering a plenipotentiary to perform legal acts on behalf of and at the expense of the principal. By virtue of legal fiction, the plenipotentiary was treated as an independently acting principal who had been granted the power of attorney. Another example of legal fiction is the legitimacy of an extramarital child arising from the marriage of their parents. Once again, through legal fiction, such a child was considered one of the legitimate offspring. Yet another example of legal fiction was the legitimacy of a child born out of wedlock as a result of his parents' marriage. Such a child was considered legitimate on the basis of legal fiction. Again, by way of legal fiction, such a child was included among the legitimate progeny.[6]

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[4] Marek Kuryłowicz and Adam Wiliński, *Rzymskie prawo prywatne. Zarys wykładu* (Warszawa: Wydawnictwo Wolters Kluwer, 2013), 90.

[5] Lucjan Świto, „Osobowość prawna 'nasciturusa' w prawie kanonicznym i polskim," *Prawo Kanoniczne* 40(1997), 233–248.

[6] Wacław Uruszczak, „Kościelne źródła instytucji pełnomocnictwa. Liber Sextus. 5, 12, Regulae iuris 68 et 72," in *Semper Fidelis. Prace dedykowane pamięci Profesora Janusza Sondla*, eds Dorota Malec, Łukasz Marzec, and Tomasz Palmirski (Kraków: Wydawnictwo: Poligrafia Salezjańska, 2017), 429–442; Lucjan Świto, *Zawarcie małżeństwa przez pełnomocnika w formie wyznaniowej ze skutkami cywilnymi w prawie polskim* (Olsztyn: Wydawnictwo UWM, 2019).

In the early seventeenth century, Antoine Dadine d'Auteserre (1602–1682), a professor at the University of Toulouse and the author of the treatise *De fictionibus iuris* (Parisiis 1659), distinguished five types of legal fiction: (1) as to the person – e.g. if a husband died leaving a pregnant wife, he is not considered to be childless; (2) as to the object – e.g. in the case of lending an object, it is not considered to be returned if it has been damaged; (3) as to the legal act – e.g. a symbolic, in other words, fictitious transfer of possession (4) as to the time – e.g. when the legal effects of a legal act occur *ex tunc*, i.e. earlier than actually predicted (the fulfilment of a condition precedent to the contract); 5) as to the location – e.g. a clergyman who was absent due to studying abroad was deemed to be discharging the obligation of residency.[7]

Thus, constructing fiction is a legal technique reserved for the legislator. It is a 'lie of the law' whereby a state contrary to reality is acknowledged in order to cause a legal effect to ensue. In the case of a legal presumption, a fact or form of law is assumed to have been proven. This is because a presumptive conclusion is probable, whereas it could not arise at all as part of legal fiction if that fiction were not established by a norm.

Even today, numerous cases of legal fiction and presumptions are applied, including:

– treating a resolution passed by the majority as a resolution adopted by all;
– considering democracy to be the rule of all the nations, meaning all citizens, when in fact the role of a citizen is limited to electing Members of Parliament or Senators;
– attributing paternity to a man who is not the biological father of a child, either following his acknowledgment of the child or based on the presumption of his paternity;
– deeming substituted service effective when the addressee is not at his address and has been notified of the mail twice; the fiction also operates if, e.g. the addressee refuses to accept the mail;
– treating an unworthy heir as if he had died before the testator's death. He had not lived to see the opening of the succession and was therefore excluded from it;
– considering the convicted person innocent due to the expungement of the sentence.

Undoubtedly, the use of legal fiction or presumption is always exceptional. As contrived and essentially contradictory constructs, they cannot be formulated at

[7] Antonio Dadino Altesserra, *De fictionibus iuris tractatus quinque*, Parisiis 1659, 14; Uruszczak, „Prawo a prawda, czyli o fikcjach prawnych uwagi historyka prawa," 31.

will. They are only justified by considerations of equity and the common good. Under no circumstances may legal fictions be created by courts or other bodies that interpret the law. If this happens, it amounts to an abuse of power or even lawlessness. Therefore, devising legal fictions should be the exclusive domain of lawmakers. Nevertheless, legal fictions tend to be either judicial or administrative.[8] For example, in a number of court proceedings held in Warsaw in reference to the expropriation or restitution of real estate, administrative authorities or courts took advantage of the legal fiction involving an unknown place of residence of a deceased person.

Even though the fact of a person's death was known, proceedings to ascertain the acquisition of estate and identify the heirs were not instituted. Instead, the relevant authorities deemed the deceased to be of unknown abode, which distorted reality and undermined the truth. This subsequently enabled the appointment of a guardian *ad litem* for the deceased and the continuation of expropriation or re-privatisation proceedings. Clearly, a deceased person cannot be included among living persons of unknown whereabouts. Even if the death of a person has not been legally confirmed, it is common sense that someone aged 118 years at the start of proceedings, particularly if this person has been appointed a guardian *ad litem*, should be considered deceased.[9]

Establishing the Truth in a Trial

The incompatibility of the law with absolute truth, that is with the real and natural order of things, is manifested in the so-called procedural truth. It is constructed on the basis of the rules that govern court proceedings. Similar to formal truth, which is based on fiction or legal presumptions, procedural truth serves to ascertain the truth in a trial and has its origins in ancient legislation.[10] Examples of procedural truth include *res judicata*, limitations and prohibitions on evidence, and moral certitude in canon law.

[8] Uruszczak, „Prawo a prawda, czyli o fikcjach prawnych uwagi historyka prawa," 33.

[9] Uruszczak, „Prawo a prawda, czyli o fikcjach prawnych uwagi historyka prawa," 32–33.

[10] Izabela Pilarczyk, „Poszukiwanie prawdy w procesie cywilnym," *Studia Prawnicze. Rozprawy i Materiały* 15(2014), 169–180.

Res Judicata

The legal formula *Res judicata pro veritate habetur* ("a matter adjudged is taken as truth") denotes inadmissibility of re-examining and resolving a case that has already been judged.[11] Consequently, the dispute between the litigants has been definitively ended as a result of the final, non-appealable and enforceable adjudication. A definitively resolved case is considered *res judicata*, while the resulting judgment is considered just regardless of its reference to objective truth. An exception may be found within the framework of canon law, where cases concerning the status of persons never become *res judicata*.[12]

The principle of *res judicata* is an eloquent example which demonstrates that truth and its ascertainment are not the only values that the trial serves because it is subordinated to other values as well. The most frequently invoked value is the common good which consists in ensuring the certainty of legal transactions in order to avoid continual litigation between the same parties over the same subject matter. Indeed, public good demands that a dispute not be protracted indefinitely.

Evidentiary Prohibitions and Limitations

Prohibitions or limitations pertaining to evidence span those legal rules which prohibit taking evidence under certain conditions or restrict the possibility of obtaining evidence. Evidentiary prohibitions and limitations are provided for both in Polish law (in civil, criminal and administrative proceedings) and in canon law. An evidentiary prohibition (in Polish and canonical procedures alike) can seriously inhibit ascertaining the truth in a trial if a confessor does not disclose the knowledge obtained during the confession or (in a canonical procedure) the evidence acquired in a wrongful manner is not used.

The primary reasons for introducing evidentiary prohibitions into a trial include respecting human dignity and intimacy, safeguarding vital interests of the state, protecting familial relations and close relationships of the witness with other persons, and preserving confidentiality of the classified and professional information. Prohi-

[11] Krzysztof Burczak, Antoni Dębiński, and Maciej Jońca, *Łacińskie sentencje i powiedzenia prawnicze* (Warsaw: Wydawnictwo C.H. Beck, 2007), 192.

[12] Can. 1643 of the Code of Canon Law

bitions and limitations pertaining to evidence can be either complete and unconditional, or conditional, that is waived when certain conditions are met.[13] Evidentiary prohibitions or limitations offer yet another example of how the principle of material truth need not be absolute for the law (or legal proceedings in this case). After all, it may happen that without information falling under an evidentiary prohibition, the judge will deliver a verdict that is inconsistent with the facts.

Moral Certainty

Moral certainty that the ecclesiastical lawmaker demands from the judge regarding the case he is to adjudicate does not ensure that ecclesiastical judgements will always reveal the truth to the letter. Moral certainty is an inner conviction about something. It is a judgement based on the belief in the truth or falsity of that thing, derived from certain premises. According to can. 1608 § 1 of the CCL, the judger is required to develop moral certitude concerning the cases he is to rule on. On the one hand, the level of moral certitude that the judge must reach cannot be merely a subjective conviction, a conjecture or likelihood, however high. On the other hand, it cannot be an absolute certainty that precludes any doubt or possibility of error. It is sufficient if it eliminates all reasonable doubts and uncertainties.[14]

This moral certainty, based on an uninhibited evaluation of the evidence in accordance with the judge's conscience, should result from analysing each piece of evidence in relation to the entire case, taking into account scientific knowledge, life experience, and the principles of logic. The judge's conviction is rooted in his certainty that the conclusions drawn from a comprehensive analysis of the evidence are objective.

In addition, it may be noted that a judge cannot make a judgment relying on private knowledge, even if he knows it is confirmed, but should always be informed by the knowledge that the case file provides. If the available information does not align with the judge's personal knowledge, the judge should seek to supplement the evidence in the manner provided for by procedural law. However, according to can. 1550 § 2(1) of the CCL, he cannot act in the capacity of a witness himself.

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[13] Lucjan Świto, „Tajemnica duszpasterska," *Biuletyn Stowarzyszenia Kanonistów Polskich* 32 (2022), 183–196.

[14] Tadeusz Pawluk, *Prawo Kanoniczne według Kodeksu Jana Pawła II*, vol. 4, *Doczesne dobra Kościoła. Sankcje w Kościele. Procesy* (Olsztyn: Wydawnictwo WWD, 1990), 290–292.

Although it is crucial for the ecclesiastical lawmaker that court judgments contain objective truth – a goal which the judge's obligation to substantiate the judgment in legal or factual terms and the institution of appeal serve as well – the truth may not always be reflected in ecclesiastical judgments. This is because they are not based on absolute certainty, which only God can possess, but on the judge's moral certitude.

Conclusion

Trying to answer the questions posed here, namely whether the law serves the truth, seeks the truth, or identifies itself with the truth, one could ask – paraphrasing Pilate – which truth is that? After all, as outlined above, the manner in which the law pursues the truth may involve a specific category of truth, i.e. formal-procedural truth, which does not necessarily correspond to the absolute truth on which Pope John Paul II elaborates in his encyclical.

However, if that particular formal-procedural legal truth, employed in legal systems for centuries, somehow serves to realise the superior principle of attaining absolute truth, such a situation should not constitute a cause for concern. Things will take a turn for the worse if law begins to deviate from the pursuit of absolute truth, succumbing solely to some expedient, pragmatic criteria derived from the erroneous belief that everything should be governed by technology and the will of the majority.

The phenomenon of law beginning to elude any control and creating a new reality that utterly contradicts the natural order and its most fundamental principles should, at the very least, provoke reflection. At present, when reality appears as a domain of unlimited choice, the question of the "truth in law" becomes particularly significant. Today, when truth is no longer linked to fact and all paradigms are disrupted, law claims the prerogative of being a super-censor of truth. It is the law which happens to determine the beginning and the end of human existence. It tells us whether a human being is already complete or *merely* a foetus, an embryo or a cluster of cells. It also tells us whether a human being who breathes is alive or not (due to the death of the brainstem). Should he continue his life if he is alive then? It defines human life and death. It is in courtrooms that one decides nowadays whether a human being is male or female (depending on which gender they feel like being at the moment) and whether he or she has two mothers or several parents. It is the law that dictates today whether a person is entitled to the truth (e.g. of their descent etc.). And yet, is this right?

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Rev. Lucjan Świto

La vie et la mort : la dimension juridique de la vérité

Résumé

Se référant à l'encyclique de Jean-Paul II *Fides et ratio*, l'article aborde le problème de la vérité dans sa dimension juridique. Autrement dit, qu'est-ce que la vérité pour le droit ? À quelle vérité le droit sert-il ? En d'autres termes, la vérité à laquelle le droit aspire correspond-elle à l'ordre réel et naturel

des choses, c'est-à-dire est-il possible d'atteindre la vérité absolue au moyen de spéculations et de constructions juridiques ? Au contraire, même les expériences les plus existentielles, telles que la « vie » et la « mort », ne s'accorderont pas avec la vérité résultant de certaines actions juridiques, créant ainsi une nature et une réalité différentes. L'analyse effectuée a montré que le droit utilise une catégorie spécifique de vérité, à savoir une vérité formelle et procédurale qui ne correspond pas nécessairement à la vérité absolue dont parle le pape Jean-Paul II dans son encyclique. Si cette vérité juridique spécifique, formelle et procédurale est subordonnée à la mise en œuvre du principe directeur de la recherche de la vérité absolue, alors une telle situation ne devrait pas susciter d'inquiétude. La situation sera pire si le droit commence à s'écarter de la recherche de la vérité absolue, succombant uniquement à certains critères ad hoc et pragmatiques fondés sur des croyances erronées selon lesquelles tout devrait être subordonné à la technologie et à la volonté de la majorité, car il n'existe pas de normes fondamentales communes à tous les peuples ou celles-ci ne peuvent être indiquées.

Mots-clés: vérité, vérité formelle, vérité procédurale, fiction juridique, présomptions juridiques, interdictions de preuve, chose jugée

Rev. Lucjan Świto

Vita e morte: la dimensione giuridica della verità

Sommario

Facendo riferimento all'enciclica di Giovanni Paolo II *Fides et ratio*, l'articolo affronta il problema della verità nella sua dimensione giuridica. Che cosa è la verità per il diritto? A quale verità serve il diritto? In altre parole, la verità a cui mira il diritto corrisponde all'ordine reale e naturale delle cose, ovvero è possibile raggiungere la verità assoluta attraverso speculazioni e costrutti giuridici? Al contrario, anche le esperienze più esistenziali, come la "vita" e la "morte", non saranno in accordo con la verità come risultato di determinate azioni giuridiche, creando una natura e una realtà diverse. L'analisi effettuata ha dimostrato che il diritto utilizza una categoria specifica di verità, cioè una verità formale e procedurale che non corrisponde necessariamente alla verità assoluta di cui scrive Papa Giovanni Paolo II nella sua enciclica. Se questa verità giuridica specifica, formale e procedurale è subordinata all'attuazione del principio guida del raggiungimento della verità assoluta, allora tale situazione non dovrebbe destare preoccupazione. Sarà peggio se il diritto inizierà a deviare dalla ricerca della verità assoluta, soccombendo solo ad alcuni criteri ad hoc e pragmatici basati su credenze errate secondo cui tutto dovrebbe essere subordinato alla tecnologia e alla volontà della maggioranza perché non esistono o non possono essere indicati standard fondamentali comuni a tutte le persone.

Parole chiave: chiave: verità, verità formale, verità procedurale, finzione giuridica, presunzioni giuridiche, divieti di prova, res judicata