

Sara Smyczek

The Equity Argument in Polish and German Case Law

Summary

This thesis examines the use of equity in civil case law in Poland and Germany. Its primary objective is to reconstruct how courts in both legal systems employ the criterion of equity in their reasoning, as well as to analyse the functions it fulfils in the process of adjudication. The research also adopts a comparative perspective, enabling the identification of similarities and differences in the treatment of equity within the two systems and an assessment of its significance in the application of law. Three areas are subjected to analysis: the jurisprudential debates on equity in legal theory, statutory provisions in civil law that refer to this category, and the case law of Polish and German courts. The central research hypothesis posits that in both jurisdictions references to equity serve a comparable role as an instrument for balancing interests and individualising judicial decisions. However, the manner in which courts apply it differs. Based on this, several more specific hypotheses are formulated. First, despite terminological divergences, provisions of Polish and German civil law referring to equity serve the same purpose: they empower and oblige courts to take into account all relevant circumstances of the case and to balance the parties' interests. Second, in judicial practice the equity argument functions in a subsidiary capacity, usually combined with other values such as justice, equality, or proportionality. Third, civil courts generally do not formulate explicit definitions of equity, but rather employ it implicitly. Fourth, German law tends to anchor the equity argument in explicit legislative provisions, while in Poland references to equity more often appear without direct statutory grounding or are linked to general clauses of an equity-related function, such as the principles of social coexistence. Fifth, in both systems the equity argument arises predominantly in asymmetrical disputes, where economic or informational disparities between the parties occur, and its role is to restore balance. Sixth, the absence of a statutory definition of equity in either system enhances judicial discretion. Still, it does not preclude consistency, provided that courts disclose the criteria of balancing in their reasoning. Finally, lexical distinctions between expressions such as "principles of equity" and "considerations of equity" do not determine their substantive content or practical application.

The dissertation is structured into six chapters, progressing in a logical sequence from theoretical foundations through doctrinal and empirical analyses to conclusions. The introductory chapter sets out the aims of the study, the justification for the chosen topic, the research problems and hypotheses, and the methodology, which combines analysis of jurisprudential literature, dogmatic examination of legal texts, close reading of judgments, and comparative inquiry designed to capture the parallels and divergences between Polish and German practice. The theoretical framework, developed in the second chapter, reviews primary debates on equity and identifies three main strands of interpretation: the normative approach, which ties equity to legal principles; the situational approach, which views it as an *ad casum* assessment in relation to specific circumstances; and the psychological approach, which highlights judicial intuition and personal traits. The chapter also explores reflections on equity

in Polish jurisprudence, with particular attention to the works of Henryk Piętka, Eugeniusz Jarra, and Jerzy Wróblewski. The empirical part begins with an examination of Polish case law. Here, three forms of references to equity are distinguished—those linked to principles or norms, those formulated *ad casum*, and hybrid forms. The analysis further classifies situations in which courts invoke equity, whether by reference to general clauses or within the scope of judicial discretion. The following chapter turns to the equity argument in Polish civil adjudication, outlining its diverse functions: confirming a chosen interpretation, elucidating the *ratio legis*, supplementing literal interpretation, and shaping legal consequences. Particular attention is paid to equity as a criterion of assessment, enabling judges to ground their decisions in axiological considerations. The subsequent chapter focuses on German judicial practice, combining doctrinal analysis with case law. After reviewing provisions in which the legislator expressly refers to equity, this dissertation reconstructs how German courts employ this criterion. Both instances of reliance on general clauses and those situated within judicial discretion are considered, followed by an in-depth discussion of the equity argument and its role as a criterion of assessment. The final chapter synthesises the findings. It demonstrates both commonalities and divergences in the understanding and use of equity in Poland and Germany. Common elements include treating equity as an instrument of correction and individualization of decisions, as well as its subsidiary role in connection with other legal values, such as justice and proportionality. Differences concern the degree of normative anchoring: German provisions explicitly enshrine equity, thereby enhancing predictability and constraining arbitrariness, whereas in Poland, equity references are more open-ended and tied to general clauses, thereby expanding judicial discretion. The dissertation concludes that equity may be conceived as a “silent assumption of the legal system”, functioning not only as a doctrinal tool but also as an axiological and legitimising factor that allows adjudication to reconcile the formal legal order with the demands of material justice.