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Between Flexibility and Efficiency of Law Application in View of the Principle of the Protection of the Good of the Child

Pomiędzy elastycznością a efektywnością stosowania prawa z uwzględnieniem zasady ochrony dobra dziecka

ABSTRACT

In the article, the author draws attention to the need to implement two values of applying the law when adjudicating in cases concerning children. These two values are flexibility and efficiency. Their simultaneous implementation is not excluded, because it is particularly important in the course of the law application process to make decisions in accordance with the principle of the protection of the good of the child and the implementation of the protective function. The research thesis is formulated in this direction. The research was conducted based on the case law that provides a broad picture of the trend in deciding in administrative, civil, criminal and other matters from the Polish perspective. The nature of this article is scientific and research. The point of view presented in the work aims to clearly emphasise the necessity for simultaneous implementation of flexibility and efficiency, which is unfortunately difficult to achieve in the Polish perspective.

Keywords: flexibility; efficiency; good of the child; application of law; rule of law

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INTRODUCTION

The principle of the protection of the good of the child is a system-wide principle functioning in Polish law.[1] This means that this construct cannot be equated only with a sub-branch of the family and guardianship law, but the scope of its impact needs to be extended to various parts of the legal system, both public law and private law. The extension of the scope of impact is possible due to the fact that the good of the child can be derived from the provisions of conventions (thus from international law) and constitutional law. This is of particular significance in the context of the ongoing discussion on the flexibility and efficiency of the application of law, given technological progress and the need to also take into account procedural aspects for the proper protection of the child during the law application process.

The principle of the protection of the good of the child should be derived from the Constitution of the Republic of Poland,[2] namely Article 72 (the principle of the protection of the rights of the child), Article 30 (human dignity) and the content of other legal provisions, e.g. Article 48 (concerning, among other things, the upbringing of the child, taking into account the child's degree of maturity, freedom of conscience and religion and freedom of conviction). It should also be borne in mind that it is possible to derive from Article 72 (1) of the Polish Constitution a programming rule[3] requiring legislative and law-applying bodies to take measures aimed at protecting the rights of the child. State authorities have a duty to seek to ensure the widest possible protection for the child by introducing appropriate legislative measures and by making decisions aimed at ensuring that the law is properly implemented, i.e. in accordance with the good of the child. The introduction of a programming norm with such content means that the goal of public authorities is to care for every child. The programming norm itself means that this protection is embedded in state policy. Therefore, the criterion of the good of the child is regarded as a priority and constitutional value,[4] a meta-structural element and a non-regulatory criterion of an inter-branch and interdisciplinary nature which cannot be ignored in the application of the law.[5]

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[1] K. Hanas, *Konstrukcja normatywna „dobro dziecka" i jej sądowe stosowanie*, Lublin 2021, passim; eadem, *Criterion "The Good of the Child" in the Legal Order: Between the Normative Structure and Judicial Case Law*, Maribor 2023, passim.

[2] Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws 1997, no. 78, item 483, as amended). The English translation of the Constitution is available at https://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm (access: 14.8.2023).

[3] L. Grzonka, *Koncepcja norm programowych z perspektywy teorii prawa*, Poznań 2012, passim.

[4] Judgment of the Constitutional Tribunal of 26 November 2011, P 33/12, Legalis no. 740186.

[5] The importance of extra-legal criteria from the point of view of law application is discussed in L. Leszczyński, *Kryteria pozaprawne w sądowej wykładni prawa*, Warszawa 2022.

The discussion presented in this paper seeks to demonstrate two values of application of the law, namely flexibility and efficiency, in the context of the functioning of the principle of the protection of the good of the child within the legal system. The problem corresponds to the subject matter of the workshop "New Challenges to Justice: Information Society, Application of Law and ADR" held at the 30th Biennial World Congress of the International Association for the Philosophy of Law and Social Philosophy in Bucharest (3–8 July 2022). In the context of the question at issue, it should be noted that, with the development of the information society, the way in which law is applied has also changed with a view to safeguarding the interests and good of the child, and that the protection is best expressed when the values of flexibility and efficiency of the application of the law are fulfilled.

Changes in the perception of the child in Poland has taken place gradually. Crucial from my research perspective are the views of A. Strzembosz. He noted that the minor's good under the then applicable Act of 26 October 1982 on the procedure in juvenile matters consists in the "formation of an informed and honest citizen with comprehensive development of personality and talents, socially desirable attitudes and a sense of responsibility, a citizen prepared for socially useful work",[6] the judgments of the Supreme Court and the Supreme Administrative Court,[7] and then the activities of the Codification Commission at the Ombudsman for Children which called for the introduction into the system of a legal definition of the good of the child and the introduction of the institution of the child's advocate.[8] Therefore, the good of the child should be taken as a comparison between the current and future situation of the child, taking into account, where possible, the child's views and his or her development. This is intended to depart from the perception of the child in terms of patriarchal parental authority, giving way to a different concept of parental responsibility. The latter concept has been known since the very beginning under the Convention on the Rights of the Child,[9] but it is not used by courts and law-making bodies in Poland. This is due to the fact that the concept of parental responsibility operates in the area of family and guardianship law. In linguistic terms (in the Polish language), responsibility for someone is associated with guardianship

[6] A. Strzembosz, *Nowa ustawa o postępowaniu w sprawach nieletnich. Próba komentarza*, Warszawa 1983, p. 50.

[7] See decision of the Supreme Court of 22 June 2012, V CSK 283/11, LEX no. 1232479; judgment of the Supreme Administrative Court of 30 October 2018, II OSK 1868/16, Legalis no. 1860297. Cf. resolution of the Supreme Administrative Court of 2 December 2019, II OPS 1/19, Legalis no. 2256199.

[8] The draft of the Family Code proposed by the Ombudsman for Children, http://brpd.gov.pl/sites/default/files/kodeks_rodzinny_projekt_z_uzasadnieniem.pdf (access: 24.6.2023).

[9] Convention on the Rights of the Child, New York, 20 November 1989, United Nations Treaty Series, vol. 1577, p. 3.

and care, while authority is associated with managing and ruling.[10] The concept of responsibility seems to correspond most closely to the principle of the protection of the good of the child and to implement in an appropriate manner the value of efficiency and flexibility in the application of law.

Therefore, attention should be paid in this study to the final outcome of the law application process, i.e. the content of the decision understood as a model (an administrative decision in case of public administration bodies, or a ruling – judgment, decision or resolution when courts are concerned). As part of the accepted research methodology, the case law in both public-law and private-law matters from the period 1980 to 2023, as well as scholarly views on the issue in question were analysed.

FLEXIBILITY AND EFFICIENCY OF THE APPLICATION OF LAW

Flexibility and efficiency in the application of law were repeatedly the subject of scientific research and discussion during conferences. Flexibility in the application of the law "refers to the category of adequacy of acts of law application in relation to the changing social reality (social environment of the law) and the resulting changing needs, interests, values and social assessments, and on the other hand to the separateness of facts established and classified in the decision-making process".[11] Flexibility is achieved by taking into account legal principles,[12] general reference clauses,[13] estimative terms.[14] This is the way in which space is created for the interpreting entity, who is to establish the meaning of a given legal norm in such a way as to fully carry out the protection of rights of the individual.

Efficiency can be associated with the economic dimension of law (as opposed to the category of effectiveness, which also includes a sociological aspect). There is no doubt that efficiency should be regarded as a value related to the application of law.[15] It is also understood differently, because that concept is difficult to define. At this point, it is worth quoting valuable observations made by J. Stelmach, who distinguished several conditions of efficient law. The specification of these

[10] M. Szymczak (ed.), *Słownik języka polskiego*, vol. 2: *L–P*, Warszawa 1979, p. 469; M. Szymczak (ed.), *Słownik języka polskiego*, vol. 3: *R–Ż*, Warszawa 1979, p. 732.

[11] A. Korybski, L. Leszczyński, *Stanowienie i stosowanie prawa. Elementy teorii*, Warszawa 2015, p. 171.

[12] See M. Kordela, *Zasady prawa. Studium teoretycznoprawne*, Poznań 2012.

[13] See L. Leszczyński, *Tworzenie generalnych klauzul odsyłających*, Lublin 2000; idem, *Stosowanie generalnych klauzul odsyłających*, Kraków 2001.

[14] M. Zieliński, *Wykładnia prawa*, Warszawa 2002, p. 173.

[15] J. Leszczyński, *Wartości w teorii prawa Jerzego Wróblewskiego*, "Filozofia Publiczna i Edukacja Demokratyczna" 2013, vol. 2(2), pp. 258–272.

elements makes it possible to understand the concept of efficiency in a better way than by citing various definitions of that concept formulated over the years. These conditions for efficient law are:

- the law should be effective;
- the law should provide for changes to come in socio-economic reality;
- the law should be a tool to maximise individual and social wealth;
- the addressees of the law are economically rational;
- the law should allow for the proper allocation of goods;
- the law should be simple and concise;
- the law should take into account, i.a., tradition and accepted standards;
- science should focus on examining efficient law.[16]

Many of these conditions should be taken into account in law-making, as the linguistic content of the provision will determine the first interpretative findings. To this end, the law-applying entity is obliged to use the linguistic interpretation rules. Similarly, the allocation of goods can also be made, in a sense, at the level of normative acts.

An interesting Polish ruling, which refers to the concept of efficiency and the right to court, is the decision of the Supreme Court of 23 February 2021 (V KK417/19).[17] The thesis of the decision must be criticised as the Supreme Court expresses the view that certain procedural actions are abandoned because of the overload in Polish courts. According to the thesis, "the justice system can only be efficient if on time". In the current situation of the judiciary resulting from the state of epidemics, it is particularly important not to burden the courts with cases that are not relevant in terms of the functions and objectives of criminal law. Indeed, every case, including the one that needs to be re-examined, means that the other, much more important, case will not be dealt with, which in effect may entail considerable delays in the administration of justice. This aspect of the growing backlog in common courts should also be taken into account when assessing whether the objections raised in a particular cassation appeal actually concern a breach of law of a gross nature. Although the content of the judgment does not refer to the good of the child, it does show the weak aspects of the Polish justice system. The implementation of the value of efficiency does not mean a constant change of legal regulations, nor does it stem entirely from the state of pandemic, but concerns organisational changes in the Polish justice system, aimed in particular at increasing the number of cases assigned to one judge. The right to court and a fair trial is a human right and the individual should not be criticized for exercising any of his or her rights.

[16] J. Stelmach, *Efektywne prawo*, [in:] *Vetera novis augere. Studia i prace dedykowane Profesorowi Wacławowi Uruszczakowi*, eds. S. Grodziski, D. Malec, A. Karabowicz, M. Stus, vol. 2, Kraków 2010, pp. 957–966.

[17] LEX no. 3189328.

A question may be asked about whether the examination of the law from the perspective of efficiency and still from the perspective of flexibility is really needed from the point of view of the protection of children's rights. The answer must be in the affirmative, since in the case law of Polish courts the interpretation of legal provisions is still carried out in isolation from the system-wide principle of the protection of the good of the child. Such an interpretation affects the understanding of flexibility and efficiency of the application of law and determines the correct outcome of the interpretation. In such a case, the effect of legal interpretation is always to protect the child, irrespective of the area of the legal system covered by the decision.

It should be borne in mind that the child, in the sense of economic analysis of the law, should be treated as an individual who, in the long term, upon reaching the appropriate age, will be treated as *homo oeconomicus* – a rational entity.[18] The appropriate age referred to above for each individual will be different, as indicated by, e.g., the preferred terms in the Convention on the Rights of the Child (Article 12) such as 'in accordance with the age' or 'maturity of the child'. Although decisions are taken by legal representatives for the child, or in the event of disagreement, by administrative authorities and courts, the effects of these decisions will always influence the situation of the minor. Therefore, it should be noted once again that the situation of the child cannot be viewed in terms of parental authority but of parental responsibility. The juxtaposition of these two concepts completely changes the optics of looking at the welfare of the child.

On the one hand, as far as the protection of the good of the child is concerned, the legislature wants the widest possible flexibility, which manifests itself in the form of discretionary powers of the judge,[19] and on the other, it puts stress, more and more often, on efficiency. These two values should not exclude each other, and the interpretation of a given decision-making situation will depend on the case of a particular child. At the same time, efficient and flexible legislation will allow for a wide protection of the good of the child.

CHALLENGES FOR THE APPLICATION OF LAW – CONCLUSIONS

The flexible application of law taking into account the criterion of the good of the child requires looking at the decision-making situation in terms of parental responsibility, the dignity of the child, the rights of the child, and the obligation to

[18] On the concept of *homo oeconomicus*, see M. Jurek, R. Rybacki, *Model homo oeconomicus i jego dostosowanie do współczesnych uwarunkowań*, "Studia Ekonomiczne" 2014, no. 180, pp. 65–75.

[19] B. Wojciechowski, *Dyskrecjonalność sędziowska. Studium teoretycznoprawne*, Toruń 2004, passim.

take into account the child's opinion. To determine how the good of the child must be understood, the specific case should be taken into account. It is important that when going through the various phases of the law application process and at the time of reconstructing the legal norm it must be borne in mind that the law should perform the protective function. It is the direction in which interpretative reasoning should be carried out. This can be done in a simple way, by asking questions about how making a given decision (including refraining from making it) will be conducive to the child's development or protect his or her material interests. A special role is played here by functional rules and teleological-axiological rules. However, in order to apply them, it is necessary to have a basis for this already in the very content of the legal norm.

The creation of a legal norm in the case of safeguarding the interests of the child will not be an interpretation act consisting only in finding a single legal provision and creating a normative basis for the decision on that basis. The normative basis for the decision in the model decision-making situation includes, or at least should include, a reference to the substantive-law rule of a given branch of law, on the basis of which the case is decided, as well as a derivation of the principle of protection of the good of the child in conjunction with the Polish Constitution and the Convention on the Rights of the Child. A normative basis is thus created, containing in its structure the extra-legal criterion of 'the good of the child'. That criterion is precisely part of the principle of the protection of the good of the child. Similarly, decisions can be taken based on procedural rules, such as the publication of decisions on admitting evidence, requests to secure the claim, and many others. The linking of procedural provisions with the principle of the protection of the good of the child is founded constitutionally and conventionally and thus, from a theoretical point of view, firmly rooted axiologically and ethically. In view of the foregoing, it may be pointed out that, in cases concerning the restriction or deprivation of parental responsibility, where during the proceedings it is established whether there are grounds for such a restriction or deprivation, an element of the normative basis for the decision should be the Convention on the Rights of the Child. The reference to Article 3 (2) and (3) of the Convention makes it possible to capture in the Polish legal system the temporal and spatial dynamics of the law in force. I mean that the Polish Family and Guardianship Code[20] adopted in 1964, during the socialist period, did not foresee in its content that in more than 20 years, due to the influence of international documents, responsibility and care would be stressed more than parental authority. Nor was it foreseen that the perception of the law in terms of what is the good of the child could also change, as many different problems affecting children, which have not previously been mentioned, are cur-

[20] See Explanatory memorandum to the Government bill amending the Civil Procedure Code and certain other acts, Sejm Papers no. 3137.

rently being emphasised. As an example, one can point to hatred, discrimination, surrogacy, or mental health of minors.

The Polish legal system certainly lacks resolutions of the Supreme Court and resolutions of the Supreme Administrative Court that would emphasise how important it is, from the point of view of the process of applying the law, to clarify what is to be understood by the good of the child with the focus on the implementation of the protective function. In doing so, it would be emphasised that defining the good of the child is not only about establishing the literal wording of a legal provision, but also about grasping the changes taking place in society in a temporal perspective. The criterion of the good of the child, due to the vagueness of the term, allows for a free interpretation of the legal provisions which determine the situation of the child.

Adopting the norm-principle of the good of the child as part of the normative basis of the decision allows for promoting the value of the good of the child against other extra-legal criteria, as well as conducting reasoning processes that capture the dynamics of the law over time and other values of the application of law, including efficiency.

The efficiency of the application of law must also certainly be combined with the principle of the protection of the good of the child, both by paying attention to the substantive-law elements and procedural elements. The first association which combines the criterion of the good of the child with the economic dimension of law and thus efficiency is prompt proceeding, exemption from the costs of proceedings, or the exemption from court fees or the reduction of those charges. Other problems concern the settlement of welfare, maintenance, inheritance, property performances, and many other issues.[21] It should be borne in mind that issues relating to the 'organisation' of the legal system, namely e.g. establishing family-law departments, the sufficient staffing for vacant judicial positions, and the allocation of a number of cases which enables streamlined proceedings, are also important for the assessment of the law as efficient. The efficiency will certainly also be influenced by the communication elements in decision-making processes. Taking the example of Polish courts, it is necessary to introduce efficient communication with the parties, both through electronic communication via information portals and by allowing the submission of certain applications (for the statement of reasons for the judgment, to admit evidence) and linking the portals to the charging system. Moreover, it is necessary to prepare the trial in such a way so as to accumulate a number of activities within a single period without the need to extend the proceedings temporally. Remote hearings introduced during the COVID-19 pandemic also play a major role, which is particularly important in terms of the interests and welfare of the child.

[21] Judgment of the Supreme Administrative Court of 8 February 2017, I OSK 1766/15, LEX no. 2284775: "Courts pay attention to material aspects, such as whether the child is provided with hygiene products, clothing, footwear or housing".

An interesting solution which influences the conduct of various proceedings, but also one which may apply in cases concerning children, is Article 156[1] §§ 1 and 2 of the Civil Procedure Code,[22] which allows for efficient conduct of proceedings. According to § 1: If necessary, the presiding judge at the hearing may instruct the parties of the likely outcome of the case in the light of the statements and evidence presented to date. The aim of introducing that provision was to improve judicial proceedings and communication between the court and the parties. Combined with the principle of the protection of the good of the child, such instruction about the expected outcome may be necessary. On the other hand, the discretion of the judge manifests itself in the decision to give more or less formal instructions to the parties, e.g. in the form of a free discussion with the court during the hearing. Nor has it been specified at which point such instruction may take place during a hearing. In such a situation, there is a real chance of signing a settlement that would satisfy both parties. According to the explanatory memorandum to the bill, this provision is modelled on the wording of Article 399 § 1 of the Criminal Procedure Code,[23] but in my opinion the content of the legal norm does not fully reflect the goal which the legislature wanted to achieve. This means that the same end result was not fully achieved.

The vagueness of the legal provisions allows for the introduction of specific solutions which aim at the efficient application of law from the perspective of the child. There are no legal provisions allowing for the participation in court hearings (e.g. in family and juvenile matters) of psychologists who can realistically assess and advise the court on how to properly safeguard the good of the child. In matters concerning children, it is also necessary to cautiously address the issue of the temporal limitation of evidence or the application of the provisions on preparatory hearings (Article 205[4] of the Civil Procedure Code introducing the preparatory hearing and Article 205[4a] of the Civil Procedure Code relating to the obligations of the parties and the instructions addressed to them). This means that in the process of applying the law, establishing the substantive truth is usually of particular importance.

Another issue which will have an effect on the efficient and flexible application of law is the obligation to hear the child as laid down in Article 12 of the Convention on the Rights of the Child. An equivalent of this provision is also found in the Polish Constitution and in other normative acts. It should be pointed out that the provision makes it compulsory to carry out that activity. That obligation can be implemented in many ways and it is the area in which the discretionary powers of

[22] Act of 17 November 1964 – Civil Procedure Code (consolidated text, Journal of Laws 2021, item 1805).

[23] Act of 6 June 1997 – Criminal Procedure Code (consolidated text, Journal of Laws 2022, item 1375).

the judge may be seen and the value of the flexibility and efficiency of the application of the law may be actualized. Hearing a child depending on the age and the degree of development of the child can take place in the form of a psychological examination or by the court with the presence of a psychologist. The presence of a specialist in psychology could improve decision-making.

However, there are also aspects where it is difficult to fully separate the financial interests of the child from those of the parents, and it is therefore difficult to speak of fully actualizing the value of efficiency and flexibility in the application of law by taking into account only the child. This is the case when the legislature allows for various forms of support, such as tax credits, tax preference, social welfare benefits. The child and other family members are also entitled to such assistance.[24]

RELATION OF THE ABOVE CONSIDERATIONS TO THE CURRENT STATE OF KNOWLEDGE

The considerations presented above complement the current state of knowledge in the field of child rights protection. It seems that it is the social organisations and entities functioning in the area of child rights protection that pay attention to the problems related to the efficient and flexible application of legal provisions and formulate postulates for the law as it should stand. However, there is a lack of effective legislative action to improve the situation. It is true that legal provisions are subject to modification, but changes should also be made in the application of the law by various entities.

The concept of the good of the child is an interdisciplinary criterion[25] and regulations should therefore be drafted and applied in cooperation between different persons (lawyers, psychologists, logopedists, medical practitioners, and many others). This is a difficult but also interesting task, because the process of applying the law itself should not be associated only with proceeding before a court or public administration.

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[24] Judgment of the Supreme Administrative Court of 5 April 2017, II FSK 573/15, LEX no. 2261656; judgment of the Supreme Administrative Court of 26 July 2016, II FSK 590/16, LEX no. 2076390; judgment of the Supreme Administrative Court of 23 April 2015, II FSK 675/13, LEX no. 1665976; judgment of the Supreme Administrative Court of 10 November 2015, II FSK 2163/13, LEX no. 1828129.

[25] A. Błasiak, E. Dybowska (eds.), *W trosce o dobro współczesnego dziecka. Wybrane zagadnienia*, Kraków 2014, passim; E. Kabza, K. Krupa-Lipińska (eds.), *Dobro dziecka w ujęciu interdyscyplinarnym*, Toruń 2016, passim; K. Kamińska, *Dobro dziecka w dyskursie państwo–rodzina. Inaczej o przemocy domowej*, Kraków 2009, passim; E. Włodek, Z. Solak, T. Gurdak, *Dobro dziecka. Perspektywa pedagogiczna i prawna*, Kraków 2017, passim.

Shaping the child's situation also depends on the legal-economic situation of his/her parents or legal guardians, the life situation (sociological and psychological aspects), and cultural elements. The situation of the child can be analysed from different angles, such as from the perspective of the court, specialists (psychologists, logopedists), parents, social organisations, or specific professional groups (representatives, entrepreneurs). The above can be shown in an interesting example, namely the Charter of Children's Rights in Business.[26] The originators of the Charter have noted that the child is a recipient of advertising content and a user of services, the parents should have a well-organised workplace in terms of working time and pay, and business partners should oppose child labour and engage in initiatives to promote the rights of the child. Although the Charter is not a normative act, such an agreement may be part of the business ethical principles to be followed. It is very possible that such guidelines on the protection of the rights of the child will continue to be developed as a collective effort of individual groups to protect the welfare of the child.

Another step, important from the perspective of the child's situation, is proposing the draft of a new Family Code, the content of which emphasises child's empowerment, dignity, responsibility, care, childhood.[27] The normative acts to which the draft's authors most frequently refer are: the Declaration of the Rights of the Child, adopted by the General Assembly of the League of Nations in 1924, the so-called Geneva Declaration, the Constitution of the Republic of Poland of 1997, the Declaration of the Rights of the Child of 1959, and the Convention on the Rights of the Child of 1989. Since these are acts of particular importance due to their conventional or constitutional status, they should not be disregarded in the application of law.

As previously mentioned, from a legal theoretical point of view, the criterion of the good of the child is an element of a principle of law, i.e. a legislative construct of specific characteristics. According to J. Wróblewski, in order to determine whether a particular norm has the status of a principle, one should look at its features, i.e. hierarchical superiority in the structure of the system, substantive superiority, social significance, and a special role played by the norm within the structure of the legal institution.[28] Relating these elements to the criterion of the good of the child allows us to notice that the good of the child is of a priority nature. This is important from the point of view of the application of law and translates into the creation of

[26] Forum Odpowiedzialnego Biznesu, Karta Praw Dziecka w Biznesie, https://odpowiedzialnybiznes.pl/prawadziecka (access: 24.6.2023).

[27] See footnote 7; S.L. Stadniczeńko, M. Michalak (eds.), *O potrzebie nowego Kodeksu Rodzinnego i jego podstawach aksjologicznych. W 30. rocznicę uchwalenia Konwencji o prawach dziecka*, Toruń 2019.

[28] K. Opałek, J. Wróblewski, *Zagadnienia teorii prawa*, Warszawa 1969, pp. 255–260.

a normative basis for decision, taking into account the protective function. These characteristics determine the good of the child primarily as an element of a meta-principle, as well as a meta-clause, which also translates into actualization of the values of flexibility and efficiency of the application of law.

CONCLUSIONS

The Polish legal order contains extra-legal criteria that support the implementation of efficiency and flexibility in the application of law. The implementation of these two values of law application depends to a large extent on the discretionary powers of the judge, cooperation between the parties, prudent conduct of the public authorities, and the ability to reach agreements. The values of flexibility and efficiency correspond with each other and should be implemented together. The right protection of the good of the child will therefore depend on the correct construction of the normative basis for a decision based on the norm-principle of the protection of the good of the child, both in the context of implementation of procedural and substantive rules. The incorporation of a legal principle in the normative basis of the decision focuses the application process on achieving the values of flexibility and efficiency. Within the concept of the good of the child, a reference can also be made to economic values intended to safeguard individual interests (material needs), such as housing and maintenance. These needs can be met in multiple ways, by providing assistance directly to the child, creating jobs for the parents, funding educational establishments, or even securing claims, or organising hearings so as to conduct the proceedings quickly and efficiently.

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ABSTRAKT

W niniejszym artykule autorka zwraca uwagę na konieczność realizacji dwóch wartości stosowania prawa podczas orzekania w sprawach dotyczących dzieci. Te dwie wartości to elastyczność i efektywność. Jednoczesna ich realizacja nie wyklucza się, gdyż w toku stosowania prawa szczególnie istotne jest podejmowanie decyzji zgodnie z zasadą ochrony dobra dziecka i nastawieniem na realizację funkcji ochronnej. W tym kierunku formułowana jest teza badawcza. Badania były prowadzone w oparciu o orzecznictwo, które daje szeroki obraz, jaki jest kierunek podejmowania decyzji w sprawach administracyjnych, cywilnych, karnych i innych w polskiej perspektywie. Artykuł ma charakter naukowo-badawczy. Punkt widzenia zaprezentowany w pracy ma na celu wyraźne podkreślenie konieczności równoczesnej realizacji elastyczności i efektywności, co w perspektywie polskiej niestety jest trudne do wykonania.

Słowa kluczowe: elastyczność; efektywność; dobro dziecka; stosowanie prawa; zasada prawa