ROCZNIKI NAUK PRAWNYCH
Tom XXIV, numer 3 – 2014

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ON *PETITIO PRINCIPII* IN LEGAL ARGUMENTATION

The postulate 'people should be able to defend their views' does not require any specific justification. In the civilised world of today – after all, skirmishes over courtrooms and confrontations at consulting rooms of law offices are determinants of such world – this defence does not rely on the argument of force. Instead, it employs the force of argument. Below, I endeavor to make it clear what is intrinsic and essential for *petitio principii* (literally: 'a postulation of the beginning', 'begging the question') in the sphere of formulating and proposing arguments in the actual practice of law. In other words, this paper aims at designing a tool to specify the circumstances which underlie the effectiveness of each legal argumentation[1].

The realisation of this task will consist of three stages. First, I will introduce and describe a basic (from a historical perspective and also its frequency of usage) conception of *petitio principii*. In the second stage, I will focus on juxtaposing the data of the first stage with the information on the function and structure of the argument. This should yield a conception of *petition principii* that can be used in any argumentative discourse. In the last stage, I will specify this conception by in-

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[1] I have used the word 'designing' because *petitio principii* on the ground of law discourse (legal argumentation) has not been an object of scientific investigations

troducing essential aspects of a persuasion existing in legal practice[2]. In result of this operation, a conception of *petitio principii,* which is peculiar for legal argumentation, will be formulated.

1. *RATIO PROPRIA* OF *PETITIO PRINCIPII*

The Latin words '*petitio*' and '*principii*' were first used together as an expression relating to a specific type of situation in the Middle Ages. The composition '*petitio principii*' was formed in the course of translating logic works of Aristotle as an equivalent of the 'τὸ ἐν ἀρχῇ αἰτεῖσθαι' expression[3]. The philosopher from Stagira used this expression to organize a conception of fallacy which might affect the initial point of reasoning[4]. Throughout the ages, this conception became the subject of numerous interpretations and studies. For the purposes of this paper, however, it is essential to stress that the reasoning, which concerns *petitio principii*, was identified with demonstration. In turn, demonstration, speaking generally, was understood as showing the truth of some sentence (a conclusion) by searching out other sentences (premises): a) from which ones it logically results (i.e. the conclusion realizes with premises a certain law of logic) and b) which ones are true[5]. For instance, if someone is to show that the sentence 'The Yeti exists' is true (i.e., that the Yeti does, *de facto*, exist), he or she/ they might – if he or she uses/ they use demonstration – introduce sentences 'There are people who have encountered the Yeti' and 'If there are people who have encountered the Yeti, then the Yeti exists' (in this case, the demonstration will rely on the logical law called *modus ponendo ponens*). Such a person might also posit that 'One museum has

[2] It is worth stressing the assumption of this study: legal argumentation is a kind of argumenttation (because arguments that are formulated in it have a specific structure), but it is not a case of general argumentative discourse (there is not something like general argumentative discourse) and it is not a standard for any other kind of argumentation (this circumstance is excluded by a specific structure of arguments peculiar for legal argumentation). J. S t e l m a c h. *Kodeks argumentacyjny dla prawników.* Kraków: Zakamycze 2002 pp. 26-28.

[3] S. S c h r e i b e r. *Aristotle on False Reasoning: Language and the World in the Sophistical Refutations.* New York: Suny Press 2003 pp. 98, 214; J. W o o d s, D. W a l t o n: *Petitio Principii.* "Synthese" 31: 1975 pp. 106-107, 124.

[4] S c h r e i b e r. *Aristotle on False Reasoning*. p. 106.

[5] M. P o l e t y ł o. *Dowodzenie.* In: *Mała encyklopedia logiki.* Ed. W. Marciszewski. Wrocław-Warszawa-Kraków-Gdańsk-Łódź: Ossolineum 1988 p. 49-50; Z. Z i e m b i ń s k i. *Logika praktyczna.* Warszawa: Wydawnictwo Naukowe PWN 1994 p. 196, 155; S. K a m i ń s k i. *Dowód.* In: *Powszechna Encyklopedia Filozofii.* Ed. A. Maryniarczyk. T. 2. Lublin: Polskie Towarzystwo Tomasza z Akwinu 2001 p. 705.

a plaster cast of the Yeti's footprint' and that 'The Yeti's pictures have been published in the press' and also that 'Since one museum has a plaster cast of the Yeti's footprint, the Yeti exists', and also 'Since Yeti's pictures have been published in the press, the Yeti exists' (in this case, the reasoning will follow the rule of the simple constructive dilemma).

It is important to note that each fallacy of any demonstration might stem either from its form (construction, structure) or its premises. A formal fallacy of demonstration occurs when a relationship between premises and a conclusion does not rely on a logical law because of a number or an arrangement of sentences which form the reasoning. In such a case, the conclusion does not logically result from the premises, so even if the sentences which form the premises are true, the sentence which forms the conclusion is not necessarily so. In the above-discussed instance, anyone who tries to show that the sentence 'The Yeti exists' is true by merely positing the sentence 'Since there are people who have encountered the Yeti, then the Yeti exists', despite the obvious validity of the sentence 'Since there are people who have encountered the Yeti, then the Yeti exists', will fail to achieve the objective due to a formal fallacy. Indeed, the conclusion 'The Yeti exists' does not logically result from the sentence 'If there are people who have encountered the Yeti, then the Yeti exists' alone. Instead, it stems from the conjunction of the sentences 'Since there are people who have encountered the Yeti, then the Yeti exists' and 'There are people who have encountered the Yeti'; it is only then that the relationship between the premises and the conclusion fulfils the *modus ponendo ponens*. Correspondingly, neither the sentence 'One museum has a plaster cast of the Yeti's footprint' nor the sentence 'The Yeti's pictures have been published in the press' alone, nor even their logical product, prove the sentence 'The Yeti exists'[6].

If the fallacy of demonstration is related to premises, one of the two following situations is at work. The first involves at least one of the premises' being a fallacious sentence (i.e. it describes a fact or a state of affairs differently from what the fact or state of affairs that it actually is). This fallacy, called a material fallacy, would therefore be committed by anyone asserting that the sentence 'The Yeti exists' is true by using such sentences as 'The author of this paper has encountered the Yeti', 'The author of this paper is a man', 'If the author of this paper is a man, then there are people who have encountered the Yeti', and also 'If there are people

[6] It is of course necessary to distinguish a case in which there is a lack of premises and a case in which one or more premises are hidden or not mentioned (because of their obviousness). In latter case we do not deal with the formal fallacy but with the enthymematic demonstration (Z i e m b i ń s k i. *Logika praktyczna*. pp. 155-156).

who have encountered the Yeti, then the Yeti exists'. Indeed, although combined, these sentences follow a logical law, the premise of 'The author of this paper has encountered the Yeti' is a false sentence. So it is a material fallacy to show (following any law of logic) that a conclusion is true by using sentences which contain a false sentence[7].

In the second situation, demonstration uses a premise represented by a sentence the truth of which has not been determined. It involves finding (in order to support the validity of the latter) at least one sentence the truth of which is at least as questionable as that of the conclusion. This fallacy is *de facto* illustrated by the examples of reasoning provided at the beginning of this part of the paper. Indeed, anyone pointing out that the sentences 'The Yeti exists', 'One museum has a plaster cast of the Yeti's footprint', or 'The Yeti's pictures have been published in the press' would have difficulties proving that these are true sentences. The truth of the sentences about the people who have seen the Yeti, the existence of a plaster cast of the Yeti's footprint, and also the existence of the Yeti's pictures in the press is as questionable as the truth of the sentence that the Yeti exists. It is this fallacy that one traditionally and most commonly denoted by the name '*petitio principii*'[8].

In summary, *petitio principii* concerns a quality of the premises of demonstration. In this sense, the basic conception (i.e. *ratio propria*) of *petitio principii* should be defined as 'a fallacy in which one attempts to support a conclusion of demonstration by at least one premise the truth of which, like the truth of a conclusion, has not been determined'.

2. *PETITIO PRINCIPII* IN ARGUMENTATION

The fallacies of demonstration – the formal fallacy, the material fallacy and *petitio principii* – are objective in nature. It means, if a certain instance of demonstration is affected by any of these, then the truth of the conclusion cannot be

[7] S. L e w a n d o w s k i. *Retoryczne i logiczne podstawy argumentacji prawniczej*. Warszawa: LexisNexis 2013 p. 176; M. L e c h n i a k. *Elementy logiki dla prawników*. Lublin: Wydawnictwo KUL 2006 p. 101.

[8] K. S z y m a n e k. *Petitio principii*. In: I d e m. *Sztuka argumentacji. Słownik terminologiczny.* Warszawa: Wydawnictwo Naukowe PWN 2001 pp. 235-236; W. M a r c i s z e w s k i. *Petitio principii.* In: *Mała encyklopedia logiki*, p. 140. Z i e m b i ń s k i. *Logika praktyczna*. p. 196; L e w a n d o w s k i. *Retoryczne i logiczne podstawy argumentacji*. p. 178. From the formulated definition it can be derived proposition that *petitio principii* is also made when one of premises predicate the same what is predicated by a conclusion. It means that *circulus vitiosus* is a kind of *petitio principii*.

shown and therefore the aim of the reasoning will not be achieved. This does not, however, preclude a successful application of materially fallacious, formally incoherent or *petitio principii* – affected demonstration in a discussion. Indeed, reasoning which is demonstration affected by the said fallacies can sometimes be successfully used in argumentation[9]. It is due to the fact that argumentation has a different purpose from demonstration. While demonstration aims to prove that a sentence is true, an argument seeks to elicit (reinforce) the support of a statement (which is not necessarily a descriptive statement, i.e. a sentence) from or among the auditory, i.e. people to whom this statement has been proposed for approval[10]. An argument, therefore, might involve a range of diverse mental activities, including demonstration, even if it is affected by a material or formal fallacy, or by *petitio principii*[11].

Everyone who argues, therefore, can use demonstration. Furthermore, using demonstration in argumentation substantially augments its power (attributable to the fact that each demonstration follows a logical law). It is not by chance that *alibi* – i.e. an argument in which an attempt is made at showing that a person who is accused of an unlawful act was, in fact, not present at the place where the unlawful act took place, and which, by extension, is ultimately an argument that follows the logical law of *modus tollendo tollens* – is considered one of the most effective lines of defence. Nevertheless, even if an argument employs demonstration, there is no certainty that this argument will succeed in achieving its objective. A statement argued using demonstration might not be approved by the ones to whom it has been communicated for approval, despite its being true and logically resultant from valid and true premises, of whose truth and validity the auditory was aware. At the same time, even when clear to the auditory, a fallacy in demonstration does not necessarily render the argumentation invalid. Indeed, it is sometimes the case that the auditory approves a statement which is argued by means of demonstration, even if one or more of the sentences of this demonstration is not true or if the

[9] The word 'argumentation' – also in jurisprudence – is most often linked with two meanings: 1. 'an act or a sequence of acts: persuasion, justification'; 2. 'a class of arguments' (J. J a b ł o ń s k a - B o n c a. *Prawnik a sztuka negocjacji i retoryki*. Warszawa: LexisNexis 2003 pp. 116-117, 121-128). In the article the word 'argumentation' is used in the first sense.

[10] Ch. P e r e l m a n. *L'empire rhétorique: rhétorique et argumentation*. Paris: Vrin 2002 pp. 21-22; M. K o r o l k o. *Sztuka retoryki. Przewodnik encyklopedyczny.* Warszawa: Wiedza Powszechna 1990 p. 84.

[11] It is necessary to add that the said aim of argumentation determinates a fact that argumentation actually organizes not only in mind of the subject of this kind activity, but also in a sphere of communication. It means, a vocal or literal presentation of completed reasoning is a necessary element of argumentation.

conclusion does not logically stem from the propositions made in support of this conclusion[12].

To determine a situation denoted by the expression '*petitio principii* in argumentation', it is important to point out that argumentation is the process of presenting arguments. In view of the aforementioned characteristics, it can be said that arguments are operations aimed at eliciting (reinforcing) the approval of a statement from or in the auditory by providing further statements which are in one way or another related to the conclusion proposed for approval[13]. One might also say that *petitio principii* in argumentation, namely in the sphere of forming and raising arguments, does not consist in using – as one of the premises of an argument – a conclusion the truth of which has not been determined, even if a given argument involves demonstration. Nevertheless, *petitio principii* in argumentation, like *petitio principii* in demonstration, is a fallacy committed in the premise. Indeed, since an argument is not about showing the truth of a sentence, but approving a statement, then *petitio principii* in argumentation can only happen if the arguing individual relies – in the initial point of an argument (used in a given case) – on information which the auditory does not approve in general (i.e. *a priori* of a discussion and completely)[14].

What is the initial point of an argument? To answer this question, one should, in the first place, emphasise that each argument consists in gaining the auditory's approval of some statement (a conclusion of an argument) by presenting the auditory with other statements that are in one way or another related to the conclusion; such statements are called premises of an argument. However – and that feature of arguments should be laid out – while the conclusion might not even be explicitly voiced (i.e. it might be implied to the auditory) and is used to define an individual argument, an argument might in principle contain any number of premises[15].

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[12] K. S z y m a n e k. *Argument*. In: I d e m. *Sztuka argumentacji*. p. 44.

[13] The name 'argument' also denotes different objects. In everyday language it often assigns a reason of a decision. In logic the term 'argument' is used to design a medium term of a syllogism or an element of a complex expression. In turn, in jurisprudence the name 'argument' usually denotes a rule used to determination a class of an application of a legal norm (L e w a n d o w s k i. *Retoryczne i logiczne podstawy argumentacji*. p. 89; M. K o r o l k o, *Retoryka i erystyka dla prawników*, Warszawa: PWN 2001, p. 209).

[14] P e r e l m a n. *L'empire rhétorique*. p 43; I d e m. *Logique juridique: nouvelle rhétorique*. Paris: Dalloz 1999 pp. 116-117.

[15] The expression "in principle" is used here to indicate that there are some circumstances that might preclude the infinite range of potential statements. For instance, an overly extensive text might discourage readers from delving into its contents. Similarly, an elaborate speech might bore

To define the initial point of an argument, two more qualities of arguments should be identified. First, each premise of an argument can support its conclusion regardless of or in conjunction with the other premises. For instance, the statement 'John is a lawyer' supports the statement 'John is qualified to become a public prosecutor', regardless of the statement 'John is honest' and the expression 'John is hardworking' (which could also be raised in favour of the said thesis). In turn, to support the statement 'Peter is knowledgeable about cars', it would not be enough to claim 'Each car mechanic is knowledgeable about cars' or simply state 'Peter is a car mechanic'. Instead, it would require the use of both these statements. Secondly, another distinctive feature of arguments is the different nature of the relationship between individual premises and conclusions, as well as between the premises alone. In other words, the relations which an argument might involve various categories, and to elicit (increase) the approval of the auditory, there is no need to arrange individual statements according to a logical law (although this is desirable for the success of an argument, due to the reliability of the logical laws). Nevertheless, a logical relationship in an argument might be replaced or enriched by a relationship of a different nature, like in the argument 'Joseph will pay back his debts to John, since he has paid back his debts to Andrew and repaid the bank loan on time'. Moreover, the relationship between statements does not even have to be a question of a linguistic characteristics, as reflected by the premise 'I can feel it', used to support the conclusion 'Eulalia loves Peter'.

The above-provided discussion of the characteristics of arguments provides a sufficient basis for defining what the initial point of an argument is. These characteristics allow to claim that the initial point of this kind consists of 1) a content of the individual premises of an argument; 2) a relationship between the premise of an argument and its conclusion or a relationship between at least two premises of the argument.

Therefore, a situation denoted by the name '*petitio principii* in argumentation' involves, similarly as it happens in demonstration, the qualities of the premises. The underlying fallacy here does not involve the insufficiently determined truth of the premises. Instead, it results from disregarding the auditory's opinion on the content of the premises. In addition, unlike *petitio principii* in demonstration, what *petitio principii* in argumentation touches is only the relationship between the elements of an argument; in this regard it also concerns the lack of approval of the auditory. In other words and more precisely, *petitio principii* in argumentation is a situation where any of the argument's premises contains information of which

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the listeners with its subject matter rather than convincing them that the conclusion is true (P e r e l m a n. *L'empire rhétorique*. p. 182).

the auditory in general disapproves or where the argument's premises (or at least one premise and the conclusion) are juxtaposed in a relationship that is *a limine* unacceptable to the auditory[16].

3. THE LEGAL DISCOURSE AND THE SPECIFICITY OF *PETITIO PRINCIPII*

Assuming that the law is a set of "rules of conduct, established or accepted by the appropriate authorities of a State, the observance of which is, when need be, enforced by means of coercion available to this State[17]", each participant in legal disputes should recognise the issue of application of law. Admittedly, for such disputes, it is of central relevance that a State authority (*de facto* those who hold the office) applied the law by making a such and such legal decision or that a State authority (those who hold the office) will apply the law and probably make a such and such legal decision. If a legal decision in fact determines that for a specific constellation of facts, a specific legal norm applies, entailing specific legal consequences defined thereunder[18], then – according to the above-established conception of argumentation – legal argumentation amounts to eliciting (augmenting), by means of statements (premises of an argument), the approval of another statement (a conclusion of an argument) which belongs to one of the three groups of statements. The first group is defined by the expression 'an X legal norm is valid'; the second group is defined by the expression 'an X fact took place'; the third group is defined by the expression 'an X fact results in legal consequences defined under the X legal norm'[19].

Each of the above-provided expressions requires some explanation. And so, the expression of 'an X legal norm is valid' should be understand as an abstract formulation of results of an interpretation of the law. It amounts to determining that a such and such legal norm, determined as regards assumptions, a disposition and a sanction, is formally valid; in other words, in a legal system (under which

[16] P e r e l m a n. *L'empire rhétorique*. pp. 42-43.

[17] „Prawnicy akceptują zwykle pojęcie «prawa w znaczeniu prawniczym», czyli prawa jako *zespołu reguł ustanowionych bądź uznanych przez odpowiednie organy państwa, wobec których posłuch zapewniony bywa w ostateczności dzięki przymusowi jaki może stosować to państwo*" (T. C h a u v i n, T. S t a w e c k i, P. W i n c z o r e k. *Wstęp do prawoznawstwa*. Warszawa: C. H. Beck 2012 p. 18).

[18] Ibid., p. 217; W. G r o m s k i. *Decyzyjny model stosowania prawa*. In: W*prowadzenie do nauk prawnych. Leksykon tematyczny.* Ed. A. Bator, Warszawa: LexisNexis 2010 pp. 301-302.

[19] Z. P u l k a. *Argumentacja prawnicza.* In: *Wprowadzenie do nauk prawnych*. p. 244.

a legal decision is to be made), it is prohibited or permitted for a subject of some kind to undertake acts of some kind in circumstances of some kind. Therefore, the 'an X legal norm is valid' pattern encapsulates statements which identify: a) those who are addressed by the legal norm, b) the circumstances for which the norm applies, c) and the rules of conduct of those who are addressed by the legal norm. Under the currently valid Polish law, such statements include, for instance, 'Criminal courts are prohibited from using as evidence any statements made by the defendant in the capacity of a witness' and 'A natural person may have only one place of permanent residence'.

The expression of 'An X fact took place' represents a schematic formulation of the factual findings which, in their entirety, are relevant to the solution of a case. Each statement of this kind describes a specific event, and combined, these statements constitute the profile of a state of facts, based on which a legal decision can be made under a relevant legal norm. Under a Polish law, a potential decision, illustrating the sequence of such statements, could be as follows: 'On 3 February 2012 in Lublin, a collision took place, involving the plaintiff's property, a bus, make MAN, and a trolley bus, line M12. The collision was caused by the trolley bus driver. The car was insured against third-party liability with the claimed-on insurance company. The defendant estimated the claim to amount to the costs of repairing the bus, which were PLN 3,611. The defendant compensated the plaintiff with this amount. The actual cost of restoring the bus to the pre-accident condition by way of repair was PLN 9,676'.

The expression 'an X fact results in consequences defined by an X legal norm' represents each statement which formulates a result of subsumption. As the result of subsumption, determined facts are assigned to a reconstructed legal norm, which directly suggests that these facts entail consequences defined by the legal norm. Consistent with this pattern are, therefore, statements which claim that an event (which is a part of the state of facts which form the factual grounds for a legal decision) is legally relevant in the framework of a reconstructed legal norm, and also statements which claim that an event entails, within the framework a legal norm, specific consequences. The following are examples of such statements: 'the optical fibre cables found in the defendant's house represent movable property, as defined in Article 278 par. 1 of the Polish Criminal Code' and 'Pursuant to Article 535 of the Polish Civil Code, the defendant is liable towards the plaintiff for paying the price in the amount of PLN 100'.

The above-presented classification of conclusions of arguments that are specific to legal argumentation facilitates a clear description of the characteristics of statements which represent premises for the said arguments. Indeed, since the pat-

tern 'an X legal norm is valid' is the abstract formulation of consequences of an interpretation of the law, then an argument whose conclusion is a statement which fits into this pattern will *de facto* represent verbalised actions undertaken to reconstruct a legal norm. Its premises, therefore, will be primarily based on statements which constitute the content of a directive (rule) in respect of the interpretation of the law, and are used in a given case. Since the pattern 'an X fact took place' is an abstract formulation of the factual findings of a legally investigated case, then an argument whose conclusion is a statement which fits this pattern will constitute a tool for eliciting (increasing) the approval of a given perception of the state of facts whose legal consequences (verbalised in the legal norm) are to be defined. Its premises, therefore, will be primarily based on descriptive statements which inform the recipients that specific facts have been established, and secondarily – depending on how complex this argument is[20] – directival statements about justifying the possibility of these facts being established. Indeed, factual findings, if made at all (and not presumed, as happens in academic cases), are made with the law in mind, including, in particular, the norms which govern the taking of evidence. This means that the information about the facts which might be legally qualified – and which are verbalised as a statement that fits the pattern of 'an X fact took place' – should be collected in compliance with legal norms, defined by means of the directives in respect of the interpretation. If, in turn, the pattern 'an X fact results in consequences defined by an X legal norm' is an abstract formulation of the result of a subsumption, then the argument whose conclusion is a statement which fits this pattern will be based on premises which primarily rely on statements which fit the patterns 'an X legal norm is valid' and 'an X fact took place'. Secondarily, its premises will be based on expressions which fit both of these patterns.

Therefore, arguments which are specific to a legal argument ultimately use only directival statements as their premises. The structure of any argument of this type involves legal norms which derive from the interpretation of the law. The interpretation of the law, in turn, is determined by a range of rules established within a legal doctrine. To gain an understanding of *petitio principii* in legal argumentation, it is important to note the fact that directival statements – being statements which tell what to do – cannot be qualified in terms of their being true (or false). Hence their legal validity is not based on the acknowledgement of the truth (falseness) of the information (judgments) they convey. Instead, it is based on the acknowledgement of the legal validity of at least one other statement. This means

[20] See note 15.

that the approval of the content of each premise of an argument specific to a legal argument is based on a number of mutually supportive directives; the said content cannot simply be inconsistent with the rules which are the content of directival statements. These rules ultimately define the broad interpretation of the law. Therefore – appropriately to the conception of *petitio principii* in argumentation, as formed above – *petitio principii* in legal argumentation can be generally put as a fallacy in which an argument derives from at least one premise whose content is not supported by the directives approved by the auditory (which are, ultimately, rules that determine the interpretation of the law in *sensu largo*), or in which the argument-forming statements are arranged into premises and the conclusion by means of at least one relationship of this type which is not accepted by the auditory.

As far as the already-mentioned directives (rules which should be observed when building each premise of an argument in a legal argumentation to avoid *petitio principii*) are concerned, they are currently commonly designated – both in the doctrine and the judicatory – collectively by names 'principles of law', 'legal topoi' or 'legal reasoning'. There is no agreement, either in jurisdical doctrine or among law enforcers, as to what exactly forms the denotation of each of these terms; in particular, what some academics or law enforcers call a legal topos others will call a rule of law or legal reasoning[21]. This situation validates the general definition of the said directives as rules of reasoning, dicta or maxims, which, at the same time: 1. are commonly known and acknowledged by those who create legal culture[22]; 2. define formal requirements (standards) for a correct settlement of the discussed issues (i.e. issues which might be raised in a discussion for which the application of the law is relevant)[23]; 3. are not absolutely binding on those involved in the discussion[24].

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[21] J. S t e l m a c h, B. B r o ż e k. *Metody Prawnicze*, Kraków: Wolters Kluwer 2006 pp. 211, 217-219; L. M o r a w s k i. *Argumentacje, racjonalność prawa i postępowanie dowodowe*. Toruń: UMK 1988 p. 55; G. S t r u c k. *Topische Jurisprudenz. Argumentund Gemeinplatz in der juristischen Arbeit.* Franfurt am Main: Athenäum 1971 p. 20-21; Ch. P e r e l m a n. *Logique juridique.* pp. 87-88.

[22] S t e l m a c h, B r o ż e k. *Metody Prawnicze*. p. 211.

[23] Ibid. pp. 22-24; L e w a n d o w s k i. *Retoryczne i logiczne podstawy argumentacji*. p. 113.

[24] L. M o r a w s k i. *Zasady wykładni prawa*. Toruń: Dom organizatora 2006 pp. 57-58. I claim that a lack of this binding force finally results from two reasons: 1) there is no commonly accepted order of application of said directives; 2) these directives are formulated in general terms. Hence basic argumental tactics oriented toward destruction binding force of such directive consist in: a) call other this type directive which is in opposition to negated directive; b) describe situation in question in the way that negated directive does not fit to this situation.

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Petitio principii in legal argumentation can also – in addition to building the premise(s) of an argument in non-compliance with the said directives – be applied when the statements of an argument are arranged into the premises and the conclusion by means of one relationship of this type which is not accepted by the auditorium. As already mentioned, this disapproval is *a limine*, which means that it results from the use (to link argument-forming statements) of a relationship which belongs to a category which is *a priori* of the discussion and completely unacceptable for the auditory. If, in turn – *manifestum non eget probatione* – the said disapproval involves various categories of relationships, depending on the type of discussion, the specification of this problem would require answering the question: 'Are there any categories of relationships for arguments specific to a legal argumentation that are *a limine* unacceptable to the auditory?'.

The answer to this question is "no", for the said relationships are in fact realisation of rules of reasoning. In a legal discourse – as opposed to, for instance, an academic discussion in which, as a rule, any metaphorical conceptualisation is *a limine* repudiated – there is not a single class of reasoning which would be disapproved outright. To be more specific, statements which form each argument specific to legal argumentation can be arranged according to a pattern which is based on a relationship of logical laws, or a pattern which follows directives that, while not referring to the rules of logic, reasonably allow the approval of the conclusion of an argument[25]. In consequence, if premises of an argument which is specific to a legal discourse are not affected by *peitito principii* (in legal argumentation), this argument is taken into consideration regardless of what reasoning is followed by statements which build the argument.

The ultimate and most concise definition of *petitio principii* – which is specific to legal argumentation – would be the following: it is a fallacy in which an argument is based on at least one premise whose content is inconsistent with a directive which is a certain principle of law, some legal topos or a rule of legal reasoning. The said inconsistency – due to the complicated and largely undetermined relationships between the rules of law, legal topoi and rules of legal reasoning – should be evident.

[25] The said expression is a reference to Z. Ziembiński's analyses concerned a line of non-dedictive reasoning (Z i e m b i ń s k i. *Logika praktyczna*. pp. 182-192).

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ON *PETITIO PRINCIPII* IN LEGAL ARGUMENTATION

Summary

In the Article I attempted to discuss and describe *petitio principii* in the sphere of formulating and proposing arguments in the actual practice of law. First, I discussed a basic – from a historical perspective and also its frequency of usage – conception of *petitio principii*. Then, received in such way data (i. e. *ratio propria* of the name '*petitio principii*'; in other words the name by means of we describe some fallacy in demonstration) were brought face to face with a conception of an argument, namely with the information on its function and structure. This operation provided a form of *petitio principii* that – in regards to general and abstractive character – can be used in any discussion. The final stage of the considerations concentrated on specification of such general and abstractive conception of *petitio principii* by introducing essential aspects of a persuasion existing in legal practice.

Key words: *petitio principii*, argument, law argumentation, application of law.

O *PETITIO PRINICIPII* W ARGUMENTACJI PRAWNICZEJ

Streszczenie

W rozważaniach zawartych w artykule podjąłem próbę określenia pojęcia *petitio principii* jako błędu swoistego dla sfery argumentacji prawniczej. Wpierw scharakteryzowałem jak – z perspektywy historycznej i zarazem w kontekście częstotliwości używania wyrażenia '*petitio principii*' – przede wszystkim jest rozumiane *petitio principii*. Następnie dane te (czyli *ratio propria* nazwy '*petitio principii*', za pomocą którego rzeczony termin służy do oznaczania pewnego rodzaju błędu w dowodzeniu) skonfrontowałem z pojęciem argumentu (tj. wypowiedzi argumentacyjnej), mianowicie z informacjami o strukturze argumentu i jego funkcji. Otrzymaną w ten sposób koncepcję *petitio principii*, którą – ze względu na jej ogólny i abstrakcyjny charakter – odnieść równie dobrze można do każdej odmiany argumentacji, dookreśliłem poprzez zestawienie jej z istotowymi i zarazem swoistymi właściwościami przekonywania, jakie istnieją w praktyce prawniczej.

Słowa kluczowe: *petitio principii*, argument, argumentacja prawnicza, stosowanie prawa.