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RESPECTING THE FREEDOMS AND RIGHTS OF ELDERLY PEOPLE AS A REQUIREMENT OF THE RULE OF LAW

POSZANOWANIE WOLNOŚCI I PRAW OSÓB STARSZYCH JAKO WYMÓG PRAWORZĄDNOŚCI

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Abstract

In the first part of the article, the author analyzes the principle of the rule of law (Rechtsstaat) in a comprehensive manner, combining the formal and material premises of this concept. He presents the historical sources of the concept (including R. v. Mohl and F. J. Stahl), the distinction between the formal and substantive understanding of the rule of law, and contemporary constitutional views that emphasize the need to combine both approaches. In the second part, he identifies threats to the freedoms and rights of older people in Poland – exclusion, loneliness, and limited access to cultural goods, healthcare, social security, and social assistance – and relates them to specific provisions of the Constitution of the Republic of Poland (Articles 6, 19, 67, 68, 69). It points to systemic deficiencies: an insufficient number of geriatric facilities, medical personnel, and limited provision of social and cultural services for seniors. In conclusion, it emphasizes the need for a coherent senior policy – developing U3A, community care, geriatric rehabilitation, social inclusion, and intergenerational education – as a condition for the effective implementation of the rule of law in an aging society.

Keywords: rule of law, rights of older people, senior policy, social exclusion

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Abstrakt

W pierwszej części artykułu Autor analizuje zasadę państwa prawnego (Rechtsstaat) w ujęciu kompleksowym, łączącym formalne i materialne przesłanki tego pojęcia. Przedstawia historyczne źródła koncepcji (m.in. R. v. Mohl, F. J. Stahl), rozróżnienie między formalnym a materialnym rozumieniem państwa prawnego oraz współczesne zapatrywania konstytucyjne, które podkreślają konieczność łączenia obu podejść. W części drugiej identyfikuje natomiast zagrożenia dla wolności i praw osób starszych w Polsce – wykluczenie, samotność oraz ograniczony dostęp do dóbr kultury, opieki zdrowotnej, zabezpieczenia społecznego i pomocy bytowej — i odnosi je do konkretnych przepisów Konstytucji Rzeczypospolitej Polskiej (art. 6, 19, 67, 68, 69). Wskazuje braki systemowe: niedostateczną liczbę placówek geriatrycznych, personelu medycznego oraz ograniczoną realizację świadczeń socjalnych i kulturalnych dla seniorów. W konkluzji podkreśla konieczność prowadzenia spójnej polityki senioralnej – rozwijania U3A, opieki środowiskowej, rehabilitacji geriatrycznej, inkluzji społecznej i edukacji międzygeneracyjnej – jako warunku rzeczywistej realizacji państwa prawa wobec starzejącego się społeczeństwa.

Słowa kluczowe: państwo prawne, prawa osób starszych, polityka senioralna, wykluczenie społeczne

1. The rule of law in a comprehensive approach

The concept of the rule of law (Rechtsstaat) originated in the German legal culture and was developed in a doctrine in the 19th century [Garlicki 2002, 61]. German legal theorists increasingly postulated replacing state authority, functioning on the basis of decision-making principles, i.e. decisions of the princely authority, with an authority making its decisions based on the positivist principles of law [Radwański 1985, 22]. Therefore the content elements of the rule of law, specified at that time, came down to binding the ruler's actions with law and to the legal regulation of relations between the citizen and the state. The creator of the concept of the rule of law was, according to some authors, J.W. Placidus, who was the first to use this concept in his work in 1798 [Kunig 1986, 21]. However, most representatives of legal science indicate that the first author to specify the concept of the rule of law (Rechtsstaat) and to introduce this concept to the science of state law was R. v. Mohl, who in the work published in 1832 gave a legal characteristic of an anti-absolutist state.

According to v. Mohl, Rechtsstaat is a concept of a state of law understood materially. Opposing the postulate of I. Kant's school to limit the goals of the state only to securing and implementing the law, he tried at the same time to reconcile the subject matter proper to "chameralism" with the liberal science of the constitutional system, born under the influence of the French constitutional doctrine. According to R. v. Mohl, a necessary condition for defining a given state as a state of law is to examine whether it considers the principle of citizens' freedom to be paramount.

This principle is determined by the goal of every state operating on the basis of law, which is to provide individuals with the possibility of comprehensive development. Only by leaving each member of society a wide sphere of freedom to decide about themselves, limited only by clear regulations setting the boundaries beyond which interference in the sphere of freedom of another person occurs and recognizing the individual as an entity fully responsible for the path of their self-fulfilment, the chance to create a truly civic society does arise.

However, a citizen should act and move within the state within the limits set by reason and law and the duty of obedience to authority. R. v. Mohl left a wide margin for state activity. However, he emphasized that the state should support the achievement of the goals of the individual and society, but only those that require such assistance – the postulate that the state's actions should be based on the principle of subsidiarity, not welfare. The purpose and tasks that the state should fulfill were decisive for him, while the form of government (monarchy, republic) was definitely secondary [Radwański 1985, 28-29].

The other creator of the concept of the rule of law, F. J. Stahl, unlike R. v. Mohl, sees the distinguishing features of the rule of law in the so-called content (Inhalt) of state activity [Stahl 1856]. It was Stahl who was the forerunner of the concept of a formal state of law. According to him, the distinguishing feature of a state of law is the method of achieving specific goals, and not the goals themselves: "The state should be a state of law […]. It should, by virtue of legal provisions, precisely define the paths and limits of its action and ensure the sphere of inviolable freedom of its citizens, and it should not directly implement (enforce) moral ideas outside the legal sphere to a wider extent than the legal sphere, that is, to the most necessary limitation. The concept of the rule of law is not in the sense that the

state has a legal order without administrative tasks, or that it only protects the rights of individuals – it does not cover the purpose and content of the state at all, but only the manner and nature of their implementation" [ibid., 137-38].[1] F. Stahl includes the following among the postulates of a formal state of law: the primacy of the constitution, the direct application of laws by state officials, the separation of the justice system from the administration, and the independence and irremovability of judges [ibid., 604].

It should be noted here that the 19th century and the first half of the 20th century were dominated by the formal understanding of the rule of law. The vast majority of authors adopt such a concept, which is emphasized by contemporary legal theorists and constitutionalists, who often identify the formal concept of the rule of law only with legal positivism [Morawski 1994, 4]. After World War II, supporters of the formal state of law, under the influence of totalitarian states, often changed their views, adopting the substantive concept of the rule of law. These include, among others: German philosopher G. Radbruch, who, moving to the position of a material state of law, created the so-called "the Radbruch formula" in order to quickly cleanse German legislation of the Nazi component. Nevertheless, even today the formal concept is still alive, although consistently and rightly supplemented by material elements.

Undoubtedly, despite the differences in the understanding of the concept of Rechtsstaat from the perspective of its precursors, this concept is a denial of systems of government by people with broad, undefined and uncontrolled power. It categorically rejects decisionist political concepts and the absolute power. The basic negative postulate that distinguishes the state of law (rule of law) is therefore the exclusion of discretion and arbitrariness in the actions of the authorities [Nowacki 1995, 30]. From this point of view, it is identical to the rule of law developed in the Anglo-Saxon countries, based on the idea of the rule of law. Therefore, constitutional axiology is a comprehensive understanding of the general clause of the state of law, combining both the formal and material postulates of this concept of the state and law, which is a kind of a rational combination of the state of laws and the state of judges.

The analysis of the formal requirements of the Rechtsstaat concept, which are relatively easy to define, and the material requirements, the attempt

[1] See Nowacki 1998.

to catalogue which causes more problems because they force us to ultimately opt for a certain system of values, leads to the reflection, that the idea of the rule of law should consist of both of these premises – just as the law itself is a combination (inseparable) of its subjective (*ius*) and objective (*lex*) sides, therefore the rule of law must be analyzed from both the formal and material sides. Ultimately, the Constitutional Tribunal expressed a similar view in its judgment of April 12, 2000, in which it stated, among other things, that "if Art. 2 of the Constitution is not to remain just an empty declaration, it is necessary to take into account the generally accepted standards of the rule of law, as well as to consider what shape (model) of the rule of law the Polish Constitution has adopted. Even the creation of norms, which is impeccable from the point of view of legislative technique, does not exhaust the essence of the rule of law. These norms must implement the basic assumptions underlying the constitutional order in Poland and implement and protect the set of values that the constitution expresses. Consequently, it is impossible to assess compliance with the principles of the rule of law without taking into account the values indicated in the preamble to the Constitution and eliminating the provisions specified in Art. 1 of the Constitution, stating, that Poland is the common good of all citizens".[2]

All this allows us to conclude that the formal postulates of the rule of law constitute only the construction of such a state. This structure is fulfilled through the implementation of the material premises of the state understood in this way. Only they determine its value, that is, the fact that it is actually a state of law.[3]

The analysis of the achievements of the doctrine of constitutional law in Poland, in relation to the enormous legacy left by the precursors of the Rechtsstaat concept in Germany, allows the formulation of the essential elements and principles of the constitutional principle of the rule of law, understood in a comprehensive manner. These principles include the following: 1) law in force; 2) legalism; 3) implementation of formal postulates; and 4) implementation of substantive postulates of the concept of the rule of law. Catalogs of formal principles created in the literature on the subject usually showed rather small differences. Undoubtedly, the most important

[2] K 8/98, OTK, 2000, No. 3, item 87.

[3] See Czarnek 2006, 273ff; Czarnek 2009.

of these postulates include the following: 1) division of powers; 2) constitutionalism and its guarantees; 3) legal certainty – legal security; 4) prohibition of retroactivity and protection of acquired rights; 5) proportionality of law; 6) appropriate *vacatio legis*; and 7) democracy. However, the material postulates do not concern the very structure of the state and law, the formal requirements that both the state and law should meet, but the content of this law and the goals of the state. This is therefore about the values that John Paul II spoke about in the parliament in 1999,[4] which should be reflected in the content of the statutory law. Indirectly, it is also about the fundamental goals of the state, implemented through the law it creates. Three basic material postulates of the Rechtsstaat concept can be identified: 1) reflecting a socially accepted system of values based on natural law in the content of the law; 2) respecting and protecting fundamental freedoms and human rights; and 3) implementing the principles of social justice.

From the point of view of the rule of law in a material and comprehensive approach and the topic of this study, the second of the material postulates is the most important – The state, through the laws it establishes, should, above all, respect and protect the fundamental freedoms and rights of its citizens. This is the fundamental postulate, the implementation of which is an inherent feature, a factor constituting states called states of law. The tasks of the legislator in a state of law in relation to "liberty rights" are therefore: 1) to indicate the subject of the law; 2) to indicate the obligated entities; 3) to define the scope of a given freedom – the sphere of behavior subject to legal protection, excluded from the interference of other entities; 4) standardizing the premises, procedure and nature of interference undertaken exceptionally to protect particularly valuable values; 5) creating legal measures to protect the individual against unlawful interference by state authorities or other entities; and finally 6) ensuring the actual conditions for

[4] Ioannes Paulus PP. II, Litterae encyclicae Venerabilibus in Episcopatu Fratribus Clericisque et Religiosis Familiis, Ecclesiae Catholicae Fidelibus universis necnon bonae voluntatis hominibus saeculo ipso Encyclicis ab editis litteris «Rerum novarum» transacto *Centesimus annus* (01.05.1991), AAS 83 (1991), p. 793-867. See also Speech of Pope John Paul II in the Sejm of the Republic of Poland on 11 June 1999: "While respecting the autonomy inherent in the relationship between the state and the Church, it must be emphasized that it does not mean independence from values. History teaches that democracy without values easily turns into open or disguised totalitarianism."

the implementation of freedom, removing the most serious actual obstacles to the implementation of freedom rights [Wojtyczek 1999, 27].

Human freedoms and rights should be understood as values per se, resulting directly from the inherent and inalienable dignity of man. Therefore, freedom and human rights cannot be established, but their protection can and must be declared. As H. Waśkiewicz states, "human rights are not, as some people believe, only claims of a purely moral nature; nor are they just values or ideals to be implemented in social life. Human rights are also not just postulates that members of the society may possibly put forward to the state authority, which the state authority is not obliged to take into account […]. Human rights are subjective rights of a specific type, i.e. rights of a legal nature […] they are subjective rights that a person is entitled to under natural law" [Waśkiewicz 1985].[5]

Today, however, this derivation of freedom and human rights from natural law is forgotten. If it is assumed that their source is human dignity and therefore they are independent of the positive legislator, they are also treated as absolute and unlimited, arbitrary, also independent of the norms of natural law. Meanwhile, under Cardinal P. Erdö, it should be pointed out, that the problem of the meaning of freedom is one of the most delicate issues of Western culture: "freedom should be exercised responsibly. Man is a being who corresponds to reality - this is where his true freedom is realized. (…) But if reality, also in human society, really exists and if we are not forced to follow only our desires and subjective opinions, then freedom serves to follow what our true good demands, which cannot be incompatible with common good, but what is more, these two realities are correlated" [Erdö 2006, 30].

It is worth recalling the words of John Paul II, who at the threshold of the Third Polish Republic, during his pilgrimage to Poland in 1991, admonished in Kielce: "Mature freedom is needed – this is what society, the nation, and all its areas of life can be based on. But you cannot create a fiction of freedom that supposedly liberates people, or actually enslaves and corrupts them! This is why we need to examine our conscience at the threshold of the Third Polish Republic." In turn, in Warsaw he said: "We are

[5] See Motyka 2004,16ff.

taking the exam of our humanity, our Christianity, our Polishness and our Europeanness. […] The test of our freedom is before us! Freedom cannot only be possessed. You have to earn it constantly, constantly! It is acquired by making good use of it, by making use of it in truth. Because only the truth makes people and human communities, societies and nations free." John Paul II clearly defined what this truth is in Koszalin, where he warned, taught and asked: "May you never forget. […] This is the Decalogue – ten words. The future of man and society, the future of the nation, the state, Europe and the world depend on these ten simple words."[6]

The connection between freedom and human rights with natural law is therefore unquestionable and cannot be undermined by the thesis of ius positivists, who directly deny the natural character of individual rights, supporting only the latter in the dispute between *ius* and *lex*.[7] The provision of Article 30 of the Constitution of the Republic of Poland[8] clearly states that the source of human rights is the "natural, inalienable and inviolable" dignity of the person, the respect and protection of which is the duty of public authorities. Man's dignity, as the source of his freedom, has already been highlighted in the preamble. D. Dudek emphasizes that, although quite clumsily, the legislator refers to natural law assumptions [Dudek 2000, 80].[9]

2. The threat to the freedom and rights of elderly people

What is the threat to the freedoms and rights of elderly people? The effect of the exclusion and loneliness of the elderly is a radical limitation or even exclusion of the possibility for this part of society to exercise

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[6] IV Apostolic Journey of John Paul II to Poland, 1-9 June 1991.

[7] Meanwhile, as emphasized by, among others, M.A. Krąpiec "however, ius and lex are two aspects of the same subject, where once we put emphasis on the fact itself as due, and secondly on the content of this fact. […] The philosophy of law in general basically analyzes law not from its existential side, i.e. from its ontic character – jus – but from its content side as lex. And this exclusivity of unilateral treatment has become the cause of many misunderstandings. Meanwhile, law has two inseparable sides: the existential side, i.e. the fact of law, and the essential side of the analogous content of law" [Krąpiec 1993, 32-33].

[8] Constitution of the Republic of Poland of 2 April 1997, Journal of Laws No. 78, item 483 as amended [hereinafter: the Constitution].

[9] See Krukowski 1997, 18ff.

the freedoms and rights guaranteed in the Constitution of the Republic of Poland. The following freedoms and rights are most at risk.

2.1. Specified in Article 6 of the Constitution the right of access to cultural goods: "The Republic of Poland shall provide conditions for the people's equal access to the products of culture which are the source of the Nation's identity, continuity and development"

Therefore, in a rule-of-law state, in an aging society, senior policy should include the development of facilities such as senior homes, intergenerational education centres, rural housewives' associations, universities of the third age, etc. Especially this last form has been gaining popularity in the recent years. As we can read in the study of the Statistical Office in Gdańsk: "Universities of the third age are educational institutions which primarily target the elderly. The U3As' main objective is to activate senior citizens through education – lectures, workshops, courses, group outings and trips, and many other forms. All these activities seem to be guided by the goal «[…] to add life to years, not just years to life» which is the motto of Halina Szwarc – the founder of the first U3A in Poland. These universities engage their students in social life, they also provide an opportunity to meet interesting people, make friends, pursue their passions or unfulfilled desires. The effect of the operation of universities of the third age is therefore multidimensional – it allows the implementation of the students' individual needs and, in the social dimension, prevents the exclusion of elderly people from various spheres of life".[10] In particular, this effect is the ability for the elderly to use cultural goods.

There were 552 universities of the third age (U3As) in the 2021/22 academic year. Universities of the third age varied according to organisational and legal form, but associations were the prevalent form – 288 establishments. A total of 86,609 students attended U3As. Most were women (83.8%), people aged 60-79 (82.9%), people with secondary education (48.9%) and retirees (88.6%). A prospective U3A student had to meet certain requirements. The main criteria were the submission of a declaration

[10] Statistical Office in Gdańsk, *Uniwersytety trzeciego wieku w roku akademickim 2021/2022. Universities of the third age in the 2021/2022 academic year*, Statistics Poland, Statistical Office in Gdańsk, Gdańsk–Warszawa 2023, p. 4.

of participation (82.1%), relevant age (75.0%) and a fee payment (71.4%). 9.8 thousand people conducted lectures or regular classes for U3A students. Academic teachers prevailed – 2.2 thousand, followed by experts, specialists in specific fields of science – 1.1 thousand and foreign language teachers – 1.0 thousand. Over 45% of the lecturers worked without pay. Organisational and administrative work at U3A was performed by 6.2 thousand people, 84.2% of whom worked for free. There were an average of 11 service staff per U3A and 14 students per person performing administrative work. The educational, activating and integrating activities organised by U3As included lectures and seminars (87.5%), regular classes (81.5%), cultural and arts events (78.6%) and social actions for the needy (49.5%).[11]

2.2. Specified in Article 19 of the Constitution the right of veterans of the fight for independence, especially war invalids, to special care from the state: "The Republic of Poland shall take special care of veterans of the struggle for independence, particularly war invalids"

Among such actions on the part of the Polish state, an example may be the care provided to Capt. Marianna Krasnodębska alias Wiochna in the "Kalina" Social Welfare Home in Lublin, already mentioned in this article. Marianna Krasnodębska is a nearly 102-year-old member of the Home Army and a steadfast soldier of the Freedom and Independence association during World War II and the post-war Anti-Communist Uprising in Poland. In addition to fighting for the independence of our homeland, she was also famous for saving the lives of her Jewish neighbors from Piaski, for which she was honored by Jad Waszem with the title of "The Righteous Among the Nations". For several years, due to the death of her loved ones, including children, she has been staying at the expense of the City of Lublin in the "Kalina" Social Welfare Home in Lublin, under the care of local employees and nurses, under the supervision of the above-mentioned Manager Andrzej Łaba. However, it is completely obvious that the Polish state does not fully fulfill its obligation under Article 19 of the Constitution, and the case of Capt. Krasnodębska, described briefly here, is not very numerous.

[11] Ibid., p. 10.

2.3. Specified in Article 67 of the Constitution the right to social security, understood comprehensively (*sensu largo*), not only as the right to a pension: "A citizen shall have the right to social security whenever incapacitated for work by reason of sickness or invalidism as well as having attained retirement age. The scope and forms of social security shall be specified by statute"

In this area, the development of social care homes, day care centers for seniors, etc. is particularly important in a rule-of-law state. In a rule-of-law state, cases of elderly people suffering in solitude in apartment blocks without a lift, trapped within their own four walls, should be systematically eliminated.

As L. Garlicki points out, even though this constitutional right to social security, also for elderly people, is recognized as a subjective right, both in our constitution and in the constitutions of the countries of our region, these are usually "formulations that are much more restrained than in the previous political era, it is also dominant that the act is entrusted with defining the specific shape of the law in question" [Garlicki 2003, 1-2]. The quoted author emphasizes, following the Constitutional Tribunal, that this "social security" covers all benefits that are granted from public funds to a citizen in need [ibid., 3].[12] However, this provision did not notice "the differentiation of the basic techniques for implementing this security, i.e. no distinction was made between social insurance, social security and social assistance. Thus, the specificity of social insurance as a system based on the reciprocity of benefits and not on one-sided social solidarity has been lost." [ibid., Article 67, 3].[13]

The content of the right to social security is to guarantee every citizen benefits in the case of, among others: reaching retirement age. Therefore, this provision requires the legislator to specify, among others: the concept of retirement age, i.e. the creation of "legal infrastructure for the social security system" [ibid., Article 67, 4].

The retirement age was established in the Act of 17 December 1998 on pensions and annuities from the Social Insurance Fund.[14] Pursuant to Article 24 section 1 of this Act, insured persons born after 31 December 1948 are

[12] See Judgment of the Polish Constitutional Tribunal of 20 November 2001 r., K. 15/01, OTK ZU 2001, No. 8, item 252.

[13] See Kolasiński 2001, 112ff.

[14] Journal of Laws of 2024, item 1631, 1674.

entitled to a pension upon reaching the retirement age of at least 60 years for women and at least 65 years for men, subject to Articles 46, 47, 50, 50a, 50e and 184, as well as Arcicle 88a of the Act of January 26, 1982 – Teacher's Card.[15] This provision was amended in 2012 with a transitional period until 2017 in such a way that it successively increased the retirement age for women and men, including those employed in agriculture, to 67 years of age, which became one of the main reasons for the defeat of both the President of the Republic of Poland, Bronisław Komorowski and the PO-PSL coalition in 2015. The amendment of 2016 returned to the differentiated retirement age for the level of 60 years for women and 65 years for men.

The content of the right to social security, which also includes (as already indicated) the concept of "social assistance", is also the guarantee of benefits in social welfare homes for elderly people with disabilities that prevent their independent existence.[16] This guarantee is additionally strengthened by the provision of Article 69 of the Constitution.

2.4. Guaranteed in Article 68 of the Constitution the right to health protection: "Everyone shall have the right to have his health protected. Equal access to health care services, financed from public funds, shall be ensured by public authorities to citizens, irrespective of their material situation. The conditions for, and scope of, the provision of services shall be established by statute. Public authorities shall ensure special health care to children, pregnant women, handicapped people and persons of advanced age"

In this area, a rule-of-law state with an aging society is obliged to develop geriatric departments in district hospitals, medical care facilities and rehabilitation centres for seniors. The lack of such facilities, or their insufficient number, causing their inaccessibility, is in fact a violation of the right to health protection of the elderly. The literature on the subject indicates that, in fact, the subjective right is written only in the first paragraph of the article in question – everyone has the right to health protection. The subsequent provisions, written in paragraphs two to five, constitute only the so-called curriculum standards. However, it is necessary to accept the point of view

[15] Journal of Laws of 2024, item 986.

[16] More on this topic later in the study.

of J. Trzciński, who, in his commentary on these provisions, rightly pointed out that a systemic interpretation of the law should be applied in this case, according to which "the provisions of Art. 68 should be interpreted in connection with each other. This means that the provision that »everyone has the right to health care« (section 1) should be read together with provisions such as: »public authorities shall ensure equal access to health care services financed from public funds to citizens, regardless of their financial situation (paragraph 2)«, or »public authorities are obliged to provide special health care […] to elderly people« (paragraph 3)" [Garlicki 2003, ad. Article 68, 2]. The provisions of sections 2-5 complement the provisions of section 1. However, as the cited author points out, they do not exhaust the content of the concept of "right to health protection" – "the concept of 'everyone has the right to health protection' is not fulfilled by enumerating the obligations of public authorities contained in sections 2-5. These are undoubtedly the most important responsibilities, but there are others besides them." [ibid.].

In the conclusion of his comment, J. Trzciński expressed the following view, worth a full approval: "I see the possibility of reading the program norms in such a way, that a minimum of citizen's rights are encoded in them. This minimum of citizen rights is the equivalent of the minimum obligations imposed on public authorities contained in program regulations. This construction of responsibility, minimum obligations of public authorities and minimum rights of citizens in program norms gives rise to the statement that citizens can also assert their rights on the basis of program norms. Also by way of a constitutional complaint before the Constitutional Tribunal. It cannot be that the provisions on the socio-economic rights of citizens will be read only as a declaration or a manifesto defining the goals of the state, because such a lesson in the provisions of the constitution would be contrary to the thesis that the constitution is the highest law" [ibid. 7].[17]

For this reason, a result of Article 68 section 3 of the Constitution is not only the obligation of public authorities to creating appropriate conditions for the treatment of elderly people, i.e. an appropriate number of geriatric and rehabilitation departments or care and treatment centers. This provision is also the subjective right of elderly Poles to access this type of facilities and the health services provided there. Unfortunately, there are far too few

[17] See also Trzciński 1999, 45-46.

of these facilities. This was demonstrated, among others, by the audit carried out by the Supreme Audit Office. As we read in the report P/14/062 "Medical care for the elderly", the results of this inspection showed that "there is no system of geriatric medical care for the elderly in Poland; the availability of geriatric care is insufficient; there is a lack of common, comprehensive and standardized procedures in medical care for the elderly".[18] In accordance with the content of the document entitled Map of health needs in the field of hospital treatment for Poland, in 2029 the forecast demand for beds in geriatric wards will amount to 7,710 beds. Meanwhile, as of September 1, 2021, only 1,140 geriatric beds were available for patients 65+, which represented 15% of the forecast number.[19] Staff shortages are also a huge problem – in Poland, as of June 30, 2021, 532 doctors specialized in geriatrics. Of them, 518 were professionally active, including the largest number in the Silesian Voivodeship – 102. Meanwhile, according to Prof. Tomasz Kostka, former national consultant (he held the position until September 2020), the target number of geriatricians in Poland should be 3,000.[20] The lack of specialized nurses is also a problem – the requirement to employ a certain number of nurses with appropriate qualifications was not met in six out of 10 audited hospitals (60%). As of August 3, 2021, only 11,158 nurses had qualifications in geriatrics, long-term care, palliative care, internal medicine and conservative nursing.[21]

2.5. Stated in Article 69 of the Constitution the right to assistance in securing existence: "Public authorities shall provide, in accordance with statute, aid to disabled persons to ensure their subsistence, adaptation to work and social communication." Unlike the previous provision, the one currently being analyzed formulates the principle of state policy, "and does not take the form of a subjective law" [Garlicki 2003, ad. Article 69, 1][22]

This is evidenced primarily by the way this provision is drafted, indicating specific obligations on the part of public authorities, but

[18] Supreme Audit Office Branch in Kielce, *Funkcjonowanie medycznej opieki geriatrycznej*, https://orka.sejm.gov.pl/opinie9.nsf/nazwa/872_20230525/$file/872_20230525.pdf [accessed: 21.10.2025].

[19] Ibid., p. 16.

[20] Ibid., p. 10.

[21] Ibid., p. 13.

[22] See Winczorek 2000, 233.

not mentioning any "right to…". And although the allegation of violation only of Article 69 cannot be made directly the subject of a constitutional complaint[23] (unless in conjunction with Articles 67 and 68 of the Constitution), however, it formulates specific tasks for state authorities.

The content of the obligations arising from this provision is to provide assistance to disabled people, including elderly people who are unable to live independently, so that they can lead a life in society, which, as B. Banaszak and M. Jabłoński rightly emphasize, is "one of the necessary conditions for respecting for human dignity." [Banaszak and Jabłoński, 1998, 128]. Therefore, the provision of Article 69 is directly related to Article 30 of the Constitution – "The inherent and inalienable dignity of the person shall constitute a source of freedoms and rights of persons and citizens. It shall be inviolable. The respect and protection thereof shall be the obligation of public authorities. Creating decent living conditions for people with disabilities (including in particular for the elderly) should be treated – as L. Garlicki rightly emphasizes – as a special constitutional value." [Garlicki 2003, ad. Article 69, 2].

"Providing assistance" refers in particular to securing one's existence. This means that "in this most basic scope, the consequences of Art. 69 partially overlap with the consequences of Art. 67 section 1",[24] obliging public authorities (government and local government) to create appropriate social security mechanisms for disabled people, including elderly people. It should also be emphasized that a separate reference to the situation of disabled people in Article 69 suggests the admissibility of granting them certain preferences over other categories of people in need. Disability should be treated, at least in accordance with the recommendation of the Committee of Ministers of the Council of Europe, "as any limitation or lack, resulting from impairment, in the ability to perform certain activities in a manner or to the extent considered normal for human beings."[25] This generates, among others: creating an entire social welfare

[23] See Decision of the Polish Constitutional Tribunal of 6 September 2000, Ts 69/00, OTK ZU 2000, No. 7, item 277.

[24] Ibid.

[25] Ibid., p. 3.

system in a state of law, which also includes running social welfare homes for disabled elderly people.

Conclusions

All these provisions of the Constitution, which indicate the freedoms and rights of elderly people, are also program norms establishing specific tasks of the state. All these tasks are called comprehensive senior policy. In order to create conditions for the proper and dignified existence of elderly people, the state is obliged to introduce reforms and solutions that, on the one hand, counteract the phenomenon of loneliness and exclusion of the elderly, and on the other hand, allow the rest of society to benefit from the wisdom and experience of seniors. Therefore, it is definitely necessary to increase efforts aimed at counteracting the exclusion of elderly people from the labor market, as we said, creating Universities of the Third Age, promoting senior volunteering and creating intergenerational clubs – intergenerational education centers. We also need to place greater emphasis on educating young generations to increase their awareness of the need to respect elderly people and the need to benefit from their wisdom and experience. We also need much better systemic solutions in the health service, aimed at preventing and combating diseases of the elderly – definitely more geriatric and rehabilitation departments for the elderly.

All these activities are activities supporting seniors. However, according to Prof. Pikuła, attention should be paid to the following aspect of the problem – senior policy activities are aimed primarily at seniors who do not struggle with multi-morbidities, live in large urban centers, in their own apartments, and have the opportunity to use the goods of technological progress. There still remains the issue of elderly people, sick people, in small towns, left alone with problems, diseases, without access to electronic devices [Pikuła 2015, 80]. We need to definitely increase our efforts and do our best to help them. All these activities aimed at effectively ensuring that seniors can enjoy their freedoms and rights are a *sine qua non* condition for defining our country, with its unfortunately aging society, as a rule-of-law state.

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