

THE REALISATION OF THE PRINCIPLE OF HUMAN DIGNITY IN THE ACTIONS OF PUBLIC ADMINISTRATION – SELECTED ISSUES

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Abstract. Human dignity is one of the constitutional values in a number of contemporary states, including Poland. Article 30 of the Polish Constitution says that the inherent and inalienable human dignity is a source of human and civic freedoms and rights. It is inviolable and must be respected and protected by public authorities. Respect for human dignity is expressed as a normative principle or a value that public administration must keep in mind in its operations. Given its universal nature, it determines the way in which people are treated by public administration, which must not only consider but also respect human dignity. Therefore, the state administration should not take action that would violate human dignity and should take action where that dignity is at risk. This obligation becomes the source of the public administration's special duties concerning the respect for and protection of human dignity.

Keywords: dignity; human dignity; public administration; the duties of the administration; the Polish Constitution

INTRODUCTION

Human dignity is placed at the forefront of constitutional values in current legal systems, forming chapters devoted to human freedoms and rights in the constitutions of contemporary states [Zieliński 2010, 155]. This is also true of the Polish Constitution, whose Article 30 declares the inherent and inalienable human dignity is a source of human and civic freedoms and rights. It's inviolable, while its respect and protection are the duties of public authorities.

In this way, dignity becomes a crucial principle relating to man. It is expressed as a normative principle or a value that must be considered by public administration. The high status it is attributed results from the fact a human being is recognised as the rationale for law and the supreme legally protected value. It becomes a fundamental determinant of the state and law [Sadowski 2007, 24]. This means a prevailing legal order must be subordinated to human beings. They should be at the centre of the administration's

actions and the administration is to serve the human being, who is the *raison d'être* of public administration.

This paper aims to emphasise and substantiate the significance of human dignity in the actions of public administration. The formal dogmatic method, which consists in analysing legal acts using literature and judicial decisions, is the basic method of research in this study.

1. THE CONCEPT AND TYPES OF DIGNITY IN POLISH LAW

The notion of dignity cannot be interpreted unilaterally, since it's an "ambiguous concept from the domain of values" [ibid., 26]. It nonetheless continues to be analysed by a variety of researchers, including the practitioners of legal doctrine [Borski 2014, 7-20; Duniewska 2005a, 9-27], who point to its two dimensions, namely, human and personal dignity. The former, cited by Article 30 of the Polish Constitution, accrues to anyone owing to the nature and fact of being a human being [Mrozek 2014, 43] as an inherent attribute subject to absolute protection. It's treated as primary and supreme in the hierarchy of human values in the legal order [Duniewska 2019, 157-58]. It's permanent, universal, and inalienable [Bucińska 2001, 32-33]. In turn, personal dignity is regarded as an attribute a human being can acquire, develop, and lose [Kapis 2011, 28]. It's associated with self-esteem, respect for oneself and others. It's treated as synonymous with reputation, formed by a series of external circumstances.¹

This distinction is important, because human dignity cannot be forfeited, whereas personal dignity can. Their mutual connection is very clear, though, since personal dignity arises from human dignity [Giełda 2017, 49].

The Constitutional Court has likewise pointed out two aspects of human dignity grounded in Article 30 of the Polish Constitution.² Referring to the doctrine [Complak 1998, 41ff.; Idem 2002, 63; Redelbach 2001, 218ff.; Mazurek 2001], the Constitutional Court states the human being's dignity as a transcendent value, prior to other human rights and freedoms (for which it is the source), inherent and inalienable, always accompanies a human being and cannot be violated either by a legislator or by any acts of other entities. In this sense, human beings always preserve their dignity and no behaviour can remove or breach that dignity. It's an immanent characteristic of every human being that does not require an 'acquisition' or can be forfeited.³ The other sense of 'personal dignity' is closest to what can be

¹ Judgment of the Supreme Court of 25 April 1989, ref. no. I CR 143/89, Legalis no. 26653.

² Judgment of the Constitutional Court [hereinafter: CC] of 5 March 2003, ref. no. K 7/01, Legalis no. 56028.

³ Decision of the CC of 21 September 2011, ref. no. Ts 220/10, Legalis no. 1351593.

referred to as the right to privacy, including the mental life values of every human being and all those values which define an individual's subjective status in society which make up the respect due to each person.⁴ In the Court's opinion, only the latter aspect of dignity can be violated by the conduct of others or the application of certain legal regulations.⁵ The former aspect of human dignity, on the other hand, cannot be even violated by an undignified behaviour of its subject, since that type of dignity cannot be taken away from any human being.

A more detailed division of dignity has been suggested by M. Piechowiak, who identifies its four types. Beside the human and personal dignity, he defines personality dignity, based on a moral perfection of an acting subject, and a dignity grounded in everyday circumstances that foster or impede the realisation of personality dignity, e.g., relating to health conditions [Piechowiak 1999, 343ff.; Idem 2011, 3-20].

2. THE HUMAN BEING'S DIGNITY AS THE FOUNDATION OF STATE GOVERNMENT

A human being possesses dignity as a human person, therefore, they must always be an end in themselves, not a means to forming public and social life [Fundowicz 2009, 159]. This has been affirmed in legal systems [Ćwil 2010, 238], both domestic and international.⁶ This is upheld by the Constitutional Court, which states the legislator has endowed human dignity with a constitutional rank, making it a point of reference for the value system on which the constitution and the entire legal order of the state are founded.⁷ A human person's dignity has thus been recognised as the highest value, which means it's not a human being who is for the state but it's the state which is for a human being [Mazurek 2001, 81]. The idea of human dignity is therefore respected by every democratic legal order and becomes the foundation for any constitutional laws relating to all the aspects of human life.⁸

The Polish Constitution makes three references to the concept of dignity [Potrzeszcz 2005, 27]. This is already the preamble that points out that all who apply the Polish Constitution shall do so "careful to preserve the inherent human dignity, the right to freedom, and the duty of solidarity with

⁴ Judgment of the CC of 10 July 2007, ref. no. SK 50/06, Legalis no. 83418.

⁵ Judgment of the CC of 5 March 2003, ref. no. K 7/01.

⁶ Due to the space constraints, the provisions of international law are not discussed in this paper.

⁷ Judgment of the CC of 23 March 1999, ref. no. K 2/98, Legalis no. 43190.

⁸ Judgment of the Regional Court in Olsztyn (1st Civil Division) of 9 February 2021, ref. no. I C 765/19, Legalis no. 2583448.

others, while treating the respect for these principles as the unshakable foundation of the Republic of Poland.” This indicates a systemic association of dignity not only with human rights and freedoms but also with the Constitution’s overarching principles [Bosek 2012, 727]. In this manner, dignity becomes a value that provides the guidance for the interpretation and application of the Constitution in the spirit of respect for the inherent dignity of the human being [Zieliński 2019, 107-27; Mrozek 2014, 45].

Dignity is mentioned again in Article 30, the beginning of Chapter II, devoted to human and civic freedoms, rights, and duties. The human dignity – an inherent, inalienable, and inviolable source of rights and freedoms – is listed first there. Its inviolability is prioritised [Granat 2014, 16-18; Piechowiak 2011, 4]. This corroborates dignity is a fundamental constitutional value in the legal order of Poland and plays a major role in the application and interpretation of legal regulations [Piechowiak 2012, 351; Idem 2013a, 39-40].

Dignity is last regulated in Article 233(1), according to which a law laying down the scope of restrictions to human and civic freedoms and rights during a martial law and a state of emergency cannot restrict the freedoms and rights set out in the respective provisions, with Article 30 cited first.

The provisions of the Polish Constitution imply, therefore, both persons and their dignity are values superior to the entire legal system and, as such, are subject to special protection [Piechowiak 2020].

Like M. Granat emphasises, though, the introduction of the principle of dignity to the Polish Constitution is not a condition necessary to recognising human dignity in law. The appreciation of human dignity in law does not necessarily result from its representation in regulations. A number of legal systems do not express the principle in their constitutions while attaching importance to human dignity. This means that even if the Polish Constitution failed to refer to human dignity, it wouldn’t change the fact of its existence, respect, and protection by all entities, including public administration authorities [Granat 2014, 21].

3. HUMAN DIGNITY IN COURT DECISIONS

The Constitutional Court decisions make increasingly frequent references to human dignity as the supreme value. It’s difficult, nonetheless, to identify a case where the dignity would be the sole benchmark. Human dignity cannot be captured in law ‘for the sake of itself’. Its ‘action’ can be perceived in certain situations where law is applied. M. Granat is right to note, therefore, the question of dignity violations in the Court’s decisions is chiefly situational, concerning the infringements on specific rights or freedoms.

The charge of breaching Article 30 of the Polish Constitution is advanced in conjunction with the violations of other constitutional rights, e.g., human freedom, the legal protection of life, equality under the law, etc. [ibid., 3].

The concept of dignity drew special interest at the time the new Polish Constitution was drafted [Krukowski 1997, 38-50], although the Constitutional Court had ruled even before the Constitution became effective that the principle of respect for and protection of human dignity is a major component of the democratic rule of law and thus a binding legal norm.⁹ Once the prevailing constitutional law was approved, the Court's pronouncements concerning the value system incorporated in the Constitution have expressed the view the principle of inherent and inalienable human dignity is at the core of the system.¹⁰ The Court has also stressed Article 30 of the Polish Constitution lays down the axiological and normative foundation of the entire legal system.¹¹ It's even been accepted human dignity can be treated as an autonomous constitutional standard, including in the case of a constitutional complaint,¹² which implies the Constitutional Court sees Article 30 of the Polish Constitution as a source of subjective rights, questioning the refusal to treat dignity as a subjective right since it is placed among other general principles.¹³

The Court also emphasises regulations and norms guaranteeing human dignity, due to its nature and legal importance, cannot be excluded by other specific provisions concerning human rights and freedoms or substantive legal provisions based on the principle *lex specialis derogat legi generalis*.¹⁴ As A. Zoll points out, no type of freedom and no right can be protected if they contravene human dignity, since they cannot contradict their own source [Zoll 2006, 281].

The Court has found that since human dignity is the source of individual rights and freedoms, this fact determines how they are understood and realised by the state. The prohibition against violating the dignity is absolute and binding on everyone.¹⁵ This is the only right to which the principle of proportionality cannot be applied.¹⁶ Thus, all the actions of public authorities should consider the existence of a sphere of autonomy wherein human

⁹ See Safjan and Bosek 2016, comments on Article 30.

¹⁰ Judgment of the CC of 23 March 1999, ref. no. K 2/98.

¹¹ Judgment of the CC of 27 May 2002, ref. no. K 20/01, Legalis no. 54123.

¹² Judgment of the CC of 29 April 2003, ref. no. SK 24/02, Legalis no. 56666.

¹³ Judgment of the CC of 15 October 2002, ref. no. SK 6/02, Legalis no. 55388. The CC cites the doctrine in its arguments: Wojtyczek 2001, 210; Jabłoński 2001, 304; Urbanek 2000, 67.

¹⁴ Judgment of the CC of 7 March 2007, ref. no. K 28/05, Legalis no. 80542.

¹⁵ Judgment of the CC of 24 February 2010, ref. no. K 6/09, Legalis no. 209522; of 9 July 2009, ref. no. SK 48/05, Legalis no. 159125; of 30 October 2006, ref. no. P 10/06, Legalis no. 77571.

¹⁶ Judgment of the CC of 5 March 2003, ref. no. K 7/01.

beings can realise themselves in full socially though, on the other hand, these actions cannot lead to legal or social situations that remove the sense of dignity from individuals.¹⁷

The CC has found human dignity under Article 30 of the Polish Constitution is double in nature – it's a constitutional value and a right.

3.1. Human dignity as a value

The Court treats human dignity as a value “of a crucial significance to the axiology of the present constitutional solutions,”¹⁸ of a guiding importance to the interpretation and application of “all the remaining provisions concerning individual rights, freedoms, and duties.”¹⁹ The Court describes it as a ‘transcendent’, ‘absolute value’ of a particular ‘rank’, since ‘it’s a link between the natural and statutory law’. It exerts a substantial influence on human rights while remaining above the law itself. It’s a primary value that doesn’t need to be ‘acquired’. It’s universal and serves everyone. It is a kind of ‘matrix’ for other values that helps the Court ‘to read’ these values and constitutional values that provide the former with detailed content in specific cases.²⁰ It’s a ‘regulator’ of other rights.

Dignity as a value is distinct from other values of the Constitution and can be regarded as absolute. No constitutional value is higher than dignity. It cannot be replaced with another value or e.g. suspended. Dignity is independent from circumstances as well. It’s not a relative value, therefore. The primacy of dignity among constitutional values is absolute [Granat 2014, 15].

3.2. Human dignity as a legal norm

Human dignity as a legal norm is easier ‘to capture’ than the dignity as a value, since it is a human subjective right that is independent from anyone’s qualifications, mental and physical condition or everyday circumstances. It’s a kind of respect due to any person. It can be violated with others’ actions or with legal regulations. It’s subject to an absolute protection, though, therefore the legislator cannot create legal or factual situations that deprive an individual of their sense of dignity.²¹

¹⁷ Judgment of the CC of 4 April 2001, ref. no. K 11/00, Legalis no. 49672.

¹⁸ Judgment of the CC of 30 September 2008, ref. no. K 44/07, Legalis no. 106699, and of 27 May 2002, ref. no. K 20/01, Legalis no. 54123. M. Najman is of a contrary opinion that dignity should not be understood as a value – cf. Najman 2021, 95ff.

¹⁹ Judgment of the CC of 24 February 2010, ref. no. K 6/09, Legalis no. 209522.

²⁰ Judgment of the CC of 9 July 2009, ref. no. SK 48/05, Legalis no. 159125.

²¹ *Ibid.*; judgment of the CC of 30 September 2008, ref. no. K 44/07.

Dignity is a fundamental principle of the Polish Constitution which determines any attempts at viewing a human being from a legal perspective. Since the Polish law lacks regulations guaranteeing everyone the right to respect for their legal capacity,²² this is human dignity that constitutes the principal source of the capacity. The legislator associates man's subjective status with the inherent and inalienable human dignity [Bosek 2012, 165-66].

4. THE NATURE OF HUMAN DIGNITY

The Polish Constitution introduces the concept of dignity while identifying its characteristics, namely, its inherence, which rules the norms of positive law as its source (it's not granted). It's characteristic of every human being²³ [Bronk 2010, 83]. It exists at every point in life. Therefore, human beings must be recognised and respected regardless of their condition, since human dignity is always the same [Complak 1998, 42]. It's not a source or foundation of being human, but an intrinsic, internal property of people [Piechowiak 1997, 14ff.]. A human person, even if they err, preserves their innate dignity without ever forfeiting it.²⁴

The inherence determines the universality of dignity, which accrues to every human being on equal terms, and its non-disposability, or the impossibility of acquiring and disposing of it [Piechowiak 1999, 80; Dziedziak 2019, 95]. Dignity is not conferred on a human being by anyone. It cannot be lost in effect of the actions of others or of oneself, either [Piechowiak 2003, 5-35; Idem 2004, 41-42].

Inviolability is another feature of dignity. It is violated anywhere a human being becomes a mere object of actions by other entities. Inviolability is different than inalienability, though. The former is a normative characteristic – its recognition is expressed in the prohibition to sacrifice dignity for the sake of other values [Piechowiak 2009, 74-75]. On the other hand, inalienability is a descriptive characteristic – one cannot divest themselves of or disown it [Piechowiak 2013b, 656; Winczorek 2008, 79].

²² The legal capacity is clearly regulated in the basic documents of international human rights law. Cf. Article 6 of the Universal Declaration of Human Rights ("Everyone has the right to recognition everywhere as a person before the law") and Article 16 of the International Covenant on Civil and Political Rights ("Everyone shall have the right to recognition everywhere as a person before the law").

²³ Judgment of the CC of 22 November 2016, ref. no. K 13/15, Legalis no. 1532469.

²⁴ Jan Paweł II, *Orędzie do sekretarza generalnego ONZ „Wolność religijna podstawą praw ludzkich”*, in: *Dzieła zebrane Jana Pawła II*. Vol. V: *Orędzia. Przesłania. Przemówienia okolicznościowe*, Wydawnictwo M, Kraków 2007, p. 286.

Views on the attributes of constitutional human dignity and its rank in the constitution's hierarchy of values are summarised by L. Bosek. He calls it 'the constitutional principle, the principle of principles, which we deem absolute and fundamental, the basic constitutional principle, the principle of constitutional order, 'the guiding constitutional principle', 'the supreme principle of the constitutional objective law', 'the guiding idea of the Constitution', the general principle concerning human freedoms and rights, the principle of the entire legal order [Bosek 2012, 144].

5. HUMAN DIGNITY AND THE DUTIES OF PUBLIC ADMINISTRATION

The foregoing discussion implies human dignity becomes a source of duties for public administration relative to human beings and communities [Czarny 2001, 191] it is to serve by satisfying the collective and individual needs of citizens arising from life in communities [Boć 2007, 130]. The administration is bound to do so by norms and acts in relation to people generally or individually by resolving specific administrative cases.

The protection of dignity is a guideline for public administration by setting the limits of its actions. Article 30 sentence 2 *in fine* combines the negative duty of (prohibition against) violating the dignity and the positive duty of its respect and protection.²⁵ This means the duty of refraining from actions that violate dignity, of actions to prevent its violations and guarantee remedies in case of such violations [Wojtyczek 2001, 204]. Public authorities are also bound to react in any cases of violating or restricting human dignity. This obligation requires the provision of 'the most effective and broadest possible' protection of constitutional freedoms and rights and the removal of their violations. The absence of such a response allows for resorting to the available remedies to protect the rights [Chmaj 2002, 85]. Any interpretative doubts as to the removal of human right violations should be resolved with a view to expanding the mechanisms of protection of these rights.²⁶

The duty of respecting and protecting dignity is first of all imposed on public authorities and applies to every area of law operation. The actions of the state and state functionaries can be legislative, executive or even actual.²⁷ The duty can be preventive, current or consequential. Z. Duniewska points out the state's activities in this area are primarily expressed

²⁵ Judgment of the CC of 9 July 2009, ref. no. SK 48/05, Legalis no. 159125.

²⁶ Judgment of the CC of 16 March 2011, ref. no. K 35/08, Legalis no. 299300.

²⁷ See Safjan and Bosek 2016, comments on Article 30.

in public legal regulations as police and performative actions [Duniewska 2005b, 19-20].

This duty must be actually realised. It's not about laying it down in law, but about its real fulfilment in practice. This is exemplified with respect for the general principles of administrative proceedings, regarded as a statutory guarantee of respect for the basic rights of parties to proceedings. These principles determine a range of duties the authorities have in respecting individual powers in order to protect them against unauthorised actions [Smarż 2018, 16]. Anyone coming into contact with the state empire must be treated not only justly under the law but with respect for their due dignity.

Article 8 of the Code of Administrative Procedure, according to which public administration authorities conduct their proceedings so as to generate parties' trust in public power, is of particular importance. The introduction of appropriate legal mechanisms is a necessary condition for the principle of dignity to be realised, but it is insufficient. Public authorities are to realise the principle in the process of law application in direct contact with their customers as well [Polak and Trzciński 2018, 271-72]. Therefore, a lack of assistance from the administration is highly reprehensible and cannot lead to a violation of the constitutionally protected human dignity, guarded by public administration²⁸ [Łukasiewicz 2004, 198].

The timely handling of cases needs to be addressed, too, stressed by the Regional Administrative Court in Wrocław in its judgment of 2 September 2020,²⁹ where it ruled the excessive length of proceedings or the inaction of an authority in dealing with a case may violate human dignity and thus breach constitutional principles. A situation where a party waits for a resolution from a public administrative authority too long cannot be reconciled with the democratic rule of law and clearly signals a gross violation of law. Such conduct of an authority obviously undermines an individual's trust in public administration authorities. The Court continued to point out it's beyond any doubt the negative experiences of parties in connection with an authority's inaction or excessively long proceedings are especially painful where such inaction (length of proceedings) becomes aggravated. This view accords with the decisions of the European Court of Human Rights (ECHR), which has repeatedly found protracted administrative proceedings are in breach of Article 6 of the European Convention on Human Rights.³⁰ The Court accepts a strong presumption an excessive length of proceedings causes a moral damage.³¹

²⁸ Judgment of the CC of 15 April 2003, ref. no. SK 4/02, Legalis no. 56664.

²⁹ Ref. no. III SAB/Wr 662/20, Legalis no. 2499163.

³⁰ Cf. e.g., *Fuchs versus Poland*, complaint No. 33870/96, the judgment of 11 February 2003, and *Beller versus Poland*, complaint No. 51837/99, the judgment of 1 February 2005.

³¹ Judgment of the Supreme Administrative Court of 11 July 2019, ref. no. I OSK 442/18,

The principle of subsidiarity needs to be mentioned, too, which assumes that wherever an individual is capable of taking care of themselves and their affairs, the public administration shouldn't intervene, while where an individual is helpless, the administration is bound to help. It should assist an individual with their efforts before, though, guide their actions, and make them feel not overwhelmed with the administration's actions but supported. When other options are not available, the public administration can carry out its actions or deal with an affair on behalf and for the benefit of an individual [Giełda 2017, 56].

Public administration should not only respect individual dignity but also draw the legislator's attention to any necessary changes to law. As the Constitutional Court is right to note, the legislative powers, one of public authorities, are especially charged with respecting and protecting human dignity.³² This is stressed by J. Blicharz, who emphasises law exists for humans [Blicharz 2012, 27-28].

Public administration should protect and guard human dignity [Giełda 2017, 46 and 56]. The Supreme Court has underlined³³ the public authorities' duty of respecting and protecting human dignity is particularly important wherever a state acts as part of an empire, pursuing its repressive goals whose execution cannot restrict human rights and dignity more than is implied by the protective aims and purpose of a given means.³⁴ This protects citizens from the actions of public administration authorities that impair the value expressed in Article 30 of the Constitution.

CONCLUSIONS

The legal orders of particular states are founded on specific values. Human dignity is a crucial value in the Polish legal system and a principle the state political system and the entire legal system are built upon.

It constitutes the source of the remaining freedoms and rights, including those not explicitly declared in the constitutional law. It's universal and thus becomes a measure of how human beings are treated by public authorities. In discharge of its statutory duties, public administration must have regard to human dignity at all times. It must be respected and protected. Therefore, the administration cannot act where human dignity would be violated and must act where the dignity is at risk. The protection of this dignity

Legalis no. 2232695. Cf. Scordino against Italy, 36813/97, the judgment of 29 March 2006.

³² Judgment of the CC of 19 May 1998, ref. no. U 5/97, Legalis no. 10436.

³³ Judgment of the Supreme Court of 2 October 2007, ref. no. II CSK 269/07, Legalis no. 88045.

³⁴ Judgment of the Supreme Court of 30 November 2006, ref. no. I CSK 269/06, Legalis no. 161066.

should be a fundamental characteristic of public administration's actions. It becomes the source of public administration's special duties towards human beings and communities as far as the respect for and protection of human dignity are concerned.

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