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NORMATIVE SIGNIFICANCE OF HUMAN DIGNITY ON THE BASE OF THE CONSTITUTION OF THE REPUBLIC OF POLAND

1. Ideological inspirations of the article 30 of the Constitution of the Republic of Poland

Article 30 of the Constitution of the Republic of Poland, published in 'general principles' of the second chapter of the Constitution and devoted to 'of freedoms and rights of persons and citizens', seems to be the subject of heated discussions in the law area, especially, what is justifiable, among constitutionalists. It states that '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'. The very situation of this article in the constitutional system and the content of this regulation indicate its particular significance for understanding the issue of the rules and freedoms of people. Art. 30 of the Constitution makes the introduction to the catalog of freedoms and rights of persons, defined in the following constitutional regulations in the chapter II. The formulation placed in the very first sentence of this regulation and stating that human dignity is inherent and inalienable and determines a source of all human freedoms and rights forms a reference to the concept of legal and natural rights and freedoms of persons as the base of the constitutional doctrine, which constitute the foundation of the character of laws and constitutional freedoms; this article also constitutes general instructions concerning the comprehension of basic rules and freedoms resulting from the instructions involved in the Constitution.

The reference to the legal and natural concept reveals the connection of the constitutional model of rights and freedoms with the currently accepted and grounded on the model of a democratic state the doctrinal legal and natural concept, which lies at the base of the comprehension of the essence

and character of rights and freedoms of an individual in a democratic state. The standard catalog of individual rights and freedoms in a democratic country is inspired by legal and natural concepts, underlining the fact that fundamental rights of an individual are treated as basic values situated beyond the positive law, since they resulting from the unusual and unique human nature; the essence of such a unique human nature is human dignity, natural for every human being, innate and inalienable.

The Constitution of the Republic of Poland dated 2 April, 1997 remains in a common current of the contemporary democratic constitutionalism, frames of which are described especially by such international law acts as the Convention for the Protection of Human Rights and Fundamental Freedoms dated 4 November, 1950, as well as the International Pact on Civil and Political Rights dated 19 December, 1966. These two legal and natural acts, ratified by Poland, in their preface appeal to the Universal Declaration of Human Rights dated 10 December, 1948 by the United Nations General Assembly. The above-mentioned pact of 1966 almost cites word-by-word the content of the extract of the preamble to the General Declaration of 1948, stating that 'recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world'. Quoting the above-mentioned extract of the Declaration, the relevant extract of the preamble of the Pact among others highlights that these rights result from the 'human inherent dignity'.

There is no doubt, that the Polish Constitution of April 2, 1997, falling into the after-war democratic standards in the sphere of rights and individual freedoms, is inspired by legal and natural ideas, among which, the idea of innate and inalienable human dignity and the resulting rights and freedoms, united by the general idea of individual freedom, takes the leading place. The legal and international acts were a direct inspiration and examples for the Constitution of 1997. It is necessary to add, however, that the idea of human dignity and its legal and natural inspiration, found the reflection not only in the after-war international legal acts, making the standards of a democratic country, but also in various constitutions of the European countries.¹ Some of them, even earlier than the Constitution of 1997, had certainly had an influence on the Polish constitutional discussions before

¹ More about human dignity in the international legal acts and the European Constitutions see, for example: J. Krukowski, *Godność człowieka podstawą konstytucyjnego katalogu praw i wolności jednostki*, [in:] *Podstawowe prawa jednostki i ich sądowa ochrona*, (ed.) L. Wiśniewski, Warszawa 1997, Seym Edition; J. Zajadło, *Godność i prawa człowieka (Ideowe i normatywne źródła przepisu art. 30 Konstytucji)*, Gdańskie Studia Prawnicze, volume III, 1998.

the resolution of the homogenous constitution of the democratic country took place in 1997.

The position of the central notion of human dignity in the international and legal acts and the constitutions of the countries as well as the rule of the protection of dignity makes, apart from the already existing different formulations, 'the finish of the process of transformation of the notion of human dignity from the philosophical sphere to the juridical one. The consequence of the jurisdiction of this concept is a subjective side of the individual in the public law and the recognition of the constitutional individual rights, basic for the legal system' – it is stated even in the doctrine, underlining the particular significance of the innate idea and inalienable human dignity.² But the jurisdiction of the idea of human dignity causes numerous problems and questions. Before they are approached, it is necessary to notice in the very beginning that doubts concerning the character and direction of such jurisdiction result from the fact that in the philosophical field there is a fundamental difference between ideas concerning human dignity. It is understandable, as it is the reflection of the differences in various philosophical areas. The jurisdiction of the idea of human dignity has result in uncleanness as to the normative contents, at least as to the normative meaning of this idea. It is difficult to accept the idea that it is possible to assign normative contents of the idea of human dignity without the earlier assignment of the philosophical (doctrinal) content of this idea, at least concerning its essence. The necessity of general description of the essence human dignity appears also when one accepts that 'the positivism of the clause of dignity and basic rights of an individual consists of the fact that pointing at the extra-positive source of these rights and assuming their primary character, the Constitution does not simultaneously refer to certain concept of natural law'.³

J. Zajadło was right when he predicted that assigning the normative contents of art. 30 of the Constitution and normative functions of the article, the Constitutional Tribunal will have to define the content of the idea of human dignity. It is also impossible for the Tribunal to separate from 'the sources of ideal inspiration, which forejudged the genesis and stylistic of art. 30 of the Constitution'.⁴

² P. Tuleja, *Stosowanie Konstytucji RP w świetle zasady jej nadrzędności (Wybrane problemy)*, Kraków, edition Zakamycze, pp. 106–107.

³ P. Tuleja, op. cit., p. 127.

⁴ J. Zajadło, op. cit., p. 53–54.

In the professional literature two meanings of the idea of human dignity usually function. The first one, objective, resting on the attribution of certain special features, unique for every human being, independent of its subjective sense of dignity – is usually called **personal dignity**. The second meaning refers to **private dignity**, also called by some people **individual dignity**.⁵ This meaning refers to the subjective sense of dignity expressed in the imagination of a certain human being about himself through ‘such attributes as veneration, honor, likeness, opinion and so on..., in other words, it is the awareness of self-consciousness. Numerous legal regulations have served to provide its defense, especially criminal law, protecting for example, personal immunity – and civil law, responsible for the protection of personal property. Differently from the personal dignity (constitutional), it is easy to violate this kind of dignity, it is enough, for example, to abuse another person. It is not enough to violate the dignity of one person or some people to violate the personal dignity. According to K. Complak, ‘the act of this type has to hit a man as the representative of the human race’.⁶

Human dignity, perceived as private or individual dignity, is therefore ‘an adventurous attribute or, in other words, a value, which a person may acquire, develop through his work or lose’ as J. Krukowski assesses, who accurately reveals, that personal or individual meaning of human dignity is connected with a certain philosophical or theological inspiration.⁷

There is no doubt that human dignity, which is referred to in the art. 30 of the Constitution, being innate and unalienable, is personal dignity, connected with every representative of the human race, inviolable, and not amenable to restrictions. K. Complak suggests understanding the essence of human dignity (personal) in the Christianity context; this suggestion is possible to agree with for its essence, even if one does not accept this context. The author writes: ‘Individual dignity means the distinction of a human being as the most important and ideal value for other values and their final test. It is possible to describe it briefly as holiness of a human being. Dignity exists independently of subjective conceptions one has about

⁵ J. Krukowski, op. cit., p. 39, M. Piechowiak distinguish 4 types of dignity; personal; private defined as good name; individual, connected with moral perfection; dignity grounded in the circumstances, depending on the fact whether the conditions correspond to personal dignity – M. Piechowiak, *Filozofia praw człowieka*, Lublin 1999, pp. 343–351.

⁶ K. Complak, *O prawidłowe pojmowanie godności osoby ludzkiej w porządku R.P.*, [in:] *Prawa i wolności obywatelskie w Konstytucji R.P.*, (ed.) B. Banaszak and A. Preisner, pp. 66–61.

⁷ J. Krukowski, op. cit., p. 39–42.

himself. It is firmly connected with every human being. What is more, it is not lost even when the old age or illness put a person into the so-called vegetative state'.⁸

2. Standardization of the art. 30 of the Constitution in the jurisdiction of The Constitutional Court of Justice

The Constitutional Court of Justice, being the constitutional court applying, which is obvious, the regulations of the Constitution takes a special significance in revealing the normative contents of the art. 30 of the Constitution. However, while analyzing the art. 30 of the Constitution, the Court of Justice in its jurisdiction not only had to deepen the understanding of the idea of dignity in the constitutional area, but also to answer some questions connected with the practice of its constitutional and legal assignments. Especially, it was necessary to decide whether it was possible to construct norms on the basis of the article 30; and whether the subjective law results from the art. 30, which is essential especially for the description of the admissible patterns of the constitutional control in the procedures initiated by the constitutional complaint; what role the art. 30 of the Constitution has in the constitutional systematic.

The Court of Justice introduced into its jurisdiction the view dominating in the doctrine regarding the inviolable, objective human personal dignity and subjective dignity, individual one, also stating in the verdict dated 5 March, 2003 (signature act K7/01⁹) that both personal dignity, described by the Court of Justice as 'transcendental', as well as private dignity, supported by the art. 30 of the Constitution. The Court of Justice claimed that the art. 30 can make the model of the constitutional control. Simultaneously, assessing relations between the violation of the right to private life (art. 47 of the Constitution) and the violation of dignity described in the art. 30 of the Constitution, the Court of Justice stated, that 'not every sign of the violation of the right to private life is equal with the violation of personal dignity or, more precisely, the rights which result from this dignity. The right to the protection of private life as well as every kind of freedom and rights of an individual, finds its axiological consolidation in

⁸ K. Complak, *op. cit.*, p. 65.

⁹ OTKZ.U.2003/3A/19.

the dignity of a person, however, the identification of the violation of every rule and freedoms with the violation of dignity would deprive the guarantees comprised in the art. 30 of the Constitution of their individual application area. In fact, it would make it shallow and would excessively simplify the sense and the normative content included in the concept, which operates art. 30 of the Constitution. It involves the most important values which do not use other separate guarantees in the constitutional area, but they touch the matter of the position of the individual in the society, the individual's relations with other people and the public authorities. The acceptance of another attitude would question the formed line of the jurisdiction on the basis of the art. 47 of the Constitution, which clearly assumes that the right to a private life cannot be treated in absolute categories and it can also be restricted according to the criteria described by the rule of proportion – at the same time, assuming that every violation of a private sphere also violates human dignity, such an attitude could not be accepted’.

In the verdict of March 7, 2007 (signature act K28/05¹⁰), the Court of Justice clearly underlined that the art. 30 of the Constitution can make a separate pattern of the constitutional control. The Court of Justice recalled its assignments in the matter K/01, and two more aspects of the dignity interpretation, which slightly modified the terminology and emphasized a clear distinction of dignity as the unchangeable value and human dignity, were introduced. The Court of Justice stated: ‘On the basis of the jurisdiction of the Constitutional Tribunal, it is possible and essential to distinguish two aspects of human dignity – the dignity as the innate and inalienable value and the dignity perceived as ‘the private right’, ‘including the values of every person’s psychical life as well as all these values which describe the subjective position of an individual in a society and which comprise, according to the general opinion, the respect necessary for every person’. In the first meaning, a man retains dignity in every condition, but dignity understood as ‘the private right’ can, in practice, be the subject of violation – ‘it can be touched by the behavior of other people and law regulations’ (verdict of the Constitutional Tribunal in the above-mentioned case K 7/07). This kind of phenomenon should be always negatively judged as being contradictory to the constitutional standards. On no account should their vindication or doubts regarding dignity as an innate and inalienable value be accepted on such a base. In the case under investigation it is possible to consider only the objection of violation of dignity in its second meaning by the accused regulation’.

¹⁰ OTKZ.U.2007/3A/24.

Additionally, when it comes to the case SK 50/06¹¹ and its verdict dated 10 July, 2007, the Court of Justice recalled the two aspects of dignity included in the art. 30 of the Constitution, repeating the terminology included in the verdict K 7/01. By doing so, the generally accepted categorization in the doctrine was one more time departed from. However, in the verdict the Court of Justice reminded some regulations made in the verdict of October 15, 2002 concerning the case SK 6/02¹² and objective treatment of a man included in the art. 30 of the Constitution, which resulted from the verdict. The case SK 6/02 deserves a special attention, especially because of the fact that the Court of Justice clearly stated that the art. 30 of the Constitution can result in the objective right of an individual, qualified as one of necessary requirements of the appeal; the Court of Justice, appealing to the views in the doctrine, indicated what functions in the constitutional systematic the art. 30 of the Constitution has. ‘Human dignity, referred to in the art. 30 of the Constitution, has some functions in the constitutional rule: it is a link between the Constitution (the act of the positive law) and the legal and natural order; it determines the interpretation and application of the Constitution; it determines the system and the range of particular rights and freedoms and, finally, it has the function of the objective right of an individual of a separate legal content (L. Garlicki, *The Commentary to the art. 30 of the Constitution*, to be published). Therefore, the art. 30 of the Constitution can be applied as a separate constitutional pattern when investigating the consistence with the Constitution as well as in case of the constitutional appeal (compare K. Wojtyczek, *Ochrona godności człowieka, wolności i równości przy pomocy skargi konstytucyjnej*; M. Jabłoński, *Pojęcie i ochrona godności człowieka w orzecznictwie organów władzy sądowniczej w Polsce*, [in:] *Godność człowieka jako kategoria prawna*, (ed.) K. Complak, Wrocław 2001, p. 210 and p. 304). However, because of the specific character of this right, the frequency of its use may be low. The Tribunal has stated that the opposite standpoint, which questions the position of dignity among the individual objective rights of an individual, limits the constitutional protection of an individual in the way which does not appeal to one’s interpretation (K. Complak, *Uwagi o godności człowieka oraz jej ochrona w świetle nowej Konstytucji*, “Przegląd Sądowy”, Nr 5/2998, p. 44, L. Urbanek, *Pojęcie godności człowieka w Konstytucji RP z 1997 r. a problem definicji*, “Prawa Człowieka”, Nr 7/2000, p. 67).

¹¹ OTZK.U.2002/5A/65.

¹² OTKZ.U.2002/5A/65.

In the verdict of September 30, 2008, signature act K 44/07¹³, the Court of Justice went further in the interpretation of the normative content of the art. 30 of the Constitution, showing a central place of that regulation in the constitutional axiology and its particular role for the expression and application of other constitutional regulations describing rights, freedoms and duties of an individual. ‘According to the art. 30 of the Constitution, “inherent and inalienable human dignity determines the source of freedom and rights of men and citizens. It is unchangeable and its respect and protection is a duty of the public authorities” (see also the verdicts of the CT dated 5 March, 2003, signature K 7/01, OTK ZU number 3/A/2003, position 19 and the one dated 24 October, 2006, signature SK 41/05). On the base of the art. 30 of the Constitution, the idea of human dignity should be attributed the character of the constitutional value with a central meaning to build the axiology of the current constitutional solutions. A democratic country under the rule of law is a country based on human respect, especially, on the respect and protection of life and human dignity. These two values are correlated in a direct way. The art. 30 of the Constitution is a leading resolution for the interpretation and application of all other decisions concerning rights, freedoms and duties of an individual. This is also underlined in the preamble to the Constitution, which appeals to everybody applying the Constitution to ‘do this taking care of the preservation of inherent human dignity...’, also the art. 233 item 1 of the Constitution orders to avoid the violation of human dignity even in case of states of emergency in the country. The tribunal stated that similar conclusions were introduced on the basis of the previous art. 1 of the constitutional regulations (see also the decision of the CT in the regulation of March 17, 1993, signature W. 16/92 as well as a different opinion presented by L. Garlicki for the verdict of the CT concerning the case: signature K. 26/96)’.

In the above-mentioned verdict the Constitutional Tribunal underlined that the art. 30 of the Constitution results in the order to treat every man in an objective way, directed to the state organs. At the same time, there is a prohibition of a certain behavior, resulting from this particular situation. The acceptance of the inalienable human dignity was recognized by the Tribunal as a constitutional principle: “The confirmation of the inalienable human dignity as a constitutional principle as well as the objective right of every human being – independently from his/her

¹³ OTZK.U.2008/7A/126.

qualifications or psycho-physical state and actual life situation – constitutes the base of the acceptance of their objectiveness. This statement marks a certain way of behavior for the state organs, including the legislator and the executive organs. A man ought to be treated as a free, autonomic object, able to develop his/her personality and create the way of his/her behavior’.

The Tribunal evaluated the art. 122A of the air law contradicting the art. 30 of the Constitution on the ground that the article, allowing to shoot a civil airplane with passengers and the crew on board if the reasons of security demand this when the airplane is used against the law, especially as a means of terrorist attacks in the air, treats people on the board of the plane in an objective and impersonal way, aiming at their personal dignity. The Tribunal explained it in the following way: ‘From the point of view of the analyzed pattern of the control the questioned rule of of the art. 122a of the air law would not cause such serious constitutional doubts if it only allowed for shooting the plane with only assassins on board; they have chosen and caused the situation; it was their will to die, exposing the lives of innocent people to danger. If they are shot, they will die in flight, which has been caused by them. Therefore, it is not possible to say about them that they are treated as objects. When aimed at people on board who are nor aggressors – passengers and personnel, this type of extreme legal measures aims at their personal dignity. Taking into consideration the formulation accepted by CT in the verdict of January 15, 2006, it is possible to say that the result of the application of the questioned regulation is ‘dispersonification’ and ‘reification’ of the people on the board of the plane RENEGADE, who were not aggressors (passengers and crew members). These people become only the subject (object) of the rescue action, aimed at the prevention of some hypothetical and further losses, which a planned terrorist action could cause. In fact, it is a false argument that the passengers and the crew of the RENEGADE plane found themselves in such a situation only because of the illegal action of the terrorists; indirectly, it is a symptom of the state failure in the realization of the positive protection duties’.

Stating that the above-mentioned regulation contradicts the art. 38 of the Constitution, which guaranties a legal protection of life to every person, the Tribunal has also admitted explicitly ‘the priority of values, which are life and human dignity’. The Tribunal has also underlined that ‘these values constitute the foundation of the European civilization and form the idea of humanism, the meaning of which is primary in our culture (also legal culture)’.

3. Some final remarks

The jurisdiction of the Tribunal confirms that showing the full normative contents of the art. 30 of the Constitution is a very difficult activity. From a constitutional point of view, it is not a necessary activity because the principle of the protection of dignity plays a guarantying role in the relations with other rights and freedoms of an individual; it determines the uncrossable protection barrier in the relation with other rights and freedoms, among which personal dignity and the right to protection of life take a special place. P. Tuleja accurately writes that the specification of the normative constitutional content of the principle of dignity takes place through showing its violation in specific situations, enabling the precision on the ground of particular areas of law orders and restrictions essential for its realization. The principle of the protection of dignity is somehow described from a negative side because it is not possible to reveal all elements of dignity subjective to protection in advance but it is possible to show the situations in which the violation of dignity appears, especially in a severe way. This is the way all courts practise, not only the constitutional ones. Their starting point is the prohibition of the subjective treatment of men.¹⁴ It is worth mentioning that such an approach demands defining the matter of this inherent and inalienable human dignity because without such an agreement the proof of the violation could be impossible. Certainly, such an element of the issue of human personal dignity is the right to self-description, deciding about themselves, based on their own, autonomic act of the will.

The center of gravity in the assignment of the normative content of the art. 30 of the Constitution in its connection with certain legal situations in ‘a negative way’ lies on the relations between the principle of human dignity and its protection and other constitutional rights, as well as particular rights and freedoms. The obvious difficulty in a positive description of the normative content of the protection of human dignity result in the opinion, presented by some people, that human dignity should be treated as ‘the premise of the commentary and content of the remaining rights of the Constitution’; it plays a supplemental function for obeying certain rights and freedoms. The idea of human dignity should not be inserted in any structure of the regulations of the Constitution, only in its preamble; the art. 30 of the Constitution should not form the basis for judging

¹⁴ P. Tuleja, *op. cit.*, p. 110–111.

in the Tribunal.¹⁵ Generally, it is possible to notice that in the ideas of the doctrine the approval for the accepted direction of the jurisdiction chosen by the Tribunal, treating the art. 30 of the Constitution as a possible example of the constitutional control, including the constitutional principle of the protection of human dignity, and at the same time, the objective right for the protection and respect of human dignity. On the other hand, the first sentence of the article 30 of the Constitution states that human dignity determines the source of freedom and rights of citizens. It means that the right for the protection of human dignity protection includes all the rights and freedoms. K. Wojtyczek remarks that it is not possible to exclude a situation, especially because of the technical and medical development, in which the organs of public authorities would violate human dignity without violating simultaneously other rights of an individual guaranteed in the Constitution. This is why it is not possible to exclude the situation of the constitutional appeal, in which the only pattern of control would be the art. 30 of the Constitution. It is necessary to highlight the point of view presented by K. Wojtyczek that ‘the order to respect and protect human dignity can be perceived as the directive of the dynamic commentary of the Constitution. This regulation creates the possibility of the adaptation of the protection of human dignity to threats, which have not been anticipated by the creators of the constitutional regulations concerning human rights’.¹⁶

The professional literature highlights the significance of the art. 30 of the Constitution in a different way. J. Potrzezszcz, showing his approval for the jurisdiction accepted by the Tribunal, assesses that the principle of human dignity, described in the Constitution of the Republic of Poland ‘marks axiological direction for the interpretation of all the system’. In the summary of the analysis of the jurisdiction of the Tribunal Court connected with the art. 30 of the Constitution the author claims: ‘To finish the consideration concerning human dignity in the jurisdiction of the Polish Constitutional Tribunal it is necessary to pay a tribute to this court because, making the use of the doctrine, it tries to involve the theoretical and philosophical bases of the idea of dignity, which results in a more effective use of the art. 30 of the Constitution as a pattern of the constitutional control of law’.¹⁷

¹⁵ M. Jabłoński, *Rozważania na temat znaczenia pojęcia godności człowieka w polskim porządku konstytucyjnym*, [in:] *Prawa i wolności obywatelskie w Konstytucji R.P.*, op. cit., pp. 92–97; also the literature concerning such a point of view presented there.

¹⁶ K. Wojtyczek, *Ochrona godności człowieka, wolności i równości przy pomocy skargi konstytucyjnej w polskim systemie prawnym*, [in:] *Godność człowieka jako kategoria prawa (articles and materials)*, (ed.) K. Complak, Wrocław 2001.

¹⁷ J. Potrzezszcz, *Godność człowieka w orzecznictwie polskiego Trybunału Konstytucyjnego*, “Roczniki nauk prawnych”, Towarzystwo Naukowe KUL, volume XV, nr 1/2005.

To finish this synthetic consideration, it is necessary to say that a particular role of the art. 30 of the Constitution is that in the very first sentence of the regulation, it determines a general clause for the perception of legal and natural concept of human dignity for the source of human dignity is the natural law and not the proclaimed law. L. Garlicki concludes, 'it gives a supra-constitutional significance to the principle of human dignity because all the norm of the positive law (including the text of the Constitution) have to respect this principle; if they collide with it, they lose their feature of legitimacy'.¹⁸

Translated by Katarzyna Dolińska-Józwiak

¹⁸ L. Garlicki, *Polskie prawo konstytucyjne. Zarys wykładu*. Issue 12, Warsaw 2008, p. 91.