

The meaning of human dignity in constitutional law

Human dignity is one of the most important concepts introduced by the Constitution of Poland of April 2, 1997. The provision, which introduces the principle of human dignity (Article 30), does so in a very profound way. The analysis of this regulation is of fundamental significance in discussing human rights and civil liberties. This article deals with human dignity as a value and as a legal norm.

According to Article 30 of the Constitution of the Republic of Poland of 1997, “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.” In this provision, human dignity has a dual status. By this I mean that it is both a human right and the supreme constitutional value, as explained below.

There are numerous reasons for taking an interest in the meaning of human dignity as a principle of law. I would like to demonstrate the content of human dignity as a legal category by analyzing the provisions of the Constitution of 1997. The Constitution invokes human dignity in Article 30 (at the beginning of Chapter II on human rights) as well as in the Preamble (introduction). Despite the fact that human dignity is considered to be the cornerstone of the Polish system of law, neither Article 30 nor the Preamble specifies the content of this category. If the meaning of human dignity in law is not established, then it will be treated merely as a lofty catchword, even though it is invoked in the Constitution. In constitutional discussions human dignity frequently occurs as a ‘filler’ in the absence of a possibility to reach an agreement, “when people want to sound serious, but they are not sure what to say”¹. It is frequently the case that the principle of human dignity is invoked, even if there is no agreement as to what it means or how it functions in relation to human rights.

Of key importance in explaining the meaning of human dignity of Article 30 is constitutional jurisprudence. It demonstrates how dignity ‘works.’ However, so far there has been no case before the Constitutional Tribunal in which human dignity would be the only higher-level norm for review². Therefore, in the jurisprudence of

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¹ J. Waldron, *How Law Protects Dignity*, New York University, School of Law, Public Law and Legal Theory Research Paper Series, Working Paper 2011, no. 11-83, p. 2; A. Barak, *Human Dignity. The Constitutional Value and the Constitutional Right*, Cambridge University Press, 2015, p. XVII.

² It seems that the Constitutional Tribunal was close to such a situation when examining case no. SK 20/14. The challenged provision was Article 20 Paragraph 5 of the Act of 18 October 2006 on the disclosure of information concerning documents of state security bodies from the years 1944-1990. The

the Constitutional Tribunal, the violation of dignity is primarily of 'situational' character, *i.e.*, it is related to a violation of a particular right or freedom.

First, I will attempt to explain the meaning of human dignity as a constitutional value (Section I) and next as a constitutional right (Section II).

1. Human dignity in the Constitution of Poland

Human dignity as a value is the basis of the entire system of law in Poland. It is situated beyond, or above, the law. It serves every human being, so its character is universal rather than selective. It is also identical for all people (every person has the same dignity). Furthermore, it is inviolable, as stated in Article 30, *i.e.*, it is not subject to any interference and even the humiliation of a human being does not take away his or her dignity. Human dignity cannot be suspended or exchanged for a different value. It cannot be lost. Dignity, understood in this way, is called human dignity. Human dignity is a different category than personal dignity. The concept of personal dignity is narrower than human dignity. Personal dignity, which occurs mainly in civil law, concerns the kind of contribution that a person makes to society. It may also be a person's position in society or certain qualities or abilities he or she has. Personal dignity may be greater or lesser and may even be lost. It is a dynamic element in human life. Its protection in the law is expressed through the so-called personal rights. The protection of dignity understood in this way is our subjective right. Let me return, however, to human dignity in the Constitution understood as a value³.

According to Article 30 of the Constitution, human dignity constitutes "a source of freedoms and rights of persons and citizens". How should we understand the meaning of 'source' here? In my opinion, being a source indicates that human dignity is primary to freedoms and rights of persons and citizens and that it is their basis. Dignity, however, is not the 'cause' of human rights, *i.e.*, it does not generate the content of the law. Dignity does not give birth to the law. The law comes from the democratically legitimate legislator. In my opinion, the relationship between dignity and human rights could be explained in such a way that realizing human dignity is the goal of regulating human rights. In this sense, human rights would be the means to realize human dignity. Human dignity would be the aim of regulating human rights. I must admit that such an explanation of the relationship between dignity and human rights is not satisfactory. It seems that it reverses the relation of dignity to human

proceedings were discontinued due to the death of the applicant. Cf. decision of 22 July 2015, OTK-A, no. 7, item 115.

³ See M. Granat, *Godność człowieka z art. 30 Konstytucji RP jako wartość i jako norma prawna* (Human dignity in the meaning of Article 30 of the Polish Constitution as a value and as legal norm), „Państwo i Prawo” 2014, no. 8, p. 3; M. Piechowiak, *Godność jako fundament powinności prawa wobec człowieka* (Dignity as the foundation of the obligation of law towards a human being), [w:] *Urzeczywistnienie praw człowieka w XXI wieku. Prawo i etyka* (The realization of human rights in the 21st century. Law and ethics), red. P. Morciniec, S.L. Stadniczenko, Opole 2004.

rights. It is especially incompatible with the absolute nature of human dignity. Presumably, the relationship between human dignity (Article 30) and human rights (regulated in Chapter II) is such that human rights are manifestations of human dignity or human dignity constitutes the core of human rights. This means that human dignity can be better understood if it is expressed through a system of human rights and freedoms. To illustrate this relationship, an analogy is often invoked, according to which human dignity resembles a tree whose boughs are human rights. Human dignity pulsates in human rights, which means that it is the deepest reason for their defence. This metaphor helps the understanding that there are different constitutional regulations of human rights, but human dignity remains one and it has an absolute character. In the jurisprudence of the Constitutional Tribunal, human dignity is the only axiomatic value, which means it does not need to be argued for. The prohibition by the legislator of its violation is absolute.

Human dignity as a value is, according to the Constitutional Tribunal, “of fundamental significance to the axiological basis of current constitutional solutions”⁴. It is “the axiological basis and premise of the entire constitutional order”⁵. It is of great significance for the interpretation and application of “all the other provisions concerning the rights, freedoms, and responsibilities of an individual”⁶. Names are indeed of secondary importance, but the Constitutional Tribunal defines it as “a transcendental value”, which indicates that it originates beyond the legal order. It is an absolute value. The Tribunal also speaks about the rank of human dignity, which is manifested in the fact that dignity is “a link between natural law and positive law.” In sum, it is clear that human dignity exerts influence on the law, but itself remains beyond or above the law. It is a primary value in constitutional law, which itself does not require prior achievement.

Human dignity as a constitutional value plays a dual role in the law. First, it is a point of reference, a kind of horizon for other constitutional values. It is a matrix for other constitutional values (*e.g.*, liberty, equality, and social justice). It enables understanding these values and the principles of law that embody them. It serves as a point of reference for other constitutional values. Constitutional rights of persons and citizens without reference to dignity would lose their meaning and significance. Dignity is used to ‘order’ them, obviously with reference to a specific case. It is therefore a regulator of other rights and freedoms. Human dignity is used to measure particular rights and freedoms of persons and citizens. An example of such an application of human dignity is case no. SK 48/05 of 9 July 2009⁷. In this case, the applicant claimed in a constitutional complaint that the provision of road traffic law obliging him to wear a seatbelt in his own car is inconsistent with Article 30 of the Constitution, because “he is allowed to do everything that does not endanger others.”

⁴ Cf. judgement of 30 September 2008, K 44/07, OTK-A 2008, no. 7, item 126, p. 1131.

⁵ Cf. judgement of 9 July 2009, SK 48/05, OTK-A 2009, no. 7, item 128, p. 1102.

⁶ Cf. judgement of 30 September 2008, K 44/07, OTK-A 2008, no. 7, item 126, p. 1131.

⁷ Cf. judgement of 9 July 2009, SK 48/05, OTK-A 2009, no. 7, item 1008, p. 1103.

According to the applicant, the violation of “the principle of respecting and protecting human dignity by a public authority” consisted in the legislator forcing him “to act in a certain way.” An authority compels people to make certain decisions in their own case, within their own living space. Furthermore, according to the applicant, the legislator should undertake only “persuasive actions” that will not interfere with the principle of the inherent and inalienable dignity of the human being. According to the applicant, imposing on a citizen the obligation to wear a seatbelt while driving a car deprives him or her of the right to decide about their own safety. The legislator’s infringement upon the person’s freedom to decide about themselves was not, according to the complainant, justified by the legislator with any of the values listed in the Constitution. Moreover, in the applicant’s opinion, the challenged provision also violated the right to legal protection of private life (Article 47 of the Constitution and Article 8 of the European Convention on Human Rights). This is because it dictates specific behaviour in matters belonging to a citizen’s personal choice. The Constitutional Tribunal obviously found the challenged provision consistent with Article 30 and Article 47 of the Constitution. The Constitutional Tribunal stated that the applicant had not presented arguments demonstrating that the obligation to wear seatbelts in a car leads to the violation of human dignity by a public authority. One cannot adopt the view that any imposition of an obligation on a person by the legislator violates their dignity. Such a claim cannot be accepted in the light of human dignity itself⁸. In my opinion, this example accurately illustrates the importance of human dignity as a measure for the assessment of the regulation of human rights and freedoms by the legislator. Human dignity was used here as a measure for a legal regulation which, according to the applicant, violated his dignity and personal liberty.

Human dignity is primary to the law (including the rights and freedoms). It affects the law, but itself remains beyond, or above, the law. In this sense, human dignity is an absolute value in the Constitution. What does human dignity as an absolute value mean? It should be noted that an absolute value in the world of law may have a weak power of persuasion. It can lead to the reluctance of lawyers to dealing with the issue of human dignity because it is located beyond the law or above it. Such a qualification of dignity must be understood in such a way that among constitutional values, there is no higher value. This means that dignity cannot be suspended or exchanged for another value. Dignity does not depend on the circumstances either. The fact that dignity is an absolute value does not mean that it should be excluded from the debate regarding, for example, the sources of its origin or ways of its functioning. The most important thing is its primacy among other constitutional values. This primacy is absolute, although in some cases, such as in the case of shooting down an aircraft (K 44/07), dignity as a basis of review turns out to be effective if it corresponds with a different value (here: the common good). The Constitutional Tribunal’s application of human dignity as a value is accompanied by invoking other constitutional values. The role of human dignity is manifested in the

⁸ *Ibid.*

fact that it expresses a certain harmony thanks to which constitutional principles and values interact with each other in resolving the case.

Another case before the Constitutional Tribunal which demonstrated the significance of human dignity as a value was a judgement of 30 September 2008 no. K 44/07 on the provision of Aviation Law concerning the shooting down of an aircraft qualified as RENEGADE, *i.e.*, an aircraft used for unlawful acts, in particular as a means of a terrorist attack. The challenged provision of Aviation Law (Article 122a) envisaged the possibility of shooting down a passenger aircraft in the event of a threat to the security of the state, and where an organ of the air defence command, taking into account information provided by the air traffic service, found that the aircraft in question had been used for unlawful acts, in particular as a means for carrying out a terrorist attack. Article 122a was introduced by the Polish legislator as a reaction to the terrorist attacks in New York in 2001.

The Constitutional Tribunal declared the challenged regulation to be incompatible with Article 30 of the Constitution. In this case, the value that required protection on the one hand was the security and the lives of the people on the ground at risk of an attack. On the other hand, the same value applied to the lives of the people on board the aircraft (inseparably connected with the lives of terrorists). The challenged Article 122a perhaps would not give rise to so significant constitutional concerns if it related to shooting down an aircraft with only terrorists on board. In this case, then, a 'life for life' dispute arose: whose lives should be saved, the people on the ground, or aircraft passengers'? Resolving this problem was related to taking a decision by the Constitutional Tribunal regarding the hierarchy of constitutional values, including human life. The declaration of unconstitutionality of Article 122a of Aviation Law was based on an argument that 'a last resort' (shooting down an aircraft) would be directed against people on board, *i.e.*, against the passengers and the crew, which would violate their dignity⁹. The result of the application of Article 122a would be 'de-personification' and 'reification' of these people. According to the Constitutional Tribunal, in a state ruled by law, whose axiological basis is the inviolable and inalienable dignity of every human being, it is not acceptable for a public authority to have the right to decide about the deliberate causing of death of innocent people, even if it led to the achievement of other objectives, such as the protection of the common good, state security, or the lives of other people. The Tribunal stated that human dignity must be attributed in equal measure to both the people on board the plane as well as the people on the ground at risk of attack. The good which could be destroyed was the lives of the people in each of these groups and the right to avoid death belongs to all equally. The Tribunal stressed that human life is not subject to differentiation under the Constitution. It is a fundamental right which determines the possession of "all other rights and freedoms." The Constitutional Tribunal explained the legal protection of life in Article 38 of the Constitution as "the prohibition of depriving a person of their life." The legal protection of life is a consequence of the

⁹ Cf. judgement of 30 September 2008, K 44/07, OTK-A 2008, no. 7, item 126, p. 1131.

fact that everyone has the right to life. Hence, Article 38 requires that public authorities should undertake positive actions to protect life.

A characteristic thing in this case was that the Tribunal did not examine Article 122a from the perspective of one of the emergency states provided for in the Constitution. It declared that even in the event of an state of emergency, or martial law, the rights in Article 30 and Article 38 shall not be limited¹⁰. Emergency states in the country, as it follows, do not suspend human dignity. The issue of a RENEGADE aircraft was considered by the Tribunal in the situation of the standard functioning of the state.

It is worth emphasizing the part of reasoning of the Tribunal in which it rejected the position of some participants of the proceedings who invoked the principle of proportionality (Article 31 Paragraph 3 of the Constitution). They claimed that the protection of some people's lives (in this case the passengers') may be limited or even suspended pursuant to Article 5 of the Constitution, according to which it is a duty of the state to ensure "the security of the citizens." It was proposed, therefore, that "the protection of human dignity", expressed in the guarantee of the right to life should be subject to evaluation.

In my opinion, issuing the judgement in case K 44/07 and declaring Article 122a of the Aviation Law to be inconsistent with Article 30 of the Constitution, the Tribunal did not resolve the dilemma (life for life, or whose life is more important) on the basis of human dignity. Article 30 of the Constitution, despite its potential, was unable to support the declaration of the unconstitutionality of Article 122a of Aviation Law. In this case, the value of human life was on both sides of the conflict (both the passengers of the aircraft and the inhabitants of the city). Human dignity certainly does not divide people into 'guilty' ones (the aircraft with whom can be shot down) and 'innocent' ones (who will survive), *e.g.*, by a decision of the military commander, who is beyond the field of potential destruction. The Tribunal emphasized the symmetry of lives, the 'rescued' ones and the 'sacrificed' ones. It was impossible to determine which was which, the more so that the problem could not be resolved on the basis of Article 38 of the Constitution, *i.e.*, the legal protection of life. In my opinion, in this case, given the equivalence of goods involved, the Tribunal resolved the case with the use of the principle of the common good. This principle (expressed in Article 1 of the Constitution) was not a basis of review in this case, but its implicit presence in the jurisprudence is much more significant than it seems. The common good enabled the Tribunal to look at the dispute over the shooting down of an aircraft from a more general perspective. The value of the common good in this case was emphasized by the Constitutional Tribunal in such a way that the duty of the legislator is to respect each life, because each life is related to human dignity. The deliberate destruction of life, whether of plane passengers or city inhabitants, would contradict the common good. The violation of the principle that it is unacceptable to shoot innocent people in any situation (even if there are few of them) would destroy this value. The value

¹⁰ *Ibid.*, p. 1312-1313.

of the common good in this case meant that the lives of the minority cannot be sacrificed for the lives of the majority. Case K 44/07 therefore shows that it is impossible to imagine a law which would be an expression of the common good and which at the same time would violate human dignity. The common good in this case was one of the faces of human dignity. The Constitutional Tribunal's concern for the common good constituted here the concern for human dignity. This article does not deal with the relationship between the principle of the common good and the principle of human dignity. Certainly, however, it should be stressed that the common good is a value that does not contradict human dignity.

The Tribunal's order addressed to the legislator: "respect all lives", both the lives of innocent passengers and the inhabitants of the city which can be attacked with the plane, is certainly grounded both in human dignity and in the principle of the common good, and not solely in the first of these. The principles of the common good and human dignity prevented the legislator from adopting an 'economic' approach to life (if the plane is shot down, others will be saved). They also prevented the consideration of the value of life in terms of the category 'minority.'

The fact that dignity in the Constitution has the status of the supreme value is justified by the wording of Article 30 of the Constitution, according to which human dignity is "a source of freedoms and rights of persons and citizens." As an absolute value in the above sense, it aspires to be the foundation of the system of law and human rights. In Article 30 not only is there no antinomy between dignity as a value and dignity as a legal norm, but they are two sides of human dignity. If dignity were only a constitutional value (like, for example, beauty in the Preamble), it would fall outside the Constitution as being devoid of, as lawyers say, operational value. If it were only the legal norm, it would certainly be subject to balancing by the Constitutional Tribunal as other norms, but this is not the case.

2. Human dignity as a subjective right

Human dignity of Article 30 of the Constitution which functions as a legal norm is more tangible than dignity as a value. This is because it serves as a subjective right of the person.

Human dignity understood as a subjective right determines the position of an individual in society. It means that a person should be treated as free, autonomous, and able to develop. Dignity as an individual right is independent of the person's qualifications, psychophysical condition, or current life situation. Dignity here is a kind of respect to which every person is entitled. The Constitutional Tribunal, treating human dignity as a right, separates it from other particular rights and freedoms in its jurisprudence. It is usually the case that a violation of human dignity as a right is recognized in connection with a violation of another particular right or freedom. For example, excessive interference by the legislator into the right to privacy or the right to social security may be declared as violating human dignity. In the judgement of

5 March 2003 (no. K 7/01) concerning lustration¹¹, the Constitutional Tribunal stated that not every infringement of the right to private life entails a violation of dignity. It is not always the case that “interference into the constitutionally protected private sphere affects human dignity.” There must be a *iunctim* between an infringement of the right to privacy and a violation of human dignity¹². Accordingly, in the 2010 judgement concerning the reduction of pensions of former officers of the Security Service (no. K 6/09), the Tribunal stated that the legislator had the right to reduce those pensions, and it did not affect the dignity of these people as their right. A characteristic thing was that the applicant (a group of MPs) argued that the relationship between the right to social security of former officers of the Security Service and human dignity was such that having a higher pension than others was linked to human dignity. Such a view, obviously, could not be upheld by the Tribunal.

Dignity as a right must be respected. It seems that respect is an adequate response to human dignity understood as a right. This response takes the form of a demand to respect human dignity and determines the actions of state bodies in the event of its violation. The Constitutional Tribunal does not balance human dignity with other constitutional rights. If in a given case dignity is considered by the Tribunal as a legal norm, it does not compete with other constitutional norms. If the Tribunal conducted a test of proportionality in relation to Article 30 of the Constitution, it would mean that dignity is measured by a different norm. Another constitutional norm would serve to measure human dignity. Therefore, dignity as a right must always win the competition with other rights. The prohibition of violation of dignity under Article 30 is absolute and applies to everyone. Likewise, the inviolability of dignity has its consequence in excluding dignity from the test of proportionality. It is, therefore, not clear how much dignity weighs. Dignity as a right is out of competition, *i.e.*, it is not subject to evaluation. As an inviolable right it is beyond comparison with other rights and freedoms. Thus, human dignity is used to measure human rights and freedoms, but it cannot measure other dignities.

The Tribunal, treating human dignity as a right, separates it from other specific rights and freedoms. An example of such an approach of the Tribunal is the case concerning the obligation to wear seatbelts in a car (SK 48/05). The Tribunal declared the weakening of the protection of human freedom constitutional, upholding the obligation to wear seatbelts. It emphasized that a weaker protection of freedom does not entail diminishing human dignity. The situation was similar in the lustration case cited above (K 7/01), *i.e.*, not every infringement of the right to private life entails a violation of dignity. The right to protection of private life, as well as other rights and freedoms, is grounded in dignity, but identifying any violation of any right or freedom with the violation of dignity is not approved by the Constitutional Tribunal. Although dignity as a value is manifested in human rights and freedoms, it is not the sum of rights and freedoms.

¹¹ Cf. judgement of 5 March 2003, K 7/01, OTK-A 2003, no. 3, item 19.

¹² *Ibid.*

3. Summary

1. The provision of Article 30 of the Constitution of Poland is one of the deepest expressions of human dignity in contemporary constitutionalism. It stands out from constitutional regulations in many other countries (*e.g.*, German Basic Law), as well as among legal acts, such as the Charter of Fundamental Rights of the European Union.
2. The Constitutional Tribunal does not overuse the principle of human dignity. It seems that this principle is invoked and applied only in situations of a serious threat to human rights. Such judicial restraint of the Constitutional Tribunal in the application of human dignity is justified.
3. Human dignity of Article 30 is dual, and the constitutional jurisprudence highlights the meaning of such understanding of dignity. This duality consists in distinguishing between human dignity as a constitutional value and as a constitutional right. Human dignity of Article 30 is both. It serves as the foundation of the system of law and as an inviolable right. As already pointed out, as a value it is beyond, or above, the legal order. As a legal norm, it is part of the law. This way of expressing human dignity is neither a drawback of the regulation of Article 30 of the Constitution, nor the drawback of the Tribunal's consideration of dignity. It is anchored in Article 30 of the Constitution.
4. Understanding dignity both as a value and as a norm seems to be somewhat paradoxical. On the one hand, human dignity is inviolable (which must mean that it is not subject to any interference). On the other hand, the same provision requires that public authorities respect and protect human dignity. A question may be asked of why dignity should be protected if it cannot be violated? How to reconcile the constitutional inviolability of human dignity with frequent violations of human dignity? It must be intriguing to resolve *prima facie* inconsistencies in the expression of human dignity through Article 30. In my opinion, this regulation can be explained through the duality of human dignity, *i.e.*, that dignity is both a constitutional right and a constitutional value.

