

SOME REMARKS ON DIGNITY IN THE JURISPRUDENCE OF THE POLISH CONSTITUTIONAL TRIBUNAL

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Summary: Human dignity is a legal category that emerged in the 20th century due to the experiences of World War II and totalitarianism. Today, it is a recurring theme in international and national laws, including constitutions. In Poland, public authorities are mandated to uphold and safeguard dignity. The Constitution of the Republic of Poland elevates the concept of dignity to a legal norm that guides the actions of public authorities. The Constitutional Tribunal has made several statements about dignity, which provide a comprehensive understanding of the subject from various perspectives. This article explores the jurisprudential perspective that has shaped the constitutional approach to dignity in Poland, focusing on the Polish jurisprudence of the Constitutional Tribunal, which is influenced by comparative law.

Keywords: dignity, Constitutional Tribunal, values, human rights, principles of the state.

1 Introduction

The concept of human dignity, a fundamental human characteristic deeply rooted in philosophy and theology, underwent a significant transformation in the 20th century, emerging as a category of profound significance in law¹. This shift was largely propelled by the harrowing experiences of totalitarianism and World War II, which underscored the paramount importance of dignity. The concept of dignity was first expressed in the preamble to the Charter of the United Nations² and later in the Universal Declaration of Human Rights³. Today, dignity is a recurring theme in international laws and national legal acts,

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- 1 BLICHARZ, Jolanta. Dyskusje na temat znaczenia autonomii jednostki (osoby) jako wartości aksjologicznej. *Acta Universitatis Wratislaviensis. Przegląd Prawa i Administracji*, 2011, vol. LXXXVII, no. 3368, pp. 13; MAZUREK, Franciszek. *Godność osoby ludzkiej podstawą praw człowieka*. Lublin: Wydawnictwo Katolickiego Uniwersytetu Lubelskiego, 2001, p. 17.
 - 2 Treaties UN [online]. Available at: <<https://treaties.un.org/doc/Publication/CTC/uncharter.pdf>> Accessed: 13.12.2023.
 - 3 United Nations [online]. Available at < <https://www.ohchr.org/en/universal-declaration-of-human-rights>> Accessed: 13.12.2023.

including constitutions⁴. A pivotal moment in recognising human dignity came in 1997 when the legislature in Poland acknowledged inherent human dignity as an inviolable source of individual freedoms and rights. As per constitutional provisions, public authorities are mandated to uphold and safeguard dignity⁵.

Article 30 of the Constitution of the Republic of Poland is important in evaluating legislative and law enforcement actions. It elevates the concept of dignity from a symbolic value to a legal norm that can guide the actions of public authorities. The Constitutional Tribunal has made several statements about dignity, which provide a comprehensive understanding of the subject from various perspectives. This article explores the jurisprudential perspective that has shaped the constitutional approach to dignity in Poland. It will focus on the Polish jurisprudence of the Constitutional Tribunal, which is influenced by comparative law, particularly the German experience.

The analysis will establish the meaning and role of dignity as a legal category and the functionality of the findings made by the Constitutional Tribunal in the field.

2 Dignity in the Constitution of the Republic of Poland

The Constitution of the Republic of Poland, in a unique manner, invokes the concept of dignity in the analyzed scope. It does so in the preamble, in the provisions on states of emergency⁶, and most importantly in Article 30, which commences the chapter on freedoms, rights and duties of man and citizen⁷. According to this provision, “The inherent and inalienable dignity of man is the source of human and civil liberties and rights. It is inviolable, and its respect and protection is the duty of public authorities.” Dignity is considered a universal constitutional value, which is of fundamental importance for the construction of the axiology of current constitutional solutions. It serves as the prism through which all other provisions on the rights, freedoms and duties of the individual should be interpreted and applied⁸.

Based on an analysis of the Constitutional Tribunal’s jurisprudence, the literature underlines the absolute nature of dignity. It is a transcendent value,

4 SHULTZINER, Doron, CARMI, Guy E. Human Dignity in National Constitutions: Functions, Promises and Dangers. *The American Journal of Comparative Law*, 2014, vol. 62, no. 2, pp. 461–490; ZIELIŃSKI, Michał. Regulacja godności we współczesnych konstytucjach. In SADOWSKI, Mirosław, SZYMANIEC, Piotr (eds.). *Prawa człowieka, idea, instytucja, krytyka*. Wrocław: Wydział Prawa, Administracji i Ekonomii Uniwersytetu Wrocławskiego, Wrocławskie Studia Erazmiankie Studia Erasmiana Wratislaviensia, 2010, pp. 162–168.

5 Art. 30 Constitution of the Republic of Poland of April 2, 1997 (Journal of Laws No. 78, item 483, as amended).

6 Art. 233 ust. 1 of the Constitution of the Republic of Poland.

7 Chapter II of the Constitution of the Republic of Poland.

8 WOJCIECZEK, Agnieszka. O poszanowaniu godności człowieka na przykładzie polskich gwarancji jej ochrony oraz orzecznictwa Sądu Najwyższego Stanów Zjednoczonych Ameryki. *Studia Iuridica Lublinensia*, 2021, vol. XXX, no. 5, pp. 704–705 and the rich literature on the issue cited there.

primary to other human rights and freedoms as inherent and inalienable, it accompanies man at all times and cannot be violated by the legislator, the acts of other subjects, or himself. In doing so, human dignity, a value of absolute protection, is subject to an action that is not subject to evaluation from the perspective of proportionality and cannot be legitimized in any way and to any degree⁹.

Article 30 of the Constitution recognizes man as a subject of law, and provides equal protection to all individuals. This article defines the legal status of man in the entire legal system¹⁰. The Constitution of the Republic of Poland considers dignity as an inherent and inalienable value. It is the foundation of individual freedoms and rights, applicable to every human being irrespective of their ethnicity, age, gender, or wealth¹¹. The principle of human dignity imposes an obligation on lawmakers to establish a legal framework that protects the subjective rights of individuals, enabling them to realize their full potential as persons. It is, therefore, the responsibility of the lawmakers to ensure that the legal system provides equal protection to every individual, and recognizes their inherent value as human beings. This will enable them to live their lives with dignity and freedom, as guaranteed by the Constitution¹².

Human dignity is a widely accepted legal principle recognized as a constitutional principle¹³, value, and separate fundamental right¹⁴. While it may seem vague, legal experts acknowledge the normative character of this principle¹⁵. Article 30 of the Constitution of the Republic of Poland is simple and complex in its interpretation because it deals with issues beyond the positivist concept of law. However, it is difficult to argue that a person's dignity is not inherent due to their humanity. It is important to note that including the principle of dignity in the Constitution is not the only way to recognize human dignity in law. There are legal

9 ZIELIŃSKI, Sebastian. Rozumienie godności człowieka i jej znaczenie w procesie stanowienia i stosowania prawa. Propozycja testu zgodności regulacji prawnych z zasadą godności człowieka. *Przegląd Sejmowy*, 2019, no. 4, pp. 120.

10 BOSEK, Leszek. Komentarz do art. 30 Konstytucji RP. In: SAFJAN, Marek, BOSEK, Leszek (eds.). *Konstytucja RP. Tom I. Komentarz do art. 1–86*. Warszawa: C.H. Beck, Legalis, 2016, pt. 1, 3.

11 BANASZAK, Bogusław. Komentarz do art. 30. *Konstytucja Rzeczypospolitej Polskiej. Komentarz*. Warszawa: C.H. Beck, Legalis, 2012, pt. 5.

12 POTRZESZCZ, Jadwiga. Filozoficzne podstawy praw człowieka w Konstytucji Rzeczypospolitej Polskiej z 1997 roku. *Roczniki Nauk Prawnych*, 2002, vol. XII, no. 1, p. 42.

13 GRANAT, Mirosław. Godność człowieka z art. 30 Konstytucji RP jako wartość i jako norma prawna. *Państwo i Prawo*, 2014, no. 8, p. 3; JASTRZĘBSKA-WÓJCICKA, Klaudia. Godność człowieka jako wartość chroniona konstytucyjnie. *Przegląd Prawa Konstytucyjnego*, 2021, no. 5, p. 337.

14 WILCZYŃSKI, Przemysław. W kwestii godności człowieka jako kategorii prawa. *Acta Universitatis Lodzensis. Folia Iuridica*, 2023, special issue, pp. 338; LIPOWICZ, Irena. Godność ludzka w świetle prawa administracyjnego. *Przegląd Filozoficzno-Literacki*, 2012, vol. 33, no. 1–2, pp. 103.

15 GRANAT, Mirosław. Godność człowieka z art. 30 Konstytucji RP jako wartość i jako norma prawna. *Państwo i Prawo*, 2014, no. 8, p. 3; JASTRZĘBSKA-WÓJCICKA, Klaudia. Godność człowieka jako wartość chroniona konstytucyjnie. *Przegląd Prawa Konstytucyjnego*, 2021, no. 5, p. 337.

systems that do not explicitly reference dignity in the constitution, but guarantees of respect for dignity are derived from the system as a whole. Therefore, it is crucial to understand the meaning of the principle of dignity and its significance in legal and social practice. Recognizing and respecting human dignity can create a more just and equitable society for all¹⁶.

Interpretation is essential to our work as lawyers. At the heart of our concerns is the Constitution legislator's inclusion of the value of dignity in a legal norm. This inclusion raises critical questions that provide us with a deeper understanding of its intended purpose and legal effects. This complexity prevents dignity from being just a slogan and adds depth to our work.

When interpreting Article 30 of the Polish Constitution, we must take the case law of the Constitutional Tribunal as the primary reference point. This is because Article 30 can serve as a standard for assessing the constitutionality of laws. The Constitutional Tribunal has the task of interpreting Article 30 and analyzing its compatibility with laws. Dignity, as a constitutional source of human and civil liberties and rights, is the foundation for interpreting all such liberties and rights. As a result, it plays a crucial role in interpreting laws and the adjudication process by courts and tribunals.

Recognizing dignity as a constitutional source of human and civil liberties and rights allows us to better appreciate its profound impact on our work as lawyers. It serves as a constant reminder of our duty to uphold the law and ensure that individuals' liberties and rights are safeguarded. By doing so, we contribute to creating a just and equitable society that values the dignity of all.

3 Dignity and the Constitutional Tribunal

3.1 *The Constitutional Tribunal as the guardian of dignity*

The Constitutional Tribunal is a judicial power organ. Its primary role is to decide on matters of hierarchical conformity of law within the scope defined by the Constitution of the Republic of Poland. While the legislature has provided other competencies¹⁷ for this body, they are only supplementary to its main task. The establishment of the Constitutional Tribunal is in line with the concept of the constitutional judiciary, which was designed to oversee the process of creating legal norms by legislation, ensuring the protection of individual freedoms and rights, and the realization of constitutional values and principles. Thus, the body

16 GRANAT, Mirosław. Godność człowieka z art. 30 Konstytucji RP jako wartość i jako norma prawna. *Państwo i Prawo*, 2014, no. 8, p. 20; GIEŁDA, Małgorzata. Godność człowieka w otoczeniu administracji publicznej – wybrane zagadnienia. *Acta Universitatis Wratislaviensis. Przegląd Prawa i Administracji*, 2017, vol. CXI, no. 3802, p. 54.

17 These include ruling on the compatibility of the goals or activities of political parties with the Constitution, resolving disputes of competence between the central constitutional organs of the state, or recognizing the temporary inability of the President of the Republic to hold office under Article 131 para 1 of the Constitution of the Republic of Poland.

overseeing the hierarchical conformity of the law is tasked with realizing the principle of constitutionalism, which mandates that only those decisions of the sovereign that align with constitutional principles be recognized as legitimate¹⁸.

The dignity from Article 30 of the Constitution is treated as a constitutional principle and the starting point for considering human freedoms and rights. Therefore, the Constitutional Tribunal becomes the guardian of this dignity by exercising its powers.

The Constitutional Tribunal is a public authority that applies the law and decides cases within its competence based on legal norms. To do so, it interprets legal provisions at various levels and contexts, considering the perspective of the axiology of the Polish Constitution. Dignity is one of the basic points of this assessment.

In proceedings before the Constitutional Tribunal, dignity is the primary standard of control. Article 188 points 1 and 3 of the Constitution of the Republic of Poland grants the Constitutional Tribunal the power to rule on the compatibility of certain acts with the Constitution¹⁹. Therefore, Article 30 of the Constitution of the Republic of Poland may be analyzed to determine compliance with constitutional norms. Dignity will also be used to interpret other constitutional norms, particularly those regulating the individual's status in the state. Finally, it will be an argument in the justifications of the Constitutional Tribunal's judgments, aimed at strengthening the explanation of the direction taken.

3.2 *The Constitutional Tribunal's understanding of dignity*

A review of the Constitutional Tribunal's jurisprudence, or rather its justifications, indicates that the Tribunal treats dignity as a fundamental value of the legal order or an element of the axiology of the constitutional order²⁰. The Tribunal explains that: "[t]he Constitution, in the totality of its provisions, gives expression to a certain objective system of values, the realization of which should serve the process of interpretation and application of individual constitutional provisions. The provisions on individual rights and freedoms, located primarily in Chapter II of the Constitution, play a central role in determining this system of values. Among these provisions, the principle of inherent and inalienable human dignity takes a central place in turn"²¹. The Tribunal recognizes that constitutional norms are arranged in a certain objective system of values. Dignity is, therefore, the plane of reference for the system of values around which the Constitution of the

18 MĄCZYŃSKI, Andrzej, PODKOWIK, Jan. Komentarz do art. 188 Konstytucji RP. In SAFJAN, Marek, BOSEK, Leszek (eds.). *Konstytucja RP. Tom II. Komentarz do art. 87–243*. Warszawa: C.H. Beck: Legalis, 2016, pt. 5.

19 See more on the scope of the Constitutional Tribunal's (CT) adjudication: judgment of CT of March 10, 2022, ref. K 7/21, OTK ZU A/2022, item. 24.

20 Cf. Judgment of CT of October 30, 2006, ref. P 10/06, OTK ZU No. 9/A/2006, item 128.

21 Cf. Judgment of CT of March 23, 1999, ref. K 2/98, OTK No. 3/1999, item 38.

Republic of Poland is built and, at the same time, is the foundation of the entire legal order in the state²².

The Constitutional Tribunal unquestionably regards the value of dignity as a transcendent value that is inherently and inalienably important²³. It is also the primary source of all other human rights and freedoms. Interestingly, the Tribunal needs to provide a precise definition of dignity. Instead, it outlines its characteristics and functions. Dignity is undoubtedly considered a value or a principle in various judgments²⁴.

In some cases, the Tribunal even formulates a subjective right based on dignity. The Tribunal also firmly regards dignity as a source of freedoms and rights derived directly from Article 30 of the Polish Constitution²⁵. The Constitutional Tribunal explains, "Being a source of rights and freedoms of an individual, the concept of dignity determines how they are understood and realized by the state."²⁶

The jurisprudence of the Constitutional Tribunal divides dignity into personal and personal, inspired by both doctrinal approaches and the jurisprudence of the Federal Constitutional Tribunal of Germany²⁷.

In its justification of the judgment of K 7/01, the Constitutional Tribunal made it clear that human dignity is a constitutionally guaranteed value with two dimensions. These dimensions are both enshrined in Article 30 of the Constitution. The first and foremost dimension is that human dignity is a transcendent value that precedes other human rights and freedoms. This means that no behavior can deprive a person of their dignity or violate it. The second dimension of human dignity is "personal dignity," closest to the law of personhood. It encompasses the values of each person's psychological life and those that define the individual's subjective position in society. According to popular opinion, these values include respect for each person. It is essential to note that only dignity in the latter sense can be subject to violation and "affected" by the behavior of others and legal regulations²⁸.

The Constitutional Tribunal presented a similar approach in the judgment of K 28/05. It explained that "it is possible and expedient to distinguish between two aspects of human dignity – dignity as an inherent and inalienable value, and dignity understood as a 'right of personhood', 'encompassing the values

22 Cf. Judgments of CT of: April 4, 2001, ref. K 11/00, OTK No. 3/2001, item 54; September 1, 2006, ref. SK 14/05, OTK ZU No. 8/A/2006, item 97; September 30, 2008, ref. K 44/07, OTK ZU No. 7/A/2008, item 126; January 22, 2013, ref. P 46/09, OTK ZU No. 1/A/2013, item 3.

23 Cf. Judgment of the CT of March 5, 2003, ref. K 7/01, OTK ZU No. 3/A/2003, item 19.

24 Cf. for example, the wording used in the grounds of the judgment of CT of March 5, 2003, ref. K 7/01, OTK ZU No. 3/A/2003, item 1.

25 Cf. Judgment of the CT of November 15, 2000, ref. P 12/99, OTK ZU No. 7/2000, item 260.

26 Cf. Judgment of the CT of April 4, 2001, ref. K 11/00, OTK No. 3/2001, item 54.

27 Cf., for example, the decision of the Federal Constitutional Court of Germany, BVerfGE 87, 209/228, concluded that human dignity as inviolable is not lost even by behaving in an "unworthy" manner. It cannot be taken away from any human being. However, the entitlement deriving from it to demand respect can be subject to violations.

28 Cf. Judgment of the CT of March 5, 2003, ref. K 7/01, OTK ZU No. 3/A/2003, item 19.

of the psychic life of every human being and all those values that define the subjective position of the individual in society and that make up, according to popular opinion, the respect due to every person.' Dignity in the former sense is retained by a person under all conditions, while dignity understood as a 'right of personhood' may be subject to violation in practice"²⁹. In this context, one may wonder to what extent dignity in Article 30 of the Polish Constitution can be treated as a subjective right separate from other freedoms and rights. Indeed, the Constitutional Tribunal mentions two references to dignity: 1) inviolable dignity – inherent and inalienable and 2) violable dignity – which can be lost.

Based on the information presented above, it can be inferred that the Constitutional Tribunal regards dignity as a fundamental value or directive of the Constitution. To ensure consistency in evaluating the correctness of solutions regarding goods and values of paramount importance to individuals, the Tribunal follows a systematic approach that employs uniform criteria. Indeed, the relevant feature, which is the inherent dignity of each person, must always prevail in these cases over other criteria that could justify differentiation in the level of protection³⁰.

The cited judgments refer to constitutional values and directives. This still needs to show us the usefulness of dignity in a legal and operational context.

In addition to the above approaches, the Constitutional Tribunal states that Article 30 of the Constitution of the Republic of Poland expresses "a freedom that is crucial from the point of view of constitutional axiology"³¹, although from the context of the statement and to ensure its logic, it could be inferred that it meant not "freedom" but "value."

In all its judgments, the Tribunal is unanimous in its view that dignity cannot be understood as a feature or set of rights conferred by the state. Indeed, it is primary in relation to the state³². Indeed, it should be noted that the Constitutional Tribunal has consistently emphasized the pre-eminence of each person's dignity concerning the state, thus affirming its inherent nature.

29 Cf. Judgment of the CT of March 7, 2007, ref. K 28/05, OTK ZU No. 3/A/2007, item 24. See also judgments of the CT of September 30, 2008, ref. K 44/07, OTK ZU No. 7/A/2008, item 126; July 14, 2003, ref. SK 42/01, OTK ZU No. 6/A/2003, item 63; October 22, 2020, ref. K 1/20, OTK ZU A/2021, item 4. In the literature, it is argued that the Constitutional Tribunal unintelligibly derives both meanings of dignity from Article 30 of the Polish Constitution: POLAK, Piotr, TRZCIŃSKI, Janusz. *Konstytucyjna zasada godności człowieka w świetle orzecznictwa Trybunału Konstytucyjnego*. *Gdańskie Studia Prawnicze*, 2018, vol. XL, p. 265; BANASZAK, Bogusław. *Komentarz do art. 30. Konstytucja Rzeczypospolitej Polskiej. Komentarz*. Warszawa: C.H. Beck, 2012, p. 214.

30 Cf. Judgment of the CT of September 1, 2006, SK 14/05, OTK ZU No. 8/A/2006, item 97.

31 Ibidem.

32 Cf. Judgment of the CT of April 4, 2001, ref. K 11/00, OTK ZU No. 3/2001, item 54.54. See also the analysis by J. Potrzezsch, POTRZESZCZ, Jadwiga. *Godność człowieka w orzecznictwie polskiego Trybunału Konstytucyjnego*. *Roczniki Nauk Prawnych*, 2005, vol. XV, no. 1, pp. 27–49.

In doing so, it adopts a high standard of protection of human dignity, including children in the prenatal stage³³. It does not differentiate, does not gradate inviolable dignity and is not tempted to value human life, guided by pragmatic considerations. In its judgments, it sometimes refers to international law and solutions adopted in other countries (especially German solutions)³⁴ and to the jurisprudence of Polish courts. However, there are no explicit references to specific philosophical concepts explaining the origin and essence of dignity.

For the Constitutional Tribunal, dignity is first and foremost a constitutional value of central importance for constructing the axiology of current constitutional solutions, through the prism of which all other provisions on the rights, freedoms and duties of the individual should be interpreted and applied³⁵. It determines the directions of action of public authorities. In this context, dignity becomes a constitutional principle that sets an impassable framework for the behavior of public entities. The Constitutional Tribunal recognizes dignity as a key component of constitutional identity³⁶.

The Tribunal also emphasizes that the principle of proportionality does not refer to dignity. It explains that “human dignity is subject to absolute protection. According to the generally accepted view, it is the only right to which it would not be possible to apply the principle of proportionality.”³⁷.

Another aspect of the meaning of the concept of human dignity expressed in Article 30 of the Constitution, closely related to the application of this provision, also appears in the jurisprudence of the Constitutional Tribunal. In this aspect, human dignity is understood as a complementary clause. In the opinion of the Constitutional Tribunal, the right to the protection of private life, like any other freedom and right of the individual, finds its axiological foundation in the dignity of the person; however, equating the violation of any right and freedom with a violation of dignity would deprive the guarantees contained in Article 30 of the Constitution of an independent field of application. It would essentially shallow and oversimplify the meaning and normative content contained in the concept in Article 30 of the Constitution. This is because it encompasses the most important values that do not enjoy other independent guarantees on constitutional grounds and touch the essence of the individual's position in society, his relationship to other persons and public authority.

33 Cf. Judgment of the CT of October 22, 2020, ref. K 1/20, OTK ZU A/2021, item 4.

34 Cf. Judgments of the CT of March 5, 2003, ref. K 7/01, OTK ZU No. 3/A/2003, item 19, and September 30, 2008, ref. K 44/07, OTK ZU No. 7/A/2008, item 126.

35 Cf. Judgments of the CT of September 30, 2008, ref. K 44/07, OTK ZU No. 7/A/2008, item 126; January 22, 2013, ref. P 46/09, OTK ZU No. 1/A/2013, item 3.

36 Cf. Judgment of the CT of November 24, 2010, ref. K 32/98, OTK ZU No. 9/A/2010, item 108.

37 Cf. Judgment of the CT of March 5, 2003, ref. K 7/01, OTK ZU No. 3/A/2003, item 19.

3.3 Functions of dignity in the light of the jurisprudence of the Constitutional Tribunal

From the jurisprudence of the Constitutional Tribunal, in addition to the characteristics of dignity, one can derive the functions of dignity. So, according to the Constitutional Tribunal, what are the functions of dignity?

First, it is assumed to be the link between the Constitution (an act of positive law) and the legal-natural order. This issue was one of the most important threads of constitutional discussions on the question of natural law in the future Constitution. The issue was related to drafting the Constitution's provision as an act with supreme legal power in Poland. It was argued that the affirmation of dignity contradicts the idea that only positive law is the law of the Republic. Ultimately, the resolution of the collision of values was left to the will of the interpreters³⁸. That is, it was expected that the Constitutional Tribunal would be the one to make the harmonizing interpretation between the provision on human dignity and the supremacy of the Constitution. The Tribunal has not fully met the expectations of the members of the Constitutional Committee of the National Assembly and those involved in the work of the Constitution of the Republic. Indeed, the Tribunal explained that the introduction to the Constitution already emphasizes that the application of the Constitution should be accompanied by care for preserving the inherent dignity of man³⁹. This is the task of public authority, which means that the legislator and the bodies applying the law must respect the content of the concept of dignity to which every human being is entitled⁴⁰. However, the Constitutional Tribunal must still indicate how these obligations should be implemented.

Secondly, the Constitutional Tribunal states that dignity is the axiological basis and premise of the constitutional order⁴¹. It determines the system and scope of individual human and civil rights and freedoms⁴². This becomes a determinant of the interpretation and application of the Constitution⁴³.

Third, it is a normative constitutional principle. The Constitutional Tribunal extracts various legal solutions from it⁴⁴. In particular, it derives from Article 30

38 Zob. szerzej WINCZOREK, Piotr. Problem prawa naturalnego w dyskusjach konstytucyjnych. In SZYSZKOWSKA, Maria (ed.). *Powrót do prawa ponadstawowego*, 1999, p. 132; POTRZESZCZ, Jadwiga. Filozoficzne podstawy praw człowieka w Konstytucji Rzeczypospolitej Polskiej z 1997 roku. *Roczniki Nauk Prawnych*, 2002, vol. XII, no. 1, pp. 26–27.

39 Cf. Judgment from the CT of April 4, 2001, ref. K 11/00, OTK ZU No. 3/2001, item 54.

40 Ibidem.

41 Cf. e.g., judgments of the CT of: April 4, 2001, ref. K 11/00, OTK No. 3/2001, item 54; September 1, 2006, ref. SK 14/05, OTK ZU No. 8/A/2006, item 97; September 30, 2008, ref. K 44/07, OTK ZU No. 7/A/2008, item 126; January 22, 2013, ref. P 46/09, OTK ZU No. 1/A/2013, item 3.

42 Cf. Judgment of the CT of October 30, 2006, ref. P 10/06, OTK ZU No. 9/A/2006, item 128.

43 Cf. Judgment of the CT of September 30, 2008, ref. K 44/07, OTK ZU No. 7/A/2008, item 126. See also judgment of the Supreme Court of February 28, 2007, ref. V CSK 431/06, OSNC No. 1/2008, item 13.

44 BOSEK, Leszek. Komentarz do art. 30 Konstytucji RP. In. SAFJAN, Marek, BOSEK, Leszek (eds.). *Konstytucja RP. Tom I. Komentarz do art. 1–86*. Warszawa: C.H. Beck, Legalis, 2016, pt. 39–44.

of the Constitution the protection of fundamental human rights not concretized in specific constitutional provisions⁴⁵.

Fourth, and quite debatable from the point of view of the previous jurisprudence of the Constitutional Tribunal, dignity is sometimes considered a subjective right of the individual with a separate legal content. However, the Constitutional Tribunal should emphasize that it extracts specific solutions from human dignity with great caution and restraint. The object of the right to dignity is, in the most general terms, the creation (guarantee) of such a situation for each person that he has the opportunity to realize his personality autonomously, but above all that he does not become an object of action on the part of others (especially public authorities) and does not constitute only an instrument in the realization of their goals⁴⁶. The Constitutional Tribunal presented this position in the case of legislation mandating the use of seat belts in vehicles. The complainant alleged that the regulation he challenged is incompatible with Article 30 of the Constitution since the imposition of an obligation to use seat belts while driving violates the principle of respect and protection of human dignity by public authorities by forcing citizens to act in a certain way by coercion instead of possible persuasive actions.

This is a consequence of the assumption that Article 30 of the Constitution of the Republic of Poland can not only be the basis for control of the constitutionality of the law in the application mode but also the complaint mode since it expresses a constitutional human right⁴⁷. However, it should be recognized that the Constitutional Tribunal cautiously recognizes the self-existence of the control standard derived from Article 30 of the Constitution of the RP in cases initiated by a constitutional complaint. At the same time, the dissenting opinion states, “[t]here are serious arguments that dignity is a subjective, personal, non-material right. “Protection and respect” of dignity, as demanded by the Constitution, is the subjective aspect of this right. “Protection and respect” must be directed to protecting dignity as a subjective right⁴⁸. Since it is a subjective right, the subject of the complaint may be the allegation of incompatibility of a provision of the law with Article 30 of the Constitution as an independent benchmark⁴⁹.

The comparison establishes that the Constitutional Tribunal duly recognizes the distinct roles of dignity and Article 30 of the Polish Constitution. This indicates that they can be utilized for different purposes in the hierarchical control of the

45 Cf. Judgment of the CT of February 25, 2002, ref. SK 29/01, OTK ZU No. 1/A/2002, item 5.

46 Cf. Judgment of the CT of July 9, 2009, SK 48/05, OTK ZU No. 7/A/2009, item 108.

47 Cf. Judgments of the CT of: October 9, 2001, ref. SK 8/00, OTK ZU No. 7/2001, item 211; October 15, 2002, ref. SK 6/02, OTK ZU No. 5/A/2002, item 65; July 14, 2003, ref. SK 42/01, OTK ZU No. 6/A/2003, item 63; May 26, 2008, ref. SK 25/07, OTK ZU No. 4/A/2008, item 62; July 9, 2009, ref. SK 48/05, OTK ZU No. 7/A/2009, item 108; November 4, 2014, ref. SK 55/13, OTK ZU No. 10/A/2014, item 110.

48 Cf. on this issue L. Bosek, *Guarantees of human dignity and their impact on Polish civil law*, Warsaw 2012, pp. 155–158.

49 See the dissenting opinion of Judge M. Granat to the decision of the CT of July 22, 2015, ref. SK 20/14, OTK ZU No. 7/A/2015, item 115.

law. While Article 30 of the Constitution of the Republic of Poland may appear to be the primary standard for control in proceedings before the Constitutional Tribunal, it is equally vital, and from the perspective of the Tribunal's entire jurisprudential activity, even more prevalent, to utilize it in the process of interpreting the law.

3.4 The practice of the Constitutional Tribunal in relation to dignity

Among the judgments in which the Constitutional Tribunal referred to dignity, it is necessary to point out those in which Article 30 of the Polish Constitution was mentioned as a standard of control, as well as those in which dignity was used only to argue in connection with the assessment of constitutionality – either to justify a decision or to interpret constitutional provisions (especially those relating to human freedoms and rights) or the provisions under review. Interestingly, prior to the entry into force of the Constitution of the Republic of Poland, that is, when dignity as a constitutional value was not yet explicitly mentioned in the previous constitutional provisions, the Tribunal referred to this category. It emphasized that it is related to the democratic state of law⁵⁰.

A review of the Constitutional Tribunal's jurisprudence allows a general determination of the cases in which it refers to dignity. Only selected examples will be cited below, which have shaped the Tribunal's approach to dignity.

The first group of matters relating to dignity are protecting life and health. Even before the Constitution of the Republic of Poland came into force, the Tribunal examining the constitutionality of the provisions of the Act on amending the Act on family planning, the protection of the human fetus and the conditions for the admissibility of termination of pregnancy and amending certain other acts, commented on the value of human life from conception to natural death⁵¹. It linked the need to protect human life and health with the dignity of the human person in the Constitutional Tribunal's judgment ref. K 26/96 was largely a repetition of the arguments from the case law of the Federal Constitutional Tribunal of Germany, although this was not disclosed in the justification for the judgment. However, the comparison of the method of argumentation in that case was similar and was based on the construction of dignity. The issue of conditions for terminating pregnancy, based on the model from Art. 30 of the Constitution, was also the subject of the judgment ref. K 1/20, in which the Tribunal found the eugenic premise allowing abortion to be unconstitutional (termination of pregnancy is possible when prenatal tests or other medical grounds indicate a high probability of severe and irreversible impairment of the fetus or an incurable disease that threatens its life).

50 See, for example, the ruling of the CT of May 28, 1997, ref. K 26/96, OTK ZU No. 2/1997, item 19. The Polish Constitution came into force on October 17, 1997.

51 See, for example, the ruling of the CT of May 28, 1997, ref. K 26/96, OTK ZU No. 2/1997, item 19.

The Tribunal relies on the principle of dignity and refers to judgment ref. K 26/96 confirmed the legal personality of the unborn child and therefore found that the interference with his dignity through the challenged provisions was contrary to the Constitution.

In the judgment of ref. K 44/07, in which the Tribunal dealt with provisions on the scope of discretion of public administration bodies in deciding to destroy (shoot down) a civilian aircraft, the authority used dignity to justify a violation of the Polish Constitution. The basis for recognising his subjectivity is the affirmation of inalienable human dignity as a constitutional principle and a subjective right of every human individual – regardless of his qualifications or psycho-physical state and current life situation. This statement determines a certain course of action for state bodies, including the legislature and executive branches. A person should be treated as a free, autonomous subject, capable of developing his personality and shaping his conduct. The Tribunal held that to the extent that this type of ultimate legal measure (shooting down a passenger plane) can be directed against the non-aggressors on board, i.e. the other passengers and personnel, it undoubtedly harms their dignity⁵².

In another case, the Constitutional Tribunal showed how objectification of human beings can occur in the case of a research experiment. This case, too, was heard before the Polish Constitution came into force. According to the Constitutional Tribunal, allowing a research experiment without the consent of the person on whom the experiment is performed violates the principle of a democratic state of law by violating the dignity of the human being, reduced in such a case to the role of an experimental object (subject). Persons incapable of free decision-making and expression of will cannot be the subject of research experiments⁵³. These themes were developed, for example, in cases concerning the rules on collecting the accused's biological material for genetic testing⁵⁴. The Tribunal saw in dignity the prohibition of subjecting a person to scientific experiments, including medical experiments, without freely given consent and the prohibition of torture, cruel, inhuman and degrading treatment and punishment, including the prohibition of corporal punishment.

The Tribunal also dealt with provisions concerning a minor's consent to medical treatment. In this context, it is explained that personal integrity has a corporeal and spiritual dimension since the identity of a human being is defined jointly by the body and psyche. This value is linked to the idea of human dignity, as stated in Article 30 of the Constitution⁵⁵.

52 Cf. Judgment of the CT of September 30, 2008, ref. K 44/07, OTK ZU No. 7/A/2008, item 126.

53 Cf. Resolution of the CT of March 17, 1993, ref. W 16/92, OTK ZU 1993, item 16.

54 Cf. Judgment of the CT of October 11, 2016, ref. SK 28/15, OTK ZU A/2016, item 79.

55 Cf. Judgment of the CT of October 11, 2011, ref. K 16/10, OTK ZU No. 8/A/2011, item 80; cf. judgments of the CT of: October 6, 2009, ref. SK 46/07, OTK ZU No. 9/A/2009, item 132; March 10, 2010, ref. U 5/07, OTK ZU No. 3/A/2010, item 20; October 11, 2011, ref. K 16/10, OTK ZU No. 8/A/2011, item 80; May 17, 2012, ref. K 10/11, OTK ZU No. 5/A/2012, item 51; July 28, 2014, ref. K 16/12, OTK ZU No. 7/A/2014, item 78.

The second group of decisions of the Tribunal were statements on social rights in the context of implementing the principle of dignity. In particular, these concerns include securing housing needs or social security. Several of the Tribunal's judgments on evictions pointed to the need to ensure a person's minimum living standards, which are required by respect for the dignity of the human person⁵⁶. The Constitutional Tribunal expressly stated its position that the prerequisite for respect for human dignity is, among other things, the existence of a certain material minimum that ensures the individual's ability to function independently in society and the creation of opportunities for each person to fully develop his or her personality in the surrounding cultural and civilizational environment. Of course, this statement of the Constitutional Tribunal had a broader appeal and was also referred to in case law on the right to social security. The Tribunal recognized that respect for human dignity requires that in the event of an eviction order, at least certain categories of subjects – due to their particular personal, family or material situation – should be given protection⁵⁷.

In social affairs, the Tribunal equated dignity with the existence of “a certain material minimum, ensuring that an individual can function independently in society and creating opportunities for each person to fully develop his or her personality in the surrounding cultural and civilization environment”⁵⁸. According to the view expressed in the case SK 6/02, “Against the background of Article 30 of the Constitution, a situation in which a person would become solely an object of actions taken by the authorities, would be a “substitutable quantity,” and his role would be reduced to a purely instrumental form or the charge of “statutory de-subjectivation-individualization” – can be considered, in principle, a violation of dignity. Of course, the assessment of whether such an arbitrary violation of human dignity occurs – must take into account the circumstances of the specific case.” Such violation “would have to humiliate the individual, treat him or her unfairly, harm his or her civil, social or professional status, causing an intersubjective conviction, justified by the circumstances, that the individual has suffered unjust, unjustified harm through such legal regulations”⁵⁹.

The Constitutional Tribunal emphasized the essential connection between dignity and the common good and the principle of a democratic state of law (the latter served the CT to invoke dignity before 1997).

The Tribunal also saw a strong correlation between human dignity and freedoms and rights. It believed these categories could not be separated since there is an element of dignity in every freedom and right. At the same time, interestingly, it pointed out that this does not apply to all freedoms and rights to

56 Cf. Judgments of the CT of: April 4, 2001, ref. K 11/00, OTK No. 3/2001, item 54; October 2, 2002, ref. K 48/01, OTK ZU No. 5/A/2002, item 624 November 2010, ref. K 19/06, OTK ZU No. 9/A/2010, item 96; October 18, 2017, ref. K 27/15, OTK ZU A/2017, item 74; November 15, 2017, ref. SK 29/16, OTK ZU A/2017, item 75.

57 Cf. Judgment of the CT of October 18, 2017, ref. K 27/15, OTK ZU A/2017, item 74.

58 Cf. Judgment of the CT of April 4, 2001, ref. K 11/00, OTK ZU No. 3/2001, item 54.

59 Cf. Judgment of the CT of July 14, 2003, SK 42/01, OTK ZU No. 6/A/2003, item 63.

the same degree. The importance of a given freedom or right increases directly to the strength of their connection with human dignity. Therefore, abolishing or restricting particular freedoms and rights that would violate human dignity is impermissible⁶⁰. In this regard, the Constitutional Tribunal believes that in the content of each right and freedom, one should look for a certain content core, the violation of which is excluded because it constitutes a *condition sine qua non* of the principle of dignity.

At the same time, it should be emphasized, which is not widely publicized, that the Tribunal indicates that a distinction can be made between fundamental (inherent) rights, which are an emanation of human dignity, and rights that are merely a form or one of the forms of securing human rights. The former realizes dignity itself, while the latter realizes other rights and freedoms. The legislator has a certain amount of freedom and can shape rights and freedoms, “seeking an optimal model that, on the one hand, will create the possibility of their protection, and on the other – create instruments that guarantee the possibility of realizing other constitutional values⁶¹.

Thus, the Constitutional Tribunal assumed that certain rights, especially those of a procedural nature, are not a simple emanation of dignity. For example, it stated that: “In the context of Article 30 of the Constitution, the right to a court expressed in Article 45(1) of the same Constitution, despite the categorical nature of its formulation, is not an absolute right. Moreover, although it may serve to protect human dignity (this is how the meaning of the right to a court should be seen), man’s inherent and inalienable dignity is not its direct source. For this reason, as the Constitution contains provisions that create the possibility of statutory limitation of the rights and freedoms enshrined using laws, there are insufficient grounds for claiming that such a possibility is excluded about this right”⁶². This is an important statement since today, there is an attempt to absolutize the right to a court, while it is primarily a means of realizing (protecting) freedoms and rights.

In conclusion, it should be pointed out that the Tribunal, in its judgments, linked human dignity, among other things, to the legal protection of life⁶³, religious freedom⁶⁴, protection of honor, good name⁶⁵, the realization of social rights⁶⁶, the right to privacy and the protection of informational autonomy⁶⁷ or the right to health⁶⁸.

60 Cf. Judgments of the CT of October 30, 2006, ref. P 10/06, OTK ZU No. 9/A/2006, item 128; May 12, 2008, ref. SK 43/05, OTK ZU No. 4/A/2008, item 57.

61 Cf. Judgment of the CT of November 15, 2000, ref. P 12/99, OTK ZU No. 7/2000, item 260.

62 Ibidem.

63 Cf. Judgment of the CT of October 22, 2020, ref. K 1/20, OTK ZU A/2021, item 4.

64 Cf. Judgments of CT of December 10, 2014, ref. K 52/13, OTK ZU No. 11/A/2014, item 118; October 7, 2015, ref. K 12/14, OTK ZU No. 9/A/2015, item 143.

65 Cf. Judgment of the CT of October 30, 2006, ref. P 10/06, OTK ZU No. 9/A/2006, item 128.

66 Cf. Judgments of the CT of: April 4, 2001, ref. K 11/00, OTK No. 3/2001, item 54; September 7, 2004, ref. SK 30/03, OTK ZU No. 8/A/2004, item 82.

67 Cf. Judgment of the CT of June 23, 2009, ref. K 54/07, OTK ZU No. 6/A/2009, item 86.

68 Cf. Judgment of the CT of January 7, 2004, ref. K 14/03, OTK ZU No. 1/A/2004, item 1.

It also stressed that it is impermissible to exclude the application of the principle of dignity when there is no special provision necessary to implement Article 30 of the Constitution. In such a case, the relevant norm must be derived directly from the principle of dignity. This made it possible that the subject of evaluation, from the point of view of the constitutionality of the law, is such a right derived from dignity, which is not articulated in the text of the Polish Constitution.

4 Conclusions

Turning to the conclusion, it is necessary to answer, then, what follows from the jurisprudence of the Constitutional Tribunal on dignity? The analysis allows us to conclude that this body undoubtedly recognizes the value of dignity and points to its general and universal significance. First of all, it uses dignity for the interpretation of constitutional provisions, especially those relating to human freedoms and rights, but also for the adequacy and proportionality of the actions of public authorities to the objectives pursued. The Constitutional Tribunal uses dignity to justify the direction taken, including weighing values and conducting tests of adequacy and proportionality, although this is only sometimes clear and transparent. In addition, when analyzing the legality of public authority's action in the legislative context – both as to the procedure of establishing a normative act and its content- it reiterates the obligation of public authorities to act with respect for dignity.

Despite the multitude of judgments related to dignity, it must be said that the Constitutional Tribunal's statements are in-depth and are not sufficiently grounded in philosophical and doctrinal considerations. The Tribunal treats Article 30 of the Polish Constitution quite instrumentally. It cites this provision but needs to fully explain the law-making and law-applying bodies' specific duties about dignity.

In its judgments, the Constitutional Tribunal is also somewhat consistent in its approach to the issue of dignity. Reading the justifications of the Tribunal's judgments needs to clarify how much dignity from Article 30 of the Constitution is merely a constitutional principle and how much is a subjective right derived from it. This creates uncertainty about the content and purpose of the principle. Although judgments based on the dignity benchmark are issued, more in-depth reflection on dignity is needed in practice.

Since the Constitutional Tribunal speaks of dignity as the basis of the axiological system of the Constitution and the state, it should better explain the sources of this axiology and its consequences for the state and society. Otherwise, dignity as a value can be relativized and used to advance vested interests, including actions targeting that dignity.

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