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THE CONCEPT OF JUSTICE IN THE POLISH CONSTITUTION

Abstract

This article analyzes the multifaceted concept of justice and its foundational principles while scrutinizing its influence on the formulation and operation of the Constitution of the Republic of Poland. Drawing from philosophical and legal perspectives, it examines the intricate interplay between justice, the common good, and constitutional values, particularly within the dynamic relationship between the individual and the state. Central to this exploration is an inquiry into how Poland's constitutional framework accommodates interpretations of justice and the common good, shaping the dynamics between constitutional values and the rights of citizens. This study shows that Poland's constitution incorporates a variety of interpretations of justice and the common good, which affects the dynamic between constitutional values and citizens' rights, and that these issues have a significant impact on the balance between the effectiveness of execution and the imperative of justice. Through an examination of justice, the common good, and their implications for constitutional governance and judicial enforcement, this article contributes to a deeper understanding of the intricate dynamics shaping legal and moral discourse in contemporary Poland.

Keywords: *justice, principle of good, human rights, common good, ancient concepts of justice*

Introduction

In this article, I would like to address selected philosophical and legal views and find an answer to the question of how the concepts of justice and the common good and their interpretations influence the formation and functioning of the Constitution of the Republic of Poland, especially in the context of the relationship between the individual and the state and between constitutional values. 'Good is to be done, evil is to be avoided' – this was the basic principle of the law of nature in the view of Aristotle and later the Thomists. It applied and still applies, regardless of the changes the world has undergone, and irrespective of the legal norms established by state power. In the Aristotelian-Thomistic tradition, the law of nature had the character of a moral law. It was not the law of the stronger, as the sophists proclaimed, treating it as one of the laws of nature (Szyszkowska, 2000, p. 31).

Modern judicial execution as a feature of justice

It is necessary to begin with Socrates. He used to say that man should strive to discover truth, justice, courage, and self-mastery. He equated virtue with knowledge and goodness, for whoever possesses knowledge is good, and therefore virtuous. According to this principle, he sought the causes of human evil in ignorance. 'He was wherever he could find interlocutors, stopping people in the marketplace, in the palestra or at a feast to speak with everyone about his affairs and to make them think about them, about skill and virtue' (Tatarkiewicz, 2007, p. 79). For the Greek philosophers, justice was moral fitness. And since all evil comes from ignorance – Socrates equated moral fitness with knowledge of virtue. Plato expanded this thought a bit: since virtue is knowledge, it can and should be learned. Therefore, the goal of the perfect state – which Plato dreamed of – is to teach citizens virtue. But this can only be done by a ruler who, being a philosopher or lover of wisdom, carries within himself true knowledge of virtue and the state, and is able to pass it on to others. The good of the state is determined in the soul of every citizen. In this sense, the soul is a certain model of the state, and justice enables people to live with each other in peace. A just person considers the benefit of everyone, even those weaker than themselves. The law made by the state aims at the happiness of all citizens. Human perfection is based on his reasonableness. Socrates believed that reason is the noblest power within a human being, and that truth, goodness and virtue are the worthiest goals. He argued that the soul should be cared for, and that injustice should never be committed. Plato's and Aristotle's considerations were, in a sense, a development or polemic with Socratic ideas about the good, about justice, about the good life, among others. Socrates taught that a person should strive for the highest good, should be able to sacrifice lower and apparent goods for the higher good. Just actions are those that contribute to inner unity, both of their subject and addressee. A just law aims to achieve justice for those to whom it is directed. The means to act justly and be just is wisdom and knowledge. Consequently, it is the individual who proves to be the foremost addressee of the action of seeking his welfare (Piechowiak, 2009). Socrates' humanity has become the philosophical model of humanity, being a model of perfection for centuries.

Today, justice is closely associated with statute law and law applied in action. The role of justice in the state is best described by the Latin premia *iustitia fundamentum regnorum* (justice is the mainstay of the state). The field of law, which, in my opinion, can and should realize the feature of justice, is related, among other things, to the issue of judicial execution and enforcement authorities. The issue of tying public enforcement coercion (whose enforcement authority is the bailiff) to the will expressed by a non-public entity (the creditor) relates to a particular aspect of the relationship between public law and private law. Despite the authorization of coercive measures, execution is conducted only in accordance with the law and within the limits of the law, although it should be emphasized that the lack of compliance associated with the need to perform enforcement actions against the will of the debtor and often to their, subjectively perceived, detriment – is an immanent feature of the profession of a bailiff. The background to this phenomenon is certainly the nature and social function of the profession, which is very often identified with ruthless action and annoyance, and even repression, despite the obvious fact that *executio iuris non habetiniuriam* (execution of the law is not lawlessness). As Marek Piechowiak points out, "Respect for human rights is today considered a basic condition that any action must meet if it is to be just. These rights are considered the basis of a just social order and the state law that guarantees this order" (Piechowiak, 1977, p. 7). Also in judicial execution, the citizen is given guarantees of respect for their rights and protection from arbitrary authority. Power is always limited, even when it is democratically legitimized by the will of the citizenry (cf. Izdebski, Kulesza, 1998, p. 20). The well-known Latin parema: *Iure naturae aequum est, neminem cum alterius detrimento, et injuria fieri locupletiorem* (according to the law of nature, it is right that no one should grow rich to the detriment and harm of their neighbor) and *Iure suo uten donemini fiat iniuria* (when one exercises their right, let no one be harmed) are determinants of justice – the need for knowledge, the ability to recognize and apply what is good and right. The primacy of the individual over the state was already emphasized by Plato, who argued that to avoid the power of those who make people inferior, if there is no other way, it is better to go into exile or let the state crumble into ruins. Thus, it can be observed that human rights have been the subject of philosophical reflection since ancient

times (cf. Koba, 2009, pp. 13–30), and yet the essence of these rights is still relevant. Speaking of justice, which in legal reflection is a criterion for legal norms, it worth noting that the major issues of judicial execution are the effectiveness of the implementation of court judgments, while respecting the rights of the debtor and considering the legitimate interests of creditors. Execution should be carried out in accordance with the law, honestly and fairly. The ancient Romans could not precisely define universal justice (*iustitia*), however, they understood that righteousness for them was justice not in general, but justice achieved in a particular case. Today various rules are called procedural justice and there is a legal catalog of them. One can probably agree with the thesis that justice has always been a peculiar phenomenon and a fundamental value and will continue to be a subject of academic interest as long as there are societies and all forms of legal and political organizations, and the human individual is inclined to reflect morally on their actions (Zimmermann-Pepol, Gregorczuk, 2016, pp. 597-618).

Such a reflection recently accompanied the Polish legislature during the introduction of changes to the Law on Judicial Officers, where, in addition to the need to further deepen the systemic and organizational independence of the institution of the bailiff, the need was seen to increase supervision of its activities. An additional rationale for the changes, was to satisfy the creditor in such a way as to harm the debtor as little as possible. It needs to be mentioned that the historical changes were caused by social, economic, and political changes in the country. These transformations were also caused by changes in consciousness and the value system. The earliest example of this, and in fact an epochal change in the method of execution, was the shift in Roman law in 326 BC. from execution on the person of the debtor to execution on the debtor's property (*lex Poetelia*). In Western culture, the term justice has been known for centuries, which states that it is fair to give everyone what they deserve. Behind this legal preemption of Ulpian (Roman jurist and writer) stands the Greek tradition (Kurdziałek, 1998, p. 63). Plato, and later Aristotle, were the first to reflect on this formula. Plato already wrote about a just society in his famous State, wishing to introduce the idea of justice as a virtue of the concrete man, who, being just, can lead a truly happy life. Plato's dialogue is thus a treatise on justice, not so much the justice of the state or the law, but of

the individual person. Justice is the moral perfection of a person, a virtue that consists in the inner unity of reason and the choices made. The goal of the state and the law is the common good: 'The basic premise and purpose of our laws is that citizens should be as happy as possible and united with each other by the warmest friendship' (Plato, in: Maykowska, 1960, 743c.). The premise of justice should be the internal order and harmony of humans' governing and governed factors. Plato distinguished three social classes, consisting of producers, auxiliaries and ruler, and each of them is supposed to do their part (Hammond 1966, p. 242). The lack of this unity could lead to injustice, and with it to rebellion and confusion. To ensure that this never happens, every citizen ought to occupy themselves with what they have the greatest innate disposition for. To do one's own thing is the greatest justice. With community life, and even with being a citizen, bravery, and moral fitness (*areté*) were closely correlated. Aristotle also addressed the issue of the perfect state. He believed that every citizen should combine personal virtue with activity on behalf of the state, laying the foundations of the perfect state. However, he also considered justice in the individual person, not just in what makes up a just state or society. Aristotle postulated that narrow legal justice should be supplemented by equity (*epikeia*), which consists of correcting the law when it falls short due to its general formulation (cf. Piechowiak, 2018, pp. 26-27).

A good law is just, after all, 'we call just that which, in a state community, is a source of happiness and contributes to the maintenance of all that comprises it' (Aristotle, in: Gromska, 1982, p. 162). Moreover, justice as an ethical perfection refers not only to one's own person and one's own actions but is also directed toward other people. Injustice, therefore, will mean a lack of proper balance and the pursuit of various extremes. The prevailing view was that 'the unjust person possesses more because they cause harm, and the wronged person possesses less because they suffer harm. And naturally in the middle between the two is justice' (Aristotle, in: Wróblewski, 1996, p. 339). Justice is likewise in close connection with righteousness, which is also a virtue. With the difference that what is righteous is always just, but what is just is not necessarily considered righteous, since righteousness is attributed to natural (concrete) law, a kind of corrective to state law, which can lead to erroneous judgments about things. Both Plato and Aristotle

emphasized the necessity of a harmonious and healthy state, in which the individual can perfect his ethical virtues, and thus will be able to achieve happiness and live justly. Among the most widespread in the ancient philosophical and political doctrines of justice, was its recognition as an enduring and unchanging willingness to give to everyone what they have a right to.

Other approaches to justice

The above discussion is selective and considers a narrow part of the issue of justice in historical and doctrinal terms. It should be stressed that the Socratic tradition based on reason can also be found in the views of Roman jurists. In the most ancient concepts, the concept of justice was identified with the norms of statute law or the so-called higher law (mainly natural law) and 'ethical courage' (virtues and prowess), which was supposed to enable man to strive for perfection. From such an understanding of justice deviates most modern theories, which no longer have normative value, but are generally limited to indicating the rationale for individuals to set their own rules of conduct. These, in turn, boil down to the recognition of its particularistic 'good', which can be limited only if the individual finds it beneficial to them (However, contemporary Christian depictions of justice based on medieval models according to St. Augustine or St. Thomas Aquinas constitute a different approach). From the point of view of the law philosophy, there are other approaches to the category of justice, which are widely described in the literature on the subject. Justice can be considered paradigmatically and holistically, from individualism (the nature of the individual) to universalism (universal law in society) and objectivism (the legal-natural concept). It is also possible to refer to representatives of legal positivists and supporters of the concept of the social good, who viewed justice voluntaristically, pointing to the fundamental conventionality of the concept of justice, determined by the will of the legislator (Cf. Zimmermann-Pepol, Gregorczuk, 2016, p. 602) but, exercising the author's right, I choose to do so and not otherwise. However, it is necessary to emphasize that any reflection on justice, as a rule, was conditioned by culture, religion, politics, dominant currents of thought, political

and social system. Nowadays, the main task of the state is the realization of justice, which corresponds to the maxim of Ulpian: *'Iustitia est constans et perpetua voluntas ius suum cuique tribuendi. Iuris praecepta sunt haec: honeste vivere, alterum non laedere, suum cuique tribuere'* (the precepts of the law are as follows: live honestly, do not harm another, give to everyone what is due to them) (*Corpus Iuris Civilis, Digestum Vetus* (D. 1. 1/1 – 2)). This definition, referring to the earlier tradition, expressed in the writings of Plato, Aristotle, Cicero, and others – treats justice as a virtue. The quoted paremia could today normalize legal relations occurring between individuals treated as equal legal subjects. Law applied daily not because of fear of punishment (*metus poena rum*), but true wisdom (*vera philosophia*), would become an ethical ideal in such a view (Kupiszewski, 1988, p. 178). It can be concluded that the teachings of the above-mentioned philosophers have laid the foundation for modern law, whose goal is the pursuit of the common good, the foundation of which is the dignity of the human person.

The common good in the Polish Constitution

Modern concepts of the common good are based on the classical tradition, where the common good is linked to human rights and human dignity. The concept of the common good is linked to the state. Values flowing from the content of the principle of the common good are also developed in the Polish Constitution and uphold democracy. Humanistic values are still important, as well as universal education. It is worth pointing out that the concept of the common good grew out of, among other things, the philosophy of law and political philosophy, as well as the consensus among judicial jurisprudence, legal science, society, and politicians (cf. Wronkowska. 2006, pp. 105-106). Although the 'common good' is the basis of the modern constitutional order, its origins are to be sought in the tradition of classical philosophy: with Plato, Aristotle or Thomas Aquinas. A common good can be called a common goal. It can also be argued, following Socrates, that a good state should serve the personal development of the individual, foster the inner integrity of man, both at the level of social and individual life.

And the rationale for acting for the community is to act for the benefit of other individual subjects (Piechowiak, 2009, pp. 71-92). A concern for the common good is the most vital duty of the state and its citizens. Stoic reflection on natural law expressed the view that the primary reason for action is the law and not the good of the addressee of the action. The individual is only a part of a greater whole. The concept of the common good, along with the reception of Aristotle, was widely developed by Thomas Aquinas, whose work became a reference point for the social teaching of the Catholic Church. St. Thomas Aquinas argued that '[…] what is best in all creation is the good of order, for it is a common good, while the others are partial goods' (St. Thomas Aquinas, 1984, p. 321). According to Aquinas, the purpose of law, which is a work of reason, is to live well in the community. The common good should be the overriding norm, consistent with the goals of individual community members. The philosopher defined the concept of the common good as all the material conditions that any law should meet. The common good as the goal of law should be based on justice and proportional equality. In addition, this good is considered the goal of law. The state is a common good not because everyone has obligations to it, but because it serves the development of all members of the political community (Piechowiak, 2012, p. 433). The historical context of the search for an exemplary form of state organization proved indispensable in defining the permanent, constitutive elements of human nature, determining the main principals that should guide the functioning of the state. The attribution of the state to the common good is an essential raison d'être for the state. The freedom and dignity of human individuals have become the basic criteria for defining and constructing a pluralistic social order. It therefore became necessary to refer to higher, universal concepts. Thus, the common good became the appropriate reference point for evaluating and analyzing human life, as well as the life of the community. Selfless action for the good of others, which also became a value of Christianity (cf. Piechowiak, 2012, pp. 57-58) (influenced by the classical tradition), was one of the arguments in the formation of the foundation of the Polish Constitution. The preamble to the Constitution refers to the nation's Christian heritage but leaves the question of religious beliefs to the private

affair of each citizen. The other of the ways of understanding the common good referred to the April Constitution. According to its assumptions, the individual was subordinated to the state, which could not be accepted in the current socio-political conditions and would conflict with other principles expressed in the Constitution, such as the principle of a democratic state under the rule of law (Article 2 of the Constitution). It must be strongly emphasized that a coherent formulation of the common good without sufficiently defined categories of this concept was not easy, as the doctrine did not develop the issues for the purposes of jurisprudential activity, and the Constitutional Court in its jurisprudence referred to the tradition of constitutionalism of the interwar period, which was contrary to the assumptions of the formula of the new Constitution and its priority values for Polish society. It should also be added that as a result of the dispute over the interchangeable use of the phrases: 'dobro wspólne' (common good) and 'wspólne dobro' (common good) – the former was eventually adopted, in order to avoid emphasizing the primacy of the state over the individual and the primacy of the duty of citizens to the state. It should be mentioned that also the aspect of the common good and human dignity, freedom, and rights – became an issue of their mutual location in the Polish Constitution of 1997 (cf. Piechowiak, 2012, pp. 335-358). It was eventually accepted that these constitutional values are complementary to each other. The Constitutional Court emphasized the essential connection of dignity with the common good and the principle of a democratic state of law. And although the Constitution lacks a definition of the concept of 'common good', an analysis of certain provisions allows for its formulation. The common good is the Republic of Poland, and therefore the Polish state. The common good is included in the principles of the state system and in the area of freedoms, rights and duties of the individual, and is intended to serve all citizens. The principle that the Republic of Poland (Poland) is the common good is in the systematics of the Constitution before other systemic principles, including the principle of a democratic state under the rule of law. Thus, it can be assumed that when talking about the common good in the context of Article 1 of the Constitution, we are talking about the state, the individual, and above all the relationship between these entities. The constitutional value is the common good. What the common good is one learns primarily from the

preparatory work for the Constitution. The concept of the common good was extensively discussed by the Constitutional Commission, and from there we can infer the basis for understanding this concept (Piechowiak, 2013, p. 10). The concept of the state as a common good emphasizes that this good belongs to all citizens. The state is therefore a collectivity composed of all who are its citizens. The state is the good of all. In the constitutional principle of the common good, there are two elements to be distinguished: there is the order for the realization of the common good by public authority, and the right of citizens to determine the shape of the common good (the principle of citizen participation in public authority). The first is an optimization directive addressed to the public authority, ordering the realization of the common good. The second is the principle of citizen participation in public power. The common good can be defined in a subjective sense (as the integral development of the members of the political community) and in an objective sense (considering the conditions for the integral development of the members of the political community). As a guiding principle, the common good is linked to other constitutional principles and values. The concept of common good as a rationale of the state serves very well to legitimize the action of public authority and indicates its integrative role. The sum of the conditions of social life makes possible the integral development of the communities they create. Since the Constitution contains the concept of the state, its role, goals, and tasks, it can be considered that the principle of the common good enshrined in it can be an answer to the question posed by the ancients: why does the state exist, what is the reason for its existence and the adoption of such and no other principles of its functioning? The whole essence of Polish statehood is conveyed by the clause stating that 'The Republic is a common good'. Because in a state, especially a democratic one, based on 'the integration of every citizen into the state, the supreme principles of the political system must be more than legal norms, they must be a kind of a political catechism of citizenship, they must become an object of faith of the population.' Thus, the Constitution is a specific legal act that establishes the foundations of the organization of the state, determines how the law is created and applied. It lies at the heart of the rules that determine how state bodies, groups of people or, finally, individuals should act. The common good can only be such an

arrangement of the institution of individual rights, freedoms and duties that will ensure the individual's realization of constitutionally granted rights. Connected with the concept of 'common good' are not only the duties of the citizen to the state, but also the duties of the state to the citizen.

Summary

The article demonstrates that the main principals of human nature are crucial in determining the permanent elements of human nature that affect the functioning of the state. The attribution of the state to the common good is the essential ground for its existence, as reflected in the Polish Constitution. The concept of the common good and its interpretation have had a significant impact on the formation of the Polish Constitution, particularly by emphasizing the dignity, freedoms, and rights of the individual. The interpretation of the common good as an integrative value of the state, plays an important role in the creation of social conditions of development for every citizen. The common good is a fundamental principle of both political philosophy and law, determining the purpose of the functioning of the state and the action of its bodies. Contemporary interpretations of the common good consider both traditional humanistic values and universal human rights, which is reflected in the constitutions of many states, including the Polish Constitution.

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