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Problems with applying human rights in the actions of public administration

Abstract: This article aims to analyze the contemporary problem of respecting human rights in the actions of public administration. To that end, it aims to show the causes of the issue in question and propose solutions.

The article opens with a description of the legal aspect of human rights from the general perspective as a matter of rules and elements of the legal system. This part of the article presents the legal grounds for and obstacles to incorporating human rights and the acts that regulate them into the actions of public administration.

In the subsequent sections, the analysis shifts to a detailed perspective. The first one concerns the reliance of the public administration's actions on Art. 6 point 1 of the European Convention on Human Rights and shows the issues with applying it to administrative cases, as noted in the literature and jurisprudence. The second addresses the issues associated with incorporating human rights regulations into the application of the substantial law. This problem is analyzed from the standpoint of legal regulations, values and interpretation. At the same time, the article aims to show that while on the one hand public administration is responsible for safeguarding rights, on the other it is also entitled to breach and limit.

Keywords: public administration, human rights, European Convention on Human Rights, legal system, administrative values.

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I

Human rights are undoubtedly the foundation of the legal system and the actions of authorities in every democratic state of law. Both as values and standards, they determine and set limits on such actions. Contemporary states of law guarantee human rights. Therefore, on the one hand, they must refrain from breaching them and create measures for their protection, and on the other, provide ways for everyone to exercise them. This is what should be done according to the concept of positive obligations of the state,[1] as established in the jurisprudence of the European Court of Human Rights.[2] Although it is not a unified concept but rather a set of rules that depend on the circumstances of the case, which allows it to be adapted to every situation,[3] there is no doubt that it applies to the state in general and to its authorities responsible for implementing it. The Polish literature underlines that public administration must not breach human rights, and at the same time, is obliged to create conditions for their exercise on the grounds of law.[4] It may therefore be noted at the very outset that human rights are the core of the legal system, allowing it to develop along specified lines and setting limits on the actions of authorities.

Consequently, human rights in the actions of public administration cannot be analyzed without viewing them as part of the legal system's foundation and as the object of the actions of public administration. This also raises the issue

1 Leszek Garlicki, "Horyzontalne oddziaływanie praw człowieka a standardy EKPCz" in *Wpływ Europejskiej Konwencji Praw Człowieka na funkcjonowanie biznesu*, eds. A. Bodnar, and A. Ploszka. Warszawa, 2016, 25.

2 Andrzej Nałęcz, "Podsumowanie" in *Wzorce i zasady działania współczesnej administracji publicznej*, eds. B. Jaworska-Dębska, P. Kledzik, and J. Sługocki. Warszawa, 2020.

3 Cezary Mik, "Charakter, struktura i zakres zobowiązań z Europejskiej Konwencji Praw Człowieka", *Państwo i Prawo*, no. 4. 1992: 12; Cezary Mik, *Koncepcja normatywna prawa europejskiego praw człowieka*. Toruń, 1994, 203. See, e.g., Judgment of 21 February 1975 in the case of *Golder v. UK*, §39 or Judgment of 9 October 1979 in the case of *Airey v. Ireland*, § 26.

4 Jakub Czepek, *Zobowiązania pozytywne państwa w sferze praw człowieka pierwszej generacji na tle Europejskiej Konwencji Praw Człowieka*. Olsztyn, 2014, 12 et seq.; Mirosław Granat, "Godność człowieka z art. 30 Konstytucji RP jako wartość i jako norma prawna", *Państwo i Prawo*, no. 8. 2014: 3–22.

of including them in the administration monitoring process carried out by administrative courts.

The role of human rights in the actions of public administrative authorities cannot be discussed without referring to their place in the system of the sources of law. Just as public administrative authorities are obliged to act in accordance with the law, so too administrative courts monitor their compliance with the law, which also includes acts aimed at protecting human rights. Here, it is necessary to establish the legal context of human rights. Legal regulations pertaining to human rights make up part of the legal order by means of:

- reflecting the need to protect human rights in the domestic legal order (e.g., in the Constitution of the Republic of Poland, or specific laws expanding the constitutional regulation);
- including in the Polish legal order such acts of international law as the Universal Declaration of Human Rights, the Charter of Fundamental Rights of the European Union, and the European Convention on Human Rights.

In this way, human rights become an axiological basis for the legal system and a normative element of the domestic order, deriving both from acts in force at home and internationally. Given that the existing European and global human rights protection standards are governed particularly by international law, the latter must be discussed as well.

The ratification of acts of international law means that they become part of the domestic legal order. Thus, they must be considered by the legislator in the law-making process, and by public administrative authorities and courts[5] in their actions. These standards provide the legal basis and axiological guidelines for the actions of authorities, affecting their forms and methods alike. Apart from their content, the way these standards are interpreted by international courts, including the European Court of Human Rights, also becomes part of the legal

5 Zygmunt Wiśniewski, "Postępowanie sądowo-administracyjne w świetle standardów międzynarodowych" in *Europejska przestrzeń sądowa*, eds. A. Frąckowiak-Adamska, and R. Grzeszczak. Wrocław, 2010, 106.

order.[6] It can therefore be concluded that while the general human rights protection standards are established in international acts, it is the domestic legal order that must develop and adapt them to the conditions of the given state.

This is consistent with the principle of compliance with international law laid down in the Constitution, which states, among other things, that the interpretation of domestic law should follow the existing jurisprudence of international authorities.[7] The Constitutional Court noted that "the legal consequence of Art. 9 of the Constitution is a constitutional assumption that on the territory of the Republic of Poland, in addition to the norms (provisions) established by the domestic legislator, there are also regulations (provisions) created outside the system of domestic (Polish) legislative bodies […] Therefore, the constitution-maker consciously assumed that the legal system in force on the territory of the Republic of Poland will be multi-component. In addition to legal acts established by domestic (Polish) legislative bodies, acts of international law are in force and are applicable in Poland as well."[8]

Above all, courts (including administrative courts) are obliged to not only consider the axiological values underlying the domestic legal system when interpreting the law but also to take into account international law when determining the legal situation.[9] Likewise, when applying the law, public administrative authorities must take into account the sources of international law applicable to a specific case.[10]

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6 Zbigniew Cichoń, "Europejska Konwencja Praw Człowieka nadal najskuteczniejszym na świecie instrumentem ochrony prawa człowieka (w 55. rocznicę podpisania Konwencji)", *Palestra*, no. 11–12. 2005: 179.

7 Michał Balcerzak, "Zobowiązania międzynarodowe w dziedzinie praw człowieka a krajowy porządek prawny" in Bożena Gronowska, Tadeusz Jasudowicz, Michał Balcerzak, Maciej Lubiszewski, and Rafał Mizerski, *Prawa człowieka i ich ochrona*. Toruń, 2010, 100–101.

8 Judgment of the Constitutional Court of the Republic of Poland of 11 May 2005, K 18/04. Legalis.

9 Andrzej Redelbach, *Europejska Konwencja Praw Człowieka w polskim wymiarze sprawiedliwości*. Poznań, 1997, 30.

10 Paweł Sarnecki, "Komentarz do art. 9" in *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, vol. V, ed. L. Garlicki. Warszawa, 2007, 2; Bogusław Banaszak, *Konstytucja Rzeczypospolitej Polskiej. Komentarz*. Warszawa, 2012, 101.

II

The above problem does not raise doubts about the actions of administrative courts, and it is possible to apply the provisions of international law even with disregard to domestic legal acts. In the context of administrative authorities, problems arise in terms of the uniform perception of public administrative authorities being bound by the provisions establishing human rights protection standards. This applies to Art. 6 of the European Convention on Human Rights and Fundamental Freedoms,[11] which is of the utmost importance to the protection of human rights.

Pursuant to Art. 6 point 1 of the Convention: "1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice." Since its content is addressed to courts, the question remains as to whether it also applies to public administrative authorities. There are diverging views on this issue in the doctrine and jurisprudence.

Some claim that this rule should also shape the actions of public administration;[12] others flatly reject that possibility.[13] For instance, Z. Kmieciak notes that "the appropriate application of an act's provisions in matters governed by another act is possible only where the construct of a relevant reference is used. I am not aware of any instances of its use in any regulation, but even a brief

11 European Convention on Human Rights of 4 November 1950 (Journal of Laws of 1993, no. 61, item 284); hereinafter: the Convention.

12 Barbara Adamiak et. al. *Kodeks postępowania administracyjnego. Komentarz*. Warszawa, 2014, 45.

13 Zbigniew Kmieciak, "W poszukiwaniu modelu postępowania odpowiadającego naturze administracji publicznej", *Państwo i Prawo*, no. 11. 2015: 11.

look at the line of the jurisprudence of the European Court of Human Rights shows that the Convention's requirements regarding the right to a fair trial, with limitations as to the subject matter resulting from the words: *civil rights and obligations* and *any criminal charge*, extend to the part of the administrative proceedings that we qualify as mandatory proceedings before an appeal to the court against action and/or the execution of a court judgment." He therefore denies that it can be directly applied to the actions of public administration. In another one of his publications, Z. Kmieciak also notes that "none of the provisions of the Convention makes it possible to challenge excessively long preliminary administrative proceedings on a standalone basis, i.e. in isolation from court proceedings. The established jurisprudence of the European Court of Human Rights indicates that when examining a complaint concerning a breach of the right to have a case heard by a court within a reasonable time, as defined in Art. 6 sec. 1 of the European Convention, the preliminary administrative proceedings necessary for initiating court proceedings are taken into account, as are the proceedings carried out for the execution upholding the appeal measure of the ruling."[14] Similar views can also be found among other representatives of the doctrine. A. Krawczyk believes that, among other things, Art. 6 sec. 1 Convention must not be the basis for administrative procedure standards because it leads to identifying constructs typical of court proceedings with the standards of administrative procedure and imposing incompatible mechanisms onto the latter, thus giving rise to numerous practical doubts.[15]

Based on the jurisprudence, it should be recognized that Art. 6 sec. 1 of the Convention is applied not only to assess the actions of courts but also

14 Zbigniew Kmieciak, "Przewlekłość postępowania administracyjnego w świetle ustaleń europejskiego case law", in *Analiza i ocena zmian kodeksu postępowania administracyjnego w latach 2010–2011*, eds. M. Błachucki, T. Górzyńska, and G. Sibiga. Warszawa 2010–2011, 117–118.

15 See Agnieszka Krawczyk, "Standardy współczesnej regulacji postępowania administracyjnego" in Barbara Adamiak, Janusz Borkowski, Agnieszka Krawczyk, and Andrzej Skoczylas, *Prawo procesowe administracyjne. System Prawa Administracyjnego*, vol. 9. Warszawa, 2014, 36 et seq.

of public administrative authorities, which results from the requirement to ensure the Convention's effectiveness in the domestic legal order. This is despite the initial recognition that the scope of Art. 6 sec. 1 of the Convention is narrower than the right to have a case heard under Art. 45 sec. 1 of the Constitution since the former only applies to criminal and civil cases.[16] However, it was assumed in the jurisprudence focused on the Convention that the term "civil rights and obligations" should be construed on a autonomous basis, independently of the definitions adopted in the internal legal systems of the States Parties to the Convention, taking into account the informal assignment of cases to the jurisdiction of civil, criminal or administrative justice and of the nature of law under which a dispute should be resolved (civil, commercial, administrative, tax law), but depending on the legal essence of cases.[17] Consequently, a civil case is not just a private law case since its civil nature is determined by whether there is a dispute regarding the existence of a subjective right or manner of its exercise, regardless of the type of subjects involved in such a case.[18] This means that the term "civil case" should be construed in the broadest sense, that is, as comprising administrative and judicial/administrative matters.[19] This view is also consistent with the direction of the jurisprudence of administrative courts and international courts, which used international regulations as a standard for monitoring administrative authorities,[20] notably, in terms of the

16 Leszek Leszczyński, and Bartosz Liżewski, *Ochrona praw człowieka w Europie: szkic zagadnień podstawowych*. Lublin, 2008, 71. Leszek Garlicki, "Prawo do sądu" in *Prawa człowieka. Model prawny*, ed. R. Wieruszewski. Wrocław, 1991, 544. See also: Judgment of the Constitutional Court of the Republic of Poland of 7 March 2005, P 8/03, published in OTK No. 3/2005, item 20.

17 See, e.g., Judgment of European Court of Human Rights of 16 July 1971 in the case of *Ringeisen v. Austria*, Application No. 2614/65.

18 Leszczyński, Liżewski, 74.

19 Garlicki, *Prawo*, 544; also Judgments of European Court of Human Rights of: 29 May 1996 in the case of *Feldbrugge v. Holland*, Application No. 8562/79; 16 July 1971 in the case of *Ringeisen v. Austria*, Application No. 2614/65.

20 Judgment of the Regional Administrative Court in Olsztyn of 3 April 2012, II SAB/Ol, CBOSA; similarly: Judgment of the Regional Administrative Court in Wrocław of 4 December 2012, II SAB/Wr 20/12, CBOSA; Judgment of the Regional Administrative Court in Gliwice of 18 March 2013, II SAB/Gl 60/12, CBOSA; Judgment of the Regional Ad-

excessive length of proceedings. However, this view also suggests that numerous administrative legal issues remain outside the regulation deriving from the Convention.[21]

III

While it may be accepted that there are grounds for recognizing that international norms establishing human rights standards form a procedural environment that ought to be respected by public administrative authorities, a vital issue arises as to their validity within the scope of the application of the law at the substantive law level. This is due both to the problem of including the value of human rights in the jurisprudence of authorities and the problem of the direct application of standards.

Starting with the issues related to the application of standards, it should be noted that public administration indisputably operates based on law and within its limits. This does not imply that every legal provision is suitable for direct application and may therefore be the basis for an administrative decision. This gives rise to a problem with the direct application by the authorities of acts establishing the human rights protection standards without any laws intermediating in the process.

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ministrative Court in Gliwice of 9 January 2017, I SAB/Gl 8/16, CBOSA; see Judgments of European Court of Human Rights of: 22 July 2008 in the case of *Przepałkowski v. Poland*, Application No. 23759/02; 9 June 2009 in the case of *Kamecki and others v. Poland*, Application No. 62506/00; 4 October 2011 in the case of *Mularz v. Poland*, Application No. 9834/08; 1 December 2009 in the case of *Trzaskalska v. Poland*, Application No. 34469/05. See also: *Bukowski v. Poland* (dec.), Application No. 38665/97, Judgment of 11 June 2002; *Koss v. Poland*, Application No. 52495/99, Judgment of 28 March 2006;*Turczanik v. Poland*, Application No. 38064/97, Judgment of 5 July 2005; *Kania v. Poland*, Application No. 12605/03, Judgment of 21 July 2009 and *Derda v. Poland*, Application No. 58154/08, Judgment of 1 June 2010.

21 Judgments of European Court of Human Rights of: 9 December 1994 in the case of *Schouten and Meldrum v. Holland*, Application No. 19005/91 and 19006/91; 12 July 2001 in the case of *Ferrazzini v. Italy*, Application No. 44759/98.

Apart from the above issues concerning the wording of international provisions and the literal exclusion of their application from the administrative cases that they lay down, the following problems may be identified: 1) the general nature of some international provisions establishing the human rights protection standards; 2) the specific role of internal law in administrative actions; and 3) public administrative authorities not being able to challenge the incompatibility of acts of a lower rank with international laws and acts.

In particular, the problem related to the legal acts regulating the issue of human rights occurs in cases where such acts contain norms of a general, declarative nature, which prevents their direct use by public administrative authorities as the basis for administrative decisions. As already pointed out by T. Bigo, an international treaty must meet the following conditions to be an independent source of administrative law: 1) it must enter the legal order as its constituent part in an unmodified form, i.e. as a treaty; 2) it must relate to the object of administration and have substantive/legal content; and 3) the execution of the standards and provisions of the treaty must fall within the competences of administration.[22] These should be expanded to include one more condition — one concerning the provisions deriving from such acts to be applied by public administrative authorities. The legislator must formulate them in a precise manner.

The problem with international treaties regulating the issue of human rights does not concern the formal inclusion of the former in the system of domestic law, but rather their content. The problem in this regard is not the so-called self-executing treaties, which enable the direct application of the law based on international legal norms, without the intermediation of a domestic act implementing the treaty.[23] Their norms constituting subjective rights are, in principle, precise, clear and unconditional, thereby making it possible to apply such treaties directly. However, the treaties that fail meet such conditions

22 Tadeusz Bigo, *Prawo administracyjne. Część I. Instytucje ogólne*. Compilation Władysław Kawka. Wrocław, 1948, 49–51, 52.

23 Małgorzata Masternak-Kubiak, *Przestrzeganie prawa międzynarodowego w świetle Konstytucji Rzeczypospolitej Polskiej*. Kraków, 2003, 218.

are executory ones,[24] which may be applied by authorities only when they are implemented into the domestic legal order by statute, pursuant to Art. 91 sec. 2 of the Constitution. Another category includes treaties that make it possible to use international norms only to interpret domestic law norms, including ones adopted to implement international norms. This interpretation removes the doubts arising due to the application of a domestic norm or the adoption of a specific standard. The latter two instances may be deemed an indirect operation of an international treaty. They may cause issues in the area of application since they may not be an independent basis for issuing administrative acts, and because the need to rely on domestic law during their application may alter their meaning, thus distorting the protective system.

It seems that a specific risk in that regard is posed by the role that internal law plays in public administration. This is due to its detachment from the hierarchy of the sources of law and because of the phenomenon of the inverted hierarchy of the sources of law referred to in the literature. Acts of internal law are sources of law yet their scope is limited. They concern only the relations taking place within the administrative structure and can only be used when shaping the relationship between organizationally related entities of law engaged in a relationship of subordination. The assumption is that acts of internal law must not shape the legal situation of an individual and that they may be constituted by statute.[25] Given their wide-ranging functions, including executive, managing, organizational, regulatory and information ones,[26] they profoundly affect the understanding of the law, including the understanding of human rights. Although the principle of good administration should play a significant role in the constitution of acts of internal law, mandating their

24 Masternak-Kubiak, 233.

25 Renata Raszewska-Skałecka, "Funkcje prawa zakładowego na przykładzie wybranych zakładów administracyjnych", *Acta Universitatis Wratislaviensis. Przegląd Prawa i Administracji* 67, no. 2663. 2005: 244–245.

26 Tadeusz Kuta, "Funkcje współczesnej administracji i sposoby ich realizacji", *Acta Universitatis Wratislaviensis. Prawo* 217, no. 1458. 1992: 7.

legality and the rule of law,[27] they may allow the administration to shape the understanding of human rights protection issues as expected by the authorities, which is inconsistent with the general standards of protection. Acts of internal law do affect the legal situation of an individual — both directly and indirectly. Yet it is also indicated that "in general, explanations, instructions and ministerial letters are not sources of universally binding law, and therefore, cannot constitute the basis for issuing an administrative decision."[28] On the other hand, "this does not mean that […] an administrative authority may not use the interpretative guidelines of authorities – particularly central authorities – to interpret the legal provisions that raise doubts when deciding on an individual administrative case."[29] This may distort the human rights protection system to the extent that an individual subjected to such decisions may be unable to contest them in any way.

This problem takes on new meanings if viewed from a public administration perspective. Because of the rule of law, authorities are sometimes unable to challenge domestic acts which, in their view, may be inconsistent with the acts establishing the human rights standards. It should be noted that Art. 6 of the Code of Administrative Proceedings[30] does not make it possible to omit a positive legal norm even where it does not correspond directly with the provisions of the Constitution or international acts that form the basis for the protection of human rights, such as the Convention. This provision explicitly obliges administrative authorities to apply the provision in force. Called the

27 See, e.g., Dorota Dąbek, "Zakres aksjologicznej samodzielności samorządowego prawa miejscowego" in *Aksjologia prawa administracyjnego*, vol. 1, ed. J. Zimmermann. Warszawa, 2017, 479 et seq.; Piotr Lisowski, "Aksjologiczny kontekst i wymiar rządowych aktów prawa miejscowego" in *Aksjologia prawa administracyjnego*, 491.

28 Judgment of the Supreme Administrative Court of the Republic of Poland of 19 July 2012, I OSK 685/12, Legalis. Also see the Judgment of the Regional Administrative Court in Kielce of 22 December 2010, II SA/Ke 736/10. *Wspólnota*, no. 5. 2011, 45.

29 I OSK 685/12.

30 Code of Administrative Proceedings of 14 June 1960 (Journal of Laws of 2022, item 2000).

formal rule of law, this approach excludes the evaluation of legal norms applied by a public administrative authority due to extra-legal values.[31]

Unlike courts, public administrative authorities may not for that reason evaluate the compliance of lower-rank acts with statutes, the Constitution or international acts, and they do not have legal instruments enabling them to refer possible doubts to competent authorities for consideration. Consequently, acting like Pilate and expecting the issue to be resolved by an administrative court is often their only option. This means that the references to acts, particularly international ones that make up the human rights protection system on the European and global level, which are contained in their jurisprudence, must always take into account whether or not there are any subordinate norms of domestic law which must be applied in such a situation.

IV

In the axiological context, it must be noted that the need to ensure the protection of human rights means that their significance turns out to be much wider than that which results from the provisions of applicable law.

Since human rights are universal, determining whether they were breached does not depend on what is considered to be such a breach in a given country.[32] The judgment referred to reads as follows: "Were the assessment of whether a breach of human rights took place to depend on what is considered to be such a breach in a given country, the meaning of these rights, as rights arising from the essence of the human being, would be undermined."[33] By the same token, in the context of the actions of public administrative authorities, the broadest possible understanding of this issue is required. This may nonetheless bring

31 Andrzej Wróbel, "Komentarz do art. 6" in Małgorzata Jaśkowska, Martyna Wilbrandt-Gotowicz, and Andrzej Wróbel, *Komentarz aktualizowany do Kodeksu postępowania administracyjnego*. Warszawa, 2022.

32 Judgment of the Supreme Administrative Court of the Republic of Poland of 24 August 2008, V SA 1781/99, CBOSA.

33 V SA 1781/99.

problems both in terms of balancing goods and interests by public administration and the very application of the law. This in turn raises doubts as to the validity of linking the human rights protection system to the rule of law, if only from the point of view of the principle of competence. The acceptance of such possibilities would entail a risk of discretionary treatment of the protection of human rights and its uncontrolled expansion or restriction, depending on the adopted attitude. It would also create another problem: public administrative authorities acting beyond their competences. After all, public administrative authorities cannot operate where there is no legal basis for doing so.

Focusing on axiological issues, it should be noted that the very concept of human rights violations becomes broad under this approach, which also results in this framing of the concept in practice. However, it is indicated in this regard that a distinction should be made between a breach of human rights and a risk of their breach. It is assumed in this case that public administration must take action in the case of a breach; however, where there is a risk of a breach, action can only be taken in states of greater necessity (due to the lack of legal grounds for interference). If a breach of human rights can result in irreparable damage or an irreversible condition (human death, environmental pollution), an earlier administrative response would be deemed the most appropriate.[34]

Moreover, public administration comes close to breaching human rights due to the conflicting nature of administrative law, and it does so when justifying the protection of other goods. In every case subjected to administrative legal regulation, public administration must take into consideration not only a conflict between individual and public interests but also between individual interests. This is because a conflict of values occurs in this regard and one of these values is given priority. From the point of view of public administrative authorities, it is normal that one value is compromised in favor of another in

34 Irena Lipowicz, "Zagrożenia dla realizacji praw człowieka wynikające z prawa administracyjnego", *Roczniki Nauk Społecznych* 22–23, no. 1. 1994–1995: 356.

such a situation. However, a breach of human rights still occurs, which requires an appropriate response.

Since it is "the guardian of public order" which dominates over the individual, public administration will always risk breaching human rights (under the conditions laid down by law) to protect other values. Irrespective of this justification, such actions always constitute interference in the sphere of human rights, which requires an appropriate response. This may be aptly illustrated by numerous judgments of the European Court of Human Rights concerning compensation for the designation of real estate for a public purpose in spatial development plans.[35] Although the breach of the ownership right was lawful in those cases (because it was committed based on the law), the Court considered that interference with ownership rights had still occurred, which should have led to an appropriate response from the authorities.

Bearing in mind the specificity of the functioning of public administration, which safeguards human rights and, ironically, is simultaneously entitled to breach them, it should be noted that resolving this issue requires systemic changes. Recalling the view presented by I. Lipowicz, it is most important in such cases to ensure that citizens have access to a quick and "cheap" procedure for claiming their rights and can receive compensation for any instances of their violation. She noted that "while under the previous system many breaches resulted from the primacy of the 'public interest' over the individual interest, under the rule of law the administration takes more care of individual matters, paying less attention to breaches resulting from neglecting human rights, e.g., concerning the environment."[36] Since it is impossible to rule out decisions made by administrative authorities based on the inevitable conflict described

35 Judgments of European Court of Human Rights of: 14 November 2006 in the case of *Skibińscy v. Poland*, Application No. 52589/99; 17 October 2007 in the case of *Rosiński v. Poland*, Application No. 17373/02; 6 December 2007 in the case of *Skrzyński v. Poland*, Application No. 38672/02; 26 May 2008 in the case of *Buczkiewicz v. Poland*, Application No. 10446/03; 7 July 2008 in the case of *Pietrzak v. Poland*, Application No. 38185/02; 7 March 2011 in the case of *Tarnawczyk v. Poland*, Application No. 27480/02.

36 Lipowicz, 357.

above, in cases where the protection of one good requires a breach of another, measures must be established to mitigate the effects of such interferences.

V

Given the above, the issue comes down to a demand that the protection of human rights by public administrative authorities should be enabled primarily through appropriate amendments to the law, and that the contradictions in the procedures designed to protect such rights should be removed. This requires clarifying the administrative law and the authorities' involvement in it, e.g., that of the Constitutional Court, to remove from the legal system any acts incompatible with human rights protection standards.[37] This would allow administrative authorities to exercise their powers in a manner consistent with those standards, without facing dilemmas which invariably involve bearing the consequences of the erosion of state authority.

It is also impossible to deny that, apart from amendments to the law, human rights protection may also be effected through the very actions of public administrative authorities, in particular, by means of an interpretation favorable to the human rights protection standards, even when domestic regulations contain no relevant provisions in this regard. Consequently, regardless of the problems that this may entail, administrative authorities can clearly ensure human rights protection, primarily at the level of interpretation, by taking into account the axiology and making a human rights-friendly interpretation. It is also undeniable that public administrative authorities are obliged to interpret the law in line with the Constitution and the international treaties binding Poland.

Such an understanding of the problem results from such things as jurisprudence, which makes it possible to refer to acts regulating human rights when assessing statutory provisions, provided that no applicable regulations exist.[38]

37 Lipowicz, 356.

38 Judgment of the Regional Administrative Court in Łódź of 22 November 2019, II SA/Łd 240/19.

Moreover, it is explicitly stated that "it is not permissible to interpret any legal provision in a manner that would breach the constitutionally guaranteed civil rights or would be in conflict with international acts ratified by Poland, and would be in conflict with other provisions of the applicable laws."[39] This stems from the duty to provide a uniform and consistent interpretation of the provisions of law, which also results from the rule of law.[40]

VI

Actions taken by an authority are controlled by administrative courts. As regards the human rights protection standards shaped at the level of international acts, this control is carried out on two levels: 1) controlling the regulatory compliance of a public administrative authority; 2) determining if the given action is acceptable in light of human rights protection acts (e.g. the Convention). Therefore, the criterion of legality underlying the control is expanded to also include a specific criterion of purposefulness to check whether the public administration's actions comply with the objectives of acts of international law.

Administrative courts control the regulatory compliance of the actions taken by authorities, which also includes compliance with international law. Moreover, not being bound by the limits of means of appeal, they may also check whether an authority interpreted domestic provisions in line with the principle of compliance with the norms of international law. Thus, the assessment of compliance with the provisions of the laws that constitute the framework of the human rights protection system is made in a distinctive manner. This assessment is aimed at determining whether the actions of an authority and the content and effects of an issued decision are acceptable in light of the

39 Judgment of the Regional Administrative Court in Warsaw of 26 November 1991, II SA 937/91, ONSA 1993/1, item 10. See more: Agnieszka Sołtys, *Obowiązek wykładni prawa krajowego zgodnie z prawem unijnym jako instrument zapewniania efektywności prawa Unii Europejskiej*. Warszawa, 2015.

40 Among others Judgment of the Regional Administrative Court in Gdańsk of 29 June 2005, III SA/Gd 257/04.

Convention's provisions. Thus, it does not consist solely of verifying whether an authority acted within the limits of the law and on a legal basis.[41]

This is also where the insufficient means enabling the implementation of the human rights protection standards by public administrative authorities, as compared to administrative courts, become apparent. Above all, courts are entitled to forward their enquiries in that regard to international courts and authorities. This allows them to verify their actions as early as this stage in case of doubt, as well as to avoid potential contradictions. Moreover, they may also refuse to apply acts ranking lower than a statute or an international treaty to avoid issuing a decision that would be incompatible with acts regulating human rights protection. This may mean that, given the construct of administrative and judicial/administrative proceedings, the burden of human rights protection falls mainly on administrative courts, which do not manage but merely verify the actions of public administration.

VII

The above only highlights a narrow segment of the problem, yet it clearly illustrates that the issue in question should be regulated simultaneously by the legislator and public administrative authorities. This is particularly true in the case of potential problems that may arise in connection with the application of human rights protection measures in the actions of public administrative authorities. What makes this issue especially vital is the fact that human rights protection – the foundation of a democratic state ruled by law – should accompany every action taken by public administration.

The above problems, which may be caused by the implementation of human rights protection measures, show the multiplicity and multidimensionality of the described problematic issues. Therefore, it seems necessary to introduce

41 Piotr M. Przybysz, "Komentarz do art. 6" in *Kodeks postępowania administracyjnego. Komentarz aktualizowany*. Warszawa, 2022.

comprehensive solutions, particularly changes to the law, actions by authorities responsible for rectifying the incompatibility of law with acts establishing human rights protection standards, as well as encouraging authorities to perform such actions, including by selecting the appropriate staff. It appears that the problem described above cannot be resolved only by fragmented actions.

Regardless of the foregoing problems with the application of human rights in the actions of public administration, the current situation seems satisfactory. The fact that acts establishing human rights protection measures are included in the legal order, as well as all the legal principles ensuring that they are respected, means that public administrative authorities act in compliance with them. Public administration itself is aware of the need to protect human rights, which means that it is also focused on them in this respect. For this reason, one ought to admit that the actions of public administration should be oriented towards the development and improvement of the human rights protection system.

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