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Articles

Studia Iuridica Lublinensia vol. 32, 5, 2023
DOI: 10.17951/sil.2023.32.5.239-248

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Administrative Law Values – Attempts at Methodological Order

Wartości w prawie administracyjnym – próby porządku metodologicznego

ABSTRACT

The appeals to values and the renaissance of axiological thought in the various legal dogmas naturally prompt a methodological order. The article is a voice in the debate on attempts to systematize values in administrative law. On the grounds of positive law, one usually reaches only to justify the thetic validity of norms. In administrative law, which concerns human beings, it is especially common to reach for the axiological basis of the validity of the law – hence the number of value classifications is considerable. The meanders of axiological reflection in administrative law are entering a higher level of complexity. The axiology of administrative law is very complex due to the great diversity of administrative law, and any typologies are contractual in nature. The doctrine is generating new catalogues of values. Each of them is threatened by a form of relativism. The author undertakes an analysis of the proposed classifications, pointing out the advantages and disadvantages of the various solutions. The purpose of the article is to present justifications for the separation and classification of values in administrative law and to confirm the relevance of axiological reflection within the framework of the legal dogma indicated. The main methods used in the text are formal-dogmatic and comparative.

Keywords: administration; administrative law; axiology of law; values; philosophy of law

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INTRODUCTION

When creating any catalogue of values, authors face the dilemma of covering the topic too narrowly or too broadly. The limitation of the axiology of administration to just a few values may indicate the instrumental nature of the author's efforts or that he is guided by the temporary interpretive needs of administrative law.[1] However, an overly broad catalogue becomes essentially colorless – it does not reflect the autonomy of the legal dogma. The prescription for both threats seems to be the Aristotelian "golden mean". The all-encompassing nature of administrative law, its diversity, a high level of complexity and a wide range of values prevent from creating an orderly leading systematics. The value of the described actual state is the possibility of searching for methodological order which inspires many administrative law attorneys. The purpose of this paper is to present justifications for distinguishing and classifying values in administrative law and to confirm the relevance of axiological reflection within specific legal dogma.

The methodological order is defined as a detailed methodology that examines the distinctiveness of a particular scientific discipline (in the case of a specific field of studies) while establishing the principles and norms corresponding to the various divisions.[2] Although the axiology of administrative law is very complicated due to the great diversity of administrative law, and all the typologies are contractual in nature, there is no doubt that administrative law has its axiological foundation, understood as the values pertaining to this branch of law, inherent in it or derived from it.[3]

The practical dimension of administrative law assembles that we usually reach for the thetic justification of the validity of legal norms, forgetting the axiological basis of the law's validity. Metaphorically speaking, it implies that above every branch of law, including administrative law, there is an upper ground – the axiological ground that should and does influence everything beneath the upper ground. A proper understanding of any legal discipline requires an observation of both grounds in their mutual relations – it is a perspective of "through the looking glass" or "the other side of the coin" metaphorically speaking.[4] Given that discretion and administrative discretion are pivotal to the practice of applying administrative law, the naturally emerging sphere of discretion becomes a sphere of value influence.

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[1] Cf J. Stelmach, *Spór o wartości podstawowe w prawie*, [in:] *Aksjologia prawa administracyjnego*, ed. J. Zimmermann, vol. 1, Warszawa 2017, p. 42.

[2] J. Apanowicz, *Metodologia ogólna*, Gdynia 2002, pp. 9–11; J. Kawa, *Metodologia, metodyka, metoda jako podstawa wywodu naukowego*, "Studia Prawnoustrojowe" 2013, no. 21, pp. 171–176.

[3] M. Niedźwiedź, *Stanowienie prawa w multicentrycznym porządku prawnym – konflikt czy współistnienie wartości*, [in:] *Aksjologia prawa…*, p. 378.

[4] Cf. J. Zimmermann, *Wartości w prawie administracyjnym*, Warszawa 2015, p. 13.

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This is the most distinct connection between law and values in the discussed dogma as it immanently lies in the essence of administrative law.[5]

RESEARCH AND RESULTS

1. The attempts to systematize values in administrative law

The values of administrative law can be catalogued in an overly traditional way, according to the common division into systemic, substantive and procedural law. Unquestionably the catalogue of values is predominantly different in each of these categories. This division is *de facto* only in didactic and academic use as it does not allow to indicate the deeper features of the analysed branch of law.[6]

A further attempt to systematize legal dogmatics was presented by J. Zimmermann, who pointed out the following categories: "The first set of norms or the set of postulates that introduce universal values, laying outside the law, into a given field of law. The second group is formed by values that do not come from the outside. These are the values established by the law or the Constitution of the Republic of Poland and due to these values the entities applying the law operate on the basis of fixed axiological premises. The third group consists of values protected by a specific branch of law, the specific values, for whose the protection of law is created".[7]

The first group includes such values as human welfare, morality, justice, legality, truth, and the values embodied in the principle of social intercourse. The second group includes rationality, clarity, transparency, promptitude, cost-efficiency, and the values of constitutional principles (such as subsidiarity, sustainable development, equality before the law, rights acquired). The third and final group presents the values related to the broad category of public, individual, private and actual interest, and continuously the constitutional values.[8] Simultaneously, static (objective) values can be distinguished, as the result of lawmaking, as well as dynamic (subjective) values, caused by the practice of applying administrative law.[9] The relationship of static and dynamic values is based on mutual complementarity. Dynamic values are particularly relevant to the discretion of administrative action and administrative discretion.

According to the typology, T. Bąkowski includes the following values in the first group: a) values presented in the Constitution of the Republic of Poland usu-

[5] Cf. idem, *Prawo administracyjne*, Warszawa 2016, p. 534.
[6] Idem, *Wartości*..., pp. 14–15.
[7] *Ibidem*, pp. 73–74.
[8] Cf. idem, *Aksjomaty prawa administracyjnego*, Warszawa 2013, pp. 73–101; idem, *Prawo*..., pp. 536–555.
[9] Idem, *Wartości*..., p. 76.

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ally take the form of a principle of law (i.a. legalism, subsidiarity, proportionality, transparency, justice, equality before the law or the limits of administrative-legal regulations and the process of their implementation, i.a. personal, political, economic and cultural freedom); b) values embodied in the general principles of administrative procedure, related to both procedural aspects and substantive administrative law (i.a. the efficiency of public administration authorities). Amidst the values formed by the administrative law are primarily the right to good governance[10] and the values along presented (i.a. rationality, cost-efficiency), as well as the implementation of public duties *ex officio*, flexibility and deformalisation of the implementation administrative law norms and the ability to rapid response to changes in the surrounding reality.[11]

Figuratively, just as the aesthetics of law are subject to "the infinity of lists",[12] similarity can be determined in administrative law. Z. Duniewska indicates that the values can be: general public, environmental, individual, general and specific, absolute or relative in nature, permanent or fugacious, primary and derivative, expressed in the law explicitly or implicitly, emblematic of the whole system of law or its parts.[13]

By contrast, S. Fundowicz proposes a divergent attempt to systematize values. According to the author, the only common catalogue are the universal values (truth, justice, goodness and beauty) cited by the legislator in the Preamble to the Polish Constitution. Then he points out the values supposedly guaranteed or ensured by the Polish Constitution: civil rights and the reliability and efficiency of public institutions. The third and final group of values are those to be taken into account in the process of applying the fundamental law and the unalterable basis of the Republic of Poland: the preservation of the inherent dignity of man, human freedom, the duty of solidarity with others (the principle of subsidiarity).[14]

W. Góralczyk addressed to some extent to the proposals presented by S. Fundowicz and J. Zimmermann who offer to group values according to their relationship

[10] See Z. Cieślak, *Prawo do dobrej administracji*, [in:] *Prawo do dobrej administracji. Materiały ze Zjazdu Katedr Prawa i Postępowania Administracyjnego, Warszawa–Dębe, 23–25 września 2022*, eds. Z. Cieślak, Z. Niewiadomski, Warszawa 2003, s. 18–19; M. Seniuk, *Prawo do dobrej administracji. Od koncepcji teoretycznej do instytucji prawnej*, "Studia Prawnoustrojowe" 2009, no. 9, pp. 187–198.

[11] T. Bąkowski, *Aksjologia materialnego prawa administracyjnego*, [in:] *Leksykon prawa administracyjnego materialnego. 100 podstawowych pojęć*, eds. T. Bąkowski, K. Żukowski, Warszawa 2016, s. 5–7. See also A. Mituś, *Wartości – cele realizowane przez prawo administracyjne*, [in:] *Aksjologia prawa…*, pp. 105–106.

[12] See U. Eco, *Szaleństwo katalogowania*, Poznań 2009; K. Zeidler, *Estetyka prawa*, Gdańsk 2018, pp. 7–16.

[13] Z. Duniewska, *Zakres regulacji prawa administracyjnego materialnego – wyznaczenie pojęcia instytucji tego prawa*, [in:] *System Prawa Administracyjnego*, vol. 7: *Prawo administracyjne materialne*, eds. R. Hauser, Z. Niewiadomski, A. Wróbel, Warszawa 2012, p. 126.

[14] S. Fundowicz, *Aksjologia prawa administracyjnego*, [in:] *Koncepcja systemu prawa administracyjnego. Zjazd Katedr Prawa Administracyjnego i Postępowania Administracyjnego, Zakopane, 24–27 września 2006 r.*, ed. J. Zimmermann, Łódź 2007, p. 639.

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with the applicable law. Adopting this criterion allows to distinguish (1) values preceding the law, (2) values inherent in the law itself, and (3) tooling values.[15] The first values relate to natural law. The role of the legislator is to attain these values – to acquaint the content and form legal norms thus to serve the values. Then public administrations face the arduous challenge of applying these values in accordance with the spirit of natural law. Moreover, it should be emphasized that the legislator of these fundamental values cannot change, and ought not to legislate norms that harm these values.[16] These include: in the individual dimension – the dignity of the human person, the equality of human persons and their freedom, and in the collective dimension – the common good.

The second group are the values inherent in the law itself. According to W. Góralczyk, these are the following, "general principles: a) subsidiarity, b) servitude of public administration, c) competence, d) cooperation. They are also absolute in nature, but unlike the fundamental values, they are subject to change. Their creator is the legislator".[17]

The third group includes relative values – values intended to facilitate and sometimes enable the fulfillment of fundamental values and values inherent in the law itself. A peculiarity of some of them is that they cannot be created or changed by law. This group includes: efficiency of administration, uniformity, simplicity, aesthetics, respect for prevailing customs.[18]

Successive systematization is not the voice of doctrine but a normative element of soft law indicating the identity of administrative law of its values. One has to agree with S. Wrzosek that in relation to administration by objectives can be understood as fundamental values, the realisation of which lies in the ultimate intention of administrative subjects related to the realisation of various values (namely the realisation of public or individual interest).[19] These values are the goal of administrative actions and concurrent the condition for their accomplishment.[20]

The document establishing an objective on the European level for administration (from objectives to identify values) is a set of principles of administrative law concerning the relationship between administration and citizens – *Principles of Administrative Law Concerning the Relation between Administrative Authorities*

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[15] W. Góralczyk, *Aksjologia środków kierownictwa w administracji publicznej*, [in:] *Aksjologia prawa…*, p. 749.

[16] *Ibidem*.

[17] *Ibidem*, p. 750. See also idem, *Koordynacja i współdziałanie w administracji publicznej w świetle prawa*, "Krytyka Prawa" 2018, vol. 10(2), pp. 522–542.

[18] Idem, *Aksjologia środków kierownictwa…*, p. 750. See also M. Maciejewski, *Imposybilizm prawny a rozliczalność administracji publicznej*, "Krytyka Prawa" 2021, vol. 13(3), pp. 195–210.

[19] S. Wrzosek, *Nauka administracji jako subdyscyplina łącząca nauki prawne i nauki o zarządzaniu*, "Studia Prawnicze KUL" 2021, vol. 87(3), pp. 203–204.

[20] A. Błaś, J. Boć, J. Jeżewski, *Administracja publiczna*, Wrocław 2003, p. 109.

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and Private Persons, adopted by the European Committee on Legal Cooperation. It derives from the following principles of law: rule of law, equality before the law, compliance of action with the statutory objectives, proportionality, objectivity and impartiality, protection of trust and justly acquired rights, and openness of administration. In turn, the group of procedural principles included the following: access to public services, the right to be heard, the right to support and representation in the proceedings, the right to have your case heard within a reasonable timeframe, the right to be notified of the decision, to be notified of the motives behind and of the remedies, to ensure the act taken is implemented within a reasonable time.[21]

Of the indicated classifications of values in administrative law, their correlation with constitutional values is symptomatic. It is crucial to mention the fact that the values in administrative law are genetically conditioned by higher-order inherent in law in general.[22] Particular prominence of constitutional axiological foundations requires consistency in fields and branches of law. As a result, the convergence of constitutional values to administrative law occurs.

2. Values in public economic law – case study

As an example, the public procurement law, in principle, protects the values of fair competition, but also protects the equal entrepreneurs' treatment or the protection of the public interest, including in particular the outflow field of public funds. The energy law protects public security primarily by protecting the country's energy security. However, it takes into account the value of economical and rational fuels usage and energy, protects fair competition in the fuel and energy market, conserves the sustainable development of a country, weights the interests of energy companies and fuel and energy consumers and aims to protect the environment. The competition law protects fair competition, equal entrepreneurs' treatment, and includes the public and private interests of entrepreneurs and consumers.

The business act refers to freedom of economic activity, equality of entrepreneurs, transparency of business, public safety, rule of law, fair competition. The aviation law includes the following values: public safety – primarily in the form of safe air transportation, environmental protection, human life and health, freedom of aviation activity, fair competition and entrepreneurs' equality. The capital market law includes supervision over the safety of public trading in securities, financial

[21] M. Zirk-Sadowski, *Tożsamość kulturowa w wykładni i stosowaniu prawa administracyjnego*, "Filozofia Publiczna i Edukacja Demokratyczna" 2013, vol. 2(2), pp. 139–140.

[22] D. Luk'yanets, *Hierarchia i konflikt wartości w prawie administracyjnym*, [in:] *Aksjologia prawa*..., p. 62.

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flow, fair trading, transparency, simultaneous access to market information, public safety and the interests of all market participants protection.[23]

Considering all the above, we can observe the correctness of a view presented by A. Powałowski, who highlights an attempt to systematize values in the area of public economic law is excessively tough due to the multiplicity of areas covered by the regulation of this field of law, and consequently – the variety of values indicated by law.[24] The issue of determining the mutual relationship between principles and values remains on the margin of discussion. One should agree with the statement that principles are carriers of values; they provide values a normative character, introduce them to the field of law, its systematics and divisions.[25]

CONCLUSIONS

The administrative law is a tool in hands of people; moreover, often happens to be beyond them. The depth and breadth of matter do not allow for precise conclusions to be drawn. This does not change the fact that "imperfections of administration" and organizational deficits allow to direct questions about the sense and importance of public administration. The perspective of broader research allows to identify significant axiological potential in administrative law. Not only in the provisions of law, but also in the use of undefined terms not too restrained by the corset of procedures, make it possible to find human beings in administrative law. Public administration places people in the centre of interests and must be based on values because the goal is the common good.

I strongly agree with the statement by J. Boć that "in the state ruled by law, which is the most vital, humanistic and valuable construction of modern times, every act, all plans and concepts of improving administration return to the sphere of values".[26] Although, from the semantic point of view and appreciation for the Thomistic tradition, I would admit the administration improvement returns to the sphere of good, understood as a correlate of values. Considering the characteristic of administrative law is respect for the good – the good of man and the common good.

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[23] See R. Blicharz, *Ważenie wartości w publicznym prawie gospodarczym*, [in:] *Aksjologia prawa publicznego gospodarczego*, ed. A. Powałowski, Warszawa 2022, pp. 31–32.

[24] A. Powałowski, *Prawne instrumenty oddziaływania na gospodarkę*, Warszawa 2016; K. Kokocińska, *Funkcjonalność przepisów publicznego prawa gospodarczego z perspektywy kryterium wartości (zagadnienia ogólne)*, [in:] *Dysfunkcje publicznego prawa gospodarczego*, eds. M. Zdyb, E. Kruk, G. Lubeńczuk, Warszawa 2018, p. 29.

[25] A. Powałowski, *Wprowadzenie do aksjologii prawa gospodarczego publicznego*, [in:] *Państwo a przedsiębiorca. Aktualne wyzwania*, eds. A. Borkowski, W. Małecki, Wrocław 2019, p. 225.

[26] J. Boć, *Prawo ochrony środowiska jako prawo publiczne*, [w:] *Zagadnienia systemowe prawa ochrony środowiska*, ed. P. Korzeniowski, Łódź 2015, p. 21.

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The thought of L. Petrażycki, who highlighted that "the law is the more valuable, the less it is, the more often and more extensively interpersonal conflicts are resolved without the need to engage instruments of state legal control"[27] is still applicable. In the case where the enacted law is permeated with care for the welfare of the general public and in the reality of social life, lawbreaking is virtually unpunished and is ruled by self-interest and corruption, then the sublimity of the motives of the legislator can become rather ridiculous.[28]

According to L.L Fuller, the law is internally moral when postulates such as the generality of law, stability, clarity, and non-contradictory are met. The law should be possible to fulfill (the prohibition of designing impossible obligations) and should apply to future behavior (the prohibition of retroactivity). Nevertheless, the condition for the addresses to comply with legal standards is their prior publication (announcement).[29]

The specification of administrative law naturally predestines the matter for an axiological debate due to the fact that the branch of law covers a very broad spectrum of public life, civic activity, organizational activities of the state. The scope of state interference in fundamental freedom and civil rights is sometimes the subject of numerous controversies and polemics. It is worth mentioning that in each administrative decision the rights and obligations of the individual are concretized anew. Diverse statements of facts, various conditions must be taken into account in the decision-making process by public administration authorities since the legislator is not capable of foreseeing and taking into account in the legislative process, all possible factual situations in a normative act which is the source of substantive law.[30]

The values *nolens volens* are present in administrative law, and although any attempt to systematize them is a subject to the risk of relativism, it is nevertheless, worthwhile to attempt to create more catalogues. Primarily, it is always a contribution to in-depth methodological reflection; secondly, a properly designed typology of values can be a valuable tool in the process of resolving value conflicts – weighting them.[31] Thirdly, if the legal system is to be coherent, it should be built on common values *alias* a universal axiological basis, and the pursuit of the desired state requires a constant confrontation of legal reality with social realities – the creation, interpretation, application, validation, and observance of the law. Administrative

[27] L. Petrażycki, *O ideale społecznym i odrodzeniu prawa naturalnego*, Warszawa 1925, pp. 73–79; D. Black, *The Behaviour of Law*, New York–San Francisco–London 1976, p. 123.

[28] Z. Ziembiński, *Kilka tez do dyskusji o moralności i prawie*, "Państwo i Prawo" 1959, no. 11, p. 797.

[29] L.L. Fuller, *Moralność prawa*, Warszawa 1978, pp. 83–140.

[30] Cf. Z. Szonert, *Aksjologia służby publicznej oraz stanowienia i stosowania prawa*, "Zeszyty Naukowe Wyższej Szkoły Zarządzania i Prawa" 2005, no. 17, p. 27.

[31] See J. Potrzeszcz, *Ważenie wartości w prawie a problem ich absolutności i relatywności*, "Principia" 2015, vol. 61–62, pp. 107–122.

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law due to the breadth of the regulated matter and the all-encompassing nature, seems to be naturally predisposed for this purpose.

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ABSTRAKT

Odwołania do wartości i renesans myśli aksjologicznej w poszczególnych dogmatykach prawniczych naturalnie skłaniają do zachowania porządku metodologicznego. Artykuł jest głosem w debacie na temat prób systematyzacji wartości w prawie administracyjnym. Na gruncie prawa pozytywnego sięga się zwykle jedynie do uzasadnienia tetycznego obowiązywania norm. W prawie administracyjnym, które dotyczy człowieka, szczególnie często sięga się do aksjologicznych podstaw obowiązywania prawa – stąd liczba klasyfikacji wartości jest znaczna. Meandry refleksji aksjologicznej w prawie administracyjnym wchodzą na coraz wyższy poziom skomplikowania. Aksjologia prawa administracyjnego jest bardzo złożona ze względu na dużą różnorodność prawa administracyjnego, a wszelkie typologie mają charakter umowny. Doktryna generuje coraz to nowe katalogi wartości. Każdy z nich zagrożony jest pewną formą relatywizmu. Autor analizuje proponowane klasyfikacje, wskazując zalety i wady różnych rozwiązań. Celem artykułu jest prezentacja uzasadnień wyodrębniania i klasyfikacji wartości w prawie administracyjnym oraz potwierdzenie doniosłości refleksji aksjologicznej w ramach wskazanej dogmatyki prawniczej. Główne metody zastosowane w tekście to metoda formalno-dogmatyczna oraz metoda porównawcza.

Słowa kluczowe: administracja; prawo administracyjne; aksjologia prawa; wartości; filozofia prawa