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Articles

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The Right to Good Administration. Axiological Aspects of Good Administration

Prawo do dobrej administracji. Aksjologiczne aspekty dobrej administracji

SUMMARY

Certainly, it is essential, for the shaping of public order in a state, to establish the standards of good administration and axiological basis for the legal system of administrative law, both in the formal-legal and systemic aspect and the substantive-law domain. The basic role is played by legal designatations, such as: properly understood the principle of separation of powers, the principle of the rule of law, human dignity as an axiological basis and the categorical imperative in the sphere of understanding what good administration is, the meaning of the notion of the common good, proper distribution of prime factors of the relationship the common good – human dignity. Legal security and certainty of law, the elimination of inflation of law and the relativization of fundamental values of systemic significance form are also an important element underlying good administration. It is not possible to shape the system of good administration without a properly formed public service and without continuously building its ethos. The analysis of the foundations of good administration and its durability cannot boil down only to the procedural and legal aspects. Therefore, apart from pointing to the need to constantly address the issues of the principles and standards set out in Poland in the Code of Administrative Procedure and in the Code of Good Administrative Behaviour adopted on 6 September 2001 by the European Parliament, I have decided to present this issue in another paper, while focusing herein on the fundamental axiological values symbolizing good administration. An important place in this area is taken by the problem of the individual's right to good administration, which is a consequence of recognising that the State has an obligation and responsibility to shape the optimal model of good administration and governance within the country.

Keywords: good administration; right to good administration; human dignity; common good; legal security; certainty of law; rule of law

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Data: 02/11/2026 11:37:20

I.

Undoubtedly, the right to good administration constitutes a sort of categorical imperative for the public order in the state. One of the pillars of this order is the principle of separation of powers. For the proper functioning of this order, it is necessary to: 1) appropriately define the relationship between particular powers, i.e. legislative, executive (public administration) and judicial powers; 2) define an optimal, good and rational model for the functioning of each of these; 3) base the whole system of public authorities on clear axiological foundations. This issue seems to be exceptionally complex when we take as a point of reference the public administration seen in a broad normative perspective linked to the dynamics of the legal reality to which it relates.

It should be pointed out that to adequately address the problem of public administration (the basis of the executive authority), it must be approached using a broader perspective than for the other powers, since it can be examined not only using legal, but also metaphysical, political, economic, sociological, psychological, philosophical analyses but also the organization theory, decision theory, game theory, etc. There is no doubt that the analysis of this issue in the context of public governance must be concentrated primarily on administrative aspects. But here the notion of administration raised a lot of controversies. A number of dilemmas arose regarding e.g. the relation between public administration as a whole and central government administration. It seems that the problem of normative definition of administration should not lead to the adoption of the E. Forsthoff's thesis that "the administration does not allow to be defined but only to be described"[1], or to even farther-reaching conclusions that all we cannot name is the administration. The difficult and complex problems related to the definition of the notion of administration and to a further extent with the right to good administration have been the subject of very complex scientific debates and diverse conclusions, formulated by scholars of administrative law[2].

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[1] E. Forsthoff, *Lehrbuch des Verwaltungsrechts*, Bd. 1, München 1973, p. 1.

[2] See, among others: J. Boć, *Prawo administracyjne*, Wrocław 2007; T.N. Hilarowicz, *Pojęcie administracji i nauki administracji i prawa administracyjnego*, Kraków 1917; E. Iserzon, *Prawo administracyjne. Podstawowe instytucje*, Warszawa 1968; W.L. Jaworski, *Nauka prawa administracyjnego. Zagadnienia ogólne*, Warszawa 1924; S. Kasznica, *Polskie prawo administracyjne. Pojęcia i instytucje zasadnicze*, Poznań 1947; J.S. Langrod, *Instytucje prawa administracyjnego. Zarys części ogólnej*, Kraków 2003; A. de Laubadère, *Traité élémentaire de droit administratif*, Paris 1967; F. Longchamps de Bérier, *W sprawie pojęcia administracji państwowej i pojęcia prawa administracyjnego*, „Zeszyty Naukowe Uniwersytetu Wrocławskiego. Seria A" 1958, nr 10; *idem*, *Współczesne problemy podstawowych pojęć prawa administracyjnego*, „Państwo i Prawo" 1966, z. 6; *Prawo do dobrej administracji. Materiały ze Zjazdu Katedr Prawa Administracyjnego i Postępowania Administracyjnego*, red. Z. Niewiadomski, Z. Cieślak, Warszawa–Dębe 2002; J. Świątkiewicz, *Konstytucyjne prawo do dobrej administracji. (Oczekiwana rzeczywistość)*, „Państwo i Prawo" 2004, z. 4; *Współczesne problemy*

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Data: 02/11/2026 11:37:20

Without getting deeper into disputes in this respect, it is worth noting a few observations, resulting from the subjective notion of public administration. According to J.S. Langrod, the administration is:

> […] people organised so that they can fulfil their tasks by using the assigned area of activity (sphere of activity) and available items (measures). […] It will always be, first of all, a planned group of people in the service of a certain public mission, and only after that – through these people – the whole of means they dispose of. […] Only a human, with his spiritual contribution, with his character and mind, with his vital energy, intensified by the organizational bounds and the values of the hierarchical system based on planning and coordination – is a direct component of the administration. Everything else constitutes, without exception, only his actions, inventory, tools of work[3].

This and a number of other definitions of administration do not fully exhaust the essence of the problem. Additional dilemmas arise when the problem of administration is reduced to the activity of administrative bodies and other administrative entities. This is evidenced e.g. by the problem of separating the notion of public administration from the notion of state administration. For a long time I have considered it justified to reinstate the concept of public law in the broadest possible sense of the word, which in consequence must lead to the conviction that when we talk about administrative bodies and other administrative entities, regardless of whether we talk about central government administration bodies, local government administration bodies or other administrative entities, it is appropriate to use the concept of public administration, because its scope will also include those entities administering and performing state tasks that do not state bodies or institutions. The views of T. Rabska[4], E. Ochendowski[5], M. Zdyb[6] and M. Stahl[7] are also heading in this direction.

Applying the problem of public administration to good public administration and then the right to good administration, we are undoubtedly entering an area with boundaries that are not easy to delimit. This often gives rise to various legal dilemmas and difficulties in formulating its basic determinants, which are determined by its different meanings. In this regard, I agree with the Z. Niewiadomski's view

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prawa administracyjnego, red. S. Fundowicz, Lublin 1999; M. Zdyb, *Prawny interes jednostki w sferze materialnego prawa administracyjnego. Studium teoretycznoprawne*, Lublin 1991.

[3] J.S. Langrod, *op. cit.*, pp. 201–202.

[4] T. Rabska, *Administracja rządowa i samorządowa (nowy model administracji państwowej)*, „Ruch Prawniczy, Ekonomiczny i Socjologiczny" 1991, nr 2, pp. 7–12.

[5] E. Ochendowski, *Prawo administracyjne*, Poznań 1994, pp. 3–4.

[6] M. Zdyb, *Państwo prawa w perspektywie zaszłości historycznych oraz dokonujących się zmian*, [in:] *Studia z Prawa Publicznego*, t. 1, Lublin 1999, pp. 17–49; *idem*, *Służba publiczna*, [in:] *Prawość i godność. Księga pamiątkowa w 70. rocznicę urodzin Profesora Wojciecha Łączkowskiego*, Lublin 2004, pp. 349–377; *idem*, *Drogi i bezdroża państwa prawnego*, [in:] *Konstytucja, ustrój, system finansowy państwa. Księga pamiątkowa ku czci Prof. Natalii Gajl*, Warszawa 1999, pp. 197–235.

[7] M. Stahl, *Prawo administracyjne*, Warszawa 2002, p. 11.

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Data: 02/11/2026 11:37:20

based on various doctrinal concepts, who speaks about three meanings of public administration:

> […] 1) in the first one, administration means organisational structures separated in the state, established specifically for the implementation of specific objectives having the nature of public tasks, 2) in the second one, it means an activity of specific and special features, undertaken in order to pursue public objectives, 3) in the third one, it means people employed (appointed, nominated, elected, hired under a civil contract) in the structures listed in the first sense[8].

It seems that such an approach indeed addresses the problem of public administration in objective and subjective terms because the first and third meanings, in this case, remain in a very strong relationship. A slightly different position in this matter is taken by H. Izdebski and M. Kulesza, who, regardless of their subjective and objective meaning, distinguish the functional significance of public administration[9]. A whole series of other concepts of public administration is usually associated with various differences in the manner of factorization of problems related to the subjective, objective and functional aspects of its functioning.

The leitmotif for further deliberations, concerning mainly the matter of good administration addressed in the axiological perspective, will be the issues whose analysis requires the identification of the basic features of the public administration. It seems that of crucial importance is the assumption that the administration involves, as a rule, the implementation of important tasks of the State related to the functioning of the executive power, also when it comes to the fulfilment of the responsibilities of the State by other actors of the central government administration, including local government administration and other administrative entities. By fulfilling the tasks of the state, they operate in the state structure. Therefore their activities cannot be seen in opposition to the state. This does not change the fact that particular aspects of public administration, whether it is the central government, local government, bodies of government legal persons, professional self-governments or private entities that have been entrusted tasks of the State in the field of public administration, may be treated in the area of such activities differently, e.g. liability, building the legal order in the sphere of administrative-legal relations, use of enforcement measures, etc.

Any deliberations concerning the notion of public administration, its essence and scope of activity make sense when they are to build the public order within the state, to protect human dignity and the common good, and to implement the principle of democratic state governed by the rule of law and implementing the

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[8] Z. Niewiadomski, *Pojęcie administracji publicznej*, [in:] *System Prawa Administracyjnego*, t. 1: *Instytucje prawa administracyjnego*, red. R. Hauser, Z. Niewiadomski, A. Wróbel, Warszawa 2010, p. 44.

[9] H. Izdebski, M. Kulesza, *Administracja publiczna. Zagadnienia ogólne*, Warszawa 2004, p. 83.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 02/11/2026 11:37:20

rules of social justice, and hence the protection of fundamental human values. This depends on the assessment of whether we are dealing with the so-called good administration and the possibility to exercise the right to good administration or not. Regardless of various manifestations of exercising the administrative authority, a good administration always means a kind of categorical imperative that empowers the potentiality of the activities of various administrations (central government, local government) and other administrative entities operating with the assistance of their officials, embodying, with the use of sovereign and non-sovereign forms of action, the focus on shaping public order consisting in optimal implementation of the axiological foundations of the legal system concerned.

II.

When analysing the bases of administrative governance and the standards of good administration, we often ask ourselves: Whether there is a right to good administration? Is such a right rooted in the Polish Constitution? These questions are all the more important that neither in the Preamble nor in the normative part of the Polish Constitution they have been explicitly articulated. In view of the above, can it be stated that they exist? The extreme legal positivist would probably say no, because one cannot see or hear it, it was not recorded in books, statutes, etc. So it is non-existent. For believers it would certainly be incomprehensible if we said that God does not exist because the constitution, the laws or international treaties do not contain a legal provision to confirm this. Nor is there any of us until confirmed by an act of application of law, etc. Many of rights, freedoms, principles that are crucial, not to say fundamental, would be groundless unless enshrined in the constitution or laws. This also applies to the rights we follow since they have been carved somewhere deep in our conscience and are stuck in us like the stone plaques offered to Moses, which build our integrity of will, sense of righteousness, pursuit of truth, and mobilize us to do what is good and right.

The Constitution of the United States of America, considered one of the best, or even the best constitution, is not an ultimate normative masterpiece, at least in the eyes of extreme legal positivists, but it has offered the opportunity to derive from it, especially by the Supreme Court, rights of fundamental importance for the shaping and functioning of the public order within the state. The introduction of the principle of a democratic rule of law implementing the principles of social justice to the Polish constitutional order as early as before the adoption of the current Constitution of the Republic of Poland also gave the Constitutional Tribunal the opportunity to derive fundamental rights from it and to confer appropriate content on them. This concerns such rights as the right to life, the right to health care, the right to property, the right to privacy and a number of principles which

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 02/11/2026 11:37:20

today are a specific symbol or personification of good administration, both in the systemic, substantive-legal and procedural dimensions. This applies to issues such as the division of powers, the rule of law in the sphere of administrative law, the concept of public interest, human dignity, the right to information, the protection of acquired rights and the maximum possible expectations, the right to trial in administrative matters, etc.

The problem of human dignity and the common good became the source for in-depth analyses. They were a motivation to identify and define the content of many rights, which were later articulated in the Constitution of the Republic of Poland of 1997[10]. Are such solutions acceptable today? It seems that not only they are acceptable, but they should be. To derive rights to good administration from the Polish Constitution, the plane of reference is some fragments of the preamble to the Constitution, which, among other things, stresses that the Constitution is adopted "desiring to guarantee the rights of the citizens for all time, and to ensure diligence and efficiency in the work of public bodies", that public order should be "based on respect for freedom and justice, cooperation between the public powers, social dialogue as well as on the principle of subsidiarity in the strengthening the powers of citizens and their communities". Therefore, the Polish Constitution itself somehow call upon "all those who will apply this Constitution, […] to do so paying respect to the inherent dignity of the person, his or her right to freedom, the obligation of solidarity with others, and respect for these principles as the unshakeable foundation of the Republic of Poland".

A sort of complement to the axiological foundations enabling identification of the right to good administration is provided in the currently applicable Polish Constitution in, i.a.: Article 1 ("The Republic of Poland shall be the common good of all its citizens"), Article 2 ("The Republic of Poland shall be a democratic state ruled by law and implementing the principles of social justice"), Article 7 ("The organs of public authority shall function on the basis of, and within the limits of, the law"), Article 10 (1) ("The system of government of the Republic of Poland shall be based on the separation of and balance between the legislative, executive and judicial powers"), Article 30 ("The inherent and inalienable dignity of the person shall constitute a source of freedoms and rights of persons and citizens. It shall be inviolable. The respect and protection thereof shall be the obligation of public authorities"), Article 31 (1) to (3) ("1. Freedom of the person shall receive legal protection. 2. Everyone shall respect the freedoms and rights of others. No one shall be compelled to do that which is not required by law. 3. Any limitation upon the exercise of constitutional freedoms and rights may be imposed only by statute, and only when necessary in a democratic

[10] Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws 1997, No. 78, item 483 as amended), hereinafter: the Polish Constitution. English translation of the Constitution at: www.sejm.gov.pl/prawo/konst/angielski/kon1.htm [access: 10.02.2019].

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 02/11/2026 11:37:20

state for the protection of its security or public order, or to protect the natural environment, health or public morals, or the freedoms and rights of other persons. Such limitations shall not violate the essence of freedoms and rights"), Article 32 (1) to (2) ("1. All persons shall be equal before the law. All persons shall have the right to equal treatment by public authorities. 2. No one shall be discriminated against in political, social or economic life for any reason whatsoever"), etc.

In view of the above, the question arises as to whether, when we identify the right to good administration as a specific conglomerate of other rights clearly articulated in the Polish Constitution, there is a need to derive another right from it, which in such a state of affairs constitutes a kind of meta-law. There are a number of arguments for such a need or even necessity, including the previous experience of Poland and other countries, as well as a number of rights enshrined in the most important acts of international law (e.g. in the United Nations Charter, the Universal Declaration of Human Rights, International Covenant on Civil and Political Rights or the International Covenant on Economic, Social and Cultural Rights, etc.).

In view of the foregoing, it can be assumed that the right to good administration derives its power not only from fundamental values of public order, such as human dignity and common good, but also from other rights and freedoms for stemming from human dignity, and from the principles that express the foundations of this public order (e.g. the principle of democratic state governed by the rule of law) but, importantly, it thus becomes an element of the axiological structure that generates a kind of axiological potentiality of the law. It can, therefore, be assumed that the right to good administration contains a hidden force, not literally expressed, which allows the strengthening of the public order. Lawmakers avoid using the notion of the right to "good administration", assuming that this right is a consequence of other rights and values.

In the light of the foregoing, there is no respect for human dignity and the common good where man is subject to the arbitrariness and whims of the State expressed by its organs, including primarily the public administration and its unrestrained discretionary action and impunity. This destroys the authority of the State, especially since the public administration and its activities are more often in contact with other public authorities. Hence the right to good administration is one of the key forms of expressing respect for human dignity. When respecting human dignity, we must assume that it is a source of the right to good administration, which does not even allow the authorities of the State, who are guardians of the common good, to address this good in terms which would be characterised by unlawfulness. This applies, moreover, not only to public administration bodies but also to courts (judicial power) and the legislative authority.

The right to good administration concerns mostly the relationship between the State and the individual. This relationship cannot in any way be approached as a zero-sum game, because these relationships in a civilized world can and even

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Data: 02/11/2026 11:37:20

should create a kind of harmony, and thus it is necessary to recognise not only the relationships between the individual and the State but also the relationships between the common good and human dignity. The right to good administration will always emerge when there will be conflicts or a form of disharmony in the relationship between man (not only as a psychophysical being but also as a transcendent and metaphysical being) and the State (as a relational entity that embodies the common good). When the scale of the tension in these relationships turns into pathology (paralysing each other), there may be a phenomenon in which both the individual and the State lose. This is a phenomenon known in game theory as a prisoner dilemma.

The mere acknowledgement of the right to good administration is not sufficient to achieve its best implementation possible. This is difficult, including due to the terminological confusion which led to a diversified understanding of the same concepts. This applies to legal terms that are fundamental for this matter, such as public administration, administrative law, public subjective right, right in the sphere of public law, rule of law, democratic state governed by the rule of law, common good, public interest, etc. Such a situation makes it difficult to formulate the content of the right to good administration and to identify its essence.

The fact that the right to good administration does not have to be explicitly articulated in the constitution, since it can be derived from the fundamental values of the system, does not change the reality that such a situation can hinder the identification of that law and its content. It must be pointed out that all the previous Polish constitutions, similarly to the Constitution of the Republic of Poland of 1997, do not use the notion of the right to good administration and even the notion of good administration. The case-law of the Constitutional Tribunal, the Supreme Court and administrative courts is quite reticent in this matter. This excessive caution resulted certainly from the fact that the fundamental determinants of the right to good administration and standards expressing the essence of good administration were unsatisfactorily defined in the Polish law (including the EU law), but also from the concern that citizens will exercise this law too much, which would result in the weakening of the authority of the State and the bodies acting on its behalf. This problem was particularly evident in the context of compensation for the unlawful operation of State authorities, including public administration bodies (or other administrative entities) and their officers, for damage caused by their action.

Before the Polish Constitution of 1997 entered into force (where, according to Article 77 (1), the constitutional legislature adopted the principle that "Everyone shall have the right to compensation for any harm done to him by any action of an organ of public authority contrary to law") and before the judgement of the Constitutional Tribunal in the case No. SK 18/00, there had been a prevailing opinion about the investigation of such claims as very difficult and sometimes impossible, because at that time it entailed the need to prove the fault of the public administration or officials (persons) authorised to act on behalf of that body. The

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 02/11/2026 11:37:20

introduction of the so-called objective liability consisting in that compensation for damages of this type should not only be paid in the event of the fault of an official of an administrative body), but also in the case of an objective occurrence of the damage, has changed the situation in this matter. The aforementioned judgement of the Constitutional Tribunal was crucial, because the Court held that:

> 1. Article 417 of the Act of 23 April 1964 – Civil Code (Journal of Laws No. 16, item 93 as amended), […] understood in such a way that the State Treasury shall be liable for damage caused by an unlawful act of a State during the performance of the activity entrusted to him, is in accordance with Article 77 (1) of the Constitution of the Republic of Poland; 2. Article 418 of the Civil Code is incompatible with Article 77 (1) and is not incompatible with Article 64 of the Constitution of the Republic of Poland[11].

A kind of consequence of the above-mentioned judgement and the full implementation of Article 177 of the Polish Constitution in the sphere of liability for unlawful activities of administrative entities and public officials and the resulting injury suffered by administrated entities became the Act of 17 June 2004 on the Amendment of the Civil Code and Some Other Acts (Journal of Laws No. 162, item 1692 as amended), which repealed Articles 417–420[2] of the Civil Code (as well as Articles 153, 160 and 161 § 5 of the Administrative Procedure Code). New provisions were introduced to replace them, i.e. Articles 417–417[2] of the Civil Code.

According to Article 417 § 1, the liability for a damage caused by an unlawful act or omission in the exercise of public authority shall be borne by the State Treasury or a local government unit or another legal person exercising this authority by law. In turn, according to § 2, if the performance of tasks of public authority is delegated, under an agreement, to a local government unit or another legal person, the joint and several liability for the damage caused shall be borne by the entity performing these tasks and the local government unit or the State Treasury which ordered them. This provision is supplemented by Article 417[1] § 1 and Article 417[2] of the Civil Code, as well as the Act of 20 January 2011 on Financial Liability of Public Officials for Gross Violation of the Law[12].

It seems important that as a result of the above-mentioned legal regulations, a system has been formed which is one of the important axiological elements shaping the foundations of good administration. This is so since it lays the foundations for a proper understanding of the role of administration in contemporary state models.

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[11] Judgement of the Constitutional Tribunal of 4 December 2001, SK 18/00, OTK 2001, No. 8, item 256.

[12] Journal of Laws 2016, item 1169 as amended.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 02/11/2026 11:37:20

III.

The fact that the right to good administration is not explicitly expressed in the Polish Constitution (also in the acts) could suggest that there are no grounds to speak about the right to good administration, let alone the subjective right to good administration. Such a statement seems to be groundless, as well as a number of theses often put forward, referring even to the rights and freedoms clearly stressed in the normative fragments of the Polish Constitution. This applies, for example, to the right to health care. It should be kept in mind that rights and freedoms contain also fundamental rights, which are vested in the individual only for being human and having one's own dignity, which is inviolable and inalienable. It is acceptable to state regarding many of them that the State does not grant them, but merely acknowledges their existence. These include, for example, the right to life, the right to health care, the right to property, etc. There are also rights that could be defined as protective rights, such as the right to a trial and a number of principles that are important and sometimes even necessary from the point of view of public order, such as the principle of the rule of law or the principle of proportionality, which are intended to safeguard the exercise of other rights.

With this in mind, we come to the point where the question arises whether the concept of good administration has a procedural, praxeological, sociological or deeper axiological dimension, indicating that this is a fundamental value, i.e. an axiological basis for shaping the public order. Another consequence of this direction of thinking is the question of whether one can speak about the right to good administration or even the subjective right to good administration. The answer to such questions is not always easy and requires consideration of several key axiological problems.

Firstly, the State acting through its bodies and other administrative entities, is the guardian of the legal order of the State community, in addition to upholding values, rights and freedoms of fundamental importance to people, and further on the rights from which these values derive their strength. It acts in these matters through the legislative power, which implements fundamental rights within the framework of positive law and thus performs the factorization of fundamental values. To this end, it creates an administrative apparatus and instruments for its operation, enabling it to be applied to specific individuals and other entities, and to specific factual situations. In this context, the public administration is part of a state apparatus that fulfils its servient role in relation to its citizens, while being responsible for the mission of shaping a justice-based and democratic public governance standard.

Secondly, building the standards of good administration is the quintessence of practical implementation of the right to good administration. By implementing the fundamental values that embody good administration shape to specific factual states not only does it shape the respect and authority of the right to good administration

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 02/11/2026 11:37:20

but also the authority of the State and the trust of its citizens. In this context, it can be concluded that the normative definition of the relationship the state – the individual (citizen) is essential. In this respect, the solutions that allow the functioning of the State in which the administration is an all-encompassing creation seem unacceptable, but the system in which the State and its administration is absent is not less dangerous. In Plato's *Laws*, "The state is an absolute power on earth. We do not exaggerate by saying that the state is the God, real and present. […] It is eternally its own law and its own purpose"[13]. In such a state of things, any measure is admissible for the protection of the State so understood, even if their application meant depriving the citizen of his most fundamental rights, and any deliberation on good administration or right to good administration would make no sense, because the primary purpose of the administrative apparatus would be to preserve itself. In Plato's *Republic*, the state apparatus would have to decide on all aspects of human life:

> […] the legislator will have to supervise the citizens uniting in marriages, and then the procreation and upbringing […] of new citizens in their youth and when they advance in years and come to a venerable age. […] He should carefully watch their sores and joys, their desire and any lust in their intercourse, and either upbraid […] or praise them, depending on what they deserve. […] Then he needs to keep an eye on how citizens acquire property and what they spend money on, what contracts they enter into one with another and what contracts they breach, whether voluntarily or not, and to watch how they act one against another in each individual case[14].

Articulation of a right in a normative act means that the existence of the right is confirmed. No such identification is necessary for fundamental rights, if we assume that such a right exists regardless of whether it has been articulated or not. The existence of such a law in the perspective of the relationship between the State and the individual (public administration – citizen) is a consequence of values embodying the axiological foundations for public governance in the state, including the relation between the common good and human dignity.

IV.

There is no doubt that the right to good administration is based on the determinants that create these bases. And this is not about determinants of a procedural nature, but system-wide foundations of the legal order formed within the Latin culture, related to the relationship between the State and the individual. The following should be mentioned as the most important standards.

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[13] G.W.F. Hegel, *Sämtliche Werke*, Bd. 1: *Schriften zur Politik und Rechtsphilosophie*, Leipzig 1973, p. 112.

[14] Platon, *Prawa*, Warszawa 1960, pp. 15–16.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 02/11/2026 11:37:20

1. The principle of separation of powers. Currently, the essence of this principle is formulated primarily by Article 10 (1) of the Polish Constitution and the case-law of the Constitutional Tribunal, abundant in this respect. According to one of the Constitutional Tribunal's judgements:

> […] it follows that the legislative, executive and judicial powers are separated, and that there must be a balance between them, and that they must cooperate one with another. This rule is not of a purely organizational significance. The purpose of the principle of separation of powers is, among other things, to protect human rights by preventing any abuse of authority by any of its organs[15].

It is worth noting that each of these powers has the competence expressing the essence of that power, which means that the principle of separation of powers:

> […] not only sets the rules for shaping the scope of competences of state bodies in legislation, but also how to use the competences conferred on individual state bodies. […] The division of powers does not mean their separation and lack of mutual dependence. The Constitution, when referring in the aforementioned provision to the balance between the powers, in a number of other provisions expressly provides for the interaction between organs located in different powers serving this balance (e.g. Article 98 (4) and (5), Article 101, Article 105 (1), Article 122, Article 145, Article 154 (2), Articles 158–160, Article 176 (2), Article 178 (1), Article 179, Article 180 (2) to (4), Article 183 (3), Article 184, Article 185 and Article 188 of the Polish Constitution). It would be completely groundless to incorporate the principle of separation and balance of powers in a way leading to paralysis of the formative influence, provided for in the Constitution, which each authority may exert on the other two, in appropriate limits and forms[16].

The highly modified Montesquieu's model of division of powers allows for the possibility of complementing particular powers by other ones. There is no doubt that the legislative power shapes the foundations of the positive law currently in force, the judiciary and public administration (executive power) are obliged to apply to, but the final wording of legal norms is ultimately determined by courts and public administration bodies, as they refer the law established by the legislative authority to specific persons (subjects of law) and specific factual states, thus interpreting the law in the sphere of permissible normative discretion. It is also possible to question the applicable law and eliminate it from the legal system in the event it has been found to be contrary to the Polish Constitution by the Constitutional Tribunal. The point of reference for the Constitutional Tribunal is the law whose authority is backed by the legislative power. It would be an oversimplification to argue that applying the law means a mere reading of its content from statutes and other normative acts, because decoding a legal norm from a legal regulation or regulations is a mental process associated with giving them optimal content, which

[15] Judgement of the Constitutional Tribunal of 9 November 1993, K 11/93, OTK ZU 1993, No. 37.

[16] Judgement of the Constitutional Tribunal of 4 October 2000, K 8/00, OTK ZU 2000, No. 6, item 89.

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Data: 02/11/2026 11:37:20

undoubtedly is a creative process and even a law-making process. In such a state of affairs, the right to good administration is related to the expectation that public administration bodies will interpret the law in a way that will allow extracting from it anything that is good, just and fair.

2. The rule of law. This principle – formulated in Article 7 of the Polish Constitution and also in a number of acts (e.g. Articles 6 and 7 of the Code of Criminal Procedure) is undoubtedly one of the basic pillars of the right to good administration. In the most general sense, the obligation for public authorities to operate under and within the law has a broad objective scope. "It expresses both the principle of legalism in the narrow sense, the obligation to act on the basis of the law, as well as the obligation to adhere to the law"[17]. The political transformations in Poland, due to the fact that it has still not been possible to fully solve with the consequences of various historical events concerning the understanding of the rule of law and the idea of good administration, and since the principle of legalism associated with the observance of positive law was excessively glorified, regardless of its quality, as long as it is established with respect for basic lawmaking rules and procedures. Such a formalistic approach to law, which was supposed to bind public administration bodies in the implementation thereof, put aside the question about the content and value of material administrative law without proper perception of the axiological foundations of public order and values embodying the essence of law, i.e. what is good, just, rational, prudent and fair. Therefore, when speaking of the rule of law, it is not enough to close oneself within the box of positive law. One must agree in this respect with the theses put forward by M.A. Krąpiec, who noted:

> […] that positivists take external manifestations of law, e.g. the fact of enacting a law by the Parliament, for the law itself. But this enacting does not constitute the essence of the law and does not confer the legal force on it. The authority of law stems from the good, which is the purpose of law, the reason for its validity, and for the implementation of which law obliges in such circumstances. […] Law does not mean anything if it does not pass through the filter of conscience. Law is truly effective when it becomes a practical judgement chosen voluntarily by man[18].

In that regard, one should share the A. Kaufmann's view: "A positivist who sees only statutes and is closed to any non-statutory moments of law is, therefore, […] in principle helpless against any distortion of law by a political force"[19].

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[17] See W. Sokolewicz, *Artykuł 7*, [in:] *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, red. L. Garlicki, t. 5, Warszawa 2007, p. 3.

[18] M.A. Krąpiec, *Suwerenność, by ocalić*, Toruń 1997, p. 8.

[19] A. Kaufmann, *Rechtsphilosophie, Rechtstheorie, Rechtsdogmatik*, [in:] *Einführung in Rechtsphilosophie und Rechtstheorie der Gegenwart*, Hrsg. A. Kaufmann, W. Hassemer, U. Neumann, Heidelberg 1989, p. 17.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 02/11/2026 11:37:20

In the context of the right to good administration, it should be assumed that the rule of law is primarily addressed to public authorities and its fundamental mission is the protection of civil rights against excessive freedom and arbitrariness of those authorities. Undoubtedly, it would be simplistic to reduce it to government and local government bodies, as public administration tasks and other forms of public authority are also pursued by other actors. The Constitutional Tribunal was very expressive in the judgement in case No. SK 18/00, addressing the problem, governed by Article 77 (1) of the Polish Constitution, of the right to compensation for wrongful action of State authorities, e.g.in the perspective of the rule of law. Having regard to the fact that the rule of law is primarily addressed to public authorities, the Tribunal has reasonably assumed that:

> The notion of public authority within the meaning of Article 77 (1) of the Constitution covers all the powers in the constitutional sense – legislative, executive and judicial. It should be stressed that the concept of a state body and body of public authority are not identical. This is so since the concept of "public authority" extends also to other institutions than central or local government, insofar as they exercise the functions of public authority as a result of entrusting or handing over these functions to them by an organ of state or local authority. The exercise of public authority concerns all forms of activity of the state, local government and other public institutions which cover very diverse forms of activity. The performance of such functions is usually combined, although not always, with the capacity of sovereign shaping the situation of the individual. This applies to the area where the rights and freedoms of an individual may be violated by a public authority. The term "organ of public authority" used in Article 77 (1) of the Constitution means an institution, organisational structure, entity of public authority to whose activity the damage relates, and not the governing body of a legal person in terms of civil law. The liability based on this provision is borne by the structure (the institution) and not the person associated with it (its officers). It is essential to determine whether the action of an organ of public authority is connected with the implementation of its prerogatives. The formal nature of the links between the person who directly caused the damage and the public authority is less important. However, the identification of the status of the person who directly caused the damage makes the attribution of the action to an organ of public authority easier[20].

3. Human dignity as an axiological basis and categorical imperative in the sphere of understanding the right to good administration. Undoubtedly, the essential constitutional provision for shaping the legal order in Poland is Article 1 of the Polish Constitution ("The Republic of Poland shall be the common good of all its citizens") and Article 30 ("The inherent and inalienable dignity of the person shall constitute a source of freedoms and rights of persons and citizens"). Bearing in mind that human dignity refers not only to human rights and freedoms in their synthetic formula but also to all values that embody this dignity and are supposed to serve it, and thus also the system of state organs, standards of public administration and its basic determinants, quality and determinants of applicable law,

[20] Judgement of the Constitutional Tribunal of 4 December 2001, SK 18/00, OTK 2001, No. 8, item 256.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 02/11/2026 11:37:20

etc. – it seems reasonable to locate Article 30 of the Polish Constitution of 1997 as its Article 1 or 2, because these are the most basic values from the point of view of people and the community in which they operate. The public administration (other state organs) and its facility of action should be subordinated to the common good and human dignity. Hence, the individual has the right to good administration, which means not only its effectiveness, rationality, efficiency but also the need to properly implement guarantees expressing the essence of his rights.

Undoubtedly, human dignity is an obligation to respect, also by state organs, including public administration bodies, all that constitutes the essence of our humanity. In this sense, it goes beyond the sphere of positive law. Thus, there is no doubt "that human dignity cannot be fully understood without approaching the human person in a transcendent dimension […]. Man, through his specific life, gives human dignity an individual feature. Hence, each person's dignity has its individual face and personalized picture"[21]. John Paul II in the encyclical *Veritatis Splendor* emphasized that:

> […] natural law expresses the dignity of the human person and lays the foundation for his fundamental rights and duties, it is universal in its precepts and its authority extends to all mankind. This universality does not ignore the individuality of human beings[22].

In his message for the celebration of the XXXII World Day of Peace of 1 January 1999, he clearly stressed that:

> […] no affront to human dignity can be ignored, whatever its source, whatever actual form it takes and wherever it occurs. […] Defence of the universality and indivisibility of human rights is essential […] for the overall development of individuals, peoples and nations. To affirm the universality and indivisibility of rights is not to exclude legitimate cultural and political differences in the exercise of individual rights[23].

A particular role in determining the nature and substance of human dignity and its transcendent and supra-positive character has been played by the UN Charter and in particular the Universal Declaration of Human Rights[24]. As John Paul II stressed:

> […] the Universal Declaration is clear: it acknowledges the rights which it proclaims but does not confer them, since they are inherent in the human person and in human dignity. Consequently, no one can legitimately deprive another person, whoever they may be, of these rights, since this would do violence to their nature. All human beings, without exception, are equal in dignity. For the same

[21] M. Zdyb, *Godność człowieka w świetle art. 39 Konstytucji Rzeczypospolitej Polskiej*, [in:] *Normatywny wymiar godności człowieka*, red. W. Lis, A. Balicki, Lublin 2012, p. 63.

[22] John Paul II, *Veritatis splendor*, http://w2.vatican.va/content/john-paul-ii/en/encyclicals/documents/hf_jp-ii_enc_06081993_veritatis-splendor.html [access: 10.02.2019].

[23] *Message of His Holiness Pope John Paul II for the Celebration of the World Day of Peace*, 1 January 1999, https://w2.vatican.va/content/john-paul-ii/en/messages/peace/documents/hf_jp-ii_mes_14121998_xxxii-world-day-for-peace.html [access: 10.02.2019].

[24] www.un.org/en/universal-declaration-human-rights [access: 10.02.2019].

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 02/11/2026 11:37:20

reason, these rights apply to every stage of life and to every political, social, economic and cultural situation. Together they form a single whole, directed unambiguously towards the promotion of every aspect of the good of both the person and society[25].

In view of the fact that human dignity is a kind of reference point for shaping the axiological aspects of the right to good administration, it is necessary to point to a few quite important issues. First of all, undoubtedly, dignity has an ontological, theological and religious dimension, also from the perspective of administrative law. D. Dudek rightly points out here that:

> Dignity having an essential importance and implications, as it is not a legal institution [it is not created by positive law – M.Z.] established and regulated by law. […] It is a primary phenomenon, independent from law, connected with human existence, capable of reconstruction of a philosophical (anthropological and ethical) or philosophical-legal definition, rather than a strictly dogmatic-legal one[26].

Secondly, bearing in mind the above, it should be assumed that it does not require normative legitimacy in the meaning of positive law for its existence, which means that it exists regardless of whether normative acts declare it or not. Its functioning does not require articulation in a specific normative act. Thirdly, despite the fact that for its functioning in legal transactions it is not necessary for the State authorities to be active, so it does not have to be expressed and emphasized in the constitution, statutes and other normative acts, it has a unique legal significance. The normative character of Article 30 of the Polish Constitution and human dignity, despite the fact that this provision does not create human dignity, but only confirms its existence and its above-positive character, has been pointed out many times by the Constitutional Tribunal, as soon as it was articulated in the Polish Constitution[27]. Fourthly, human dignity as such is absolute, inalienable and vested in everyone. Therefore, unlike the rights for which dignity is a source, it is not subject to limitation. It is a value to which the principle of proportionality does

[25] *Ibidem*.

[26] *Zasady ustroju III Rzeczypospolitej Polskiej*, red. D. Dudek, Warszawa 2009, pp. 43–44.

[27] Judgement of the Constitutional Tribunal of 9 October 2001, SK 8/00, OTK 2001, No. 7, item 211; judgement of the Constitutional Tribunal of 8 November 2001, P 6/01, OTK 2001, No. 7, item 248; judgement of the Constitutional Tribunal of 15 October 2002, SK 6/02, OTK-A 2002, No. 5, item 65; judgement of the Constitutional Tribunal of 5 March 2003, K 7/01, OTK-A 2003, No. 3, item 19; judgement of the Constitutional Tribunal of 22 February 2005, K 10/04, OTK-A 2005, No. 2, item 17; judgement of the Constitutional Tribunal of 1 September 2006, SK 14/05, OTK-A 2006, No. 8, item 97; judgement of the Constitutional Tribunal of 24 October 2006, SK 41/05, OTK 2006, No. 9, item 126; judgement of the Constitutional Tribunal of 7 March 2007, K 28/05, OTK-A 2007, No. 3, item 24; judgement of the Constitutional Tribunal of 30 September 2008, K 44/07, OTK 2008, No. 7, item 126; judgement of the Constitutional Tribunal of 24 February 2010, K 6/09, OTK 2010, No. 2, item 15; judgement of the Constitutional Tribunal of 4 November 2014, SK 55/13, OTK 2014, No. 10, item 110.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 02/11/2026 11:37:20

not apply, as it does to all rights and freedoms arising from dignity[28]. This is due, among other things, to the fact that it is a value above positive law. It distinguishes or may distinguish it from rights such as the right to good administration, which derive their power from it, and it may be the subject of specifying their content in the process of making and maintaining the law. Fifthly, the protection not only of human dignity but also of the right to good administration is a fundamental duty of the state. The state cannot release itself from this duty. It is also responsible for its implementation, both in the context of lawmaking and law application. Only then it can guarantee the public order and legal security for citizens. In this context, it is important that human dignity may be treated, in the light of the previous practice of the Constitutional Tribunal, as an independent model of review of compliance with the Polish Constitution, also when it comes to the right to good administration.

4. The right to good administration as part of the common good. In addition to human dignity, the common good is the axiological basis for shaping and implementing the right to good administration. Owing to this, the need to identify this right does not raise any concerns. The crucial and very important source in this matter is the case-law of Constitutional Tribunal and the administrative judiciary (first the Supreme Administrative Court and currently regional administrative courts and the Supreme Administrative Court)[29].

It is certainly reasonable to argue that the common good is a value that integrates other values within the state. This results from Article 1 of the Polish Constitution, stating that the Republic of Poland shall be the common good of all its citizens, and therefore the key task of the state is to create such a system of organs and mechanisms for their action, which would serve the whole national community and individual citizens. In this context, the common good is a kind of potentiality aimed towards the welfare of citizens. In this regard, it is also obliged to shape the optimum public order that guarantees the right to expecting security in the functioning of the State apparatus, including in particular the public administration with which the right to good administration is connected. There is no right to good administration without reference to human dignity and the common good. As noted by J. Krucina:

> The community in the natural order relies on the communication of people among themselves – *audentio hominum ad unum aliquid communiter agendum*. This order is defined by four elements: 1) human beings – since the individual is primarily a person in the community, he tends towards it, is educated in it, wants to participate in it, while receiving and giving at the same time. 2) Therefore, people cannot be just side by side, they must be one with another, creating a kind of interdependence

[28] Judgement of the Constitutional Tribunal of 9 July 2009, SK 48/05, OTK-A 2009, No. 7, item 108; judgement of the Constitutional Tribunal of 26 May 2008, SK 25/07, OTK-A 2008, No. 4, item 62; judgement of the Constitutional Tribunal of 8 November 2001, P 6/01, OTK 2001, No. 8, item 248.

[29] M. Zdyb, *Kształtowanie standardów demokratycznego państwa prawnego w orzecznictwie sądowo-administracyjnym*, [in:] *Księga jubileuszowa z okazji 30-lecia sądownictwa administracyjnego*, Lublin 2013, pp. 117–127.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 02/11/2026 11:37:20

that arises through relations, contact and meetings between human beings. 3) Contacts among people are not any kind of contact, neutral, but they orient them around something uniting; this mutual assignment grows on the ground of natural or supernatural goods, values and goals that trigger the integration force among people to become the common good of the community. Thus, the common good forming the starting point, the formal reason behind the community and the purpose for it, focuses the conduct of community members and determines their behaviour. 4) When seeking the common good, people find in its values a part of themselves, their own personal good[30].

In the context of the common good and human dignity, and the exercise of the right to good administration in this perspective, the moral dimension of the right to good administration and the ethical dimension of the public administration are important. Public administration bodies (state organs) do not stand above ethics, as F. Koneczny would say today.

It is the unethicality of public authority of state or local government which has led […] to a characteristic understanding of politics as the art of coming to power […]. And if the state does not recognize ethics in relation to citizens, how are they supposed to have ethical qualities in their behavior towards the state? […] The state has no […] power to commit unethical deeds, i.e. evil does not become moral and admissible by the mere fact that it is committed by the state, or that it is committed on behalf of or for the state […]. There is no power under the sun that would be allowed to order its subordinates to act against the Decalogue[31].

In view of the above, it should be stated that both the common good and the right to good administration must be approached not only in the normative but also in the moral (ethical), axiological, obligatory (theoretical), community, material, metaphysical and economic perspectives.

The right to good administration, albeit not literally expressed in the normative part of the Polish Constitution (regrettably!), it is a right that stems both from the Preamble to the Constitution and from basic provisions, in particular Article 30 (dignity as a source of all human rights and freedoms), Article 2 (the principle of a democratic state governed by the rule of law embodying the ideas of social justice) as well as Article 1 emphasizing that the Republic of Poland is the good of all citizens, which means that every person has his duties towards the state, but also the right to good administration, which will handle his affairs in a way that does not compromise his dignity, also taking into account the common good in terms of axiological categories that are morally acceptable. In this context, it should not be forgotten that the right to good administration is the right to a good state which is a guardian and symbol of public order in Poland and historically shaped values built on the foundations of Latin culture. I share here the position of, among others, Z. Cieślak, who assumes that:

[30] J. Krucina, *Wokół wartości najwyższych*, Wrocław 1996, pp. 14–15.
[31] F. Koneczny, *Rozwój moralności*, Lublin 1938, pp. 212–219.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 02/11/2026 11:37:20

> […] the legislature, wanting to act in accordance with Article 1 of the Constitution as an independent model for the review of consistency of legal provisions with the Constitution, may not introduce regulations that would lead to the denial of existing protected value, including in particular […] to a significant restriction of human and civil freedoms and rights[32].

And this applies also to those rights and freedoms, which, like economic freedom or the right to good administration, are a consequence of the legal order formed in Poland, including the legal order regarding the relations between the individual and the state. Law is, in my opinion, the personification of systemic values and at the same time the art of what is good, right, prudent, rational and just. Law, understood in this way, "aggregates, at the level of the entire system of applicable law, all constitutionally and legally defined values which constitute the justification for lawmaking"[33]. In the context of public order, it is important to adopt the principle that the common good is not so much based on its literal indication in the constitution and other normative acts, but it stems from the axiological foundations of the legal system. From this concept arises a categorical imperative imposing the obligation of looking for the common good, taking into account the metaphysical, axiological and moral perspectives. Good administration should always be embodied in personal and public morality, justice, equity and prudence. In this context, Saint Augustine would certainly add that "without justice [and morality – M.Z.] what are kingdoms but great bands of robbers?"[34].

5. Legal security. Certainty of law. The problem of legal security and the right to good administration, especially when we look at this problem from the perspective of risks, is related to the misunderstanding of the axiological foundations and the essence of law. In fact, the old Roman idea of Celsus who referred to law as ordo *boni ac rati* is forgotten. This formula, after its enlargement, indicates that law is the art of what is good, correct, prudent, equitable and fair, etc.[35] It seems appropriate in this context to recall again the M.A. Krąpiec's assertion:

> […] that positivists take external manifestations of law, e.g. the fact of enacting a law by the Parliament, for the law itself. But this enacting does not constitute the essence of the law and does not confer the legal force on it. The authority of law stems from the good, which is the purpose of law, the reason for its validity, and for the implementation of which law obliges in such circumstances. […] Law does not mean anything if it does not pass through the filter of conscience. Law is truly effective when it becomes a practical judgement chosen voluntarily by man[36].

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[32] See the positions proposed by Z. Cieślak in the dissenting opinion to the judgement of the Constitutional Tribunal of 20 April 2011, KP 7/09, OTK 2011, No. 3, item 26, points 3–4.

[33] Z. Cieślak's dissenting opinion to the Judgement of the Constitutional Tribunal of 16 April 2008, SK 40/07, OTK 2008, No. 3, item 44.

[34] Saint Augustine, *The City of God*, lib. 4 cap. 4, http://imagining-other.net/pp4augustineextracts.htm [access: 10.02.2019].

[35] M. Zdyb, *Aksjologiczne podstawy bezpieczeństwa wewnętrznego w Rzeczypospolitej Polskiej*, [in:] *Publicznoprawne podstawy bezpieczeństwa wewnętrznego*, red. M. Zdyb, Warszawa 2014, p. 38.

[36] M.A. Krąpiec, *op. cit.*, p. 8.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 02/11/2026 11:37:20

Certainly, from the point of view of the right to good administration, the quality of law, its coherence, functionality, rationality, moral integrity of the will of organs of administration and administrative entities, the sense of public service, clarity, unalterability of the fundamental content of the law, sometimes referred to as the conceptual core or the essence of law. The essence of human rights, including the right to good administration:

> […] should be understood as the "unalterable core" […] of each law. This unalterability lies in the fact that even the restrictions compliant with all other constitutional norms absolutely must not affect a certain sphere guaranteed by the Constitution of human and civil rights. This sphere is defined by the function of given freedom or subjective right, determined to take into account the fundamental constitutional principles[37].

The legal certainty in the sphere of administration can be put at risk by such phenomena as: fetishisation of artificial value systems and related excessive relativism of law, "quantitative and qualitative depreciation of law and its core institutions"[38] and the resulting inflation of the law, the low quality of the applicable law and its incomprehension, separation of law from morality, overabundance of amendments, dysfunctionality of administrative law, systemic inconsistency, "inclination towards various decadent and pseudo-humanitarian trends and giving in to various bureaucratic pressures"[39], etc.

Legal security and certainty of law are at the core of good administration and the right to good administration. It is undoubtedly influenced by: the understanding of the essence of law by both the lawmaking and law enforcement authorities; moral integrity of the will of the public administration and other law enforcement authorities; clarity of law; protection of acquired rights and of the best-formed expectations; linguistic correctness; trust in the law and the lawmaker; respect for historical achievements, etc.[40] The exercise of the right to good administration is threatened by various phenomena related to the dysfunctionality of public administration, including material and procedural administrative law. A kind of guarantor for the legal order in this respect is the messages known from as early as Roman times: 1) *iustitia* (justice); 2) *fides* (trust, faith); 3) *aequitas* (equity); 4) *humanitas* (humanity, kindness); 5) *honestes* (honesty, integrity)[41].

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[37] Judgement of the Constitutional Tribunal of 12 January 1999, P 2/98, OTK ZU 1999, No. 1, item 2.

[38] M. Zdyb, *Aksjologiczne podstawy…*, p. 39.

[39] *Ibidem*, p. 41.

[40] *Idem*, *Pewność prawa*, „TEKA Komisji Prawniczej. Oddział PAN w Lublinie" 2018, nr 1, pp. 421–423; *idem*, *Dylematy ładu prawnego w kontekście inflacji i niektórych innych niedoskonałości prawa administracyjnego*, [in:] *Prawo administracyjne dziś i jutro*, red. J. Jagielski, M. Wierzbowski, Warszawa 2018.

[41] See, among others: M. Kuryłowicz, *Etyka i prawo w sentencjach rzymskich jurystów*, [in:] *W kręgu problematyki władzy, państwa i prawa. Księga jubileuszowa w 70-lecie urodzin profesora Henryka Groszyka*, red. J. Malarczyk, Lublin 1996, pp. 125–135.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 02/11/2026 11:37:20

6. The authority of the administration and the ethos of the public service. A positive assessment of public administration always derives from the authority of its bodies and institutions, as well as the people who personify their seriousness and majesty[42]. The individual as a person is free from the state, but as an individual has some duties (responsibilities) towards the state. The possibility of fulfilling these duties depends to a large extent on the authority of state bodies and the ability to carry out the service intended to serve the common good and protect human dignity. Unfortunately, all too often the administrative authorities or administrative power are understood as existing for themselves only. J. Krucina is certainly right when noting that "no authority is for itself […]. It does not create social reality – it serves this reality. It is subordinate to a higher reality in which community members contribute their own dignity, their own rights, and finally, the moral order itself, resulting from the moral intuition of humanity […]"[43].

Today, we expect such an administration and such a public order, bearing in mind the most complete embodiment of good administration. After years of enslavement and fighting for freedom, it seemed that building in the conditions of freedom would be something easier, and striving for the good would result in good administration. However, for this to happen it would be necessary to replace various forms of servility with public service. As Cardinal Stefan Wyszyński, the Primate of Poland, wrote before the liberation of Poland from the communist slavery:

> Don't you think that a nation can only fulfil its task with the help of people without character, who live without character, who live just only to survive, to earn, to weasel out: today by cheating at the university, and tomorrow at the office or position held. An easy lifestyle is the greatest enemy of contemporary Poland. Not only incompetence, but also dishonesty of those competent, educated people who know their tasks, even well-paid, can lead to a terrible catastrophe of our Homeland[44].

His words spoken just before his death, addressing this matter even more profoundly, were also very meaningful[45].

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[42] See M. Zdyb, *Służba…*, pp. 349–377; *idem*, *Standardy służby publicznej. Uwagi ogólne*, „Annales UMCS sectio G (Ius)" 2017, nr 2, DOI: http://dx.doi.org/10.17951/g.2017.64.2.9.

[43] J. Krucina, *op. cit.*, pp. 14–15.

[44] S. Wyszyński, *Droga awansu społecznego (wystąpienie na inauguracji roku akademickiego KUL w dniu 21 października 1979 r.)*, NS, p. 924.

[45] He spoke then: "You don't have to look to others, these or those, maybe to politicians, demanding them to change. Everyone must begin from himself so that we truly change. And when we are all reborn, the politicians will have to change whether they want or not. We are playing at this moment in our homeland not only for a change in the social institution, it is not about replacing the people either, but first and foremost it is about the renewal of man. […] What can we benefit from the fact that, I can say trivially, a circulating bottle of spirits is passed from the hands of some drunkards to the hands of other ones! I will say even more drastically: that the key to the state funds is passed from the hands of some thieves to the hands of other ones?! After all, it is not about thieves who have access to the money and all drunkards to vodka, but it is about the awakening of the conscience of

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 02/11/2026 11:37:20

To understand the meaning of good administration, it is not sufficient to establish appropriate legal regulations, in terms of positive law, because they constitute merely building blocks and a point of reference for looking for law and for creating good administration. The public service as a component of good administration entails a necessity of: 1) balancing the fact of the collision of a formalised administrative structure, thus the formal element, with the personal one, in which emerges the problem of search for value of law, its meaning, and the personal element, expressed by the ethos of the service, which is supposed to lead to the identification of the value of law and to give moral and ethical dimensions to the law; 2) the elimination of shortcomings of law, as well as the various types of pathology which distort the essence of that law. This entails due care for the common good and human dignity. Important in this context are the guarantees concerning fundamental rights of a protective nature, such as the right to trial or the principle of proportionality applied especially when there is need to restrict those rights (also freedoms); 3) understanding the essence of human dignity.

> The law enshrined in the constitution cannot be regarded as binding only because it is established by the will of those exercising power in the State. The constitution does not negate the powers of the state authority to make the law, its meaning and its binding force, but always within the supreme principle of human dignity, the principles of the social state governed by the rule of law and unalterable human rights[46].

In this reference system, it is possible to speak of the universality of human dignity and "its emanating to all other fundamental rights"[47]; 4) the common good and human dignity are certainly a kind of categorical imperative and thus also a moral principle. They do not contradict each other but rather complement each other and intertwine. In such a state of affairs, D. Hollenbach rightly argued:

> The Government [public administration – M.Z.] has to fulfil the moral function: the protection of human rights and ensuring fundamental justice for all members of the community. It is society [in the sense of State – M.Z.] understood both as a whole and as a conglomerate of various planes and aspects, which bears the responsibility for building the common good. But it is up to the Government to guarantee a minimum of conditions for such an abundant social activity, namely guaranteeing human rights and justice[48].

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us all, to make us understand our responsibility for the nation that is being raised by God from the dead" – *idem*, *O moralną odnowę narodu (do wiernych w bazylice gnieźnieńskiej, 2.02.1981)*, NS, p. 1010.

[46] F.J. Mazurek, *Godność osoby ludzkiej podstawą praw człowieka*, Lublin 2001, pp. 157–158.

[47] *Ibidem*.

[48] As cited in: M. Novak, *Splot dwóch tradycji*, „Znak" 1990, nr 10–11, p. 11.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 02/11/2026 11:37:20

V.

General principles are related to administrative procedure as part of shaping good administration standards. Undoubtedly, the axiological bases of public order are the foundation for shaping the idea of good administration and the right to good administration. They constitute the substantive core allowing for the search for an optimal model of functioning in relations between the State (entities administering the state) and the individual (administered entity). To make these values real, it is necessary to build an appropriate system of institutions and instruments of procedural and formal/legal nature. I am not going to analyse them herein (but I will do it in subsequent publications). However, it seems important to note that the axiological foundations of the right to good administration derive its power, i.a., from Article 41 of the Charter of Fundamental Rights of the European Union of 2000. According to this provision:

> […] every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions and bodies concerned. This right is accompanied by the obligation of the bodies and institutions and all officers employed therein to settle the case appropriately and lawfully. If, as a result of administrative action, the applicant suffers a damage, he shall be entitled to claim compensation[49].

It is worth pointing to various types of principles articulated primarily in the Act of 14 June 1960 – Code of Administrative Procedure[50]. It was preceded by the regulation of the President of the Republic of Poland of 22 March 1928 on Administrative Procedure, which was the second normative act of this type in Europe[51]. The current Code of Administrative Procedure of 1960 in Articles 6–16 contains normative references that are crucial for the implementation of the right to good administration and that allow for the formation of the principle of good administration. Most of them are of a procedural nature, although some of them are also of a substantive-law nature. It should also be noted that some of them have been directly articulated in the Polish Constitution or implied from it. Among the principles contained in the Code of Administrative Procedure, one should mention such principles as: the rule of law (Article 7 of the Polish Constitution, Articles 6 and 7 of the Code of Administrative Procedure), the principle of objective truth (Article 7), the principle of reconciling public interest and legitimate interest of parties (Article 7), the principle of deepening the trust of citizens in state bodies and

[49] A. Zoll, *Prawo do dobrej administracji*, [in:] J. Świątkiewicz, *Europejski Kodeks Dobrej Administracji (tekst i komentarz o zastosowaniu kodeksu w warunkach polskich procedur administracyjnych)*, Warszawa 2005, p. 5.

[50] Consolidated text Journal of Laws 2018, item 2096 as amended.

[51] Journal of Laws No. 36, item 341 as amended.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 02/11/2026 11:37:20

deepening the legal culture (Article 8), the principle of informing about applicable law and providing legal assistance (Article 9), the principle of active participation of parties in administrative proceedings (Article 10), the principle of persuasion (Article 11), the principle of promptness and simplicity (Article 12), the principle of the right to be heard (Article 12), the principle of the right to a fair trial (Article 12), the principle of the encouragement of consensual agreements between the parties in disputes (Article 13), the principle of written form of proceedings (Article 14), the principle of dual instance (Article 15), the principle of the stability of decisions (Article 16), the principle of judicial review of the legality of decisions (Article 16).

Undoubtedly, attention should be paid to the procedural aspect of the European Code of Good Administrative Behaviour adopted on 6 September 2001 by the European Parliament. When we compare it to the Polish Code of Administrative Procedure and the applicable legislation based on the interpretation of the Polish Constitution of 1997, it is not a normative novelty. This is so because it formulates the principles and conclusions that had already been accepted in Poland much earlier. The European legislature lists therein, among others, such standards and principles as: the principle rule of law (lawfulness) (Article 4), the principle of non-discrimination (Article 5), the principle of impartiality (Article 8), the principle of independence (Article 8), the principle of objectivity (objective truth) (Article 9), the principle of proportionality (Article 6), the prohibition of abuse of power (Article 7), the principle of compliance administrative practices, with legitimate grounds for departing from them (Article 10 (1)), the principle of legitimate and reasonable expectations (Article 10 (2)), the principle of honesty (impartiality and reasonableness) (Article 11), the principle of courtesy (Article 12), the principle of responding to letters in the citizen's language (Article 13), the acknowledgement of receipt and indication of the competent official (Article 14), the obligation to transfer to the competent service of the institution (Article 15), the right to be heard and make statements (Article 16), the reasonable time-limit for taking decisions (Article 17), the duty to state the grounds of decisions (Article 18), the indication of appeal possibilities (Article 19), the notification of the decision (Article 20), the data protection (and the right to privacy and integrity) (Article 21), the request for information (Article 22), the requests for public access to documents (Article 23), etc.[52] They will be discussed in detail in another article.

[52] J. Świątkiewicz, *Europejski Kodeks Dobrej Administracji…*

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 02/11/2026 11:37:20

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STRESZCZENIE

Nie ulega wątpliwości, że dla kształtowania ładu publicznego w państwie kluczowe jest ukształtowanie standardów dobrej administracji i aksjologicznych podstaw porządku prawnego, tworzącego system prawa administracyjnego zarówno w płaszczyźnie formalnoprawnej i ustrojowej, jak i materialnoprawnej. Podstawową rolę odgrywa kilka desygnatów prawnych, takich jak: odpowiednio rozumiana zasada podziału władz, zasada praworządności, godność człowieka jako aksjologiczna podstawa i imperatyw kategoryczny w sferze pojmowania dobrej administracji, znaczenie pojęcia dobra wspólnego, właściwe rozpisanie na czynniki pierwsze relacji dobro wspólne – godność człowieka. Istotnymi elementami wzmacniającymi podstawy dobrej administracji są także bezpieczeństwo prawne i pewność prawa oraz eliminowanie zjawiska inflacji prawa i relatywizacji fundamentalnych wartości mających znaczenie systemowe. Kształtowanie systemu dobrej administracji nie jest możliwe bez odpowiednio ukształtowanej służby publicznej oraz stałego budowania jej etosu. Analiza podstaw dobrej administracji i jej trwałości nie może być sprowadzona tylko do aspektów proceduralnych i formalnoprawnych. Dlatego – poza zasygnalizowaniem potrzeby ciągłego zajmowania się problematyką zasad i standardów określonych w Polsce w Kodeksie postępowania administracyjnego oraz przyjętym w dniu 6 września 2001 r. przez Parlament Europejski Kodeksie Dobrej Administracji – problematykę tę postanowiłem przedstawić w innym artykule, kładąc nacisk w niniejszym opracowaniu na fundamentalne wartości aksjologiczne symbolizujące dobrą administrację. Ważne miejsce zajmuje w tym zakresie doniosły problem prawa jednostki do dobrej administracji, co jest swoistą konsekwencją uznania, że na państwie ciąży obowiązek i odpowiedzialność związana z ukształtowaniem optymalnego modelu dobrej administracji i ładu publicznego w państwie.

Słowa kluczowe: dobra administracja; prawo do dobrej administracji; godność człowieka; dobro wspólne; bezpieczeństwo prawne; pewność prawa; praworządność