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**PROTECTION OF THE INDIVIDUAL'S DIGNITY  
UNDER POLISH CRIMINAL LAW**

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NA GRUNCIE POLSKIEGO PRAWA KARNEGO)**

**(Abstract of doctoral dissertation)**

**The doctoral dissertation developed in the discipline of legal sciences  
at the Department of Criminal Law  
of the Faculty of Law and Administration of the University of Lodz  
under the supervision of Jan Kulesza, PhD habil., Assoc. Prof. (UŁ)**

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**Abstract of doctoral dissertation entitled**  
**„Protection of the individual’s dignity under polish criminal law”**  
**prepared under the supervision of Jan Kulesza, PhD habil., Assoc. Prof. at UŁ**

The doctoral dissertation entitled „Protection of the individual’s dignity under polish criminal law” was developed in the discipline of legal sciences at the Department of Criminal Law of the Faculty of Law and Administration of the University of Lodz under the supervision of Jan Kulesza, PhD habil., Assoc. Prof. (UŁ).

The doctoral dissertation addresses the issue of the principle of respect for the dignity of the individual in the context of the ethical legitimization of criminal law, derived from the concept of the so-called criminal law of values. In contrast to most doctoral dissertations in the field of substantive criminal law, which focus on an in-depth analysis of a single selected type of offense, the author analyzes a larger number of prohibited acts, which she considers through the prism of applying the principle of respect for dignity in the development of legal norms, as well as in the interpretation of existing ones. This is because the aim of the dissertation is to incorporate the principle of respect for human dignity into the analysis of the structure of individual prohibited acts relating to behaviors that violate human dignity in order to answer the question of whether the current regulations remain consistent with the principle of respect for human dignity and adequately protect that dignity.

The main hypothesis of the doctoral dissertation is that the principle of respect for human dignity should be of fundamental importance in establishing legal norms and interpreting existing ones. Recognition that a given provision is contrary to this principle should lead to refraining from its implementation, and in the case of an existing norm, to its repeal.

The dissertation is divided into five chapters. In the first part, the author resolves terminological and historical issues. Subsequently, the various functions of the principle of respect for human dignity were discussed, with particular emphasis on its role in the ethical legitimization of criminal law and its pro-constitutional interpretation. For this purpose, the understanding of dignity was presented within the framework of the Constitution of the

Republic of Poland, a number of international legal instruments, and the case law of the Constitutional Tribunal, the Supreme Court, the European Court of Human Rights, and the Court of Justice of the European Union. A comparative perspective was also included, focusing on the significant jurisprudence of the German Federal Constitutional Court, the Italian Constitutional Court, and the Supreme Court of the United States.

Chapter II examines the relationship between the dignity of the individual and the dignity of the nation to which that individual belongs. This analysis served to answer the question of whether there still remains space today for the criminalization of insults against the nation.

The order of the subsequent chapters reflects the stages of human existence. Thus, Chapter III of the doctoral dissertation addresses the criminal-law protection of the dignity of living persons, with particular attention to the protection of legal interests such as social belonging and identity, as well as honor and reputation. This involved an examination of phenomena such as broadly understood discrimination and hate speech, as well as the crimes of defamation and insult.

Chapter IV is devoted to the criminal-law protection of the dignity of dying, seeking to answer the question of whether there exists a right to a dignified, pain-free death, from which one might derive an individual's right to determine their own life and the moment of its end. Accordingly, the offenses of failure to render assistance and euthanatic homicide were analyzed.

The final chapter concerns the criminal-law protection of the dignity of deceased persons. The discussion begins with an analysis of the legal status of human remains and ashes, which determines the classification of acts violating the respect due to them, including desecration of remains or ashes. In this context, the regulations of the Act of 1 July 2005 on the collection, storage, and transplantation of cells, tissues, and organs were also examined. Separate consideration was given to the criminal-law protection of the places of their burial. Finally, the chapter addresses doctrinal proposals for the extension of posthumous protection of human dignity. The evaluation of these proposals was preceded by an analysis of French civil law regulations and §189 of the German Criminal Code.

In the course of preparing this doctoral dissertation, a range of complementary research methods characteristic of the legal sciences, and particularly of criminal law dogmatics, were employed. The primary method applied was the dogmatic-legal analysis, consisting of a detailed interpretation of substantive criminal law provisions, with particular emphasis on systemic, teleological, and functional interpretation.

The research also made use of the method of doctrinal analysis, which served to evaluate the views of representatives of criminal law scholarship, both domestic and foreign. This enabled the placement of the author's own findings within a broader scientific context, drawing upon more than 450 scholarly sources, and allowed for a confrontation of the author's conclusions with positions present in the doctrine.

Another significant element of the research was case-law analysis. The review and in-depth examination of 340 judicial decisions made it possible to assess the practical application of legal provisions and to identify the interpretative trends prevailing in judicial practice.

An important methodological element was also the use of the comparative legal method. Selected legal systems were analyzed, with particular attention to the solutions in force in European countries that display significant systemic similarities to Polish criminal law. The purpose of this analysis was to identify alternative legislative solutions, assess their effectiveness, and reflect on the possibility of implementing selected solutions within the domestic legal system. In this respect, the conclusions drawn from the analysis of §189 of the German Criminal Code proved particularly valuable for the present dissertation.

The above is complemented by references to the professional practice of the author of the dissertation as an attorney-at-law, serving as defense counsel in criminal cases.

The application of the above methods made it possible to conduct in-depth research, providing the basis for the formulation of the author's own conclusions and *de lege ferenda* proposals.

The analysis conducted in Chapter II, devoted to the dignity of the nation, led to the conclusion that legislative attention should be focused on the interests of the individual rather than on an abstract entity such as the nation, whose protection does not, in fact, increase the protection of the individuals who belong to it. Consequently, the dissertation demonstrates the rationale for maintaining Article 55 of the Act on the Institute of National Remembrance, while simultaneously recommending the repeal of Article 133 of the Criminal Code and Article 49 §1 of the Misdemeanor Code. While the former regulation essentially protects what constitutes a component of human dignity, the latter provisions appear disproportionate, particularly given the possibility of effectively safeguarding certain interests through civil law instruments.

Chapter III of the doctoral dissertation, devoted to the dignity of living persons, with particular emphasis on their honor and social identity, represents a stance against the currently widely discussed proposals for the complete decriminalization of insult and defamation. At the same time, the dissertation supports the introduction of a non-punishability clause in cases where the holder of the legal interest has subsequently consented or has not expressed a desire to use criminal-law protection measures. Recognizing the inconsistency of the legislator in this respect, it is proposed to consider supplementing Article 217 §2 of the Criminal Code to include insult as a form of response by the injured party, or to adopt a uniform principle that, for the possibility of refraining from imposing a penalty, the injured party's reply must fulfill the same elements of the offense as the prohibited act that triggered it. The proposed extension of the catalog of discriminatory grounds in Article 53 §2a point 6, Article 119 §1, Article 256 §1, and Article 257 of the Criminal Code to include sexual orientation and gender identity was also positively evaluated, emphasizing that current regulations allow for unprotected violations and provide highly selective protection in this regard.

Chapter IV, concerning the so-called dignity of dying, adopts the view that the right to life also encompasses the right to a dignified death. In this context, end-of-life practices were analyzed in relation to Articles 162 and 150 of the Criminal Code, which, under the current regulation of the cessation of persistent therapy or euthanasia, were assessed positively regarding the wording of the provisions. However, it was noted that with potential legalization of euthanasia, in the context of which current Belgian and Dutch solutions were reviewed, these regulations will also change. Among possible changes, a *de lege ferenda*

proposal was supported to introduce into Article 151 §2 the wording: „*In exceptional cases, the court may apply extraordinary mitigation of the sentence or even refrain from imposing it*”, emphasizing that the current lack of such a regulation, which would mirror the present wording of Article 150 §2, represents yet another legislative inconsistency.

Chapter V, devoted to the protection of the dignity of deceased persons, concludes that human dignity does not cease with death but transforms into the respect and honor due to the deceased, their body, and their place of rest, which should also enjoy criminal-law protection. The analysis of existing criminal-law regulations allowed for the recognition that they provide sufficient tools for this protection, while other matters should be addressed by different branches of law. Consequently, the doctrinal proposal to criminalize the violation of a deceased person's honor was not adopted. The provisions of the Act of 1 July 2005 on the collection, storage, and transplantation of cells, tissues, and organs were considered consistent with the principle of respect for human dignity, properly recognizing its inalienability and inviolability, with particular attention to its indivisibility and non-graduality. At the same time, it was noted that adopting a personalist conception of human remains should lead to redefining the limits of the future deceased's consent to certain practices that will involve their body after death. While it must be established that consent cannot be given for acts that constitute cannibalism or necrophilia, which are undoubtedly degrading for human remains, consent for the funeral practices and forms of preservation discussed in this dissertation should be fully permissible.

*Keywords: human dignity; ethical legitimization of law; law of values; insult; insult of the nation; Holocaust denial; Auschwitz lie; defamation; hate speech; discrimination; right to a dignified death; euthanasia; failure to render assistance; dignity of the deceased; desecration of human remains.*