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Research Article

The Implementation of Human Rights as a Challenge for Modern Executives in The Fields of Healthcare and Business Ethics

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Abstract

The synergy between the business sector and human rights is becoming increasingly visible in the second decade of the 21st century. It is worth mentioning that it is entrepreneurs themselves who are petitioning for the introduction of specific legal instruments providing appropriate protection against abuse by public authorities. On the other hand, human rights must become an effective instrument in dealing with all forms of lawlessness and abuse by private commercial entities in order to facilitate effective legal protection. This article presents the issue of the implementation of human rights standards into business and business ethics in broad terms, largely by illustrating an analysis of regional systemic difficulties related to abuse in the healthcare sector in the Polish legal system. The standards stemming from human rights are used as instruments facilitating deliberations on the reality at hand and the description of specific events. The article follows the case study research method focusing on confronting the conceptual framework with specific cases. The method of legal text exegesis following the stream of derivative interpretation, based on a normative concept, which proposes specific interpretation strategies according to the characteristics of legal texts, was employed as an auxiliary tool.

Keywords: Human Rights, Business Ethics, Dignity, Healthcare Industry.

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Introduction

A few decades ago, the responsibility of enterprises for the observance of human rights was a secondary issue for people connected with business. The concept of human rights in business was questioned by the economic philosophy of utilitarianism, which rejected human rights as an idea of scientific nonsense (fiction) that "perverted public order, and, as an alternative criterion for the legitimacy of governments, offered the principle of universal benefit, which can be understood as a common good, the greatest happiness or maximizing the prosperity" (Freeman, 2007). In addition, it was believed that human rights were merely an ideology of democratic governments, and thus they did not belong to the business sector in substantive terms. For that reason, the issues of respect for human rights were interpreted only as a minor matter that was not directly related to the functioning and policies of companies.

However, the situation changed at the end of the 20th century. First, R. Dworkin (1977) proposed his idea which placed human rights above the common good. Second, the intensification of business globalization and a significant increase in the size and strength of business organizations, as well as the speed and scale of their activities revived the interest in the human rights issues. Although some companies responded positively to a call for compliance with obligations related to human rights, most of them completely disregarded the issue. Many companies around the world are reluctant to participate in the efforts of the United Nations (UN) or other organizations to establish codes of conduct in the field of human rights or treaties and covenants that could actually serve as the basis for any legal action against businesses. In addition, we can still observe cognitive dissonance in terms of the nature of human rights and the responsibilities of businesses in relation to those rights. As regards the above-mentioned practical and theoretical problems with enterprises recognizing their responsibility for the observance of human rights, so-called universal movements for the promotion of human rights in business have appeared. Their purpose is to extend business responsibility in the field of human rights beyond the limits of responsibility of states and governments. These movements do not have philosophical or socio-political connotations, but are strictly related to human rights.

The synergy between Human Rights and Business through the prism of the Human Rights Protection Regime

The correlation between business and human rights in the second decade of the 21st century is becoming more and more noticeable. It is worth mentioning that it is entrepreneurs themselves who are petitioning for the introduction of specific legal instruments providing appropriate protection against abuse by public authorities. On the other hand, human rights must become an effective instrument in dealing with all forms of lawlessness and abuse by private commercial entities in order to facilitate effective legal protection.

Under the universal system of human rights protection, the emphasis is placed on respecting human rights in the context of obligations of non-governmental entities. The crucial initiatives concerning the development of legal and human standards, which form the basis for the application of relevant legal instruments, and which impose obligations on non-governmental entities to respect human rights are, in particular, the OECD Guidelines for Multinational Enterprises; the UN Global Compact; the Tripartite Declaration of Principles Relating to Multinational Enterprises, and the Social Policy of International Labour Organization.

In 2011, the UN adopted the Guiding Principles on Business and Human Rights. It should be noted that these are not binding legal instruments in international law, but are among the most important legal acts, as they form exegetical grounds for existing fundamental obligations resulting from the interaction between human rights and business. After the adoption of the UN Principles, a special

procedure for the Human Rights Council and the United Nations Working Group on human rights and transnational corporations and other commercial enterprises was established. This process resulted in a resolution being adopted on 26 June 2014. It became the basis for the development of the international agreement on the corporate responsibility for human rights violations (2014).

At the European level, the synergy between human rights and business reflects the operation of the universal human rights protection system. The main regulations related to this issue are Resolution No. 1757 of the Parliamentary Assembly of the Council of Europe (2010) and Recommendation No. 1936 (2010) - Human Rights and business (2010).

In turn, in 2013, the Committee of Ministers of the Council of Europe commissioned the Steering Committee for Human Rights (CDDH) to develop a recommendation document on human rights in the context of business. On 2 March 2016, the Recommendation of the Committee of Ministers to member States on human rights and business (2016) was adopted.

Jurisdiction as a measure of the effectiveness of legal instruments related to human rights and business

When it comes to legal regulations, it is difficult to judge their effectiveness, because in this situation, we use only specific legal norms that include orders, prohibitions, imperatives or obligations. The effectiveness of legal instruments becomes evident at the interface of law and reality, primarily in jurisprudence, where, based on specific complaints which come to trial, a critical analysis can be performed, concerning the assessment of the real value of applicable law, the degree of its observance and proposals for its amendment. In the context of a regional human rights protection system, the interrelation between business and legal and human standards is illustrated by the case law of the European Court of Human Rights (ECHR). It is based on the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), which is binding on European countries. The ECHR considers the most important issues related to the protection of individual rights with regard to discrimination, as well as the consequences of violation of the dignity and integrity of the individual.

Initially, the ECHR was a legal instrument intended to protect individuals only from abuse by authorities, but over time, the jurisdiction of the ECHR expanded its protection to also cover entrepreneurs, which indirectly affected business operations. At this stage, it is worth pointing out the importance of individual court orders for the formation of a legal environment that affects the efficiency of economic activities (including civil-law enforcement mechanisms and the right to trial).

As to the protection of human rights at the local level, the relevant regulations on the security and the appropriate application of legal instruments for the protection of human rights can be found in the constitutions of individual countries, which, together with the aforementioned legal regulations, form a network for the protection of human rights. For the purposes of this article, our attention should focus on protecting individuals from abuse by the authorities, which is illustrated by the examples of violation of the fundamental human rights in the Polish healthcare sector, i.e. the violation of the dignity and intimacy of the patients (beneficiaries).

The standards of Human Rights in Polish Healthcare

Paying attention to the discussion about cooperation between business and human rights in the field of healthcare, we emphasize the growing number of complaints to the Patient Ombudsman Office regarding violations of patients' rights to intimacy and dignity.

The legitimacy of respecting the dignity and intimacy of a patient is governed by the Act on the Profession of Doctor and Dentist. The standard, presented in Article 36 of the

Act, provides that: "1. The doctor providing healthcare services must respect the patient's right to intimacy and dignity; … 3. The doctor is obliged to ensure that the rest of the medical staff, while providing the patient with services, follows rule specified in Section 1" (Act on the Profession of Doctor and Dentist, 1996). The legislator initially expressed its intention to protect patients' intimacy and dignity by imposing limits related to the individuals allowed to participate in the provision of medical services. This was, however, abolished on 5 June 2009 by the Act on Patients' Rights and the Patient Ombudsman (2008). However, this restriction does not apply to clinics and hospitals of medical universities, research departments and other organizations authorized to train medical students (Article 36 (4) of the Act on the Profession of Doctor and Dentist). Nevertheless, the participation of such persons should be limited only to situations necessary for teaching purposes. In addition, according to the article referenced above, it should be recognized that the law does not, in any way, limit the patients' rights to integrity, informed consent (Bieńkowska, 2017), and intimacy. The aforementioned article obliges practitioners to respect the dignity and intimacy of patients while providing them with medical services.

Pursuant to the Act on the Profession of Doctor and Dentist, the right to dignity and intimacy is regarded as a homogeneous right; however, it should be considered as two separate, closely related rights. Therefore, when it is analyzed separately, as the right to intimacy and the right to dignity, it directs our attention to the object of protection. Thus, within the right to intimacy, the object of protection covers a set of facts related to a particular person and his/her experiences. Both (psychological) facts and experiences, as pointed out by A. Kopff (1972), are often not revealed by the patient, even to relatives, and often evoke the feelings of embarrassment, shame, and even suffering. This intimate aspect demonstrates relational characteristics and refers not only to the patient but also to third parties and their relationship with the patient.

With regard to the right to dignity, the Supreme Court also took a clearly defined standpoint, stating that dignity "relates to the sphere of personality, which manifests itself in self-esteem and expecting respect from other people" (Judgment of the Supreme Court, 1989). Therefore, the doctor's relationship with the patient must be full of care, empathy, and trust. The absence of care, tact, and empathy in the doctors' actions in relation to the patient was of interest to the judiciary. The Supreme Court, in its judgment of 21 June 1976, stated that " the doctor's behavior is contrary to the principles of coexistence in the society regarding protection of human personality, one's dignity and position in the society, and poses a risk to the minor's personality through notification of the disease, and can be considered as being in close cause-and-effect relation with the minor's attempt on his/her life, if there are no convincing reasons for associating suicide with psychological deviations of the victim" (Judgment of the Supreme Court, 1976).

Article 36 (1) of the Act is in accordance with the Article 12 of the Code of Medical Ethics, which states that "a doctor must treat patients kindly and politely, respect their dignity and their right to intimacy and privacy". As J. Sobczak (2009) points out, "it was clearly stated that it is the doctor's responsibility to respect patients' right to consciously participate in making basic medical decisions concerning their health … The use of the term "respect" in Article 12 of the Code is not accidental, and it should be understood as: to consider, observe, honor, respect, not violate." The publications on this issue also indicate that the manner of providing the patient with medical services and information about them serves as the measure of respect for the patient.

The obligation of the doctor to respect the dignity and intimacy correlates to the rights of patients, based on the Act on Patients' Rights and the Patient Ombudsman. This obligation is referred to in Article 20, which reads: "The patient has the right to intimacy and dignity, in particular, while being provided with medical services. Section 2. The right to

dignity also includes the right to die in peace and dignity." Terminally ill patients have the right to medical services that provide them with relief from pain and suffering. While the subject of the referenced article does not relate to the issue of compensation for the violation of the right arising from the above-mentioned Art. 20 (2), it is worth noting that in case of violation of the patient's right to die in peace and dignity, the court, pursuant to Article 448 of the Civil Code, may, at the request of a spouse, relatives or second-degree relatives or a legal representative, order a certain amount of money be paid for a charitable cause indicated by them. In turn, if the patient's right to die in dignity was violated as a result of a culpable act of the service provider, which was against the law and the standards of the Code of Medical Ethics, the court may award an appropriate amount for the indicated charitable cause.

It should be mentioned that Article 20 (2), devoted to the right to die in peace and dignity, is not defined by the legislator. The interpretation of this norm should be made in accordance with the constitutional principles relating to the principle of human dignity (Article 30) and the extensive case law in this respect. Article 30 of the Constitution states that "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" (Constitution of the Republic of Poland, 1997). The practical interpretation of this statement is expressed in the legal obligation to respect and protect dignity. According to the systemic interpretation, this article suggests that the normative attributes of a person's dignity are its inviolability, inherence, equality, and original nature. In turn, the original nature points to dignity in the axiological and normative sense, as a basis for other rights and freedoms.

Dignity presented in this manner sets the standards for building and developing interpersonal relationships, i.e. treating other people with respect and empathy. At the same time, the obligation to protect dignity, which stems from the Basic Law refers not only to an individual entity (in this case, a specific doctor), but also to institutions that organize the provision of medical services. The implementation of regulations consists in ensuring appropriate facilities and organizing the work of doctors in such a way that the provision of services is carried out in an atmosphere of trust, care and professionalism. In Article 30 of the Code of Medical Ethics, one can find the phrase "dignified dying conditions." The implementation of the patient's right in this regard includes spiritual care, appropriate psychological assistance and communication with relatives.

The principle of respect for dignity and intimacy should point our deliberations to the subjectivity of the patient. Violation of this principle should be regarded as the objectification of an individual, violating his/her dignity (Bosek, 2011). Article 30 of the Constitution of the Republic of Poland includes the institutional and initial guarantees of human subjectivity. This is a legal and ethical dictate stating that every human being is someone, not something. Consequently, human dignity is constitutionally an autonomous category inherent in every individual, due to his/her humanity, and directly protects against objective treatment.

The prohibition of objective treatment of human beings was invoked in the case law of the Supreme Court. This can be illustrated by the judgment of the Supreme Court of 12 June 2008. Therein the Court stated that "the actions of the respondent doctors caused the patient to remain in a state of uncertainty for several months, which was especially painful for a pregnant woman. From this point of view, we should consider the injury suffered by the patient, caused by the humiliating need to repeatedly apply for genetic testing and its denial, the lack of reliable information, hospital stays and unnecessary examinations which could not have established the condition of the unborn baby … as well as the feeling that the respondent doctors evaded their duties and did not respect the duties of the

patient, by treating her objectively" (Judgment of the Supreme Court, 2008).

Meanwhile, doctors too often see the patient (and his/her illness) as another case of the dysfunction of the body, a pathomorphological phenomenon which needs to be treated. For the patient, all the evil caused by the disease forms a whole, constituting the reality in which he/she has found him/herself and which he/she has to face. The doctor, who considers the patient through diagnostic tools and categories, which, among other things, focus mainly on the results of laboratory tests and statistics related to the disease, does not see the patient as a person. However, for the patient, his/her illness and suffering is unique, individual and personal. It cannot be classified merely as a disease entity. The tragedy of the disease is not merely a point which makes it possible to initiate a particular procedure, but it is a unique and immediate reality. "While the doctor focuses on combating the patient's condition and treating the disease, the patient may require help with coming to terms with the situation, with shifting his/her priorities, and need greater personal involvement in his/her condition by people around him/her. While a physician struggles with his professional and human helplessness because of the inability to achieve therapeutic success, the patient and his/her family are focused on finding the meaning of existence in such a reality. These are the differences that arise when two worlds collide: a perfectly healthy individual and an ill, weaker person. Perhaps doctors need not only professionalism and medical knowledge, based on regulatory documents, but also a deeper, more humane perception of both the disease and the drama of the patient" (Bieńkowska, 2015).

Creating ethical relationships as a challenge for modern healthcare executives. A patient as a stakeholder – a doctor as an administrator

It is important for doctors, who are also becoming healthcare executives, to engage in ethical actions based on empathy. The ethics of relationship stands against cognitive minimalism, relativism and, above all, various forms of pragmatism and positivism.

A common trait of the aforementioned pathologies, destructive to interpersonal relationships (including the patient-doctor, manager-employee relationships) is that they diminish or even deprive the individual of his/her value, i.e. the notion that he/she himself/herself is an absolute and independent value, for himself/herself, in himself/herself and for other people. In this sense, every individual is "someone", and being "someone" is also his/her fundamental and inviolable right.

Such a way of thinking about human beings presents specific requirements to be met by doctors, indicating, first and foremost, that: 1) in disputes concerning the most sensitive issues of human existence, priority must be given to a person; 2) in order to solve existing conflicts, a personalistic norm should be applied. The personalistic norm protects the human being from objectification and refuses to introduce ontological differences (the distinction between being and being in being), which, as the result of being manipulated by unrestricted arguments, are used to eliminate weaker individuals by refusing to protect life and its quality in difficult (or even extreme) situations.

Respect for dignity obliges the doctor to respect the subjective self-esteem of every patient. It should be noted that dignity understood in this way, both in axiological and legal terms (in the Basic Law cited above), is defined as personal dignity. R. Kozłowski (2017) states that "dignity is always the dignity of a person who, in the structure of human existence, is the highest form of existence, the most humanized or, more precisely, personified form. In the same way, we can talk about the dignity of the body or the soul, which are, if we may say so, the metaphysical 'elements' of man, because, without man, their ontological whole loses its meaning, personal overtones and expression. The dignity of a person is expressed in his/her physical and spiritual dimensions, when experiencing himself and others, during the growth and decline of one's personality, when doing good or evil."

Conclusion

Poland is not the only country which has difficulties implementing human rights standards in the business environment. The issue of understanding human rights and responsibility for all kinds of abuse poses problems. Thus, we should focus on achieving the goal for the purpose of which the complex human rights mechanisms have been created. Human rights were stated to protect individuals against totalitarian systems, to make it impossible for one person to take ownership of the other. Due to the fact that it is states that sign documents related to human rights, the governments are legally responsible for ensuring that human rights are respected within their borders. They also hold the unique legitimate dominion over certain sovereign territories, where they claim the authority over the people who live and work there. From the point of view of legal doctrines, they belong to the international system of states with sovereign power. This claim is considered legal. In addition, states play a supervisory role in relation to their citizens and legal entities alike. As to the government, the state is responsible for ensuring that national and supranational corporations pursue responsible policies of applying and respecting human rights. This forms the meeting point for the joint responsibility of the state and non-governmental organizations that have vertical or horizontal responsibilities in respect for human rights. In other words, the state creates the policy for the application and protection of human rights.

Nevertheless, since commercial organizations are subject to legal supervision by the state, they should also pursue policies of respect for human rights. Regardless of whether commercial organizations are bound by direct legal obligations in the field of human rights, their obligations derive from ethical and moral principles, as well as from social expectations.

In order to reach a consensus on human rights and responsibility for them, it is necessary to forget the thought of "the one who has the power, has the rights." Respect for human rights in the formation of the policy for their application requires a thorough analysis of not only the authorities but also of their functions, to ultimately eliminate those factors which prevent the joint realization of the rights. Human rights cannot be considered as norms created for specific individuals, in isolation from the context of ius commune of human rights. Such an approach involves the risk of social activities becoming separated from the state supervision. In such a case, the state would be perceived only as an arbitrator of claims. Human rights should be considered as an effective tool in the combating abuse of power.

Thus, a synthesis of the normative vision of a solidary and fair society that realizes the rights for all, and the practical use of human rights takes place in order to analyze the abuse of power. At the same time, it contributes to the creation of communities based on the same values to protect rights which are of fundamental significance to the general public and individuals. Although human rights are inspired by ideas of general nature, their importance is determined by the analysis of specific cases (such as the violation of the dignity and intimacy of the patient, analyzed in this article).

Within their area of responsibility, states should, first and foremost, avoid causing or facilitating actions which can be to the detriment of human rights, and take corrective measures in case of such a negative impact. It is important to note that those obligations refer to all enterprises, regardless of their size, field of operation, business context, form of ownership or structure. These factors may, however, affect the scope and complexity of the measures taken by enterprises to fulfill their obligations in respect of human rights.

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Notes

- **The Guiding Principles on Business and Human Rights:** Implementing the United Nations "Protect, Respect and Remedy" Framework adopted by the Human Rights Council in Resolution 17/4 of 16 June 2011, as annexed to The Report of the Special Representative of the SecretaryGeneral on the issue of human rights and transnational corporations and other business enterprises (A/HRC/17/31).
- Commonly referred to as the European Convention on Human Rights

(hereinafter: ECHR). The convention was adopted and opened for signature in 1950, so shortly after the tragedy of World War 2. It was originally intended as a means of protecting the individual against the state

- **Jurisprudence** which is of special importance for business was developed in relation to the infringement of the right to property (Protocol 1 Article 1) and the right to a fair trial (Article 6), as well as freedom of expression (Article 10), the principle of nullum crimen sine lege (Article 7 of ECHR), the right to an effective remedy (Article 13), and the right not to be tried or punished twice (Protocol No. 7 Article 4).

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- Cf. Bieńkowska, D. Relacja lekarz-pacjent w świetle doktryny poinformowanej zgody, [in:] Spotkać Drugiego. Prawo-Etyka-Praktyka, eds. I. Figurska, D. Bieńkowska, R. Kozłowski, Słupsk t.

- The attitude of respect and empathy does not equal dignity, since it is its direct manifestation. Dignity is the ontic value of every man; therefore, one can demand respect and empathy because of and by virtue of it.

- See Article 30 of the Code of Medical Ethics. The physician should make every effort to provide the patient with humane terminal care and dignified dying conditions. The physician should fully alleviate the suffering of patients in terminal conditions and maintain, as far as possible, the quality of life that is coming to an end. Code of Medical Ethics – Resolution of the 2nd Extraoridnary National Congress of Physicians of 14 December 1991, as amended. The Act of 2 December 2009, Journal of Laws No. 219, item 1708.

- **Verbal acrobatics**, evident in both legal literature and case law, complicates the entire situation by introducing various definitions concerning man, and disregards the crux of the matter. And thus, through the use of the term "human being", it implies weaker legal protection than in the case of already-born "persons". Nawrot, O. *Ludzka biogeneza w standardach bioetycznych Rady Europy*, op. cit., p. 54.

- Cf. Dercz, M. and Rek, T. (2003) *Prawa dziecka jako prawa pacjenta*, Warszawa, p. 103.