

Good faith in constitutional law

summary

In the field of public life, questions are very often raised as to whether a given action is in accordance with the constitution, whether it is legal and permissible. These important questions are not only reserved for lawyers and experts, as they touch upon matters important to everyone. We are interested in whether the rules of the political game enshrined in the constitution, as well as numerous guarantees of our rights and freedoms, are respected. Can we feel safe in the belief that all the main actors of this "game" respect the applicable rules and whether the established law and decisions made on the basis of it, affecting the most important spheres of the life of the state and its citizens are legal?

It is not easy to answer these important questions. We have a wide range of tools for interpreting the constitution, but very often their use does not bring satisfactory results. In practice, the activities of public authorities, both in Poland and in other European countries or in the United States of America, we observe more and more cases of constitutionally ambiguous situations. Those in which the current understanding of the constitution is replaced by a new practice that raises numerous doubts. This applies, for example, to the appointment of the judges of the Constitutional Tribunal in Poland, the dismissal of the head of the American FBI before the end of his ten-year term, the change of the parliamentary majority needed to select the authority appointing judges in Spain, or even the circumstances of postponing the election date of the President of the Republic of Poland in connection with the COVID-19 pandemic. These and many other doubts indicate that the hitherto methods of examining the compliance of specific actions with the constitution are often insufficient.

The reason for undertaking this project is the conviction that the existing mechanisms ensuring the supremacy of the constitution, and at the same time guaranteeing its validity, should be extended by an important element that can be described as an act that is honest and loyal to the constitution. It is about transferring to the constitutional ground the category known from civil law and well-established, among others in international public law, according to which fidelity and loyalty to the other party as well as diligent and reasonable conduct constitute an important criterion for assessing specific actions. The aim of the research is therefore to draw attention to the fact that in the process of applying and interpreting the constitution, in addition to examining its compliance with its literal wording, one should also take into account the intentions and motives which were guided by the decisions made on the basis of the constitution. It is not enough to state that in a given case the literal wording of its provisions was not infringed in order to be able to state that it has been complied with.

The project aims to prove that the following hypotheses are true:

- Good faith is part of the essence of the constitution as a social contract defining the framework for exercising power in the state and the relations between the authorities and between the state and the individual.
- Good faith in constitutional law results from the obligation to act or choose such a way of understanding constitutional provisions that will be adopted for the common good, with respect for constitutional axiology, rules of loyalty to other organs of public authority, individuals and the international community.
- The application of the constitution is based on the presumption of good faith, ie on the assumption that obeying the constitution is to be the main motive for action.
- Good faith in constitutional law is a normative structure (ie. a constitutional norm) that shapes the obligations of entities applying the constitution.
- Enforcement of good faith is a necessary instrument to protect the supremacy of the constitution, which may contribute to protection against its instrumentalization and, consequently, against weakening the rule of law.

The result of the research carried out as part of the project will be to expand the context in which the assessment of the admissibility of actions taken in the process of application and interpretation of the constitution is currently carried out. The adopted research method assumes an analysis of sources (legal regulations, jurisprudence of constitutional and highest courts) and the results of surveys conducted with constitutionalists, experts and representatives of parliamentary groups, the executive and judges in Poland and selected countries. On this basis, common elements of the concept of good faith will be indicated, constituting a universal constitutional concept that can be applied in the constitutional practice of states with different democratic traditions. Therefore, the project will provide knowledge on the criterion stemming from an objective compulsion to act faithfully to the constitution and its provisions. In this way, it will indicate a kind of remedy for the constitutional crises with which we so often deal in the modern world.