

## THE INSTITUTIONALISATION OF VALUES IN LIGHT OF STANISŁAW KASZNICA'S WORK

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### ABSTRACT

The life and work of Professor Stanisław W.A. Kasznica follow values in a special way. This is indicated by his scientific output, his curriculum vitae and also the history of his family. This article analyses S. Kasznica's textbook *Polskie prawo administracyjne: pojęcia i instytucje zasadnicze* (Polish Administrative Law: Basic Concepts and Institutions), 2nd Edition, Poznań 1946 to determine how, in his scientific output, S.W.A. Kasznica assigned values to the legal and juridical institutions he described. The first method is the contextual "indirect" assignment of values to a given legal institution (i.e. resulting from the general overtone meaning of a given passage of text). The second method of institutionalising value refers to value as transcendental. The third method used is the direct criticism or negation of certain institutions in a way that indicates that their antithesis is some kind of good. The fourth method of institutionalising values is to define certain institutions by directly indicating that the institution serves values. This is, in other words, the introduction of certain values into the content of a legal institution. The fifth method of value institutionalisation by S. Kasznica is based on signalling how certain anti-values objectively external and internal to the law can nevertheless be beneficial to the law. Of course, these observations are made on the basis of an analysis of the practice of public authorities and take the form of statements tinged with a slight cynicism. S. Kasznica points out in this case how the "slowness", or in other words the procedural incompetence of the parliamentary legislature, can peculiarly counteract the inflation of the law.

### KEYWORDS

values; institutionalisation of values; personification of values; meaning of values; substantive legal state; totalitarian state

## 1. INTRODUCTION. THE MEANINGS OF “VALUES” IN LEGAL THEORY

The life and work of Professor Stanisław Wincenty Antoni Kasznica follows values in a special way. This is clearly indicated not only by his scientific output, but also by his biography and the history of his family and his children.<sup>1</sup> In the case of Stanisław Kasznica, researching and writing about the law is inseparably linked with assigning values to certain legal concepts and institutions. He does this in a scientific, natural and balanced way. At the same time, his life shows that he was not detached from these values. He knew from experience what he was writing about. The impulse behind this paper is S. Kasznica's textbook called *Polskie prawo administracyjne: pojęcia i instytucje zasadnicze* (Polish Administrative Law: Basic Concepts and Institutions), 2nd Edition, Poznań 1946,<sup>2</sup> which presents the essence of administrative law, which was primarily shaped during the first 20 years of the Polish state after regaining independence in 1918. Interestingly, it also takes into account the new political and system realities taking place in Poland after the end of the Second World War. This Monograph by S. Kasznica is a narrative about the law and its values on the basis of the interwar experience. It points out the timelessness of certain institutions along with the dangers of certain solutions adopted in administrative law.

The title of this work – The institutionalisation of values – is based on an analysis of the Monograph in terms of what objectively existing values outside the law (pre-state and supra-state) and in the law S. Kasznica attributes to the state, its functions and tasks in the division of power. In other words, on what values is the phenomenon of the functioning of law, the state and public administration and its offices based (treated as forms of value institutionalisation). The principles of the system and the organisation of public administration are also treated as a form of the institutionalisation of values. Apart from presenting the forms of the institutionalisation of the values of law in the legal writing output of S. Kasznica, the text presents the thesis that the institutionalisation of values, i.e. the introduction and realisation of their objective content through the law – is connected with the personification or personification of values. Law is a product of the human mind, it exists in its abstract content located in its carriers – as an intellectual tool enabling man, based on the social contract and the authority of the state, to regulate social relations.<sup>3</sup> The history and the daily practice of the functioning of the state and the organs of public authority indicate that it is important who creates and applies public and administrative law, as well as who interprets it, who resolves the disputes that arise and who participates in the judicial control of public administration. This should unquestionably be a person who, in addition to the appropriate legitimacy derived from the law, has the ability to decode social and legal values in an independent, non-arbitrary but law-based, objectified and relatively expert manner, even if this were to be to the detriment of their own diverse interests. In order to assist this process, solutions are introduced into the legal order to prevent conflicts and collisions of

1 See S. Kasznica, *Druka wojna światowa. Wspomnienia spisane na podstawie codziennych notatek* [World War II: Memoirs Written from Daily Notes] (Instytut Pamięci Narodowej 2013).

2 Hereafter referred to in the article as the Monograph.

3 It is worth noting the communicative concept of law according to Jürgen Habermas. In his work *The Dreams of Philosophers*, he writes that law can be legitimised by its content and directly shaped when citizens participate in its creation. The authority of the state is not needed in this case. For a more extensive discussion see S. Tkacz, Z. Tobor, 'Uwagi na temat aksjologicznego wymiaru Konstytucji RP z 1997 r. i jej wykładni w świetle prac Profesora Piotra Winczorka' [Comments on the Axiological Dimension of the Constitution of the Republic of Poland of 1997 and its Interpretation in the Light of the Works of Professor Piotr Winczorek] (2022) *Archiwum Filozofii Prawa i Filozofii Społecznej* 1(30), 113–125 and the literature cited therein.

interest in those who create and apply the law. At the same time, the law variously formulates systemic and material and uses ethical prerequisites for the exercise of certain offices and social functions. Consequently, the normative sphere of the law should be oriented towards the fact that the values institutionalised in the law are decoded by people who, not only through morality and professional ethics, but also through normative solutions to the requirements imposed on them by the law, are prepared to create, execute, apply and enforce the law in which the values are institutionalised. Increasingly applicable today, artificial intelligence is prepared to make legal decisions in a formal sense based on relatively schematic states of fact and law that do not require value judgements.<sup>4</sup> If the development of science makes it capable of making decisions in an axiological and material sense, the problem of its legal subjectivity will arise.

For the topic at hand, it is important how the concept of value can be understood from the perspective of the theory of the philosophy of law in order to consider which concepts of value Stanisław Kasznica uses.

Among other things, legal theory refers to four basic meanings of value.<sup>5</sup> The first meaning indicates value as a criterion of valuation: it is referred to by sentences stating the value of a certain thing, importantly an individual thing. In this case, the scheme applies: X is valuable (positive, good and lawful). Values appear in this sense, among other things, in the jurisprudence of tribunals and courts.<sup>6</sup> In the second sense, value appears as a state of affairs (an object) so qualified (a good, i.e. in this case a valuable thing, a state of affairs, a phenomenon or a relation). Here value is treated as a kind of thing or a certain general thing (with the important proviso that it is not an individual thing). In this view, the value can be the institution of an administrative act, an administrative-legal relationship, a legal norm, a social welfare phenomenon, a nation, a society. The current state of social relations in the state of a third meaning is referred to the value as transcendental, with this meaning being referred to as proper. In this case, axiological sentences state that a certain object, fact or state of affairs is good in the sense of “being good” – as opposed to “being good” typical of the first meaning of value presented above. In this view, it is good that “the substantive rule of law is secure,” it is good that “the substantive rule of law provides security for citizens and people.” In this view, security as a value serves to attribute certain characteristics to certain states of affairs.<sup>7</sup> In the fourth sense, value is understood as a family of sets of equal states of affairs ordered by general preference relations. This concept, as noted by M. Kordela, is based on the asymmetry and transitivity of relations between legal values. It is argued in science that the asymmetry of the preference relation consists in the fact that if the legislator prefers the state of affairs W1 over W2, he thereby does not prefer W2 over W1. Transitivity consists in the fact that if the legislator prefers the state of affairs W1 over W2 over W3, he thereby prefers the state of affairs W1 over W3. If we assume that the asymmetry and transitivity of the relationship between values legitimises the assumption of the hierarchical nature of the legislator’s axiological system, then “constitutional values will overcome statutory values, statutory values will overcome sub-statutory values.”<sup>8</sup>

4 See D Użycki, ‘Czym grozi sztuczna inteligencja?’ [What are the Threats of Artificial Intelligence?] (2019) *Personel Plus* vol. 5, 95; P Fik, P Staszczuk, ‘Sztuczna inteligencja w unijnej koncepcji e-sprawiedliwości – teoria i możliwy wpływ na praktykę’ [Artificial Intelligence in the EU E-Justice Concept – Theory and Possible Impact on Practice] (2022) *Europejski Przegląd Sądowy* 2022 vol. 7, 4–9.

5 The author is guided by the work of M Kordela: M Kordela, ‘Wstęp metodologiczny do wykładni aksjologicznej’ [Methodological Introduction to Axiological Interpretation] in J Czapska, M Dudek, M Stępień (eds), *Wielowymiarowość prawa* [Multidimensionality of Law] (Wydawnictwo Adam Marszałek 2014) 31–34.

6 *Ibid.*, 31.

7 *Ibid.*, 33.

8 *Ibid.*, 40.

According to the current preferential order, as expressed in the Constitution of the Republic of Poland of 2 April 1997, human dignity constitutes the supreme value, and at the same time the source of human rights and freedoms. The value of material truth, in turn, constitutes the overriding value of all proceedings governed by law. All these values “ultimately become subordinated to a specific super value – the rule of law.”<sup>9</sup> Of course, with reference to Stanisław Kasznica, it must be emphasised that the starting point for his axiology within the science of law that he practised was the Constitution of 17 March 1921.

Reading the analysed Monograph allows one to conclude that S. Kasznica institutionalised certain values or, conversely, that he axiologised certain institutions in different ways.

## 2. REVIEW OF THE INSTITUTIONALISATION OF VALUES IN THE WORKS OF S. KASZNICA

The first method is the contextual attribution of value to a given institution of law.<sup>10</sup>

In the analysed Monograph, Stanisław Kasznica most often “ascribed” values to a given legal institution contextually, indirectly. Precisely from the context (the general overtone and impression), the reader can deduce whether the legal or juridical institution discussed at a given moment is a good, a value, and whether, due to these properties, they are in some cases timeless and universal. For example, such a context occurs when defining certain institutions. It is possible to deduce from the guided argument whether this institution is a value or a good.<sup>11</sup> Of course, in this way we enter, among other things, the complex issue of the conceptual apparatus of legal dogmatics, but, regardless of the statement that with the development of law this apparatus is subject to transformations, it must be stated that certain legal concepts have a relatively constant application over time. Such a context may additionally be the very practical significance of the definition, the fact that the author defines some legal or juridical institutions. As a rule, in the science of law, or in the law itself, institutions are defined that have meaning according to a criterion derived at least from the category of what are known as internal values of law (not to mention external ones). This, of course, does not detract from the observation that new definitions are based on criticism of previous ones, and that they may define and stigmatise negative phenomena. Contextualising a good institution may also result from demonstrating a causal relationship between the operation of certain institutions and their effects as goods expected by the law and society. The contextual valuing of legal institutions may originate in the author’s authority. This comes from the very fact that he writes about them without criticising them (even contextually).

In the case of S. Kasznica, readers familiar with his biography may be interested in his approach to the institution of the state. S. Kasznica values the institution of the state contextually. Reflecting on administration, he states that, “nowadays, no one’s administration can come into

9 Ibid.

10 The author defines the concept of an institution as a set of norms recurring in a legal act, the identification and naming of which serves the purpose of ordering and interpreting a legal text and legal dogmatics. These are also concepts deductively without normative origin, derived in dogmatics as a tool for cognition of law. For more details see B Adamiak, J Borkowski, ‘Pojęcie instytucji procesowych i ich rodzaje’ [The Concept of Procedural Institutions and their Types] in B Adamiak, J Borkowski, *Postępowanie administracyjne i sądowoadministracyjne* [Administrative and Court-administrative Proceedings] (Wolters Kluwer 2022) 139–143.

11 See the definition of office (authority) according to S Kasznica: S Kasznica, *Polskie prawo administracyjne: pojęcia i instytucje zasadnicze* [Polish Administrative Law: Basic Concepts and Institutions] (Wydawnictwo Prawnicze 1946) 44.

comparison with the state administration, both because of the vastness of the fields covered by it and the intensity of the power of action.”<sup>12</sup> It follows from this sentence that the importance of administration is determined by the number of spheres of social relations it affects, as well as the power of this effect. Referring to the state itself, S. Kasznica writes:

The state has at its disposal a means of action that no one else has (unless the state lends it or allows it to be used). This is authority, the ability to impose and assert one's will by means of absolute coercion. It is based on the monopoly of physical force (armed force) as its deepest foundation. Without this monopoly the state cannot exist.”<sup>13</sup> The state and its authority is contextually accepted by S. Kasznica as a good; he links it to the essence of the state: “Where it does not exist, there we are dealing either with a state just being formed or a state in decay.

This approach testifies to S. Kasznica's scientific objectivity. It is even phenomenal that S. Kasznica, so wronged in his private life by the institution of the state,<sup>14</sup> does not transfer his negative experiences of the state as such into a scientific text. As an administrativist, he is well aware of the fact that the operation of law is based on the unified institution of the state, and in his scientific narrative he treats it contextually as a good.

However, in relevant places in the analysed monograph he included criticism, a bad evaluation of a totalitarian state. This form of state is negatively assessed by S. Kasznica explicitly, as discussed below.<sup>15</sup>

He contextualises as good the principle of a tri-partite government, stating: “It is only the totalitarian states of the 20th century that break it.”<sup>16</sup> On the practice of applying this principle, he states: “nowhere has this principle been carried out ruthlessly and mechanistically.”<sup>17</sup>

The second method of institutionalising values refers to values as transcendentals.

12 Ibid., 7.

13 Ibid.

14 Prof. Stanisław Wincenty Antoni Kasznica was imprisoned by the tsarist authorities in Pawiak prison and the Warsaw Citadel by the Austrian authorities in Zamarstynów, and in 1939 by the Germans in Poznań. Source: from the justification of the Substitute Ordinance No KN-I.4102.65.2017.3 of the Governor of Wielkopolskie Province of 13 December 2017 on naming 9 Maja Street located in the city of Poznań as Stanisława Kasznica. Wielk. 2017.8475 of 13 December 2017. The order refers to Stanisław Józef Bronisław Kasznica, alias “Stanisław Wąsacz”, “Wąsowski”, “Przepona”, “Służa”, “Maszkowski”, “Borowski”, “Stanisław Piotrowski” (born 25 July 1908 in Lviv, died 12 May 1948 in Warsaw) – son of Professor Stanisław Wincenty Antoni Kasznica. As it then follows from the justification as above: by judgement of the Military District Court in Warsaw of 2 March 1948, No. 68/48, presided over by Lt. Col. Alfred Janowski, sentenced the son of Prof. S. Kasznica in the trial to a fourfold death penalty and to four prison sentences, as well as to additional penalties – loss of public, civic and honourable rights and confiscation of property, and on the basis of the summary of sentences imposed on him the death penalty and the additional penalties. President Bolesław Bierut did not exercise his right to pardon. The sentence was carried out on 12 May 1947 in Mokotów prison by shooting. On 14 October 1970, his personal file was handed over, together with the files of 1322 convicts from the archive of the Mokotów prison, to the Provincial Headquarters of the Civic Militia. On 30 September 1992, the Court of the Warsaw Military District declared the conviction of Stanisław Kasznica invalid. SWA. Kasznica had five children. It should be noted that his son Jan did not survive the war. He was killed during the Battle of Laski on 19 September 1939. See M Szczesiak-Ślusarek, ‘Historia rodu Kaszniców’ [History of the Kasznica Family] in S. Kasznica, *Druga wojna światowa. Wspomnienia spisane na podstawie codziennych notatek* [World War II: Memoirs Written from Daily Notes] (Instytut Pamięci Narodowej 2013) 36–38, 53, 66.

15 S. Kasznica (1946) 21.

16 Ibid., 16.

17 Ibid.

Sometimes from S. Kasznica's reflections it appears that his statements in the analysed monograph state that a certain object, fact or state of affairs (office, authority or local government) is good in the sense of "being good". S. Kasznica's deliberations concerning the element accepted by him are carried out in this convention, with the core of the office determining its timelessness and the phenomenon of its duration in time as "a thing that lasts by itself and still has the content, if not quite the same, then in any case the same type."<sup>18</sup> The point here is that it is a good thing that "In every office, the same functions are still fulfilled, similar matters are still dealt with. And at the same time they are constantly being dealt with in a similar, if not entirely the same way, which is the result not only of the existence of rigid rules of procedure, but to an even higher degree – of the formation in each office of certain traditions in office, practices and precedents, which have already been mentioned."<sup>19</sup> From S. Kasznica's statement, it can be concluded that it is good that "To this is added the constancy of the arrangement of the material means used by each office, the external appearance: so the office with its equipment, files, etc."<sup>20</sup> In addition, S. Kasznica points to the relatively permanent binding force of legal acts issued by an office, which retain their force despite the fact that the people who issued it are no longer there.<sup>21</sup>

Presenting the rationale for deepening the institution of self-government, and in particular local government, S. Kasznica mentions its good sides. Thus, local government is good because it is good that: "(...) it is a dam against the omnipotence of the state"; "(...) it is a huge civic school"; "(...) only here can the needs and tendencies of individual territories and population groups be fully taken into account"; "(...) transferring a considerable part of the tasks of public administration to self-government relieves the state budget superbly."<sup>22</sup>

The third method used is to criticise or negate certain institutions in a way indicating that their antithesis represents some kind of good. S. Kasznica clearly fears a revival of the old police state in the contemporary form of a totalitarian state.<sup>23</sup> He had been noting these tendencies since the second quarter of the century. He identifies as the attributes of this state the disregard of legal norm, the dominance of discretion, the retardation of the development of administrative law, the abuse of preventive supervision against local government. His critical analysis of the sources of administrative law is extremely interesting, coming in the form of decree-law by virtue of the Constitution itself, and by virtue of a special law (decrees with authority) and then decrees.<sup>24</sup> The reflections on this topic still provide a valuable perspective on the critical analysis of this form of sources of law today.

From reading the monograph, it is clear that S. Kasznica negates positive definitions of public administration;<sup>25</sup> he negates when administration does not produce anything positive<sup>26</sup> and negates bureaucracy in the negative overtones of the word.<sup>27</sup> He writes about the acutely felt lack of a general part of administrative law,<sup>28</sup> speaking very negatively about the inflation of law in a totalitarian state,<sup>29</sup> about decrees as a work of bureaucracy<sup>30</sup> and about the shifting of respon-

18 Ibid., 45.

19 Ibid.

20 Ibid.

21 Ibid.

22 Ibid., 80.

23 Ibid., 21.

24 Ibid., 24–29.

25 Ibid., 9.

26 Ibid., 10.

27 Ibid., 10, 29.

28 Ibid., 21.

29 Ibid.

30 Ibid., 29.



sibility.<sup>31</sup> He criticises the excessive number of ministries,<sup>32</sup> centralism, monocratic power,<sup>33</sup> the preventive supervision of local government<sup>34</sup> and even the courts.<sup>35</sup> It is telling how up-to-date S. Kasznica's words are on civil servants' salaries: "They are at starvation level; they do not fulfil their purpose because they do not provide the civil servant with a sufficient, decent livelihood."<sup>36</sup>

The fourth method of institutionalising values is to define certain institutions by directly indicating that the institution serves values. This is, in other words, introducing certain values into the content of a legal institution. In the definition of administration, S. Kasznica writes that it serves tangible and intangible values.<sup>37</sup> When defining administrative law, S. Kasznica points out that it is a means to an end, defines the limits of administrative activity and is related to efficiency and pragmatism.<sup>38</sup> When defining public service, S. Kasznica refers to "people taking action", perceiving in them an essential value and claiming correctly that: "the essence of the office – as in any community – is people taking action."<sup>39</sup> He also uses values when defining the administrative relationship and acts of public administrations. These acts are undertaken exclusively in the public interest and in the performance of some public service.<sup>40</sup> The value of the administrative-legal relationship is that it is legal, public and purely personal.<sup>41</sup> The value of "saving" as a value is associated by S. Kasznica with the functioning of large provinces.<sup>42</sup> He assesses the breaking of borders in the process of establishing a new territorial division of the country as determined by a prior value, i.e. the unification of legal regulations.<sup>43</sup> The institutions of law are filled with values and when analysing them, it is worth quoting Kasznica's definition of the judge's independence: "He stands directly face to face with the legal norm. No one has the right to impose upon him how he is to understand and explain it. He does it himself, guided solely by his own understanding and conscience."<sup>44</sup>

The principles of law serve as a classic example here.<sup>45</sup> Two of them are regarded by S. Kasznica as the most important, namely the rule of law in the operation of public administration and equality before the law.<sup>46</sup> He sees in hierarchy the protection of subjective rights by providing a vertical course of instances for the institution of appeal. In his opinion, this hierarchy makes it possible to protect the subjective rights of the individual, because there is a place to lodge an appeal.<sup>47</sup> He also writes about the values associated with the principle of deconcentration and unitisation.<sup>48</sup>

31 Ibid., 47.

32 Ibid., 55; cf also contextually critical on this subject *ibid.*, 17–19.

33 Ibid., 58.

34 Ibid., 77.

35 Ibid., 171.

36 Ibid., 91.

37 Ibid., 7.

38 Ibid., 10.

39 Ibid., 45.

40 Ibid., 96.

41 Ibid., 116.

42 Ibid.

43 Ibid., 52–53.

44 Ibid., 11.

45 Ibid., 106–109.

46 Ibid., 117.

47 Ibid., 44, 46.

48 It is worth noting that these principles were expressed in Art. 66 of *ustawa z dnia 17 marca 1921 r. – Konstytucja Rzeczypospolitej Polskiej* [Act of 17 March 1921 – Constitution of the Republic of Poland] [1921] *JoL* 267, 55, which stated: "In the organisation of state administration the principle of deconcentration will be carried out. The organs of state administration in individual territorial units are to be united in one office under one head. At the same time, account will be taken of the principle of the participation of elected citizens in the performance of the tasks of these bodies, within the limits laid down by law. On the principle of grouping".

S. Kasznica's fifth method of referring to values when writing about the law is to indicate how values objectively external to the law can be misunderstood and misapplied, and thus oppose its internal and other external values. In this case, S. Kasznica made interesting observations from which it follows that an objectified value of social relations external to the law, such as solidarity, may, in the case of the application of the law by officials (e.g. when considering appeals), become a reason/premise for its application not so much in the name of the public interest and the interest of the individual, but in the name of the solidarity of the professional group of officials.<sup>49</sup> In the case of such a pathological understanding of the solidarity of civil servants – as a phenomenon unexpected and not tolerated by the law – such instruments should be opposed. This implies there should be control from an independent and autonomous administrative court. Against the background of the indicated and analysed phenomenon, S. Kasznica formulated apt and timeless theses on the grounds of the separation of powers, about the need for administrative court judges not to continue their “solidarity” with the officials applying the law. S. Kasznica disavows a certain myth about the undisputed systemic value of the Supreme Administrative Tribunal (NTA) throughout the interwar period. He recognises and describes the negative changes in its system that followed the May Coup of 1926. He criticises this systemic state of law, which aims “at one goal: to strengthen the influence of the government on the personnel composition of the Tribunal.”<sup>50</sup> The changed legal state in force post-May<sup>51</sup> saw, in his opinion, a departure from the principle that the President of Poland could appoint NTA judges from three nominees presented by the General Assembly of Judges.<sup>52</sup> The criticised change was that the Prime Minister presented to the President of Poland for appointment as a judge one of the

49 S. Kasznica (1946) 166.

50 Ibid., 171; see Articles 30–36 of rozporządzenie Prezydenta Rzeczypospolitej z 27 października 1932 r. o Najwyższym Trybunale Administracyjnym [Regulation of the President of the Republic of Poland of 27 October 1932 on the Supreme Administrative Tribunal] [1932] JoL 806; Rozporządzenie Prezesa Rady Ministrów z 23 grudnia 1932 r. – Regulamin Najwyższego Trybunału Administracyjnego [Regulation of the Prime Minister of 23 December 1932 – Rules of Procedure of the Supreme Administrative Tribunal] [1932] JoL 968.

51 See rozporządzenie Prezydenta Rzeczypospolitej z 27 października 1932 r. o Najwyższym Trybunale Administracyjnym [Regulation of the President of the Republic of Poland of 27 October 1932 on the Supreme Administrative Tribunal] [1932] and also the subsequent amendments to Article 6 of ustawa z dnia 3 sierpnia 1922 r. o Najwyższym Trybunale Administracyjnym [Act on the Supreme Administrative Court] [1922] JoL 600, referred to in footnote 52.

52 Ibid. 171; See Art. 6: “The Supreme Administrative Court shall consist of the first president and the requisite number of presidents and judges. The first president, presidents and judges shall be entitled to the full judicial rights reserved by the provisions of Chapter IV of the Constitutional Act; in terms of emoluments they shall be equal to the first president, presidents and judges of the Supreme Court. The President of the Republic appoints, on a proposal from the Council of Ministers: the first president and the chairmen from among persons who have held the office of judge of the Tribunal for at least two years, and the judges from among candidates chosen in triplicate by the Assembly of Presidents and Judges of the Supreme Administrative Tribunal (General Assembly of the Tribunal); before appointing the chairmen, the Council of Ministers consults the first president. The first president, presidents and judges of the Court may be only persons who have a legal education. Half of the number of judges shall be qualified for the office of judge.” (Amended by Article 13 of the decree under the rozporządzenie Prezydenta Rzeczypospolitej z 7 lutego 1928 r. o zmianie i uzupełnieniu przepisów, dotyczących ustroju Najwyższego Trybunału Administracyjnego, oraz o stosunku służbowym sędziów Najwyższego Trybunału Administracyjnego [Regulation of the President of the Republic of Poland of 7 February 1928 on amending and supplementing the provisions concerning the structure of the Supreme Administrative Tribunal and on the service relationship of judges of the Supreme Administrative Tribunal] [1928] JoL 94, as amended by Article 1 of rozporządzenie Prezydenta Rzeczypospolitej z 3 grudnia 1930 r. w sprawie zmiany ustawy z dnia 3 sierpnia 1922 r. o Najwyższym Trybunale Administracyjnym [Regulation of the President of the Republic of Poland of 3 December 1930 amending the Act of 3 August 1922 on the Supreme Administrative Tribunal] [1922] JoL 657 amending the present Act as of 6 December 1930).



candidates indicated by the administrative college of the NTA, in which the first president had a decisive vote, and the Prime Minister, in turn, had a say in who became the first president of the NTA. S. Kasznica emphasises that, “regardless of this, 1/10th of the total composition of the NTA could be appointed from among the candidates that the Prime Minister chooses at his own discretion.”<sup>53</sup> At the same time, also at his own discretion (free discretion according to S. Kasznica), the Prime Minister presented candidates for the position of first president and presidents of the NTA to the President of Poland for nomination. Previously, such managerial positions could only be taken up by judges who had previously held judicial office for some time.<sup>54</sup> As S. Kasznica notes, “The real blow to the judiciary in general, and to the NTA in particular, was the suspension of judicial irremovability on several occasions after 1926.”<sup>55</sup> Already at that time, S. Kasznica formulated how significant – and particularly relevant today, in the Third Republic of Poland – this is, through his words: “There can be no real truly effective judicial control over the administration if the judge lives in constant fear that at any moment the suspension of immovability may be renewed, and then there will be a score to settle with him for judgments not issued in accordance with the government’s ideas.”<sup>56</sup>

The fifth method of valuation by S. Kasznica is based on signalling how certain anti-values external and internal to the law can – from an objective point of view – be beneficial to the law. Of course, these observations are made on the basis of an analysis of the practice of public authorities and take the form of statements tinged with light cynicism or black humour. S. Kasznica points out in this case how the “slowness”, or in other words the procedural incompetence of the parliamentary legislature can peculiarly counteract the inflation of the law.

### 3. PERSONIFICATION OF VALUES

The introduction to this article explores the concept of personification – the embodiment of values. Values, deeply rooted in morality and ethics, are intricately tied to human existence. In applying, contemplating and living with the law on a daily basis, individuals take a stance in relation to the values that underpin the creation, execution and enforcement of laws. Through their sphere of freedom, individuals can embody these values to various extents. Both the state and the law are profoundly influenced by how individuals, especially citizens, personify these values in pursuit of the common good.<sup>57</sup> On the one hand, texts of vows and oaths imbued with values are introduced into the legal order, as well as civic duties of a nature referring to moral and ethical norms.<sup>58</sup> On the other hand, there are institutions that create various forms of responsibility for non-compliance with values defined by law. At this point, I would like to raise some aspects of the personalisation of values related to Prof. S. Kasznica and his family. It is a kind of tragic paradox

53 S Kasznica (1946) 170–171.

54 Cf *ibid.*

55 *Ibid.*

56 *Ibid.*, 171.

57 See S Kasznica’s reflections on the moral duty of loyalty of an official to the state – *ibid.*, 88–89.

58 See the oath of the President of the Republic of Poland contained in the Constitution of the Republic of Poland of 17 March 1921: “I swear to Almighty God, in the Trinity One, and I swear to you, the Polish Nation, on the office of President of the Republic of Poland, which I assume: to uphold and defend the laws of the Republic of Poland, and in particular the Constitutional Act; to serve the common good of the Nation faithfully and with all my strength; to avert all evil and danger from the State; to guard the dignity of the Polish name unswervingly; to hold justice towards all citizens without distinction as my first virtue; to devote myself undividedly to the duties of office and service. So help me God and the Holy Passion of His Son. Amen”.

in the life of Prof. Stanisław Kasznica that the institution of the formal people's state (possessing the attributes of the totalitarian state that he criticised), serving formal and informal "values" (or, in fact, anti-values) of the goals and political struggle of the people's state – with its dehumanising, but effective mechanism of action – ultimately led to the conviction and execution of Stanisław Józef Bronisław Kasznica, son of Prof. Stanisław W.A. Kasznica. This is a cruel aspect of a state that draws only on its forms and authority, rather than on universal values, including human and civil rights and freedoms. Even a change of regime does not in any way justify the biological elimination of those people who express values different from those favoured by the change. After the political changes had been introduced into the Third Republic as a legal state, it turned out that the mechanism of the state, based on other values, led the instruments of public law to bring about the legal and social rehabilitation of Stanisław Józef Bronisław Kasznica, son of Prof. Stanisław W.A. Kasznica.<sup>59</sup> It turned out that the public and administrative law, to which Prof. S. Kasznica devoted his entire life made through its institutions the personification of values unfortunately posthumously in relation to a Person whom the State had earlier, in the formal sense, unlawfully deprived of life<sup>60</sup>. When dealing with public and administrative law, it is impossible not to keep these reflections in mind.

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<sup>59</sup> Here, I am thinking primarily of the recognition on 30 September 1992 by the Court of the Warsaw Military District of the invalidity of the conviction of Stanisław J. B. Kasznica; as well as zarządzenie nr 9/2019 Prezesa Narodowego Banku Polskiego z dnia 22 marca 2019 r. w sprawie ustalenia wzoru, próby, masy i wielkości emisji monety o wartości nominalnej 10 zł, z serii "Wyklęci przez komunistów żołnierze niezłomni" – Stanisław Kasznica "Wąsowski" [Order No 9/2019 of the President of the National Bank of Poland of 22 March 2019 on determining the design, sample, weight and size of the issue of a coin with a nominal value of PLN 10, from the series "The Unbroken Soldiers Cursed by the Communists" – Stanisław Kasznica "Wąsowski"] [2019] MP 293 and zarządzenie zastępcze nr KN-I.4102.65.2017.3 Wojewody Wielkopolskiego z 15 grudnia 2017 r. w sprawie zmiany zarządzenia zastępczego z 13 grudnia 2017 r., nr KN-I.4102.65.2017.3 [Substitute Ordinance No. KN-I.4102.65.2017.3 of the Governor of the Wielkopolskie Voivodship of 13 December 2017 on amending the substitute order of 13 December 2017, No. KN-I.4102.65.2017.3] [2017] OJ 8575.

<sup>60</sup> He himself was decorated posthumously by the postanowienie Prezydenta Rzeczypospolitej Polskiej z 20 sierpnia 2009 r. o nadaniu orderów i odznaczeń [Order of the President of the Republic of Poland of 20 August 2009 on the awarding of orders] [2009] MP 217; for outstanding merits for the independence of the Republic of Poland: The Grand Cross of the Order of Poland Rebirth.

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