

# CONSTITUTIONAL AND PENAL LAW ASPECTS OF THE PROTECTION OF FREEDOM OF CONSCIENCE AND CONFESSION (RELIGION) IN POLAND

Prof. dr hab. **Zbigniew Witkowski**  
Dr **Piotr Chrzczonowicz**  
Dr **Katarzyna Witkowska-Chrzczonowicz**  
*Nicolaus Copernicus University, Torun, Poland*

**Abstract:** *The authors outline the constitutional and penal law issue of protection of freedom of conscience and confession (religion) in Poland. In this context, not only do they indicate the relevant legal regulations, but also the views of doctrine, and at some noteworthy practical problems, which generated public debate and media interest in the last decade. The authors express the assumption that the current state of democracy in Poland, the issue of realization of freedom of conscience and confession (religion), which remains a controversial issue, will stimulate further social discourse.*

*It seems that the current constitutional regulations in Poland and penal law solutions are sufficient to ensure respect for human rights to freedom of conscience and confession (religion). The biggest challenge remains the practice of application of these regulations, as probably the tendencies shown above will bring about more and more cases of mentioned freedom to the Constitutional Tribunal, as well as more and more reports of such crimes being committed, such as offending religious feelings. Most probably the judicature will show the directions of Polish changes in this regard.*

**Keywords:** *constitutional law, penal law, protection of freedom of conscience and confession, state of democracy, social discourse, human rights, Constitutional Tribunal.*

## **I. Introductory remarks**

The intention of the authors of this paper is to analyze issues of freedom of conscience and confession (religion) as a legally protected interest and consider the legal regulation of these freedoms and their guarantees contained in the Polish Constitution of 2 April 1997<sup>1</sup>, and the provisions of the Polish Penal Code of 6 June 1997<sup>2</sup>.

It seems that taking into consideration the Polish specificity and some domestic problems in the area of constitutional and penal law (also where these two fields meet), which have been loud in the media and stimulated a public debate in the last decade, also requires looking at the selected facts such as: an art gallery installation presentation by Dorota Nieznalska titled “Passion” at the turn of 2001 and 2002, whose central element was a cross with a photo of male genitals glued onto it, tearing the Bible by Adam Darski (Nergal) – the leader of Behemoth, a death metal band in 2007, which took place at a

---

<sup>1</sup>Journal of Laws of the Republic of Poland of 1997 No 78, item 483 (with subsequent amendments).

<sup>2</sup>Journal of Laws of the Republic of Poland of 1997 No 88, item 553 (with subsequent amendments).

concert in a music club, a discussion on whether, after the autumn elections in 2011, when the anti-clerical formation of Mr Janusz Palikot (“Palikot’s Support Movement”) joined the Polish parliament having received slightly over 10 percent support, to remove the cross from the Chamber of the Sejm and, whether the constitution would be consistent with a legal regulation demanded by about 10 thousand Polish pharmacists, so that they can use the conscientious objection clause and refuse to give out contraceptives prescribed by doctors.

## **II. Freedom of conscience and religion in the Polish Constitution of 2 April 1997**

Freedom of conscience and religion is regulated in the Constitution of the Republic of Poland in Chapter II “The freedoms, rights and duties of man and citizen”, in art. 53. The Polish lawmaker included freedom of conscience and religion in personal freedoms and rights. The present regulation is considered in the literature as a relatively comprehensive<sup>3</sup> and detailed (in so far as the legislative technique and customs allow in the field of creation of constitutional provisions), although some authors criticize the lawmaker that he does not consistently use the term “freedom of conscience and religion” of art. 53, par. 1, as in art. 48, par. 1 refers to “freedom of conscience and confession”, and art. 53, par. 7 – on “belief, religious belief or confession”<sup>4</sup>.

It should also be mentioned that the issue of religious freedom in Poland has always been a subject of special attention, hence almost every Polish constitution contained provisions relating to it<sup>5</sup>.

The currently binding art. 53 of the Polish Constitution was clearly inspired by the international standards of human rights protection. It is impossible to analyze the art. 53 of the Constitution in isolation from its art. 30, which states that “the inherent and inalienable dignity of man constitutes the source of freedoms and rights of a human and a citizen. It shall be unfringeable, and its respect and protection is the obligation of public authorities.”

The constitutional freedom of conscience and freedom of religion are, in a sense, a consequence of human dignity, and – as with many other rights and freedoms – this dignity constitutes their direct source. Thus, freedom of conscience and freedom of religion are of personal nature, and their use is inextricably associated with human personality, however, the recognition and respect by the state and society of both these freedoms comes from human dignity, which is also expressed through the intrinsic seeking and experiencing by a human being certain transcendent values. This search must therefore be recognized and protected<sup>6</sup>. It should therefore be emphasized that from freedom of conscience and confession there stems a wide range of powers exercised individually or collectively<sup>7</sup>.

---

<sup>3</sup>Cf. B. Gronowska, *Wolności, prawa i obowiązki człowieka i obywatela* [in:] Z. Witkowski (ed.), J. Galster, B. Gronowska, A. Bień-Kacała, A. Kustra, M. Rączka, K. M. Witkowska-Chrzczonec, *Prawo konstytucyjne*, Toruń 2009, p. 163.

<sup>4</sup>Cf. K. Pyclik, *Wolność sumienia i wyznania w Rzeczypospolitej Polskiej (założenia filozoficzno – prawne)* [in:] B. Banaszak, A. Preisner (ed.), *Prawa i wolności obywatelskie w Konstytucji RP*, Warszawa 2002, p. 460.

<sup>5</sup>An interesting analysis of the regulations concerning the freedom of conscience and confession (religion) in Polish constitutions from 1791 to 1997 is provided by K. Pyclik, *op. cit.*, pp. 446 - 452.

<sup>6</sup>Cf. P. Sarnecki, *Artykuł 53* [in:] L. Garlicki (ed.), *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, Tom I, Warszawa 1999, p. 2.

<sup>7</sup>Cf. M. Pietrzak, *Wolność sumienia i wyznania w RP (regulacje prawne i praktyka)* [in:] M. Pietrzak, *Demokratyczne, świeckie państwo prawne*, Warszawa 1999, p. 275.

Every man is constitutionally entitled to freedom of conscience and religion, therefore it equally applies to Polish citizens, foreigners and stateless persons<sup>8</sup>. A separate entity, in a sense, benefiting from the freedom of religion, are the parents, because according to art. 53, par. 3 they have a right to ensure the education and teaching of their children in accordance with their moral convictions. It is also worth noting that, in accordance with art. 48, par. 1 of the Polish Constitution, the freedom of conscience and religion is at the disposal of children raised by their parents. The literature emphasizes that the subject of freedom of conscience and religion on the basis of art. 53, par. 4 of the Constitution concerning teaching religion in schools, may be churches or other religious organizations with a regulated legal situation<sup>9</sup>.

Freedom of conscience and freedom of religion, though occurring together (they are merged), might also as well be regulated separately, because in reality we are dealing with two separate freedoms here<sup>10</sup>.

The above category encompasses freedom to profess or to accept a religion by personal choice, and manifesting one's own religion individually or jointly with others, publicly or privately, in worship, prayer, observance, practice and teaching.

Freedom of religion shall also include possession of sanctuaries and other places of worship according to the needs of believers. It also implies the right of individuals to benefit from religious services wherever they are. In accordance with art. 53, par. 3 of the Constitution (in conjunction with art. 48 par. 1 of the Constitution), parents have a right to provide children with education and moral and religious teaching in accordance with their convictions. Religion of church or other religious association with regulated legal status may be taught in schools, unless it infringes the freedom of conscience and religion of others (art. 53 par. 4 of the Constitution).

It should be emphasized that freedom of religion cannot in any way be limited to the freedom of religion preached by "religious association", "church" or "church or association with regulated legal status"<sup>11</sup>. Such understanding of religious freedom, particularly important when we consider the legal status of the so-called religious sects, was accepted by the Polish Constitutional Tribunal, which in one of its judgments held that "freedom of religion is recognized in the constitutional standard in a very broad way, since it encompasses all religions and belonging to any religious community, and it is therefore not limited to participation in religious communities that create a formal, separate organizational structure and registered in the appropriate registers kept by public authorities"<sup>12</sup>.

It should be noted that freedom of having a particular philosophy, religious as well as any other, never and under no circumstances can be limited, so it is absolute in nature. On the other hand, nobody can be obliged by public authorities to disclose their philosophy, confession or religious beliefs<sup>13</sup>.

---

<sup>8</sup>Cf. P. Tuleja, *Wolność sumienia i religii* [in:] P. Sarnecki (ed.), *Prawo konstytucyjne RP*, Warszawa 2008, p. 126. Cf. also: B. Przybyszewska-Szter, *Kościół i związki wyznaniowe* [in:] M. Chmaj (ed.), *Wolność zrzeszania się w Polsce*, Warszawa 2008, p. 113.

<sup>9</sup>Cf. P. Sobczyk, *Wolność sumienia i religii* w art. 53 Konstytucji Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 r., „*Prawo Kanoniczne*” 44 (2001), No 3 - 4, p. 214.

<sup>10</sup>Cf. P. Sarnecki, *Artykuł 53* [in:] L. Garlicki (ed.), *Konstytucja Rzeczypospolitej Polskiej...*, p. 3.

<sup>11</sup>See: art. 25 par. 1 and art. 53 par. 4 of the Polish Constitution.

<sup>12</sup>See: judgment of the Constitutional Tribunal of the Republic of Poland of 16 February 1999 (file ref. No: SK. 11/98).

<sup>13</sup>See: art. 53 par. 7 of the Polish Constitution.

What may solely be limited is the freedom to manifest one's religion, and therefore it is acceptable for the public authority to interfere, but not with the whole range of protected rights, but only with its externalization, a manifestation of their religion<sup>14</sup>. Such solutions, as already mentioned above, also apply on the basis of acts of international law of human rights. Such a restriction, under the Polish Constitution, may be made only through an Act and only when it is necessary to protect national security, public order, health, morals or the freedoms and rights of others. The presented in art. 53, par. 5 of the Constitution catalog of premises to allow restriction of this freedom is closed; it is a restrictive clause (limitational) specific with the clause of art. 31 par. 3 of the Constitution – the so-called general restrictive clause (limitational)<sup>15</sup>. It is worth emphasizing that it does not differ in any respect from the limitational clauses included in contracts and international declarations, dedicated to the protection of human rights. It is not different from the catalog of premises occurring in the constitutions of other democratic countries in the world. It should also be emphasized that freedom of conscience and freedom of religion – as well as certain other rights and personal freedoms – have a special status in the Polish Constitution. Since they belong – in accordance with its art. 233, par. 1 – to the catalog of rights and freedoms which must not be restricted by law specifying the scope of restrictions on freedom and rights of a human and citizen in times of martial and emergency law<sup>16</sup>.

It is argued in the literature that the wording of art. 53 of the Polish Constitution omits two important, especially from the viewpoint of reflections concerning the so-called religious sects, elements of freedom of conscience and religion. Firstly, it is about the possibility of “establishing” a new religion, and secondly – the question of dissemination either a particular irreligious view or a particular religion<sup>17</sup>. Paweł Sarnecki believes that, although art. 53 provides for “freedom to profess or to accept a religion by personal choice” and *prima facie* it would only be about guaranteeing the right to adopt the already-existing religion, nevertheless it is reasonable to say that the regulation of art. 53 also encompasses the right to accept a new religion preached by oneself<sup>18</sup>. Moreover, freedom of establishment of “new” churches and denominations, and thus in a broader sense – religious associations, but also non-religious, belongs to a category of the freedom of association, provided by art. 12 and 58 of the Polish Constitution. It must be stressed, however, that the creation or “establishment” of a new religion (or associations of a non-religious nature) is subject to certain limitations, which stem from the Constitution itself

---

<sup>14</sup>Cf. T. Jasudowicz, Ochrona religii przed zakusami profanum w świetle prawa polskiego i standardów europejskich [in:] *Sacrum i profanum a współczesna kultura. Materiały z konferencji zorganizowanej przez Komisję Kultury i Środków Przekazu pod patronatem Marszałka Senatu Bogdana Borusewicza 25 kwietnia 2006 r.*, Warszawa 2006, p. 38. Cf. also: J. Szymanek, Prawna regulacja wolności religijnej, „*Studia Prawnicze*” No 2 (168), 2006, p. 22.

<sup>15</sup>Cf. K. Wojtyczek, Granice ingerencji ustawodawczej w sferę praw człowieka w Konstytucji RP, Zakamycze 1999, pp. 89 – 90. Cf. also: P. Chrzczonowicz, Wolność religijna a sekty, „*Zeszyty Naukowe Wyższej Szkoły Suwalsko - Mazurskiej im. Papieża Jana Pawła II w Suwałkach*” No 11, 2005, p. 124. Cf. also: L. Garlicki, Przesłanki ograniczania konstytucyjnych praw i wolności (na tle orzecznictwa Trybunału Konstytucyjnego), „*Państwo i Prawo*” No 10, 2001, pp. 5 and further; J. Szymanek, Prawna regulacja..., pp. 22 – 26.

<sup>16</sup>See: art. 233 par. 1 of the Polish Constitution in relation to art. 228 par. 1 and 2 of the Constitution.

<sup>17</sup>Cf. P. Sarnecki, Artykuł 53 [in:] L. Garlicki (ed.), *Konstytucja Rzeczypospolitej Polskiej...*, p. 5.

<sup>18</sup>Cf. *ibidem*.

and the laws. So one cannot rely on the freedom of conscience or freedom of religion to justify the creation of associations whose purposes or activities are contrary to the Constitution or act<sup>19</sup>, or for creating organizations which call on in their programs totalitarian methods and practices of Nazism, fascism and communism, as well as those whose programs or activities assume racial and national hatred, violence to gain power or to influence the State policy, or provide for own structure or membership to be kept classified<sup>20</sup>.

There is no objection however, as to the possibility of changing religion (the basis in this case is the cited above wording of art. 53, par. 2, the first sentence – “own choice of religion”).

Another important problem is the issue of freedom of propagation of faith (and non-religious views), especially in the context of the requirements of religious denominations, where the “conversion” of others is an essential or very important condition of belonging to a religious community. What is noticed in the literature is that the “propagation of faith” does not entirely stem from art. 25, par. 2 *in fine* of the Constitution, “freedom of expression in public life, outlook, religious and philosophical beliefs”<sup>21</sup>. The behavior analyzed here consisting in “conversions” indeed consist in making an effect on other people, who are in any case protected by law (including the one of the constitutional status) against this type of influence they do not wish to be subject to. Since the Constitution provides for freedom of individuals from interfering in their private life, family and personal<sup>22</sup>, freedom from provision of information<sup>23</sup> or inviolability of the household<sup>24</sup>. In the literature, therefore, it is assumed that the freedom of dissemination a particular worldview (religion) exists, but only with regard to the context, which is to respect the rights of others, because the spread of views referred to herein, is done through their articulation and external expression, which is allowed only under conditions involving external expression of behavior<sup>25</sup>. Spreading religious or nonreligious views (e.g. in the mass media) is permitted, but it can only be done with respect for the law, and so – when it comes to constitutional provisions – the first basis will be art. 14 of the Polish Constitution, ensuring freedom of the press and other mass media, as well as art. 54 of the Polish Constitution, providing each person with the freedom to express their opinions, as well as to acquire and disseminate information (par. 1), and prohibiting preventive censorship (par. 2). It is allowed to spread the faith by visiting private homes, but with respect for art. 50 of the Constitution, and therefore within the limits of inviolability of the home. It is also allowed, in order to spread the faith, to use the so-called “freedom of expression”, which is the freedom of expression provided by art. 54 of the Polish Constitution. However, there is, within the freedom of conscience and freedom of confession (religion), apart from the context indicated above, no such thing as “freedom of conversion”<sup>26</sup>.

---

<sup>19</sup>See: art. 58 par. 2 of the Polish Constitution.

<sup>20</sup>See: art. 13 of the Polish Constitution.

<sup>21</sup>Cf. P. Sarnecki, Artykuł 53..., p. 5.

<sup>22</sup>See: art. 47 of the Polish Constitution.

<sup>23</sup>See: art. 51 of the Polish Constitution.

<sup>24</sup>See: art. 50 of the Polish Constitution.

<sup>25</sup>Cf. P. Sarnecki, Artykuł 53..., p. 6.

<sup>26</sup>Cf. *ibidem*.

It is worth noticing that the doctrine stresses that in the art. 53 of the Constitution the legislator focused on defining the freedom of religion, and yet *de facto* what is analyzed here are two freedoms – freedom of religion and freedom of conscience, which are not specified by the Constitution. There are various definitions of freedom of conscience in the doctrine.

For example – Wiesław Skrzydło aptly notes that the Constitution does not define the freedom of conscience, does not define its manifestations, and does not provide a guarantee of its observance. The mentioned author defines freedom of conscience as the possibility of adopting a different worldview than religious and is of the opinion that, while in Poland, this freedom has a narrower scope, since the majority of Poles declare themselves as believers, but respect for minority rights requires a similar approach to the freedoms of non-believers, which the Constitution does not do satisfactorily<sup>27</sup>.

There are attempts within the doctrine to define the freedom of conscience. It appears reasonable to assume that freedom of conscience is the ability to accept any philosophy which extends to the realm of existence and consciousness, the view, which relates to their origin, mutual relations, development and purpose, which will also involve adopting a particular system of values<sup>28</sup>.

In turn, Józef Krukowski believes that although the scope of freedom of conscience is broader than the freedom of religion, because it concerns not only the freedom to adopt religious beliefs based on reasons of a theological, but also philosophical and ideological nature, as well as of religious and nonreligious or even anti-religious character<sup>29</sup>. The latter – according to the Author – you can externalize individually or collectively, publicly or privately, analogically as religious beliefs, as defined in art. 53, par. 2 of the Polish Constitution and, therefore, the guarantee of freedom of conscience encompasses both believers and unbelievers, by means of equality.

Radically different view is expressed by Ryszard M. Małajny, who accuses the wording of art. 53 of the Constitution of the fact that the freedom of conscience and religion “means only the freedom to manifest one’s behavior, attitudes and religious beliefs” and that “the expression of atheist attitudes and beliefs is therefore not covered by freedom. We (...) are dealing with a clear case of favoring freedom of believers”<sup>30</sup>. It seems that this interpretation is too far-reaching and indeed it should be noted that the legislator devotes little attention to manifestations of freedom of conscience as compared to the extensive regulation of the freedom of religion, yet there is no reason to propose such a far-reaching view that the position of believers in the light of the current constitutional regulation is in any way favored.

Freedom of conscience and freedom of religion, like other human rights and freedoms, are secured by certain guarantees. Based on the position criterion of a normative

---

<sup>27</sup>Cf. W. Skrzydło, *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, Zakamycze 1998, pp. 50 - 51. Cf. also: P. Winczorek, *Komentarz do Konstytucji Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 roku*, Warszawa 2008, p. 126.

<sup>28</sup>Cf. P. Sarnecki, *Artykuł 53...*, p. 3.

<sup>29</sup>Cf. J. Krukowski, *Konstytucyjna ochrona wolności sumienia i religii [in:] L. Garlicki, A. Szmyt (ed.), Sześć lat Konstytucji Rzeczypospolitej Polskiej. Doświadczenia i inspiracje*, Warszawa 2003, pp. 161-162.

<sup>30</sup>R.M. Małajny, *Regulacja kwestii konfesyjnych w Konstytucji III RP (refleksje krytyczne) [in:] R. Tokarczyk, K. Motyka (ed.), Ze sztandarem prawa przez świat. Księga dedykowana Profesorowi Wieńczysławowi Józefowi Wagnerowi von Igelgrund z okazji 85-lecia urodzin*, Zakamycze 2002, p. 301.

act in the hierarchy of sources of law, we can talk about constitutional guarantees and warranties arising from the ordinary laws. The constitutional guarantees of freedom of religion and freedom of conscience include in particular: the right to compensation for damage caused by unlawful action of public authority (art. 77, par. 1 of the Constitution), the right to legal redress (art. 77, par. 2 of the Constitution) and the right of the constitutional complaint to the Constitutional Tribunal (art. 79 of the Constitution)<sup>31</sup>.

However the guarantees contained in ordinary legislation are located primarily in the act on guarantees of freedom of conscience and confession of 17 May 1989<sup>32</sup> and include *inter alia*: the state provision of freedom of conscience and confession to every citizen and a foreigner residing in Poland (art. 1, par. 1, art. 7), ensuring that all citizens that are believers or unbelievers have equal rights in life whether it is in the realm of the state, politics, economy, social and cultural life (art. 1, par. 3), a ban on discrimination or favoring anyone because of religion or religious beliefs and forcing anyone not to take part in religious activities and rites, and to participate in them (art. 6), guarantees of freedom of conscience and confession in relations of the state with churches and other religious organizations – art.9, par. 2: separation of churches and other religious associations from the state (point 1), the freedom to carry out religious functions by churches and other religious denominations (point 2), equality of all churches and other religious associations, regardless of the form of regulation of their legal status (point 3).

One of the important provisions of the Polish Constitution for freedom of conscience and religion is art. 25, contained in Chapter I (“The Republic”), defining the constitutional rules of the state. It establishes equality of churches and other religious associations in Poland, specifying the obligation of public authorities to maintain impartiality in matters of religious belief, or philosophical, and to ensure their expression in public life<sup>33</sup>, and it refers to the issue of normalizing relations between the State and churches and other religious associations. As noted in the literature, the content of this art sparked much controversy during constitutional work, because it relates to an important area of life, which is freedom of conscience and confession<sup>34</sup>. In the literature there is a widespread argument that the provisions of the Constitution contained in art. 53 should be considered in conjunction with its art. 25, because art. 25 concerns the legal status of religious institutions and their relations with the state, and art. 53 relates to freedom of conscience and religion, therefore an individual exercising their right to freedom of religion, generally satisfies their needs in this area within a specific religious institution; so there is a close link between the functioning of these institutions and the exercising religious freedom by that individual<sup>35</sup>. Paweł Sarnecki indeed claims that freedom of conscience and religion of all people to whom the provisions of the Constitution apply, stems from art. 25, thus the constitutional principle that governs the relationship of the state with religious structures (i.e. churches and other religious associations) and the position of these structures in the state<sup>36</sup>. The Author believes that art. 25 of the

---

<sup>31</sup>See: K. Motyka, *Prawa człowieka. Wprowadzenie. Wybór źródeł*, Lublin 1999, p. 59.

<sup>32</sup>Consolidated text of the act: *Journal of Laws of the Republic of Poland of 2005 No 231, item 1965* (with subsequent amendments).

<sup>33</sup>See more on this issue: J. Szymanek, *Bezstronność czy neutralność światopoglądowa państwa* (Uwagi na tle art. 25 ust. 2 Konstytucji RP), „*Państwo i Prawo*” No 5, 2004, pp. 32 – 48.

<sup>34</sup>Cf. W. Skrzydło, *Konstytucja Rzeczypospolitej Polskiej...*, p. 27.

<sup>35</sup>Cf. P. Winczorek, *Komentarz do Konstytucji Rzeczypospolitej Polskiej...*, p. 125.

<sup>36</sup>Cf. P. Sarnecki, *Artykuł 53...*, p. 2.

Constitution implicitly assumes granting an individual the freedom of conscience and religion, which is provided by art. 53. Otherwise, according to P. Sarnecki, the regulations contained in art. 25 of the Constitution would be not make sense and, therefore, the freedom of conscience and religion is not only the personal freedom of an individual, but aspires to be a constitutional principle, which gives the analyzed regulation more weight<sup>37</sup>.

Wiesław Skrzydło claims that the inspiration for the adoption solutions reflected in art. 25 of the Constitution has also been the experience of the past from the period of Polish People's Republic, which showed that in this area there may have been significant limitations to the handling of this freedom, and therefore it was about a clear separation from the past practices and the creation of guarantees against any attempts to restore them<sup>38</sup>. The regulations adopted in art. 25 of the Constitution are considered to be complex, incorporating different aspects of the situation of churches and religious denominations, and dictated by the will to ensure respect for religious freedoms in Poland, as well as freedoms of its citizens<sup>39</sup>.

In order to get a more comprehensive glance at the issue of freedom of conscience and religion it should further be noted that the regulation contained in the Constitution relating to philosophy and religion includes not only the mechanism of "freedom", but also – in two cases – the construction of the "law". What it means is that people have a right to "benefit from religious services wherever they are"<sup>40</sup> and the right to teach religion (as well as nonreligious philosophy) in schools<sup>41</sup>.

Freedom of conscience and freedom of religion take up a very important place in the minds of Poles. In different circumstances, and historical periods (both those further in the past, and these more recent) proved their special attachment to these freedoms and that the actual guarantee of them is considered a great value in Poland.

### **III. Protection of freedom of conscience and confession in the Penal Code of 6 June 1997**

The penal-law protection of religious freedom in Poland has undergone a special evolution, because it was closely linked to the religious policy of the state. These state constitutional transformations were reflected in the types of crimes against religious feelings or violating the sphere of freedom of conscience and confession in the Polish penal legislation from 1932 to 1997<sup>42</sup>.

Today, in a democratic and ideologically neutral state, it would be unacceptable to cut penal law off from the task of protection of civil liberties in the field of faith<sup>43</sup>. It comes as no surprise then that the norms of Polish penal law guard the freedom of conscience and confession, providing for each of the acts that are an attack on this interest a sanction that alternatively includes a fine, penalty of restriction of liberty or imprisonment up to two years<sup>44</sup>.

---

<sup>37</sup>Cf. *ibidem*.

<sup>38</sup>Cf. W. Skrzydło, *Konstytucja Rzeczypospolitej Polskiej...*, pp. 27 - 28.

<sup>39</sup>Cf. *ibidem*, p. 28.

<sup>40</sup>See: art. 53 par. 2 sentence 2 *in fine* of the Polish Constitution.

<sup>41</sup>See: art. 53 par. 4 of the Polish Constitution. Cf. P. Sarnecki, *Artykuł 53...*, pp. 6 - 7.

<sup>42</sup>Cf. M. Makarska, *Przestępstwa przeciwko wolności sumienia i wyznania w Kodeksie karnym z 1997 roku*, Lublin 2005, p. 50.

<sup>43</sup>Cf. A. Wąsek, *Przestępstwa przeciwko przekonaniom religijnym de lege lata i de lege ferenda*, "Państwo i Prawo" No 7, 1995, p. 36.

<sup>44</sup>Cf. P. Chrzczonowicz, *Karnoprawna ochrona wolności sumienia i wyznania w prawie polskim*. Problematyka sekt [in:] P. Chrzczonowicz, V. Kwiatkowska-Darul, K. Skowrońska (ed.),



Offences against freedom of conscience and confession have been typified in the currently binding Penal Code in chap. XXIV. The legislator elaborated on them in articles 194 through 196. According to these regulations, acts that are subject to penalization are as follows: reducing the rights of a human because of his or her religious affiliation or the lack of it, and therefore human discrimination for these reasons (art. 194 of the Penal Code), malignant obstruction of public performance of a religious act of a church or other religious organization with a regulated legal status and malignant obstruction of a funeral, mourning ceremonies or rites (art. 195 § 1 and 2 of the Penal Code), offense of religious feelings of others by insulting a public religious object or place of worship dedicated to the public performance of religious rites (art. 196 of the Penal Code). The offenses presented here are universal; any person liable for criminal responsibility may be their perpetrator<sup>45</sup>.

Freedom from the actions of drastic forms of attack on freedom of conscience and confession is generic (group) object of protection, not religion or confession as such, and in a pure form<sup>46</sup>. The primary (main) objects of protection by specific provisions contained in this chapter (and therefore individual object of penal-law protection) are: in art. 194 of the Penal Code – the right of everyone to freedom in the religious sphere as well as in the sphere of nonreligious beliefs, art. 195 – freedom from any malicious perturbations to the freedom to participate in and contemplate of a publicly performed religious ceremony of a church or other religious association with regulated legal status and feelings of participating persons (in § 1), and in addition to that – feelings concerning the solemn nature of funeral ceremonies and mortuary rituals, regardless of whether they are religious or secular in nature (in § 2), in art. 196 of the Penal Code – freedom of an individuals from behavior that offend their religious feelings and bringing upon them, as defined by Marian Filar, “a sense of psychological discomfort caused by the feeling of lack of respect for their confession”<sup>47</sup>. Religious feelings, because of their nature, are object to special legal protection. Their correlation with the freedom of conscience and confession that are of constitutional value is direct and obvious<sup>48</sup>.

It is worth to point out while we discuss it that out of the acts described in chap. XXIV of the Penal Code over the years 1999 - 2010, according to the police statistics, the most reported cases related to crimes concerning offense of religious feelings (art. 196 of the Penal Code). The police statistics indicate 585 such cases (this is the number of initiated penal proceedings)<sup>49</sup>. According to statistics presented by the Polish Ministry of Justice, in the years 2001 – 2005 39 adult offenders were validly sentenced for the offense

---

Spółeczeństwo inwigilowane w państwie prawa (?) Granice ingerencji w sferę praw jednostki. Materiały konferencji naukowej (Toruń, 25 – 27 marca 2003 r.), Toruń 2003, p. 122; idem, *Wolność religijna...*, p. 129.

<sup>45</sup>Cf. e.g. W. Wróbel [in:] A. Zoll (ed.), *Kodeks karny. Część szczególna. Komentarz do k.k.*, t. 2, Zakamycze 1999, p. 500.

<sup>46</sup>Cf. M. Filar [in:] M. Filar (ed.), *Kodeks karny. Komentarz*, Warszawa 2008, p. 808.

<sup>47</sup>Cf. *ibidem*, p. 812.

<sup>48</sup>See: judgment of the Constitutional Tribunal of the Republic of Poland of 7 June 1994 (file ref. No: K 17/93), collection of judgments of the Constitutional Tribunal of the Republic of Poland: OTK 1994, part I, item 11, p. 9.

<sup>49</sup>See: *Statystyka przestępstw – Kodeks karny (liczba postępowań wszczętych) – obraza uczuć religijnych (art. 196 k.k.)* [Crime statistics – the Penal Code (number of initiated penal proceedings) – offense of religious feelings (art. 196 of the Polish Penal Code)],

Policja.pl, [http://www.policja.pl/portal/pol/22/500/Obraza\\_uczuc\\_religijnych\\_art\\_196.html](http://www.policja.pl/portal/pol/22/500/Obraza_uczuc_religijnych_art_196.html) (26.10.2011).

of offending religious feelings<sup>50</sup>. Note that in the same period 226 penal proceedings were initiated for this crime (the police data).

By the way, it is worth noting that freedom of conscience and confession is a byproduct (additional, further) object of penal-law protection for such crimes typified in the Penal Code as:

- genocide and preparing for it, if the offender commits homicide or causes serious injury to person's health, acting in the intent to destroy in whole or in part, *inter alia*, a religious group or group with a specific philosophy or – in the realization of this objective – he or she creates for persons belonging to such groups living conditions that are hazardous to its biological existence, applies means aimed at preventing births within the group or forcibly removes children from people belonging to it (chapt. XVI of the Penal Code – “Crimes against peace, humanity and war crimes”, art. 118 of the Penal Code);
- taking part in a mass attack or even in one of repeated attacks against a group of people taken up to implement or support the policy of the State or organization (chapt. XVI of the Penal Code, art. 118a of the Penal Code);
- the use of violence or illegal threats against a group of persons or a particular individual, for instance because of its/his or her religious affiliation or because of their lack of religious beliefs (chapt. XVI of the Penal Code, art. 119 § 1 of the Penal Code);
- public provocation to commit the crimes specified in the articles above 118, 118a, 119 § 1 of the Penal Code or their public preaching (chapt. XVI of the Penal Code, art. 126a of the Penal Code);
- public incitement to hatred based on differences *inter alia* religious or due to the lack of religious beliefs, as well as to disseminate, production, recording or importing, purchasing, storage, possession, display, transport or transfer of materials containing hateful content based on the differences such as religious or due to the lack of religious beliefs (chapt. XXXII of the Penal Code – “Crimes against public order”, art. 256 of the Penal Code);
- public insult of the population or a particular individual *inter alia* because of their religious affiliation or because of their lack of religious beliefs or for such reasons as violation of personal inviolability of another person (chapt. XXXII of the Penal Code, art. 257 of the Penal Code).

In the presented regulations – generally speaking – there are described the deeds committed by the perpetrators who may be motivated by such factors as religion or non-religious beliefs (a specific philosophy of life) of the person (group of persons). In the literature, it is noted that if the offender commits the offense because of religion or lack of religious beliefs of another person and one of those states of affairs makes him break the law, we can assume that we are dealing with a crime that exhibits characteristics of a religious discrimination. It is assumed that the above means that in addition to other interests protected by the penal law what is also violated is religious equality and freedom

---

<sup>50</sup>See: Prawomocne skazania osób dorosłych według rodzajów przestępstw (czynu głównego) w latach 2001 – 2005 (stan w dniu 25 października 2006 r.) [Valid sentences of adult persons according to the types of crimes (main criminal act) through the years 2001 - 2005 (as for 25 October 2006)], Ministerstwo Sprawiedliwości [Ministry of Justice], <http://bip.ms.gov.pl/pl/dzialalnosc/statystyki/statystyki-2009/> (26.10.2011).

to profess or not to profess a particular religion<sup>51</sup>. Discriminatory motivation may involve multiple offenses (not being expressed through their statutory signs). From our perspective we are talking about such crimes (and they were presented), whose description contains signs indicating the motive of religious discrimination<sup>52</sup>.

Crimes which are listed in chapt. XXIV of the Penal Code and located in other sections of the Code, constituting an attack on freedom of conscience and confession, may be committed, among others, by members of different groups or communities known as sects. However, it should be noted that also these people (and even at the same time a community or a group to which they belong and which operate in the popular consciousness as a sect) can be the target of attacks assessed through the prism of the constituent elements of these crimes<sup>53</sup>.

#### **IV. Practical problems concerning application of regulations on freedom of conscience and confession (religion) in Poland**

For a few weeks at the turn of 2001 and 2002 in an art gallery “Wyspa” (The Island) in Gdansk there was exhibited an installation representing the so-called mainstream of critical art titled “Passion” by Dorota Nieznalska. The elements of this installation included a metal cross hanging on a chain with a photograph of male genitals stuck to it, as well as a video displayed on a screen showing a man practicing in the gym. This message, according to the author’s installation, was supposed to direct our attention to men training in gyms, “until they feel pain.” A fragment of this work was spotted on television by two then deputies of Polish Sejm - members of the party League of Polish Families, who – after closing the exhibition – reported it with the prosecutors’ office on suspicion of a crime involving offense of religious feelings committed by the author of the installation. The prosecutors’ office issued an indictment and the court hearing the case in the first instance passed a sentence of guilty for Dorota Nieznalska. After an appeal, the court of second instance annulled the sentence and sent the case back to the proceedings at first instance. Another sentence of the court of first instance – this time not guilty of the charge of offense of religious feelings – was also appealed. The appellate court upheld the sentence. Dorota Nieznalska’s judicial saga came to an end no sooner than in 2010. Dorota Nieznalska’s acquittal concerned the assumption that the goal and message of her creative expression was not to criticize a religion nor to hurt the feelings of believers, but to criticize the cult of the body and the men who force themselves to undergo suffering in gyms. It was clearly underlined that the freedom of artistic expression cannot prevail over freedom of conscience and religion. A given artistic activity may exclude criminal responsibility for a given offense through eliminating the illegality of a particular behavior (i.e. countertype of art or countertype of artistic activities). The court held that although the accused consciously referred to Christian symbolism (knowing that the combination of the sacred symbol with genitals may seem abusive and insulting) and her action come to light in the public space, there is no evidence, however, that the purpose of the author of the

---

<sup>51</sup>Cf. P. Kozłowska-Kalisz, M. Kucharska-Derwisz, *Przestępstwa przeciwko wolności sumienia i wyznania* [in:] M. Mozgawa (ed.), *Prawnokarne aspekty wolności. Materiały z konferencji, Arłamów, 16 – 18 maja 2005 r.*, Wolters Kluwer Polska, Zakamycze 2006, p. 221.

<sup>52</sup>Cf. *ibidem*, p. 222. In the doctrine such crimes are called „discrimination crimes” (this category also contains the offense described in art. 194 of the Polish Penal Code) – cf. N. Kłaczyńska, *Dyskryminacja religijna a karnoprawna ochrona wolności sumienia i wyznania*, Wrocław 2005, p. 173. (More on the issue of penal law prohibition of discrimination – see: N. Kłaczyńska, *op. cit.*, pp. 172 – 179).

<sup>53</sup>Cf. P. Chrzczonowicz, *Wolność religijna...*, p. 130.

installation was to insult other people, and any doubts should be resolved in favor of the accused<sup>54</sup>. Although the valid sentence of the court ended the case of Dorota Nieznalska in the juridical sphere, however, it was subjected to numerous critical comments from the “outraged” – mainly the right-wing oriented representatives of political circles.

Another example of affair that electrified the Polish public opinion, where we witnessed the issue of clash of freedom of creative expression with the freedom of conscience and religion, was a case of a leader of a death metal band called Behemoth – Adam Darski, also known as Nergal. This musician, during one of his concerts, which took place in 2007 in Gdynia at the club “Ucho” (the Ear), standing on the stage, grabbed the Bible and shouted that the Catholic Church is a criminal organization. Fragments of the Bible were then thrown in the direction of the participants of the concert with a contemptuous recommendation “feed on this shit” (the audience was said to have burnt it). This event activated four members of the Law and Justice party and President of the National Defense Committee against Sects – Ryszard Nowak, who reported it with the prosecutors’ office on suspicion of committing a crime of offense of religious feelings. Adam Darski was faced with indictment from the prosecutors’ office, and in August 2011, the court of first instance hearing the so-called „Nergal case” held that the conduct constituted a kind of art form addressed to a hermetic audience. It resigned to take this opportunity and demarcate any boundaries for freedom of expression, freedom of artistic or religious act or criticism of religion, as well as investigating whether Darski is a dangerous Satanist for society and the youth. The court held that Darski had not acted with direct intent to hurt anybody’s religious feelings, and it was forbidden during the concert to record it and publicize it. It called upon the case of Dorota Nieznalska, and the construct of countertype of art (freedom of artistic expression), urging that the sentence would stimulate a legal discussion over art. 196 of the Penal Code<sup>55</sup>. Currently, this ruling is not binding and we should expect its appeal. The discussion over the above-mentioned behavior of Nergal and his subsequent statements or messages resulting from specific concert “show”, over how far can one go in provocations and attacks on the realm of the *sacrum* and religious feelings of others is still continuing and it seems that it will not soon end.

The success of the Association called “Palikot’s Support Movement” gained in the parliamentary elections that took place in autumn 2011 follows suit the noticeable secularization tendencies in Poland (but also in other European countries). This formation achieved support at the level of 10.02% of all votes (1 million 439 thousand 490 votes cast) <sup>56</sup>. The program of the Palikot’s Support Movement called “the Modern State”

---

<sup>54</sup>Cf. G. Szaro, Sąd: Nieznalska jest niewinna, portal Gazeta.pl, 2009-06-04, <http://trojmiasto.gazeta.pl/trojmiasto/2029020,89917,6687517.html> (22.10.2011); mip, PAP 2010-03-11, Oskarżona o obrazę uczuć religijnych Dorota Nieznalska niewinna, portal Gazeta.pl, <http://wiadomosci.gazeta.pl/wiadomosci/2029020,114873,7650146.html> (22.10.2011).

<sup>55</sup>Cf. MJ/PAP, Nergal niewinny. Sąd kończy sprawę darcia Biblii, 18 sierpnia 2011, Newsweek.pl, <http://spoleczenstwo.newsweek.pl/nergal-niewinny—sąd-konczy-sprawe-darcia-biblii,80953,2,1.html> (22.10. 2011); Nergal niewinny. Sąd rejonowy w Gdyni, ogłosił wyrok w procesie Adama Darskiego, Gazeta Świętojańska, 18.08.2011 r., <http://gazeta.razem.pl/index.php?id=2&t=1&page=27059> (22.10.2011); M. Górlikowski, Nergal nie zamierzał obrażać, 2011-08-19, [http://wyborcza.pl/1,75478,10136464,Nergal\\_nie\\_zamierzal\\_obrazac.html](http://wyborcza.pl/1,75478,10136464,Nergal_nie_zamierzal_obrazac.html) (26.10.2011).

<sup>56</sup>See: Komunikat Państwowej Komisji Wyborczej z dnia 10 października 2011 r. o zbiorczych wynikach głosowania na listy kandydatów na posłów w skali kraju

includes anticlerical demands, such as resignation from the funding of the Catholic Church from the state budget, the exclusion of religion from the list of subjects taught in schools and the return of religious instruction lessons to parish classrooms, or a ban on the participation of the clergy in secular celebrations<sup>57</sup>. This hostility toward the Catholic Church is reflected in the demand for the cross which is hanging in the Chamber of the Polish Sejm to be removed from there. Moreover, the Palikot's Support Movement advocates the legalization of partnered relationships (including for partners of the same sex), legalization of the so-called soft drugs, liberalization of the so-called anti-abortion act (whether or not to abort would be up to a woman), free access to contraceptives, or funding of the fertilization procedures outside the body (*in vitro*) from the state budget. The fact that a formation proclaiming such radical political views earned the trust of almost half a million Poles seems to confirm the earlier drawn thesis of secularization trends shaping up in Poland in the last decade.

On the other hand, at the opposite "pole" of social attitudes there are trends contrasting with the ones presented above. Certain working groups are demanding respect for their rights concerning freedom of conscience and confession by extending the possibility of relying on the so-called conscience clause when performing certain activities related to their profession. There are ample (and let's add critical) comments concerning the postulate of the Polish Association of Catholic Pharmacists who are relying on the Resolution No 1763 of the Council of Europe adopted by the Council of Europe Parliamentary Assembly of 7 October 2010, providing the right to conscientious objection clause within legal medical care<sup>58</sup>, collect signatures under a petition, in which they demand the right to refuse to sell "drugs damaging human fertility or killing a human embryo at the beginning of its existence"<sup>59</sup>. They argue that it is "a symptom of serious discrimination faced by Polish pharmacists, who are deprived of the right to use the conscientious objection clause"<sup>60</sup>. They also indicate that such action is contrary to the Pharmacist's Code of Ethics, whose par. 3 provides that "the calling of the pharmacist is to cooperate to protect life and health and prevent disease" and the par. 4, which provides a pharmacist with the freedom to act according to their conscience"<sup>61</sup>.

## V. Conclusions

In the Polish conditions, freedom of conscience and confession is of particular importance. For centuries, not only did the Poles fought for their statehood and independence, but also for the right to profess their religion. The Catholic Church in Poland enjoys a special position, which stems from the fact that institutionally, organizationally and spiritually it had always been the support for Polish national liberation struggle in different periods of a not necessarily ancient history. It was after all in the 1980s of the 20<sup>th</sup> century that the communist government led to the murder of the Blessed Father Jerzy Popieluszko.

---

[Communiqué of the National Electoral Commission of 10 October 2011 on the collective results of voting for the lists of deputy candidates in the scale of country].

<sup>57</sup>See:<http://www.ruchpoparciapalikota.pl/sites/default/files/Program%20Nowoczesnego%20panstwa.pdf> (27.10.2011).

<sup>58</sup>See:

[http://serwisy.gazetaprawna.pl/zdrowie/artykuly/560309,klauzula\\_sumienia\\_nie\\_dla\\_farmaceutow.html](http://serwisy.gazetaprawna.pl/zdrowie/artykuly/560309,klauzula_sumienia_nie_dla_farmaceutow.html) (27.10.2011).

<sup>59</sup><http://www.sumienie-farm.pl/> (27.10.2011).

<sup>60</sup>Ibidem.

<sup>61</sup>Ibidem.

In light of these socio-historical circumstances it should come as no surprise that, for many Poles, the freedom of conscience and confession is of supreme importance and is a particularly valuable asset.

On the other hand, for several years the trends of secularization have been present in Poland (and they have been increasing especially since 2005, when Pope John Paul II died), which is known to other European countries. In the autumn elections of 2011, slightly above 10-percent support was won by the anticlerical party of Janusz Palikot, whose members postulated to build a “modern state” based on French models, without teaching religion in schools, without joining the state and church ceremonies, without the cross in the Sejm, offices, schools and other public institutions. In response to these aggressive proposals of changes there are initiatives of Catholic circles concerning for example initiating the civil bills of a total ban on abortion or allowing pharmacists to use the conscientious objection clause in the event of receiving a prescription for a drug whose action is in conflict with the philosophy of professional representatives of this group.

Somewhere in between these two extremes there is a majority of Polish citizens, more or less identifying with the Catholic Church, who continue to take wedding vows at church when they get married, baptize children, send them to religion lessons offered in schools, appreciating the fact that they do not have to pick them up after school to get them to church premises, which would greatly hamper the organizational lives of many Polish families. Poles still traditionally take great care of a proper Christian burial.

It seems that at this stage of development of democracy in Poland, when the biggest authority of the majority of Poles John Paul II passed away (and unfortunately, there has been nobody who could follow in his footsteps) there will be more and more discussions and controversy around the realization of freedom of conscience and confession. The current statutory regulations in Poland and penal law solutions are sufficient to ensure respect for human rights on freedom of conscience and confession. The biggest challenge remains the practice of application of these regulations, as probably the tendencies shown above will bring about more and more cases of this freedom to the Constitutional Tribunal, as well as more and more reports of such crimes being committed, such as offending religious feelings. Most probably the judicature will show the directions of Polish changes in this regard in the near future, and the judges will have to show a maturity of thought in distinguishing for example “offense of religious feelings” from “the poetics of stage performances of death metal groups.”

### **Bibliography:**

#### **Acts and judgments:**

Konstytucja Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 r. - Dz. U. z 1997 r. Nr 78, poz. 483 (z późn. zm.). [The Constitution of the Republic of Poland of 2 April 1997, Journal of Laws of the Republic of Poland of 1997 No 78, item 483 (with subsequent amendments)].

Ustawa z dnia 6 czerwca 1997 r. – Kodeks karny - Dz. U. z 1997 r. Nr 88, poz. 553 (z późn. zm.). [The Act of 6 June 1997 – Penal Code, Journal of Laws of the Republic of Poland of 1997 No 88, item 553 (with subsequent amendments)].

Ustawa z dnia 17 maja 1989 r. o gwarancjach wolności i sumienia i wyznania (tekst jednolity – Dz. U. z 2005 roku Nr 231, poz. 1965 z późn. zm.). [The Act on Guarantees of Freedom of Conscience and Confession of 17 May 1989, consolidated text: Journal of Laws of the Republic of Poland of 2005 No 231, item 1965 (with subsequent amendments)].

Orzeczenie Trybunału Konstytucyjnego z dnia 7 czerwca 1994 roku (K 17/93, OTK z 1994 r., cz. I, poz. 11). [Judgment of the Constitutional Tribunal of the Republic of Poland on 7 June 1994 (file ref. No: K 17/93), collection of judgments of the Constitutional Tribunal of the Republic of Poland: OTK 1994, part I, item 11].

Wyrok Trybunału Konstytucyjnego RP z dnia 16 lutego 1999 roku, sygn. SK. 11/98.

[Judgment of the Constitutional Tribunal of the Republic of Poland on 16 February 1999 (file ref. No: SK. 11/98)].

**Books, arts, commentaries:**

**Chrzczonowicz P.**, Karnoprawna ochrona wolności sumienia i wyznania w prawie polskim. Problematyka sekt [in:] P. Chrzczonowicz, V. Kwiatkowska-Darul, K. Skowrońska (ed.), Społeczeństwo inwigilowane w państwie praw (?) Granice ingerencji w sferę praw jednostki. Materiały Konferencji naukowej (Toruń, 25 – 27 marca 2003 r.), Toruń 2003;

**Chrzczonowicz P.**, Wolność religijna a sekty, “Zeszyty Naukowe Wyższej Szkoły Suwalsko - Mazurskiej im. Papieża Jana Pawła II w Suwałkach” No 11, 2005;

**Filar M.** [in:] M. Filar (ed.), Kodeks karny. Komentarz, Warszawa 2008;

**Garlicki L.**, Przesłanki ograniczania konstytucyjnych praw i wolności (na tle orzecznictwa Trybunału Konstytucyjnego), „Państwo i Prawo” No10, 2001;

**Gronowska B.**, Wolności, prawa i obowiązki człowieka i obywatela [in:] Z. Witkowski (ed.), J. Galster, B. Gronowska, A. Bień-Kacała, A. Kustra, M. Rączka, K. M. Witkowska-Chrzczonowicz, Prawo konstytucyjne, Toruń 2009;

**Jasudowicz T.**, Ochrona religii przed zakusami profanum w świetle prawa polskiego i standardów europejskich [in:] Sacrum i profanum a współczesna kultura. Materiały z konferencji zorganizowanej przez Komisję Kultury i Środków Przekazu pod patronatem Marszałka Senatu Bogdana Borusewicz 25 kwietnia 2006 r., Warszawa 2006;

**Kłaczyńska N.**, Dyskryminacja religijna a karnoprawna ochrona wolności sumienia i wyznania, Wrocław 2005;

**Kozłowska-Kalisz P., Kucharska-Derwisz M.**, Przepięstwa przeciwko wolności sumienia i wyznania [in:] M. Mozgawa (ed.), Prawnokarne aspekty wolności. Materiały z konferencji, Arłamów, 16 – 18 maja 2005 r., Wolters Kluwer, Zakamycze 2006;

**Krukowski J.**, Konstytucyjna ochrona wolności sumienia i religii [in:] L. Garlicki, A. Szmyt (ed.), Sześć lat Konstytucji Rzeczypospolitej Polskiej. Doświadczenia i inspiracje, Warszawa 2003;

**Makarska M.**, Przepięstwa przeciwko wolności sumienia i wyznania w Kodeksie karnym z 1997 roku, Lublin 2005;

**Małajny R.M.**, Regulacja kwestii konfesyjnych w Konstytucji III RP (refleksje krytyczne) [in:]

R. Tokarczyk, K. Motyka (ed.), Ze sztandarem prawa przez świat. Księga dedykowana Profesorowi Wieńczysławowi Józefowi Wagnerowi von Igelgrund z okazji 85-lecia urodzin, Zakamycze 2002;

**Motyka K.**, Prawa człowieka. Wprowadzenie. Wybór źródeł, Lublin 1999;

**Pietrzak M.**, Wolność sumienia i wyznania w RP (regulacje prawne i praktyka) [in:] M. Pietrzak, Demokratyczne, świeckie państwo prawne, Warszawa 1999;

**Przybyszewska-Szter B.**, Kościoły i związki wyznaniowe [in:] M. Chmaj (ed.), Wolność zrzeszania się w Polsce, Warszawa 2008;

**Pyclik K.**, Wolność sumienia i wyznania w Rzeczypospolitej Polskiej (założenia filozoficzno – prawne) [in:] B. Banaszak, A. Preisner (ed.), Prawa i wolności obywatelskie w Konstytucji RP, Warszawa 2002;

**Sarnecki P.**, Artykuł 53 [in:] L. Garlicki (ed.), Konstytucja Rzeczypospolitej Polskiej. Komentarz, Tom I, Warszawa 1999;

**Skrzydło W.**, Konstytucja Rzeczypospolitej Polskiej. Komentarz, Zakamycze 1998.

**Sobczyk P.**, Wolność sumienia i religii w art. 53 Konstytucji Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 r., „Prawo Kanoniczne” 44 (2001), No 3 – 4;

**Szymanek J.**, Bezstronność czy neutralność światopoglądowa państwa (Uwagi na tle art. 25 ust. 2 Konstytucji RP), „Państwo i Prawo” No 5, 2004;

**Szymanek J.**, Prawna regulacja wolności religijnej, „Studia Prawnicze” No 2 (168), 2006;

**Tuleja P.**, Wolność sumienia i religii [in:] P. Sarnecki (ed.), Prawo konstytucyjne RP, Warszawa 2008;

**Wąsek A.**, Przepięstwa przeciwko przekonaniom religijnym *de lege lata* i *de lege ferenda*, „Państwo i Prawo” No 7, 1995;

**Winczorek P.**, Komentarz do Konstytucji Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 roku, Warszawa 2008;

**Wojtyczek K.**, Granice ingerencji ustawodawczej w sferę praw człowieka w Konstytucji RP, Zakamycze 1999;

**Wróbel W.** [in:] A. Zoll (ed.), Kodeks karny. Część szczególna. Komentarz do k.k., t. 2, Zakamycze 1999.

#### **Internet sources (documents and journalistic writings):**

Komunikat Państwowej Komisji Wyborczej z dnia 10 października 2011 r. o zbiorczych wynikach głosowania na listy kandydatów na posłów w skali kraju [Communiqué of the National Electoral Commission of 10 October 2011 on the collective results of voting for the lists of deputy candidates in the scale of country];

Prawomocne skazania osób dorosłych według rodzajów przestępstw (czynu głównego) w latach 2001 – 2005 (stan w dniu 25 października 2006 r.) [Valid sentences of adult persons according to the types of crimes (main criminal act) through the years 2001 - 2005 (as for 25 October 2006)], Ministerstwo Sprawiedliwości [Ministry of Justice], <http://bip.ms.gov.pl/pl/dzialalnosc/statystyki/statystyki-2009/> (26.10.2011);

Statystyka przestępstw – Kodeks karny (liczba postępowań wszczętych) – obraza uczuć religijnych (art. 196 k.k.) [Crime statistics – the Penal Code (number of initiated penal proceedings) – offense of religious feelings (art. 196 of the Polish Penal Code)], Policja.pl, [http://www.policja.pl/portal/pol/22/500/Obraza\\_uczuc\\_religijnych\\_art\\_196.html](http://www.policja.pl/portal/pol/22/500/Obraza_uczuc_religijnych_art_196.html) (26.10.2011);

Górlukowski M., Nergal nie zamierzał obrażać, 2011-08-19, [http://wyborcza.pl/1,75478,10136464,Nergal\\_nie\\_zamierzal\\_obrazac.html](http://wyborcza.pl/1,75478,10136464,Nergal_nie_zamierzal_obrazac.html) (26.10.2011);

mip, PAP 2010-03-11, Oskarżona o obrazę uczuć religijnych Dorota Nieznalska niewinna, portal Gazeta.pl, <http://wiadomosci.gazeta.pl/wiadomosci/2029020,114873,7650146.html> (22.10.2011);

MJ/PAP, Nergal niewinny. Sąd kończy sprawę darcia Biblii, 18 sierpnia 2011, Newsweek.pl, <http://spoleczenstwo.newsweek.pl/nergal-niewinny—sąd-konczy-sprawe-darcia-biblii,80953,2,1.html> (22.10. 2011);



Nergal niewinny. Sąd rejonowy w Gdyni, ogłosił wyrok w procesie Adama Darskiego, Gazeta Świętojańska, 18.08.2011 r., <http://gazeta.razem.pl/index.php?id=2&t=1&page=27059> (22.10.2011); Szaro G., Sąd: Nieznalska jest niewinna, portal Gazeta.pl, 2009-06-04, <http://trojmiasto.gazeta.pl/trojmiasto/2029020,89917,6687517.html> (22.10.2011); <http://www.ruchpoparciapalikota.pl/sites/default/files/Program%20Nowoczesnego%20panstwa.pdf> (27.20.2011); [http://serwisy.gazetaprawna.pl/zdrowie/artykuly/560309,klauzula\\_sumienia\\_nie\\_dla\\_farmaceutow.html](http://serwisy.gazetaprawna.pl/zdrowie/artykuly/560309,klauzula_sumienia_nie_dla_farmaceutow.html) (27.10.2011); <http://www.sumienie-farm.pl/> (27.10.2011).