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FREEDOM OF SPEECH IN POLAND – METHODOLOGY OF RESEARCH

Freedom of speech, generally, is a part of freedom at all. By this term we understand having an ability to act or change without constraint. In social sciences, philosophy and different religions, it is linked with having free will and being without undue or unjust constraints. So it is an idea closely associated with the concept of liberty. A person has the freedom to do things that will not, in theory or in practice, be prevented by other forces.

Wendy Hui Kyong Chun explains the differences in terms of their relation to institutions:

Liberty is linked to human subjectivity; freedom is not. The Declaration of Independence, for example, describes men as having liberty and the nation as being

free. Free will – the quality of being free from the control of fate or necessity – may first have been attributed to human will, but Newtonian physics attributes freedom – degrees of freedom, free bodies – to objects.

And also:

*Freedom differs from liberty as control differs from discipline. Liberty, like discipline, is linked to institutions and political parties, whether liberal or libertarian; freedom is not. Although freedom can work for or against institutions, it is not bound to them—it travels through unofficial networks. To have liberty is to be liberated from something; to be free is to be self-determining, autonomous. Freedom can or cannot exist within a state of liberty: one can be liberated yet unfree, or free yet enslaved (Orlando Patterson has argued in *Freedom: Freedom in the Making of Western Culture* that freedom arose from the yearnings of slaves).*

Methodology of the freedom of speech's research has to consist of five subsections. The first subsection should identify the sources of freedom of speech and

religious belief. The second subsection has to contain definitions of freedom of speech and religious belief. In the third subsection a distinction between the object and the subject of freedom of speech and religious belief should be presented. The fourth subsection has to provide an overview of formal restrictions on freedom of speech. And the last one has to show the problem of freedom of speech in light of the journalistic deontology.

Another part of researching is to investigate the system protection of freedom of speech and religious belief in international law and selected countries. The research process can consist of six parts. The first involve the issues of human rights, including protection of the freedom of speech and religious belief, in the declarations, covenants and conventions of the United Nations and other international agreements concluded under the aegis of the UN. The second deals with the activities of the Council of Europe on discussed matters and documents created within the Council, including European Convention on Human Rights and

Fundamental Freedoms. Moreover, there are also selected verdicts of the European Court of Human Rights. Next one should touch subsection the EU legislation on freedom of speech, on the functioning of the media and freedom of thought, conscience and religion is shown. The fourth part may contain a report about the activities of the Organization for Security and Cooperation in Europe. Next step is to describe a discussion on the legal systems of the freedom protection of man and citizen existing in both Americas and Africa, including a review of the American Convention on Human Rights of 1999 and the African Charter on Human and Peoples' Rights of 1981. In the last part, we can focus on the discussions on the legal systems of protection of the freedom of man and citizen in the developed democratic countries: the United States of America, the Federal Republic of Germany, the French Republic.

Freedom of speech and religious belief in the Polish civil law is one of the crucial research fields. It consists

of numerous points like: a definition of personal rights, and the discuss the types of personal rights, a list of personal rights associated with freedom of speech and religious belief; freedom, honour, freedom of conscience, image, privacy, secrecy of correspondence, artistic creativity and the cult of the dead. It contains an explanation of circumstances excluding the unlawfulness of the act. These include: agreement (consent) authorizing the good, the action in order to protect an important social interest (public), an action under the law, practice of subjective rights. We can discuss also the details of the right to request a replica (rectification and a press answer) and issues on non-proprietary rights and property rights of civil protection of personal rights. Last but not least are entities responsible for the violation of personal rights.

Freedom of speech and religious belief in the criminal law consists of some interesting parts concerning the criminal law protection of freedom of speech, and in detail relates to issues such as: violence

or unlawful threat against the journalist, obstruction or suppression of criticism of the press, avoidance of the publication of rectification or responses, limitation or obstruction of printing and dissemination, not granting information about the activities of organizational units, publication or dissemination of information without the consent of the individuals providing information, denial of authorization, publishing information despite the lack of permission of the person giving the information, publication of the information and data related to the private sphere of life, failure to keep a secrecy by a journalist. This issue should contain also a discussion about criminal law protection of religious belief on issues such as the extermination of religious groups, violence and the unlawful threats because of religious affiliation, religious discrimination, malicious interference with the practice of religion and mourning, an insult of religious feelings, slander (defamation), incitement to religious hatred, insult from religious reasons, mutilate the body, human ashes, or the place

of rest of the dead. Another research step must concern the circumstances excluding a crime and the duties of the press in criminal proceedings.

Another parts of researching the discussed study field are: Polish administrative law and the issues of accession to public information, information relating to the protection of personal data, the issues of classified secret information, and the problems of professional secrecy. Next should be for example confessional law with the activities of churches and religious organizations, an overview of regulations related to private and public manifestations of religious belief, the religious education, and the legal aspects of the functioning of the mass communication of a religious character.

It is wroth noticing, the Polish legislation on human rights meets the high standards valued in today's world of democracy, free market and ideological pluralism. In practice, however, a conflict between freedom of speech of some people and religious belief of others is

perceived. In this conflict, greater importance is attached to freedom of speech than to religious belief, for example, in selected court decisions.