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FREEDOM OF SPEECH AND RELIGIOUS FREEDOM

For the definition of freedom in the sphere of religious life, the following expressions are used: “freedom of conscience and religion”, “religious freedom”, “freedom of belief”, “freedom of thought, conscience and religion”, “freedom of worship”, “freedom of beliefs”. Freedom of conscience concerns the freedom of shaping and using by one's own conscience. Conscience is a theoretical term – In the sense that it does not refer to any simple, easily grasped object or its characteristics. Among other things, this is why it is so easy to undergo various interpretations. Conscience is not a thing you can see, touch it, get empirical contact with it. Strictly speaking, it is not an experience or other type of mental state. Conscience is the internal psychological disposition of a human being based on the ability to evaluate morally, the assessment in terms of good and evil – own psychic experiences (thoughts, feelings, acts of will) and own and other people's conduct, as well as feelings related to this assessment, and also to experience experiences occurring in the form of ideological acceptance (satisfaction) or disapproval (remorse). Conscience is an application of knowledge about good and evil to a

specific situation in which one must take such and no other action¹.

Freedom of conscience should not be subject to any restrictions, both on the part of the society and the state, which, of course, does not exclude human appeals for the nurturing of universal ethical values by people. Prolongation, concretization or the completion of freedom of conscience is freedom of worship. "Freedom of religion" manifests itself in two dimensions: internal and external. The internal plane consists in spiritual and intellectual involvement in fundamental existential issues, such as the origin and meaning of life, its beginning and end, its foundations, determinants, issues concerning human destiny, the relationship between life and nature, the recognition of matter, etc.²

The external plane of freedom of religion it is about the possibility of externalizing this mental commitment, eg by cultivating, teaching, practicing and ritual activities or other symbolic forms of expression including lifestyle, such as clothing, diet or occasional ceremonies. If it were not to supplement the freedom of religious beliefs with the law of externalizing them, then freedom of beliefs would be the right to internal human emigration, to build in secret their own undisclosed thoughts, some building of beliefs, views and beliefs.

¹ A. Szostak, *Sumienie – prawda – prawo*, „Znak” 1992 nr 11, s. 71.

² M. Piechowiak, *Wolność religijna – aspekty filozoficznoprawne*, „Toruńskie Roczniki Praw Człowieka” 1996 nr 3, s. 16.

Freedom of conscience and religion is one of the basic human goods. It is possible to claim this not only because it concerns the most intimate sphere of the human self, but also because religion or other worldview is a kind of foundation on which the human system of values is built, and this is implemented in an indirect or direct way in all areas of human activity. The same features can be attributed to the "freedom of national feelings", which means the right to determine their nationality and to cultivate their national traditions, including those related to the religion they profess³.

Freedom of conscience and religion is today a necessary freedom, a freedom without which any regulation of human rights and freedoms at the very beginning acquires incomplete, strong limited character. This freedom is now perceived not as civic freedom but as human freedom. In addition, the freedom of conscience and religion is the most personal, intimate, delicate and, finally, the most sensitive freedom that requires special attention and prudence on the part of the legislator. All this means that the freedom of conscience and religion is the first freedom.

By exercising their freedom of conscience and religion, citizens can remain silent about their religion or beliefs (the so-called law of silence). The freedom of conscience and religion also includes the right to associate in secular organizations in order to carry out tasks arising from religion or beliefs in matters of

³ J. Falski, *Europejskie kryteria wolności sumienia i wyznania a islam*, „Państwo i Prawo” 2008 nr 9, s. 58 i n.

religion. They also have the right to maintain contacts with fellow believers from other countries; they can participate in the work of religious organizations with international reach. On the other hand, foreigners staying on the territory of Poland and stateless persons enjoy the freedom of conscience and religion equally with Polish citizens. Citizens also have the right to free provision to churches and other religious associations and charitable institutions⁴.

The term "freedom of beliefs" includes beliefs not only of a religious nature and therefore "proper" religious freedom is only contained in it, not at the same time exhausting its essence (in a similar way as in the human worldview there are religious beliefs). However, the term "religious beliefs" should be understood as "beliefs (personal) as to religious matters". In the concept of faith (religious beliefs) there is an element of subjective conviction about the truth of what you believe in and what you preach (religion).

There is no scientifically satisfactory definition of religion to this day. Nevertheless, all researchers agree with the view that it is a significant but very complex cultural and social phenomenon that fills the individual and human communities to a different extent and extent. Everyone is also in agreement in the granting of religion a serious influence on the shaping of individual, social, national and state life. Religion is a form of social

⁴ J. Zakrzewska, M. Sobolewski, *Wolność sumienia i wyznania*, Warszawa 1963, s. 24.

consciousness that creates the whole of beliefs, ideas and views. Their essence boils down to the belief in the existence of supernatural forces, phenomena, regularities guided by the Supreme Being (God). Beliefs and views are usually connected with the practice and rites referring to the objects of these beliefs. They satisfy the emotional and moral needs of believers and integrate religious communities. Religion also provides members of a religious group with a specific set of views explaining and explaining the phenomena of the surrounding world and the meaning of human life. An important component of most religions is the organization with a specific structure of internal organs⁵.

Nowadays, many phenomena may aspire to be called "religion" or "religiosity": in addition to the traditional institutionalist religions that existed so far, other manifestations of world-outlooks also take on the characteristics of religion (religiosity), even the New Age movement phenomena, "deep ecology" recognizing the sacred "dimension of nature", Jungian psychology (studying relationships of psychology and religion, the concept of "archetypes", etc.), transpersonal psychology (using, among others, meditations, analyzing different states of consciousness, etc.) or even atheism and secular humanism.

⁵ J. Szymanek, *Wolność sumienia i wyznania w Konstytucji RP*, „Przegląd Sejmowy” 2006 nr 2, s. 40. Por. M. Winiarczyk-Kossakowska, *Wolność sumienia i religii*, „Studia Prawnicze” 2001 nr 1, s. 25.

The essence of religion is to appeal to the deity or at least supernatural power, to transcendence, absolute, sacrum. Religion or religious beliefs enable a person to have deep contact with God, if he believes in Him, and order relations with the outside world and other people. Religion creates values that are necessary for the state and society to properly fulfill their goals. In turn, the state creates the conditions necessary to realize the religious freedom of its citizens⁶.

Religious freedom should be understood in two ways: as a religious freedom, that is, individual faithful, and as institutional religious freedom, providing the Church and its internal structures with the necessary degree of freedom for the implementation of basic salvific tasks: teaching, sanctifying, and governing.

In this context, “religious freedom” can be understood in the physical sense (freedom of action or omission of a specific activity), moral (freedom of good or moral evil) and legal (freedom provided for by legal norms).

The state also provides citizens with “freedom of worship”. This is the unhampered entitlement of every human person to self-determination in relation to the external acts of worshipping God. The material object of freedom of worship are external acts: whether individual or social, resulting from the acceptance of a religion.

⁶ W. Brodziński, *Gwarancje wolności sumienia i wyznania (kilka uwag na marginesie ustawy z 17 maja 1989 roku)*, „Acat Universitatis Lodziensis. Folia Iuridica” 1991 nr 45, s. 188.

Acts of worship can be private, consisting in the worship of God by individuals and with the help of activities performed in their own name, and public, that is, given to God officially by some religious community or by authorized persons - worship stewards⁷.

“Freedom of the Church” in turn concerns the religious freedom of entire religious communities, while it refers to the freedom of all recognized religious denominations, having an institutional character. Here, denomination is understood as a religious community that is capable of independent existence, organized for durable and governing internal law, having an institutional character. It differs from an ordinary religious association⁸.

⁷ J. Szymanek, *Bezstronność czy neutralność światopoglądowa państwa (uwagi na tle art. 25 ust. 2 Konstytucji RP)*, „Państwo i Prawo” 2004 nr 5, s. 33 i n.

⁸ H. Misztal, *Ustawowe gwarancje wolności religijnej od 1989 roku*, „Chrześcijanin w Świecie” 1993 nr 3, s. 58.