

DIGNITY AND RELIGIOUS FREEDOM AS CONSUMER'S LAW

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ABSTRACT

The article indicates the norms of law established in the European Union and Poland developed on the basis of the teachings of the Catholic Church, emphasizing the dignity and freedom of religious feelings, the consumer as a human being. The issue has been compared with the controversial advertising campaigns that broadly use religious beliefs of consumers in order to increase their effectiveness. The stimulus to discuss this issue is the intensification of controversial advertisements using religious symbols and cults. This publication also points out the issue of offense of religious feelings in advertising and draws attention to the normative areas of their protection.

Key words: dignity, religion, religious feelings, consumer.

1. INTRODUCTION

Reality initiated in advertising is constantly being evaluated in terms of law, ethics and morality. In advertising, creating a message with the use of religious elements such as symbols or cult is one of the ways to attract consumers' attention. Religious feelings, as well as dignity of consumers as individuals, are personal rights, whose protection in the legislative dimension has been clearly defined. The evaluation of the advertisement in terms

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of ethics, those defying one of the basic rights and freedoms of the consumer, which is the right to freedom of religion and conscience, possessing religious feelings and their manifestation, is eventually not an easy task.

Advertisers more and more often consciously refer to the feelings of consumers and use religious symbols in order to increase the effectiveness of advertising. Therefore, the issue of increasing the protection of religious freedom and dignity of the consumer as of advertising recipient is crucial.

2. SHAPING THE RELIGIOUS FREEDOM OF THE CONSUMER AS AN INDIVIDUAL

The notion of religious freedom of the individual has been developed over centuries, beginning from antiquity, which was characterised by religious intolerance. The concept of religious freedom regarding the individual was unknown at that time. It was rather understood in the sense that every nation could preserve their beliefs and traditions¹. The battle for religious freedom began during the Reformation period. However, it did not bring about the holistic idea of religious freedom². Luther and Calvin had a hostile attitude to multi-denominationalism. According to them, the coexistence of several denominations in one area was incompatible. As a consequence, the principle of one state - one religion was adopted³. Then, in the 16th and 17th centuries, further attempts to discuss religious freedom were made. Supporters of liberal and open religious policy, however, did not receive any acceptance of their opinions. It was a result of a current political situation at that time⁴. The end of the seventeenth century marks

¹ Józef Krukowski, *Państwo i Kościół Podstawy relacji prawnych*, Lublin: KUL, 2000, 15-16.

² Katarzyna Kaćka, *Geneza i źródła wolności religii w europejskiej przestrzeni politycznej i prawnej*, in: Jerzy Gocko, *Seminare Poszukiwania naukowe*, Kraków-Piła-Warszawa-Wrocław: Towarzystwo Naukowe Franciszka Salezego, 2013, 155.

³ *Ibidem.*, 158.

⁴ Zdzisław Zarzycki, *Wolność religijna w pierwszych polskich konstytucjach do połowy XIX w.*, in: Artur Mezglewski, Marta Ordon, Piotr Stanisław, *Studia z prawa wyznaniowego* tom 13, Lublin: KUL, 2010, 26.

the development of liberal thought. Consequently, certain provisions related to religious freedom were enshrined in the peace treaty ending the period of the Swedish wars during this time⁵. The treaty between Poland and Sweden was signed in 1660. It regulated the freedom of religious practices and the respect for religious education⁶. Furthermore, in 1689 J. Locke in his book entitled "Letter on Tolerance" recognized religious freedom as a natural human right⁷. He advocated equality of religion. In addition, he believed that the law should in no way interfere with spiritual matters of individuals. It was also believed that one of the most influential thinkers of the Age of Enlightenment, Wolter, was an advocate for religious tolerance. Nevertheless, it should be noted that although this influenced the perception of religious liberty in the enlightenment, Wolter was an opponent of the Bar Confederation. He saw in it a manifestation of Catholic fanaticism. This stands in conflict with the views expressed by Wolter about the complete freedom of religion and equality⁸.

In Europe, it was the French Revolution that marked a true beginning of the process of spreading the ideas of liberty, including religious freedom. In 1789, the Declaration of Human and Civil Rights was created, introducing a catalogue of human rights recognized as natural and non-transferable laws⁹. It was supposed to guarantee the right to religious freedom. In the United States, the First Amendment to the Constitution was introduced in 1787, under which it was ensured that religious affiliation would not determine public rights criteria. The idea of religious freedom, even though it was not yet the right for all minorities, was, along with the era of constitutional states, defined as the principle of freedom of con-

⁵ Zydmunt Urbański, *Mniejszości Narodowe w Polsce*, Warszawa: Wyd. Mniejszości Narodowe, 1932, 355.

⁶ *Ibidem.*, 355.

⁷ Zbigniew Rau, *Wstęp* in: J. Locke, *Dwa traktaty o rządzie*, Warszawa: PWN, 1992, XLVI.

⁸ Marian Skrzypek, *Ambiwalencja oświeceniowych pojęć religijnego fanatyzmu, entuzjazmu i tolerancji. Filozofowie oświecenia o konfederacji barskiej*, in: Stanisław Janeczek, Anna Starościc, *Filozofia a religia w dziejach filozofii polskiej. Inspiracje – krytyka*, Lublin: KUL, 2014, 50-83.

⁹ Izabela Malinowska, *Prawa Człowieka i ich ochrona międzynarodowa*, Warszawa: Dom Wydawniczy ELIPSA, 2004, 7.

science and religion¹⁰. The regulations on religious freedom were embedded in national constitutions. And so, briefly to draw attention to this case, the Government Act of May 3, 1791 - the May 3 Constitution, included regulations on freedom of religious denominations. The privileged religion was the Catholic religion. It was due to the fact that this religion had the biggest number of followers at that time¹¹. The Constitution of March 17, 1921 already guaranteed wider laws and political freedoms in its provisions. It partially regulated personal rights and freedoms, including social and economic freedoms. Religious freedom strengthened throughout the 19th century. However, it was the twentieth century that brought about universal freedom of conscience and religion.

3. RELIGIOUS FREEDOM AS SUBJECTIVE AND OBJECTIVE RIGHT OF THE CONSUMER

Religious freedom of an entrepreneur - advertiser, as an individual, from the perspective of the subject, means, above all, respect for consumers, as individuals, with different religious views without any discrimination. Religious freedom of an individual is the right to practice any chosen religion, to self-determine, and manifest it, but without imposing his or her religion and world view on others¹².

Thus, an entrepreneur wishing to advertise his services or products should in no way mention the intimate and sensitive sphere of religious freedom of individuals as consumers. However, an advertiser may take into account the religious needs of individuals, for example in the field of selling religious symbols. The manifestation of religious beliefs does not include the protection of the expression of religious beliefs that are mani-

¹⁰ Wacław Uruszczak, Zdzisław Zarzycki (ed.), *Prawo wyznaniowe* zbiór przepisów, Kraków: Zakamycze, 2003, 19-20.

¹¹ Zbigniew Szcząska, *Ustawa Rządowa z 1791 r.*, in: *Konstytucje Polski*, Marian Kallas, Warszawa: PWN, 1990, 46.

¹² Paweł Frankowski, *Grupy wyznaniowe w Gdańsku w warunkach współczesnych procesów globalizacyjnych*, Toruń: Wyd. Adam Marszałek, 2005, 79.

fested by the religious group of their views in commercials of a commercial nature.

The subjective scope of religious freedom of individuals, including consumers, is very wide. Considering that the freedom of conscience and religion does not only mean the right to possess and represent a particular world view, but above all the right to act according to one's own conscience, the right to freedom from coercion against self-conscience¹³. The subjective character of religious freedom or freedom of conscience and religion refers to the direct manifestation of the implementation of religious beliefs. Not each and every behaviour will be entitled to legal protection under the conditions of religious freedom. These behaviours should directly result from the dogma of faith. This limits the indirect use of loose relationships with religion and their excessive protection. The protection of the above-mentioned implementations of religious freedom should be guaranteed directly by the norms contained in the constitutions, laws and international treaties. On the other hand, it should be administered indirectly with the use of institutional and legal principles and solutions.

4. GENERAL REGULATIONS OF RELIGIOUS FREEDOM AND DIGNITY IN INTERNATIONAL LAW

Human dignity and religious freedom were normalized for the first time, at the such level, by the Treaty of Lisbon¹⁴. Personal dignity and religious freedom have also found their norms in the Universal Declaration of Human Rights. This document seems to be the most important regarding this issue. It contributed in a significant way to the identification of the model of human dignity adopted in international law. The dignity of the

¹³ Wiesław Łużyński, *Państwo pomocnicze - Nauczanie Jana Pawła II*, Lublin: KUL, 2001, 229.

¹⁴ Paweł Gilowski, *Podstawy prawne Unii Europejskiej*, in: Artur Kuś, *Prawo Unii Europejskiej z uwzględnieniem Traktatu z Lizbony*, Lublin: KUL, 2010, 87.

individual has also become a model for interpersonal and social relations¹⁵. Religious freedom results from the inherent dignity of a human being¹⁶. Importantly, the recognition of equal dignity, independent from any particular characteristics, excludes the possibility of seeking other criteria of having a dignity, than being a human being¹⁷. The declaration has assumed, as the main determinator that the inherent dignity of man and equal inalienable rights of all are the basis of freedom, justice and world peace¹⁸. Although the Declaration does not have the nature of the right to be *sensu stricto*, it is still considered a political declaration. It does contain basic human rights and valuable indications for their interpretation¹⁹. It has also become the undisputed point of reference of successive legal norms. The declaration was important for the issue of religious freedom, although it was also packed with weak spots resulting from the need of general compromise of all the UN members at that time, in order to be proclaimed²⁰. The Declaration states that certain basic human rights, such as human dignity, which exists as non-transferable, universal, indivisible, interdependent and interrelated right, are available to every person regardless of their race, language, gender, skin colour or religion and religious beliefs²¹. These laws are independent from the position held in society or the party - also in the contract. Both the advertiser and the consumer are obliged to exercise the right and duty to respect religious freedom. As human beings, they are

¹⁵ Henryk Piliś, *Człowiek w filozofii Karola Wojtyły - Jana Pawła II*, Warszawa: TWB, 2002, 285.

¹⁶ Bogdan Wierzbicki (ed.), *Prawo Międzynarodowe materiały do studiów*, Białystok: Temida 2, 2008, 53.

¹⁷ Marta Andruszkiewicz, Aneta Brečko, Sławomir Oliwniak (ed.), *Filozoficzne i teoretyczne zagadnienia demokratycznego państwa prawa*, Białystok: Temida 2, 2015, 94.

¹⁸ Antoni Sułek, Józef Styk, Irena Machaj, *Ludzie i Instytucje. Stawianie się ładu społecznego. Pamiętnik IX Ogólnopolskiego Zjazdu Socjologicznego*. Tom II, Lublin: Wyd. Uniwersytet Marie Curie - Skłodowskiej, 1994, 12.

¹⁹ Bożna Gronowska, Tadeusz Jasudowicz, Michał Balcerzak, Rafał Mizerski, Maciej Lubiszewski, *Prawa człowieka i ich ochrona*, Toruń: TNOiK, 2010, 50.

²⁰ Radosław Milczarski, *Historia i Współczesność Praw Człowieka*, in: Radosław Milczarski, Monika Mazur - Rafał, Magdalena Szarota, Monika Lipka, Jerzy Kochanowski, Katarzyna Czajka, *Historia a Prawa Człowieka*, Warszawa: Ośrodek Karta, 2013, 22

²¹ Marek Piechowiak, *Prawa człowieka w świetle ich międzynarodowej ochrony*, Lublin: KUL, 1999, 344.

born with these acquired fundamental rights²². Respect or disregard for religious freedom, on the basis of reciprocity and integrity, by one of the parties, affects the freedom of other individuals, which means that rights and freedoms sometimes affect one another by being an insurmountable boundary, creating mutual respect²³. The international act that regulates the issue of protection of rights and freedoms, including the freedom of conscience and religion, is the “European Convention for the Protection of Human Rights and Fundamental Freedoms” adopted by the Council of Europe²⁴. The Convention was adopted in November 4, 1950²⁵.

Article 1 of the Convention guarantees the protection of rights and freedoms for every person, which underlines the universal nature and character of human rights. Therefore, physical and legal persons can refer to the regulations regarding freedom of conscience and religion. The Convention also covers foreigners and stateless persons. In Article 9 of the Convention, the word “everyone” is particularly important, defining the right to religious freedom for any person who is subject to the jurisdiction of a State or party to the Convention²⁶. The creation of the Charter of Fundamental Rights of the European Union was also associated with the perception of the need to protect the rights and freedoms of individuals in connection with changes occurring in society, especially related to social, scientific and technological progress²⁷. This has led to the necessary

²² Ibidem, 81.

²³ Eugeniusz Sakowicz, *Dialog Kościoła z islamem według dokumentów soborowych i posoborowych (1963- 1999)*, Warszawa: Wyd. UKSW, 2000, 138.

²⁴ Konwencja o Ochronie Praw Człowieka i Podstawowych Wolności sporządzona w Rzymie z dnia 4 listopada 1950, zm. Protokołami nr 3, 5 i 8 oraz uzupełniona Protokołem nr 2., Dz.U. 1993 Nr 61 poz. 284.

²⁵ Konwencję podpisało w Rzymie 4.11. 1950, dwanaście państw: Belgia, Dania, Francja, Holandia, Irlandia, Islandia, Luksemburg, Norwegia, RFN, Turcja, Włochy i Zjednoczone Królestwo, następnie Grecja i Szwecja. Po uzyskaniu wymaganej liczby ratyfikacji weszła w życie w dniu 8.9.1953.

²⁶ Tadeusz Jacek Zieliński, *Trzy systemy prawnej ochrony wolności religijnej o zasięgu międzynarodowym*, in: Bogusława Bednarczyk, Zbigniew Paska, Piotr Stawiński, *Religia a współczesne stosunki międzynarodowe*, Kraków: Oficyna wydawnicza AFM, 2010, 27-28.

²⁷ Jarosław Sozański, *Prawa Człowieka w Unii Europejskiej*, Warszawa - Poznań: Iuris, 2010, 244.

strengthening of fundamental rights by exposing and effectively enforcing any claims for rights violations²⁸.

The preamble of the Charter underlines the importance of values such as human dignity, freedom, equality and solidarity²⁹. It has been established that these values result from the common spiritual, religious and moral heritage of the people of the European Union³⁰.

5. EXEMPLARY REGULATIONS OF RELIGIOUS FREEDOM IN POLISH LAW

In Polish law, constitutional regulations are superior to other normative acts³¹. Legal regulations regarding religious freedom included in the Constitution of the Republic of Poland can be divided into two groups³². The first group contains general norms of religious law, as in art. 25 and 53. The second group of norms, on the other hand, regulates in more detail religious liberty at the level of various areas of social life in the context of religious affiliation³³.

Regulations included in art. 53 of the Constitution of the Republic of Poland directly refer to religious rights and freedoms guaranteed by the state³⁴. Every human being deserves the right to religious freedom. In the historical approach to this provision, the legislator insisted on the

²⁸ Robert Andrzejczuk, *Prawa człowieka podstawą prawa narodów do samostanowienia*, Lublin: KUL, 2004, 12.

²⁹ Krzysztof Motyka, *Prawa człowieka. Wprowadzenie. Wybór źródeł*, Lublin: VERBA, 2004, 73-78.

³⁰ Lech Garlicki (ed.), *Konwencja o Ochronie Praw Człowieka i Podstawowych Wolności*, tom I, Warszawa: C.H. Beck, 2010, 11-12.

³¹ Krzysztof Warchałowski, *Prawo wyznaniowe. Wybór Źródeł*, Warszawa: Wyd. Uniwersytetu Kardynała Stefana Wyszyńskiego, 2000, 12.

³² Sławomir Cebula, *Prawa i wolności religijne we współczesnej Polsce. Ustawodawstwo a realia społeczno-kulturowe*, Kraków: Nomos, 2011, 18-22.

³³ *Ibidem.*, 18-22.

³⁴ Andrzej Wróbel, *Prawo do zmiany religii w wymiarze kolektywnym i indywidualnym. Zarys problemu*, in: Maciej Aleksandrowicz, Lech Jamróz, Adam Jamróz, *Demokratyczne państwo prawa wybrane zagadnienia*, Białystok: TEMIDA 2, 2014, 248.

individual's belonging to the state and instead of using the word 'man', he used the word 'citizen'. The first one is undoubtedly much wider in understanding. It indicates the independence and freedom of the individual. The goal of the legislator is to guarantee the greatest possible freedom of every human being resulting from human dignity³⁵. Article 53 of the Constitution is based on previously described norms of legal acts and international documents. The analysed written part indicates two freedoms as elements of religious freedom. The first one is the internal freedom of religion³⁶. It is not subject to the control of other units or the state. The second one is external freedom, which may be subject to certain limitations. Furthermore, Article 53 of the Basic Law expresses the possibility of making moral choices by an individual in accordance with the values he or she recognizes³⁷. However, the question arises whether art. 53 in paragraph 2 enumerates the forms of the externalization of religious freedom as a closed catalogue. The doctrine expressed the view that the closed character of the above-mentioned forms of manifestation of religious freedom could defeat its essence. If we assumed that it is a closed catalogue, then this norm could become incompatible with the provisions of the Constitution itself and the Human Rights Conventions³⁸. It seems just right that the analysis of the provisions of the Act on guarantees of freedom of conscience and religion determines the open character of the norms stated in art. 53 par. 2 of the Constitution. It must be noted that the Constitution of the Republic of Poland does not indicate detailed norms in the field of religious freedom under consumer grounds. There are only general norms giving religious freedom to each individual. Therefore, it appears important that the regulations concerning the offence of religious feelings should be strictly specified in the rank of statutes.

³⁵ Arkadiusz Januchowski, Zagadnienia związane z interpretacją art. 25 ust. 4 i 5 Konstytucji RP, in: Artur Mezglewski, Piotr Sztanis (ed.), *Studia z prawa wyznaniowego*, t. 10/2007, Lublin: KUL, 2007, 271-272.

³⁶ Jan Świtka, Małgorzata Kuć, *Duszpasterstwo więzienne w pracy penitencjarnej*, Lublin: KUL, 2007, 94.

³⁷ Józef Krukowski, *Konstytucyjny model stosunków między Państwem a Kościołem w III Rzeczypospolitej*, [in:] Artur Mezglewski (ed.), *Prawo wyznaniowe w systemie prawa polskiego*, Lublin: KUL, 2004, 85.

³⁸ Józef Krukowski, *Polskie Prawo Wyznaniowe*, Warszawa: LexisNexis, 2008, 65.

A normative act in the matter of religious freedom in the statutory rank is the act on guarantees of freedom of conscience and religion³⁹. It is a kind of general act⁴⁰.

It covers, within the scope of religious freedom, all individuals, regardless of their religious affiliation, as well as legal persons, as well as churches and other religious organizations⁴¹. It designates a whole range of powers, for instance, having a world view relevant to the principles of your religion⁴². In art. 2 of the above mentioned Act, the legislator uses the term citizen⁴³. However, following the art. 7 of the same Act, it is also applicable in case of foreigners and stateless persons⁴⁴.

6. RELIGIOUS FREEDOM AND THE DIGNITY OF THE CONSUMER IN THE PRINCIPLES OF THE CATHOLIC CHURCH

An important document on religious freedom is the extra-judicial declaration of *Dignitatis humanae*⁴⁵. It has been divided into two parts⁴⁶. In the first one it touches upon religious freedom considered from the point of view of natural reasoning, the second part contains justification for religious freedom from the perspective of Revelation⁴⁷. The assumption of religious freedom is the common ground in relation to the dignity of the

³⁹ Ustawa z dnia 17 maja 1989 r. O gwarancjach sumienia i wyznania, Polish Journal of Laws 1989, No 25, item 155.

⁴⁰ Artur Mezglewski, Henryk Misztal, Piotr Stanis, Prawo wyznaniowe, op. cit., 51.

⁴¹ Sławomir Cebula, Konkordat między Stolicą Apostolską i Rzeczpospolitą Polską z 1993 roku na tle regulacji stosunków - państwo mniejszości wyznaniowe, in: Bogusława Bednarczyk, Zbigniew Pasek, Piotr Sławiński, Religia a współczesne stosunku międzynarodowe, Kraków: AFM, 2010 r., 125.

⁴² Józef Krukowski, Kościół i państwo. Podstawy relacji prawnych, Lublin: KUL, 1993, 221-255.

⁴³ Ibidem., 221.

⁴⁴ Henryk Misztal (ed.), Prawo wyznaniowe III Rzeczypospolitej, op. cit., 54.

⁴⁵ Ibidem., 72.

⁴⁶ Maciej Zięba, Epoka Jana Pawła II. Zrozumieć niezwykły pontyfikat, Kraków: eSPe, 2006, 13.

⁴⁷ Eugeniusz Sakowicz, op.cit., 75.

human being in their right to seek the truth⁴⁸. It is based on the first sentence of the number two declaration, which states that every human being has the right to religious freedom⁴⁹. It should be emphasized that this declaration does not, de facto, contain a definition of religious freedom⁵⁰. It refers to the “true self” that helps to discover and understand the objective truth about reality or the nature of things⁵¹. The foundation of religious freedom understood in this way makes it possible to understand the pursuit of more recognizable religious truth⁵². The Declaration also states that religious freedom is a specific kind of freedom, because it refers to the religious field, and the private sphere of the human being⁵³. Practising and externalizing this sphere should be based on voluntary and free acts⁵⁴. Getting to know and accepting the found truth leads to the necessity of arranging the life of a given individual according to its requirements. This is the basic value⁵⁵. Religious freedom in the Church’s teachings has been mostly stressed and underlined by Pope John Paul II. Karol Wojtyła in his work published in 1969 entitled ‘The person and the deed’ emphasized freedom as self-determination of individuals⁵⁶. John Paul II explains the concept of freedom in the context of the whole person. The person and human nature must be treated integrally⁵⁷. According to the Pope, the essence of freedom lies inside of every human being, having its foundation

⁴⁸ Marcin Mielczarek, *Realizacja wolności religijnej w zatrudnieniu pracowniczym*, Warszawa: Delfin, 2013, 57.

⁴⁹ Sobór Watykański II deklaracja *Dignitatis humanae*, styczeń 30 2016 <http://www.nonpossumus.pl>.

⁵⁰ Marian Banaszak, *Historia Kościoła Katolickiego. Czasy najnowsze 4 (1914-1978)*, Warszawa: Akademia Teologii Katolickiej, 1992, 343.

⁵¹ Eugeniusz Sakowicz, *op. cit.*, 76.

⁵² Józef Keller, *Katolicka doktryna społeczna*, Warszawa: Książka i Wiedza, 1989, 476.

⁵³ Maciej Zięba, *op. cit.*, 14.

⁵⁴ Wojciech Góralski, Andrzej Pieńdyk, *Zasada niezależności i autonomii państwa i Kościoła w konkordacie polskim z 1993*, Warszawa: UKSW, 2000, 71.

⁵⁵ Józef Życiński, *Europejska wspólnota ducha. Zjednoczona Europa w nauczaniu Jana Pawła II*, Warszawa: Fundacja ATK, 1998, 73.

⁵⁶ Więcej in: Karol Wojtyła, *Osoba i czyn*, Lublin: KUL, 1994.

⁵⁷ Henryk Piluś, *op. cit.*, 277.

in human dignity⁵⁸. Due to the fact that freedom is something we are born with, it is natural for a human being, according to John Paul II, to talk about the nature of a person or else human nature⁵⁹. In this sense, freedom is the hallmark of human nature⁶⁰. Religious freedom, states the Pope, is therefore the right of every human being⁶¹. Therefore, the Pope reflecting on human rights refers to the political, economic order as well as the rights to the free market⁶². The Pope, in his first encyclical, *Redemptor hominis*, formed the principle of human rights as a universal criterion for the evaluation of ideologies, action programs and socio-economic systems⁶³.

Religious freedom stands in correlation with other human freedoms. Limiting this right is also a violation of other individual rights. Pope John Paul II repeatedly emphasized, among others, in his speeches to the UN Secretary General that religious freedom is a fundamental right affecting the most intimate inner sphere of a man - his identity as a person⁶⁴. From the pontificate of Pope Benedict XVI, it can also be deduced that religious freedom primarily stems from personal sphere of man and is achieved in relationships with others. What is more, the teachings of Pope Francis refer to the ongoing protection of the right to religious freedom as an inalienable right⁶⁵. Emphasizing the fact that it is not only a law, but also a sphere of respect and cooperation. This applies to everyone, even those who do not have any religious beliefs. Francis also notices religious freedom in the service of others, justifying that the more we serve others, the more we

⁵⁸ Tadeusz Kamiński, *Etyka pracownika socjalnego*, Częstochowa: Centrum Szkoleniowo Wydawnicze AV – Polskie Towarzystwo Pracowników Socjalnych, 2003, 53.

⁵⁹ Henryk Skorowski, *Kościół a polskie spory okresu transformacji*, Warszawa: UKSW, 2009, 120.

⁶⁰ Jerzy Koperek, *Nowe demokracje i spór o naturę społeczeństwa obywatelskiego*, Warszawa: UKSW, 2001, 329 -343.

⁶¹ Jan Ryszard Błachnio, *Polskie inspiracje i wartości w nauczaniu Jana Pawła II*, Bydgoszcz: WSP, 1995, 122-135.

⁶² Czesław Ryszka, *Jan Paweł II Wielki*, Częstochowa: Edycja Świętego Pawła, 2002, 384.

⁶³ Maciej Zięba, *op. cit.*, 58.

⁶⁴ Marcin Mielczarek, *op. cit.*, 66-67.

⁶⁵ Papież Franciszek, *Rozważanie przed modlitwą Anioł Pański w święto św. Szczepana*, 26.12.2014 r.

are free. Pope Francis also states that in the contemporary world religious freedom is only proclaimed and less frequently pursued⁶⁶.

7. INSULTING RELIGIOUS FEELINGS IN ADVERTISING

According to the definition from Polish language dictionary, this word means violation by word or deed of a sense of value, honour, as well as a misconduct towards someone, an insult⁶⁷. Moreover, an offence, is the feeling of someone when his personal dignity is being violated, combined with certain acts in violation of social and moral norms. Offence is, above all, mocking and ridiculing respectable values⁶⁸. Religious symbols appear as a motif in advertisements in order to increase the effectiveness of the message. Nowadays, the success of advertising lies in the deep involvement of the recipient⁶⁹. Religious symbols in advertising create positive associations in the consumer or are close to their reality.

Therefore, advertisers reach out to their sensitive sphere, which is, as it was indicated earlier, confession or belief. Consumers, by the specific use of the content of the advertisement, are convinced that the purchase of the advertised product, will also enable the acquisition of symbolic values attributed to the advertised items⁷⁰.

The most frequently used motifs in the ads are for instance, paradise, angel, flood, Tower of Babel, priest, monk, nun, hell, or devil. The most sensitive and dangerous symbol used in advertising is the cross and Jesus. Advertisements also include elements of religious worship, including wedding, baptism, confession or Christmas. It should be noted that advertising with religious elements used in a way that is unworthy and inconsistent

⁶⁶ Papież Franciszek w przemówieniu do uczestników sympozjum: „Ameryka w dialogu - nasz wspólny dom”, Rzym, 7-8.09.2016.

⁶⁷ Bogusław Dunaj (ed.), *Wielki słownik języka polskiego*, Warszawa: Buchmann, 2009, 384.

⁶⁸ *Ibidem*.

⁶⁹ Anna Kowal - Orczykowska, *W niewoli reklamy. Percepcja ukrytych przesłań reklamy prasowej*, Kraków: Impuls, 2008, 57.

⁷⁰ *Ibidem*.

with the principles of the ethics of advertising, morally violating cultural and social norms, is a discriminatory confession and belief of consumers professing a given faith. As well, it can lead to the simplification of deep religious motives. An example of this is the Black Energy drink advertising showing a naked model with a rosary between the breasts holding a pistol with a cross-shaped trigger. As a second example, you can point to the advertisement of the clothing store House. The company presented on billboards appearing in Wrocław a pious girl and a boy, and paintings bearing the description: 'Save me, Father'. In the second phase of the same ad, the characters were shown in positions associated with sex, and the words 'Save me, Father' changed in '69 ways to preserve virginity'. The Advertising Ethics Commission stated that the content of the advertisement harms the religious feelings of consumers and is contrary to the Code of Ethics for Advertising.

Religious feelings being a sensitive sphere of the consumer's psyche and emotions are full of subjectivism⁷¹. On the other hand, the criterion helpful in determining the level of the offence of religious feelings should be the criterion of objective verification procedure⁷². There are certain discrepancies in the doctrine regarding the verification of the characteristics of images of religious feelings. On one hand, there are theories which indicate that the assessment of religious feelings should be based on generally accepted behavioural and cultural norms⁷³. On the other hand, there are supporters of social evaluation in the doctrine, as a general premise, in determining the features of an offence, insulting religious feelings of individuals⁷⁴, also the consumers. The Constitutional Tribunal in its judgement pointed out that the featuring of the offence of religious feelings in advertising are, above all, an intentional action, due to deliberate fault⁷⁵.

⁷¹ Judgement of Supreme Court, 06.04.2004, I CK 484/03, *Orzecznictwo Sądu Najwyższego - Izba Cywilna* (2005) 4, poz. 69.

⁷² *Ibidem*.

⁷³ Małgorzata Tomkiewicz, *Obrazu uczuć religijnych katolika w Polsce: czy to możliwe?*, in: Jerzy Gocko (ed.) *Seminare. Poszukiwania naukowe* tom 32, Kraków - Piła - Warszawa - Wrocław: Towarzystwo Naukowe Franciszka Salezego, 2012, 129.

⁷⁴ *Ibidem*.

⁷⁵ Judgement of Polish Constitutional Tribunal, 06.10.2015, OTKA 2015 /9/142, *Dz. U.* 2015/1632.

The Tribunal confirmed that the very criticism of the subject of religious worship is not an offence. Thus, according to the Tribunal, in order to be able to speak about offences of religious feelings, the action violating this law should be carried out in an offensive, derogatory, abusive and degrading manner.⁷⁶

The offence of religious feelings in Poland falls under the group of common crimes. According to the police statistics from 2001 to 2016, the largest number of proceedings initiated on the basis of art. 169 of the Criminal Code were recorded in 2015 in the amount of 59, the smallest in 2003 in the amount of 30 offences⁷⁷. The highest number of committed offences was recorded in 2005 in the amount of 88, the lowest, though, in 2003 and in 2015 in the amount of 32 offences.

8. PROTECTION OF CONSUMER'S RELIGIOUS BELIEFS

Both in the attacks of international and Polish law there are norms safeguarding religious freedom, the right to exercise freely chosen faith, the right to manifest religious beliefs, worship, freedom of conscience and dignity of the human person. Above mentioned regulations have been indicated, for instance, in: the Universal Declaration of Human Rights⁷⁸, European Convention for the Protection of Human Rights and Fundamental Freedoms⁷⁹, Act on guarantees of freedom of conscience and religion⁸⁰, the Constitution of the Republic of Poland⁸¹. The Charter of Fun-

⁷⁶ Ibidem.

⁷⁷ Przepięstwa przeciwno wolności sumienia i wyznania - obraza uczuć religijnych: grudzień 21 2017, <http://statystyka.policja.pl>.

⁷⁸ Powszechna Deklaracja Praw Człowieka z dnia 10 grudnia 1948: grudzień 23, 2017 http://www.unic.un.org/pl/prawa_czlowieka/dok_powszechna_deklaracja.php.

⁷⁹ Konwencja o Ochronie Praw Człowieka i Podstawowych Wolności sporządzona w Rzymie z dnia 4 listopada 1950 r., zm. Protokołami nr 3, 5 i 8 oraz uzupełniona Protokołem nr 2., Polish Journal of Laws 1993, No 61, item 284.

⁸⁰ Ustawa z dnia 17 maja 1989, O gwarancjach sumienia i wyznania, Polish Journal of Laws 1989, No 25, item 155.

⁸¹ Konstytucja Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997, art. 25, Polish Journal of Laws 1997, No 78, item 483.

damental Rights of the European Union should be attached to this catalogue⁸², in the regulatory areas of various social issues, we can also mention the International Pact on Civil and Political Rights, the International Pact on Economic, Social and Cultural Rights, and the directives governing equality in the area of religious affiliation, including Directive 2000/43 / EC of 29/06/2000⁸³ or Directive 2000/78/ EC of 27/11/2000⁸⁴.

Directive 2011/83/UE⁸⁵ also aims to protect consumer rights, including the freedom of thought of conscience and religion. The basic regulations in the field of insulting of religious feelings, in Polish law, is Chapter XXIV of the Criminal Code⁸⁶. It protects the constitutional assumptions of the idea of freedom of belief in matters of faith and world view. It also protects from publicly insulting religious objects and symbols.

Legal regulations regarding the controversial advertising are included in the Act on Combating Unfair Competition⁸⁷. In view of the above mentioned Act, unfair competition is considered to be an action contrary to the law, good consumer habits, and degrading to human dignity⁸⁸. What is more, the advertising, which interferes with the private sphere of the consumer too deeply.

The Entrepreneurs' Code of Conduct is set out in the Advertising Code of Ethics, the basic document of the Advertising Council and the

⁸² Karta Praw Podstawowych Unii Europejskiej, 2007/ C 303/01.

⁸³ Dyrektywa 2000/43/WE z dnia 29.06.2000, wprowadzająca w życie zasadę równego traktowania osób bez względu na pochodzenie rasowe lub etniczne, Dz. Urz. L 180 z 19.07. 2000.

⁸⁴ Dyrektywa 2000/78/WE z dnia 27.11. 2000 r., ustanawiająca ogólne warunki ramowe równego traktowania w zakresie zatrudnienia i pracy, DZ. Urz. L 303 z 02.12. 2000.

⁸⁵ Dyrektywa Parlamentu Europejskiego i Rady 2011/83/UE z dnia 25 października 2011 w sprawie praw konsumentów, Dziennik Urzędowy Unii Europejskiej, Dz.Urz.UE 2011, L 304/64.

⁸⁶ Ustawa z dnia 6 czerwca 1997, kodeks karny, Polish Journal of Laws 2017, item 2204 with amendment.

⁸⁷ Ustawa z dnia 16 kwietnia 1993, o zwalczaniu nieuczciwej konkurencji, Polish Journal of Laws 2017, item 1132.

⁸⁸ Mariusz Grębowiec, Reklamy kontrowersyjne i ich wpływ na podejmowanie decyzji nabywczych przez konsumentów, in: Zeszyty Naukowe. Polityki Europejskie, Finanse i Marketing, Nr 3 (52) (2010), Warszawa: SGGW, 2010, 445.

Advertising Ethics Commission. It came into force in 2010. This Code sets out, *inter alia*, basic provisions of the prohibition of discrimination in advertising based on religion⁸⁹. The Code sets limits and also promotes ethical actions in the field of advertising⁹⁰.

Institutional protection of consumers in the field of advertising is provided by the Advertising Ethics Commission. It consists of thirty consultants, experts in the field of media, appointed by the environments associated with advertising. The Commission deals with consumers' complaints about advertising messages⁹¹. Consumers and legal entities are entitled to submit complaints. If the complaint is justified, the advertiser is requested to stop the advertisement or to modify it. In addition, the Commission publishes the ruling in the media and has the right to withdraw the advertiser's "I Advertise Ethically" certificate⁹².

In conclusion, bearing in mind that public offence of the dignity of consumers, their rights and freedoms, insulting, mocking religious symbols may lead to restricting the free and public manifestation of the consumer's faith as an individual. It is crucial not only to comply with the legal norms, but also, on the side of the entrepreneur, to disseminate the use of good practices in advertising products and services. It is in the interest of all entities involved in advertising to exclude any unethical practices violating the basic rights and freedoms of the consumer as a media unit in advertising campaigns. Profits for advertisers, from the application of good practices in advertising, contribute to the ongoing building of a positive image of the company among consumers.

The controversial question nowadays is whether the general norms of individual dignity and religious freedom are sufficient to ensure proper protection of these rights of the consumer, especially in the era of modern commercialization.

⁸⁹ Wioletta Zofia Stefaniak, Zarys problematyki norm etycznych we współczesnej reklamie, in: Agnieszka Rogulska (ed.), *Media w edukacji. Wymiar kulturowy i aksjologiczny*, Siedlce: Szansa, 2013, 65-67.

⁹⁰ *Ibidem*.

⁹¹ Robert Nowacki, 'Postawy Polaków wobec nieetycznych działań reklamowych w świetle funkcjonowania Kodeksu Etyki Reklamy, *Handel Wewnętrzny nr 1 (2016)*', Warszawa: Instytut Badań Rynku, Konsumpcji i Koniunktur, 2016, 294.

⁹² *Ibidem*.

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