

Olga Nowak-Dziwina

FREEDOM OF CONSCIENCE AS A PERSONAL RIGHT.
COMMENTS AGAINST THE BACKGROUND
OF SELECTED JURISPRUDENCE OF POLISH COURTS

INTRODUCTION

Today, the need is emphasized to ensure protection of the individual personal interests of every person. The importance of accepting and respecting various life attitudes, worldviews and principles is widely endorsed. Noteworthy, this is not a new postulate. The need to have various types of values protected has been recognized by the national legislator for a long time. It has been put in place, among others, under the provisions of civil law through the construction of personal rights. The literature emphasizes that their protection is becoming one of the most important challenges, both for the legislator and for legal protection authorities [Cisek 2009, 31]. The multitude and diversity of personal rights recognized under the legal system testify to respect for the individuality of persons in changing reality and prevailing conditions. Jurisprudence and doctrine distinguish ever new types of personal rights. Their dynamic nature and variability of understanding depending on legal, customary and moral circumstances, as well as the conditions in which they occur, is their inherent feature [Lewandowski 2019, 231].

OLGA NOWAK-DZIWINA, MA – The John Paul II Catholic University of Lublin; correspondence address: Al. Raławickie 14, 20-950 Lublin, Poland; e-mail: olga.nowak-dziwina@kul.pl; <https://orcid.org/0000-0002-8218-5023>

Regardless of the above, it should be noted that there are personal rights of particular importance, as evidenced by their direct mention in Article 23 of the Civil Code.¹ The recognition of their significance means that they always enjoy legal protection, regardless of changing external circumstances. Freedom of conscience is one of them.² Its direct identification in the traditional catalogue of personal rights is an expression of its rudimentary significance in the Polish legal order. It should be emphasized that this non-property right is also protected under the Constitution. In view of the growing diversity of worldviews presented by members of society, the interpretation of the principle of freedom of conscience and religion causes more and more problems. This makes it necessary to determine the meaning and limits of protection of the personal right in question. Some scholars see the problem of a noticeable gap in research on the protection of religious feelings under civil law [Tylec 2022, 9-10]. Accordingly, jurisprudence needs to be analysed to determine the characteristics of the personal right in question and the types of acts that may result in its infringement.

1. PERSONAL RIGHTS – GENERAL REMARKS

1.1. The concept of personal rights

The concept of personal rights is treated in many different ways in the literature and jurisprudence, and there is no single, commonly established definition of these rights [Kalus 2018, 102]. Although the concept itself can be found in multiple normative acts, none of them explains what personal rights actually are [Puchała 2014, 40]. There is no legal definition of

¹ Act of 23 April 1964, the Civil Code, Journal of Laws of 2019, No. 16, item 93 as amended [“CC”].

² As a matter of fact, under various legal acts there is a terminological discrepancy regarding the name of the legally protected right discussed here. Article 23 CC provides for protection of “freedom of conscience”, Article 53 of the Constitution of “freedom of conscience and religion”, while the guarantees of “freedom of conscience and belief” is the framing used in the Act of 17 May 1989 on Guarantees of Freedom of Conscience and Belief (Journal of Laws of 2005, No. 23, item 1965 as amended). However, an analysis of the literature and jurisprudence shows that in each of these cases the legislator protects the same legal interest. For this reason, some authors will use these terms interchangeably.

the concept in the Polish legal system. It is no doubt closely related to the principles adopted in a country or culture circle for the protection of individual rights to human dignity and to develop personality [Bidziński and Serda 1986, 7]. As indicated above in the introduction, the concept should be referred to a specific level of technological and civilizational development, as well as the moral and legal principles adopted in society, the existing type of social, economic or even political relations, as the concept of infringement of a specific personal right is a dynamic over time and relates to specific milieus.³ The basic provision on the protection of personal rights is Article 23 CC, under which a person's personal rights, in particular health, freedom, good name, freedom of conscience, name or nickname, image, secrecy of correspondence, inviolability of the dwelling, scientific, artistic, inventive and rationalization work, remain protected by civil law regardless of from the protection provided for in other legislation.

A number of scholars have attempted to define personal rights, pointing out, in the first place, that these are individual rights in the domain of a person's feelings and mental state, of non-property nature [Buchalska 2020, 119]. They are so closely linked with the person in whom they vest that they arise and expire together with them, and are non-transferable to other persons [Wolter, Ignatowicz, and Stefaniuk 2001, 184-85]. Personal rights are values recognized under the legal system, including the physical and mental integrity of a person, their individuality, dignity and position in society, constituting the premise for the self-realization of a human person [Radwański 2009, 156]. They are an expression of the person's mental and physical distinctiveness and creative possibilities [Cisek 2011, 56]. In the opinion of the Supreme Court, they constitute a set of factors, the aim of which is to ensure the development of a citizen's personality, protect their existence and provide them with the liberty to use those rights that are available at a given stage of the social and economic development of society, and which are conducive to the preservation of their distinctive features while providing ties to the society in which they live.⁴ They are of decisive importance for the existence and position of a person, as they are inherently embedded in the essence of humanity and human

³ Resolution of the Supreme Court of 16 July 1993, case ref. I PZP 28/93, Lex no. 3943.

⁴ Judgement of the Supreme Court of 10 June 1977, case ref. II CR 187/77, *Legalis* no. 20141.

nature, independent of a person's will, permanent, specifiable and objectifiable.⁵

When analysing the issue of personal rights, it should be noted that the values protected under this construction are also regulated in other areas of law.⁶ The connection with their constitutional protection, which is granted to values of fundamental importance, is significant. However, not every constitutional value, and for certain not every fundamental right or subjective freedom, is also a personal right. Constitutional rights and freedoms are normative constructions serving to protect specific values that the Constitution framers recognize or declare to be protected both in the Constitution and in ordinary legislation. It can therefore be argued that the values declared or framed in the Constitution are protected on two levels, namely on the basis of constitutional norms employing the institution of fundamental freedoms or rights, and on the basis of statutory norms employing normative solutions enacted under legislation.⁷ Noteworthy at this point, the Constitution contains a direct reference to personal rights of a fundamental nature [Wojciszke 2000, 660]. One of these is freedom of conscience and religion as mentioned in Article 53, which is classified as a personal freedom, and its recognition and respect by the state and society results from the duty to protect human dignity.

The doctrine emphasizes that human dignity and freedom belong to the group of the ultimate personal rights protected by the constitutional order, and their effective protection is the basic duty of public authorities.⁸ Regardless of the protection of non-property values appertaining to a person, fulfilling their humanity and their inherent personal dignity, under the Constitution and international treaties, the legislator put in place the protection of these values under statutory norms, both those established for application in the state-citizen relations (criminal law, administrative law), as well as in relations between equal-right participants of social life

⁵ Judgment of the Court of Appeal in Poznań of 5 July 2022, case ref. I ACa 948/21, Lex no. 3397873.

⁶ Judgement of the Supreme Court of 11 December 2020, case ref. V CSK 34/19, Lex no. 3172590. This is due to the fact that it is protected under civil law, regardless of the protection provided for in other legislation.

⁷ Decision of the Supreme Court of 21 August 2020, case ref. V CSK 557/19, Lex no. 3063354.

⁸ Judgement of the Supreme Court of 21 September 2022, case ref. I NSNc 75/21, OSNKN 2022/4/23.

[Romańska 2020, 3]. Thus, the protection of personal rights may be sought under the provisions of civil law regardless of the protection provided under other areas of legislation, and regardless of whether any protection measures specified in the latter have been applied, unless the state of threat or infringement of personal rights has been removed by such application [Panowicz-Lipska 2016, 130].

1.2. Criteria for assessing infringement of personal rights

It should be emphasized that the applicable law does not provide protection against every infringement of personal rights [Kawałko and Witczak 2008, 115]. Individual values constitute personal rights protected by law only to the extent that they meet objective criteria, and not only the subjective feelings of the person seeking legal protection. The objective criterion and point of reference to verify the subjective belief that a specific value is considered a personal right should be the opinion expressed by society (or its vast majority) on whether that specific value deserves to be recognized as a legally protected personal right.⁹ Specifically, it cannot be assumed that every case of infringement of personal rights would require establishing that the infringement of rights has caused a specific social response.¹⁰ What is decisive in this respect are the moral, legal and customary views existing in a given society as decided on a case-by-case basis [Szpunar 1979, 106].

The subject of protection in the case of personal rights is not the well-being of a person or their emotions, because they do not depend on human will or sensitivity.¹¹ The mere feeling of discomfort, sadness or suffering, although characteristic of experience of an infringement of personal rights, does not yet decide that an infringement has occurred, much less confirms that the personal right cited by the claimant actually exists. Negative experiences may result from various reasons or follow from interference with various ideal interests, including those that are not personal rights.¹²

⁹ Judgement of the Court of Appeal of 27 October 2021, case ref. V ACa 563/21, Lex no. 3334529.

¹⁰ Judgement of the Supreme Court of 23 March 2005, case ref. I CK 639/04, Legalis no. 260341.

¹¹ Judgment of the Court of Appeal in Białystok of 13 January 2021, case ref. I ACa 289/20, Lex no. 3154721.

¹² Judgment of the Court of Appeal in Szczecin of 3 March 2022, case ref. III APa 14/21, Lex no. 3360525.

Noteworthy, in Polish doctrine and jurisprudence, the prevailing view favours an objective approach to the issue of personal rights [Sadomski 2003, 16]. Personal rights are objectified by the “honest, reasonable person” test, by which the claims of hypersensitive people, excessively focused on themselves can be dismissed. A sense of harm or even a drastic infringement of a person’s sphere of feelings is not sufficient to invoke the category of personal rights.¹³ Therefore, the subjective belief of the person concerned is irrelevant to the assessment whether personal rights have been infringed. The opposite assumption would lead to the conclusion that the mere filing of a lawsuit is proof of its validity.¹⁴ The need to maintain a proportionate and moderate approach is key, so legal instruments appropriate for the protection of personal rights cannot be abused for minor, incidental cases involving only subjective experiences, as this would lead to an unacceptable depreciation of the object of protection itself.¹⁵

In order to recognize an infringement of a personal right, it is necessary to analyse the specific facts of a case from the point of view of a reasonable person, and not only the subjective belief of the person concerned.¹⁶ The employment of the above objective concept makes it possible for courts to dismiss the claims of people who are hypersensitive and oversensitive about themselves, who are ready to feel the most trivial annoyance or inconvenience as the greatest torment.¹⁷

2. FREEDOM OF CONSCIENCE

2.1. Remarks on constitutional principles

It should first be noted that the legislator refers to the protection of the value in question under various branches of law. When examining the is-

¹³ Judgement of the Court of Appeal in Warsaw of 20 October 2020, case ref. V ACa 314/19, Lex no. 3112275.

¹⁴ Judgement of the Court of Appeal in Łódź of 25 August 2020, case ref. I ACa 185/19, Lex no. 3115636.

¹⁵ Judgement of the Court of Appeal in Łódź of 26 August 2015, case ref. I ACa 29/15, Legalis no. 1336545.

¹⁶ Judgement of the Court of Appeal in Łódź of 29 April 2015, case ref. I ACa 1621/14, Legalis no. 1242498.

¹⁷ Judgement of the Supreme Court of 16 January 1976, case ref. II CR 692/75, OSNCP 1976, no. 8, item 251.

sue of freedom of conscience and religion as a personal right, it should be kept in mind that theoretical constructions, built not only in civil law, must by their nature take into account a broader perspective, must be more extensive and go beyond the purely practical view of the application of law in court decisions relative to tendencies and specific expectations of the day [Safjan 2002, 242]. It is impossible to determine the meaning of freedom of conscience under civil law in isolation from the content of other applicable legal acts whose task is to protect fundamental rights and freedoms.

To define the meaning of this concept in more detail, it is necessary to refer to the provision of Article 53 of the Constitution of the Republic of Poland, which ensures everyone freedom of conscience and religion [Radwański 2009, 160]. The meaning of the norm at hand should be determined with full account taken of the meaning of freedom mentioned in Article 31(1) of the Constitution as the potential to make independent, free choices regarding specific behaviours, unimpeded by coercion or arbitrary interference. This freedom is an important non-property value, strongly linked to the personal dignity of every human being [Safjan 2002, 229]. As indicated in court jurisprudence, constitutional regulations ensure the protection of the value of freedom of conscience, which must be understood not only as freedom of religion (to choose a religion and to freely practice it), but also as a guarantee of the right to choose a worldview other than religious. The Constitution places freedom of conscience (thus protecting the rights of non-believers to have their worldview respected) on a par with freedom of religion (the right to practice religion), as reflected in the prohibition of forced participation in religious practices.¹⁸

The constitutional norms took on a specific shape in the Act on Guarantees of Freedom of Conscience and Belief. In Article 10(1) of the Act, the legislator made a reservation that the Republic of Poland is a secular state, neutral in matters of religion and beliefs, while in Article 9, among the guarantees of freedom of conscience and belief, it mentioned the separation of churches and other religious organizations from the state. Based on the remarks above, a conclusion may be made that freedom of conscience and religion is not only to protect the spiritual identity of an individual against interference from the state or other persons and to guaran-

¹⁸ Judgement of the Supreme Court of 20 September 2013, case ref. II CSK 1/13, Lex no. 1388592.

tee his or her internal autonomy, but also to establish a framework in which various, often opposite concepts and spiritual values can coexist [Bartoszewicz 2012, 56].

As often emphasized in the doctrine, the impartiality duty of public authorities over the rights of religious or philosophical beliefs and worldviews is one of the most important provisions of the Constitution, which define the axiological foundations of the state [Łączkowski 2006, 209]. It is in the context of this remark that the significance of personal right in the form of freedom of conscience and religion should be examined. As a matter of fact, it is an elaboration of one of the pivotal constitutional principles.

2.2. Remarks on the Act Civil Code

As emphasized in jurisprudence, freedom of conscience referred to in Article 23 CC should be understood as freedom, among others, regarding the choice of religion (denomination) and freedom to practice this religion, whether individually or together with other believers. The personal right set out and protected under this provision is therefore the freedom to adopt a specific religion, the freedom to express one's religious beliefs and the freedom to perform specific practices.¹⁹ The right to manifest religion is the right vested in all citizens, and due to the adopted pluralism of worldviews, each of them has the right to contribute to the creation and multiplication of the common good, using the broadly understood freedom of thought, conscience and religion [Śniecikowski 2016, 62].

The doctrine emphasizes that freedom of conscience may be infringed in various forms, including unequal treatment of certain people due to their religion, especially in certain groups of people (e.g., at school, court, office, workplace), disruption of religious rites, offending religious feelings, e.g., by ridiculing certain rituals, destroying objects of worship, insulting god or other entities of ancient worship such as saints or prophets [Kalus 2018, 117].

It is still necessary to determine whether a specific act is related to the ability of a person to express or manifest their feelings individually or jointly with other people, in private or in public, and whether it ridicules

¹⁹ Cf. Decision of the Supreme Court of 12 June 2002, case ref. III CKN 618/00, OSNC 2003, No. 8, item 84.

or criticizes the religious feelings of a person.²⁰ Whether a personal right has been infringed in a specific case depends on whether the entity invoking the protection of the personal right can be attributed a specially close link with the person or object to which the infringement relates.²¹ There are doubts expressed in the literature on the subject as to how broadly the scope of those vested with active legitimation should be defined.²² However, it seems that there is no justification for limiting the group of those entitled to pursue claims depending on whether they belong to a strictly defined group, e.g., next of kin.

A note must be made, however, that, according to the prevailing views of legal scholars, freedom of conscience and religion as a personal right may only be vested in individuals [Rataj 2014, 60; Buchalska 2020, 202-203]. On the other hand, there are views in the literature that the doctrine and jurisprudence reject the option of invoking the personal right in question without more substantial reasons [Roszkiewicz 2022, 82-3].²³ Still, these views are rather isolated, as no doubt it holds true that personal rights of bodies corporate do not cover those values that are closely linked to a person as a biological and social being, including freedom of conscience [Świątczak 2020, 41].

²⁰ Ibid.

²¹ Judgement of the Supreme Court of 6 April 2004, case ref. CK 484/03, OSNC 2005/4/69.

²² This doubt is raised by Z. Radwański, see Radwański 2009, 160.

²³ The author refers to the resolution of the Constitutional Court of 24 June 1991, case ref. W 11/91 (OTK 1992, No. 1, item 18), according to which it should be held that the provisions on the protection of citizens' rights and freedoms apply not only to individuals, but also to bodies corporate, such as cooperatives, companies, associations, etc., which unite the activities of citizens. This also applies to the Catholic Church, other churches and religious associations, provided that they act as institutions gathering citizens and pursuing their specific rights and freedoms, such as performing religious worship and religious rites, educating in the spirit of a denomination, practicing charity, etc.

3. REMARKS ON INFRINGEMENTS OF FREEDOM OF CONSCIENCE OF BELIEVERS AND DECLARED NON-BELIEVERS

3.1. Subjecting a person, against their will, to actions contrary to the dictates of their religion in the context of infringement of freedom of conscience and religion

Court jurisprudence²⁴ has repeatedly discussed the problems in assessing acts of subjecting a person to actions contrary to the dictates of their religion against their will. Judgments were issued in relation to various types of actions, often by state officials, that, in the claimants' opinion, infringed their personal rights. Decisions on this issue clearly emphasize the significance of the intended purpose of this type of action in the assessment whether the personal right of freedom of conscience has been infringed. After all, even such intervention by state officials that infringes personal rights, including religious feelings, may be justified. However, they must still act lawfully.²⁵

This remark refers, among others, to the options that uniformed services have in using the stop and search procedures, which require the removal of clothing related to one's religion, e.g., the turban. This type of action is not deemed an infringement as long as it falls within the statutory powers and is motivated by security reasons. No person should be discriminated against or particularly privileged when selecting the search methods used for them. Neither representatives of specific social groups, including cultural groups, nor followers of any religion can be exempted from this duty; at the same time, the customs and preferences of passengers, as well as their religious practices, must be respected as far as possible, without prejudice to the fundamental goal of ensuring the highest possible level of security in places particularly exposed to various types of attacks.²⁶

²⁴ As regards the protection of freedom of conscience and religion, judgments have been passed both by Polish courts and international courts and tribunals, a reference to which is beyond the scope of this article.

²⁵ Judgement of the Supreme Court of 17 September 2014, case ref. I CSK 439/13, Lex no. 1504809.

²⁶ Judgement of the Court of Appeal in Warsaw of 12 February 2013, case ref. I ACa 499/12, Lex no. 1312108.

In the same context, courts examined cases where a prison failed to provide a diet meeting the requirements of an inmate's religion during incarceration. An example can be the case of a member of the Hare Krishna Movement, who cited the religious principles under which he was on a vegetarian diet (without meat, cold cuts, fish) and asked that this be taken into account in the daily menu planning. One of the prisons where he served his sentence did not accept his request and provided only a Muslim diet free of pork. The Supreme Court found that the inmate's personal rights had been violated, but that did not automatically mean that his claims were justified. It pointed out that the conditions in which the claimant was kept and the diet offered to him did not differ from the generally prevailing conditions of serving a prison sentence in Poland, resulting from the financial and logistic possibilities of the State, and therefore did not constitute a deliberate action by the defendant to the detriment of the claimant. In the opinion of the Supreme Court, given the very short period of infringements (for the unexpired part of the claims) and only minor nuisance, resulting partly from the claimant's conduct (exchanging meals with other inmates), the degree of the claimant's sense of harm could hardly be considered significant enough to justify the award of compensation.²⁷ As regards the alleged infringement of the personal right of freedom of conscience, the person invoking it should have taken steps to inform the relevant authorities about their willingness to exercise the rights arising from their specific religion professed.²⁸

3.2. Subjecting a declared non-believer to religious practices in the context of infringement of freedom of conscience and religion

The literature on the subject often gives references to infringements of the personal rights of believers in a positive or negative aspect. However, when analysing the issue of freedom of conscience, one should also consider the option that legally protected rights may be infringed by subjecting declared non-believers to unwanted religious practices.

²⁷ Judgement of the Court of Appeal in Warsaw of 12 October 2012, case ref. VI ACa 533/12, Lex no. 1264463.

²⁸ Judgement of the Court of Appeal in Gdańsk of 26 January 2012, case ref. I ACa 1482/11, Lex no. 1236075.

Court jurisprudence considers this matter with reference to the situation where a person is subjected to a sacrament against their will, also when they are incapable of consciously giving their opposition. The Supreme Court has dealt with the issue twice based on the same facts,²⁹ in which a patient sought claims after the sacrament of anointing of the sick had been administered to him during hospitalization while he was in a medically induced coma. The claimant declared himself a non-believer and non-practitioner, which was not known to the hospital employees, including the chaplain administering the sacrament. He did not express his objection to being subjected to religious practices upon admission to the hospital. The claimant argued that when he had learned about the anointing, he experienced shock, a nervous breakdown, his mental and physical condition deteriorated, and he was at risk of another heart attack.

In the opinion of the Supreme Court, in this case the claimant's personal rights were infringed by subjecting him, against his will, to the sacrament of the anointing of the sick, and this incident was not of a minor, trivial nature, one that would not deserve protection under Article 23 CC.³⁰ This is due to the fact that the personal right protected as freedom of conscience is the freedom to adopt a specific worldview, including a specific religion, or not to do so at all. A declared non-believer cannot expect that they will not have contact with believers, their religious practices and symbols, as in social life this would be tantamount to limiting the freedom of conscience of believers, but they can expect that they will not be subjected to religious practices against their will or forced to participate in them or to use religious symbols. For a believer, receiving a sacrament is an act of spiritual significance. The incident that the claimant identified as infringement of his freedom of conscience was the administration of the sacrament of anointing of the sick when he was in a medically induced coma and could not object to it. For Catholics, Orthodox Christians and members of the Anglican Church, the anointing of the sick is an extremely important act, although the very gestures in administering it are rather

²⁹ The first lawsuit was brought against the hospital where the claimant was hospitalized, and another one against the court-appointed representative from whom the claimant demanded compensation for neglect, in his opinion, in the performance of his functions.

³⁰ Judgement of the Supreme Court of 12 September 2018, case ref. II CSK 536/17, Lex no. 2565810.

symbolic, in the sense that they do not involve any significant interference with the physical and mental integrity of the person to whom the sacrament is administered. Receiving a sacrament is undoubtedly a religious practice, and therefore administering it to a person who - regardless of the reasons - objects to their participation in this activity should be considered a form of subjecting them to religious practice against their will.³¹

Noteworthy, this reasoning has been widely commented on in the civil law literature. Part of the scholars approved of the decision issued, under which the worldview of a believer should be treated equally with the worldview of a non-believer [Kaczmarczyk 2017, 137]. However, the views of critics of the arguments presented in the above court decisions deserve special attention. In essence, they oppose the failure to consider the norms of canon law in the case in question.³² As these scholars claim, before presenting a specific opinion, the Supreme Court should have examined the conditions for administering the sacrament of anointing of the sick laid down in canon law, and only after examining these conditions could it possibly formulate an opinion as to whether personal rights had been violated. The Church legislator allows the sacrament of anointing of the sick to be administered to an unconscious person. Indeed, one may say that this sacrament is, as the name suggests, intended for people with poor or even hopeless health. Under Can. 1005 of the Code of Canon Law,³³ "This sacrament is to be administered in a case of doubt whether the sick person has attained the use of reason, is dangerously ill, or is dead" [Rakoczy 2016, 216]. In this context, attention should be paid to Article 2 of the Act on Relations between the State and the Catholic Church in the Republic of

³¹ Judgement of the Supreme Court of 20 September 2013, case ref. II CSK 1/13, Lex no. 1388592.

³² The Supreme Court has repeatedly recognized that in resolving a case marked by a canon law issue a case involving a church-related element it was justified to first examine the norms of canon law. This direction of jurisprudence can now be considered established [Rakoczy 2009, 275-85]. This is due to the fact that there is a Concordat between the Republic of Poland and the Catholic Church, which from a legal point of view is an international agreement. Under Article 91 of the Constitution, ratified international agreements, after their publication in the Journal of Laws of the Republic of Poland, become part of the domestic legal order and have a direct applicability, unless their application further depends on the enactment of a statute.

³³ *Codex Iuris Canonici auctoritate Ioannis Pauli PP. II promulgatus* (25.01.1983), AAS 75 (1983), pars II, pp. 1-317.

Poland,³⁴ under which the Church is governed by its own law, freely exercises spiritual and jurisdictional authority and manages its affairs. It was a duty of the chaplain's to ensure that the sacrament of anointing of the sick was administered to a person who had not objected to it. This service should be treated as a privilege of mercy, not as a path to proselytizing [Strus 2013, 48]. Given that the chaplain, in accordance with the norms of canon law, acted within the limits of his powers, the condition of unlawfulness, the finding of which is necessary to uphold an infringement of personal rights, was definitely not met [ibid., 46].

CONCLUSION

The protection of personal rights is one of the basic objectives of civil law. One of the rights explicitly identified by the legislator is freedom of conscience. Its separation is justified by the need to protect individual human feelings related to the right to make decisions on worldviews and religious matters, which is an emanation of human dignity. This freedom is guaranteed in constitutional norms and laws governing the relations between the state and religious associations operating within it. It should be emphasized that when assessing specific facts, not only the norms of generally applicable law should be taken into account, but also the internal regulations of individual religious communities.

The provisions of civil law establishing the principles of protection of personal rights elaborate and complete the fundamental principles. They are a guarantee of respect for the rights of every person and citizen, regardless of their worldview or religion. They must be applied with a due account taken of other principles and values in force in the legal system. In some cases, it may be necessary to limit this freedom to ensure security or protect the rights of other people.

Court jurisprudence on the issue of conscience protection provides us with information on what principles should be followed when assessing cases of forced action that goes contrary to a person's worldview or religion. Unfortunately, an analysis of all possible aspects of infringement of

³⁴ Act of 17 May 1989 on Relations between the State and the Catholic Church in the Republic of Poland, Journal of Laws of 2022, item 1700.

the personal right of freedom of conscience is outside the limits of this article. Its purpose is to demonstrate the basic principles that characterize the legal right in question.

REFERENCES

- Bartoszewicz, Jakub. 2012. "Wolność myśli, sumienia i wyznania w Polsce w świetle orzecznictwa strasburskiego." *Polski Rocznik Praw Człowieka i Prawa Humanitarnego* 3:55-72.
- Bidziński, Zbigniew, and Jerzy Serda. 1986. "Cywilnoprawna ochrona dóbr osobistych w praktyce sądowej." In *Dobra osobiste i ich ochrona w polskim prawie cywilnym*, ed. Józef Stanisław Piątkowski, 7-103. Wrocław–Warszawa–Kraków–Gdańsk–Łódź: Zakład Narodowy im. Ossolińskich Polskiej Akademii Nauk.
- Buchalska, Joanna. 2020. "Dobra osobiste osób fizycznych." In *Dobra osobiste i ich ochrona*, ed. Marta Romańska, 119-95. Warszawa: C.H. Beck.
- Cisek, Andrzej. 2009. "Ochrona dóbr osobistych osób sprawujących funkcje publiczne." *Acta Universitatis Wratislaviensis* 309:31-49.
- Cisek, Andrzej. 2011. "Objaśnienia do art. 23." In *Kodeks cywilny. Komentarz*, ed. Edward Gniewek, 56-8. Warszawa: C.H. Beck.
- Kaczmarczyk, Robert. 2017. "Ochrona swobody sumienia jako dobra osobistego osoby niewierzącej. Głosa do wyroku SN z dnia 20 września 2013 r., II CSK 1/13." *Państwo i Prawo* 3:134-41.
- Kalus, Stanisław. 2018. "Komentarz do art. 23." In *Kodeks cywilny. A Commentary. Tom I. Część ogólna (art. 1-125)*, ed. Magdalena Habdas, and Mariusz Frasz, 101-27. Warszawa: Wolters Kluwer.
- Kawałko, Agnieszka, and Hanna Witczak. 2008. *Prawo cywilne*. Warszawa: C.H. Beck.
- Lewandowski, Paweł. 2019. "O relacji dóbr osobistych osób prawnych i osób fizycznych." *Studia Prawnoustrojowe* 46:231-43.
- Łączkowski, Wojciech. 2006. "Bezstronność władz publicznych." *Ruch Prawniczy, Ekonomiczny i Socjologiczny* LXVIII, no. 2:209-19.
- Panowicz-Lipska, Janina. 2016. "Komentarz do art. 23." In *Kodeks cywilny. Tom I. Komentarz art. 1-449¹*, ed. Maciej Gutowski, 121-49. Warszawa: C.H. Beck.
- Puchała, Agata. 2014. "Pojęcie dóbr osobistych." In *Dobra osobiste*, ed. Izabela Lewandowska-Malec, 39-52. Warszawa: C.H. Beck.
- Radwański, Zbigniew. 2009. *Prawo cywilne – część ogólna*. Warszawa: C.H. Beck.
- Rakoczy, Bartosz. 2009. "Prawo kanoniczne w orzecznictwie sądów polskich." In *Prawo wyznaniowe w Polsce (1989–2009). Analizy – dyskusje – postulaty*, ed. Dariusz Walencik, 275-85. Katowice–Bielsko-Biała: Wyższa Szkoła Bankowości i Finansów w Bielsku-Białej.
- Rakoczy, Bartosz. 2016. "Głosa do wyroku SN z dnia 20 września 2013 r., sygn. akt II CSK 1/13." *Przegląd Prawa Wyznaniowego* 1:213-20.

- Rataj, Karolina. 2014. "Katalog dóbr osobistych w Kodeksie cywilnym." In *Dobra osobiste*, ed. Izabela Lewandowska-Malec, 39-52. Warszawa: C.H. Beck.
- Romańska, Marta. 2020. "Uwagi wprowadzające." In *Dobra osobiste i ich ochrona*, ed. Marta Romańska, 1-7. Warszawa: C.H. Beck.
- Roszkiewicz, Janusz. 2022. *Wolność sumienia osób prawnych. Tożsamość ideowa jako dobro osobiste i konstytucyjne prawo podmiotowe*. Warszawa: Wydawnictwa Uniwersytetu Warszawskiego.
- Sadomski, Jacek. 2003. *Naruszenie dóbr osobistych przez media. Analiza praktyki sądowej*. Warszawa: Oficyna Naukowa i Instytut Wymiaru Sprawiedliwości.
- Safjan, Marek. 2002. "Refleksje wokół konstytucyjnych uwarunkowań rozwoju ochrony dóbr osobistych." *Kwartalnik Prawa Prywatnego* I:223-46.
- Strus, Zbigniew. 2013. "Głosa do wyroku Sądu Najwyższego z dnia 20 września 2013 r. w sprawie II CSK 1/13." *Forum prawnicze* 5:35-49.
- Szpunar, Adam. 1979. *Ochrona dóbr osobistych*. Warszawa: Państwowe Wydawnictwo Naukowe.
- Śniecikowski, Wiesław. 2016. "Prawo osób wierzących do uzewnętrzniania religii." *Przegląd Prawa Publicznego* 4:45-63.
- Świątczak, Krzysztof. 2020. *Dobra osobiste osób prawnych w polskim prawie cywilnym*. Łódź: ArchaeGrapg Wydawnictwo Naukowe.
- Tylec, Grzegorz. 2022. *Ochrona uczuć religijnych w prawie cywilnym*. Lublin: Wydawnictwo Academicon.
- Wojciszke, Agata. 2000. "Katalog dóbr osobistych w świetle przepisów Konstytucji i Kodeksu cywilnego." *Gdańskie Studia Prawnicze* 7:659-71.
- Wolter, Aleksander, Jerzy Ignatowicz, and Krzysztof Stefaniuk. 2001. *Prawo cywilne. Zarys części ogólnej*. Warszawa: Wolters Kluwer.

**Freedom of Conscience as a Personal Right.
Comments against the Background of Selected Jurisprudence
of Polish Courts**

Abstract

The aim of the article is to characterize the principles of protecting freedom of conscience as a personal right, i.e., a non-property right appertaining to the person protected under civil law. The protection is to safeguard the person from acts that run contrary to their worldview or religion. However, it is not absolute. It must take into account the limitations derived from other values recognized under the legal system. Not every act that may cause a sense of harm can be treated as an infringement of personal rights.

Keywords: personal rights; freedom of conscience; unlawfulness; exclusion of unlawfulness; civil law

**Wolność sumienia jako dobro osobiste.
Uwagi na tle wybranych orzeczeń sądów polskich**

Abstrakt

Celem artykułu jest charakterystyka zasad ochrony wolności sumienia jako dobra osobistego, czyli niematerialnego dobra związanego z osobą ludzką, które chronione jest przez przepisy prawa cywilnego. Ochrona ta ma przeciwdziałać działaniom niezgodnym z wyznawanym przez daną osobę światopoglądem lub religią. Nie ma jednak charakteru bezwzględnego. Musi bowiem uwzględniać ograniczenia wynikające z innych uznawanych przez system prawny wartości. Nie każde działanie mogące wywoływać poczucie krzywdy może być traktowane jako naruszenie dóbr osobistych.

Słowa kluczowe: dobra osobiste; swoboda sumienia; bezprawność; wyłączenie bezprawności; prawo cywilne

Informacje o Autorze: MGR OLGA NOWAK-DZIWINA – Katolicki Uniwersytet Lubelski Jana Pawła II; adres do korespondencji: Al. Raławickie 14, 20-950 Lublin, Polska; e-mail: olga.nowak-dziwina@kul.pl; <https://orcid.org/0000-0002-8218-5023>