

PhD dissertation summary

FREEDOM OF CONSCIENCE AND RELIGION OF THE MINORS IN POLAND IN THE PERIOD OF 1918–2015

Keywords: the minors, freedom, freedom of religion, freedom of belief, conscience, religion, religious law, church law, children's rights and freedoms, religion, religious education.

Today, one of determinants characterizing a democratic rule of law is guaranteed respect for individual's right to freedom of belief. This concept is a broad one and it comprises both the freedom to express one's beliefs inspired by metaphysical, philosophical or scientific motives as well as lack of such beliefs. Moreover, the concept embraces both the scope of individual freedom (in the sense of internal and external freedom) as well as the freedom to set up organizational entities gathering individuals, having a complex structure, hierarchy, internal legal acts, etc., and at the same, time allowing their free functioning.

Regarding natural persons, the discussed concept of freedom consists of two elements, firstly, the inner sphere of beliefs and, secondly, the possibility of their manifestation both in the form of individual acts and behaviors as well as organization and participation in the functioning of associations based on a common ideological or philosophical foundation. In the case of communities built on religious foundations, we deal with religious associations or churches.

Respecting organizations/associations, the freedom of belief consists in the freedom of their creation, functioning and propagation of their principles as well as freedom of natural persons to join their structures.

The current situation with respect to the freedom of opinion/belief/conscience is the effect of a centuries-long evolution, which in fact brought any measurable effects only in the last half-century. It was not until this period that the traumatic experience of both armed and ideological conflicts led to the development of international standards concerning human rights and freedoms including also the freedom of belief. However, it must be pointed out that mere recognition of people's right to free expression of their beliefs (just like any other form of freedom) does not yet provide a guarantee that any declarations in this respect will be realized. It is also necessary to create mechanisms of preventing and eliminating any instances of violating human freedom. Such mechanisms must include both educational as well as legislative and institutional solutions aimed at heightening people's awareness with regard to human rights, in particular, the existence of individuals' rights or the rights of those individuals' associations in the sphere of beliefs or religion as well as the forms and ways of seeking protection by them.

The subject of the present dissertation revolves around the evolution of the scope of the freedom of conscience and religion as regards the minors. Due to the fact that the

ethical and ideological stance of people is shaped during the period of adolescence, it is of particular importance to ensure that the minors have the possibility of its free formation. The above issue is also modified by the need to take into account the development of the attitude of adults towards children and their rights. Recognition of the freedom of beliefs of both individuals and associations did not mean immediate recognition of such rights with regards to minors. This issue makes it impediment to outline the development of children's rights in general and present the origin of the freedom of beliefs concept and its scope in the course of its evolution, and ultimately, to present how these issues were regulated in practice.

The chronological framework of the dissertation covers three periods of Poland's history, i.e. the Second Polish Republic, the Polish People's Republic and the period after the breakthrough of 1989. Significant differentiation of the axiological foundations underlying the legal systems (as well as the practice of applying the law) applicable in the given periods, make it possible to present how ideology affects the actual functioning of a given category of freedom. Due to historical conditions influencing the history of the law and the system of the Polish state, the chronological framework of the dissertation may sometimes, in necessary cases, be surpassed in order to present a broader context of events taking place in Poland.

The framework of deliberations as regards the criterion of territory, was limited mainly to the area of the Polish state, adequately to the chronological framework. As in the case of chronological criteria, it was necessary to go beyond those adopted boundaries, especially in the case of the period of the Second Polish Republic. It should be kept in mind how the legal system in force in the Polish state was shaped after the period of partitions, when, despite strong efforts, it was not possible to unify the law. To some extent, we are forced to present foreign institutions and legal acts to discuss solutions functioning in the law applicable on the territory of Poland.

The dissertation presents solutions regarding religious freedom of the minors adopted in secular law, but also in church statutes of various religious associations operating on the territory of Poland, with particular reference to acts of the Roman Catholic Church as the leading religious association in Poland.

The dissertation consists of two parts, one devoted to theoretical considerations and another discussing the legal and organizational institutions related to the discussed issue and functioning in particular periods. The theoretical part is aimed at outlining the development of the contemporary understanding of the role and position of minors in society, the scope of parental authority which influences exercising the rights by minors as well as at defining the professional terminology used with reference to the discussed subject. Due to extensiveness of the topic and the fact that it has been the object of enormous scientific research (both in the area of legal and historical research as well as of sociological, medical or philosophical sciences), only basic areas and issues have been accentuated in the

dissertation. The basic part provides a presentation of the genesis, shape and evolution of legal solutions related to the broadly understood implementation of the freedom of belief in relation to minors.

The presented research was aimed primarily at determining whether the issue of freedom of opinion/belief in relation to minors is adequately normalized, whether both legislative and organizational solutions implemented in specific political and sociological environments take sufficient account of the interests of minors and provide effective protection against possible violations in the sphere of freedom of belief.

The research and analysis of materials carried out by me demonstrate that the attitude of the society and the legislator to issues related to the freedom of conscience of minors underwent constant development. It should be noted that this was not a “linear” development, since, basically up to the last century, both the attitudes of the general public and the legislation (secular and ecclesiastical) to the issue of the minors’ rights was perceived as marginal. It was only over the last half-century that the creation of regulations and institutions aimed at securing this scope of freedom in the case of minors has undergone radical acceleration. The change of attitude towards the freedom of minors concerned both secular and clerical authorities (although a clearly conservative approach on the part of the Church legislator and the resulting delays in the process of implementing new ideas and solutions must be noted here). The analysis of former and current solutions indicates that in the doctrinal area (science and legal theory) the question of the freedom as regards the minors is examined and discussed in a comprehensive and adequate manner, however, its practical application seems to be less satisfactory. In some cases, it may even be assumed that the issue is much more absorbing as regards the doctrine than the addressees and beneficiaries of the created solutions (especially with regard to individual freedom, because religious associations, as illustrated in practice are much more efficient in achieving their goals, provided they do not operate in an ideologically hostile environment). Among the reasons for this state, one can certainly identify fairly low awareness of the rights, a sense of low harmfulness of possible violations, reluctance to affirm one’s beliefs in an environment dominated by representatives of one denominational group and the associated calculation of “profits and losses” – especially in the face of a more or less explicit support for particular worldviews expressed by those currently in power.