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CRIMINAL-LAW PROTECTION DUE TO RELIGION (ARTICLE 194 OF THE PENAL CODE)

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Abstract. The article analyses the problem of the offence of religious discrimination under Article 194 of the Polish Penal Code. The author presented in the first part of the article the process of formation of "crimes against freedom of conscience and religion" in the criminal codes of 1932, 1969 and 1997, then discussed the object of protection related to the offence of "religious discrimination" in the light of Article 192 of the Penal Code of 1969. From this perspective, she analysed the object of protection, offender, objective aspects and subjective aspects of the applicable Article 194 of the Polish Penal Code of 1997.

Keywords: crimes against freedom of conscience and religion, religious discrimination, religious beliefs, criminal-law protection of freedom of religion

Freedom of conscience and religion, considered as one of the foundations of democratic society in the modern world [Sobczak and Gołda-Sobczak 2012, 28], requires special protection at the levels of international and domestic law, including criminal law. It is stressed that on an international scale this protection is provided by normative acts forming the set of human rights *par excellence*, formulating both universal and regional standards of this protection [Chrzczonowicz 2003, 116]. On the other hand, the legal systems of European countries contain internal regulations ensuring the protection of religion, churches and religious denominations [Kędzierski 2007, 71]. The subject of this protection are religions (denominations) legally existing in a given country [ibid.]. In Poland, "the regulations in the field of freedom of religion, enabling its full implementation and securing its proper execution, are contained in the Constitution of 2 April 1997, in the Act on guarantees of freedom of conscience and religion of 17 May 1989,[1] vast legislation on relations between the State and churches and other religious associations, and in the Penal Code of 1997" [Chrzczonowicz 2003, 116].

[1] Journal of Laws of 2000, No. 26, item 319.

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Freedom of conscience and religion[2] are goods protected under Article 53 of the Constitution of the Republic of Poland. It is rightly assumed that "the freedom of religion positively defined in Article 53(2) in the Constitution (including the freedom to profess or to adopt a religion of one's own choice and to manifest one's religion individually with others, publicly or privately, by worship, prayer, participation in rites, practising and teaching, and the possession of temples and other places of worship) must correspond, inter alia, to the freedom of expression referred to in Article 54(1), and the freedom of artistic creation, scientific research and the publication of its results, as formulated in Article 73, the freedom to teach and the freedom to use cultural goods" [Warylewski 2005, 369].

Freedom of thought, conscience and religion is, in its religious dimension, one of the most fundamental elements that contribute to shaping the identity of believers and their worldview.[3] It constitutes also a value for religiously indifferent people.

1. CRIMES AGAINST FREEDOM OF CONSCIENCE AND RELIGION IN THE POLISH CRIMINAL LAW – HISTORICAL OUTLINE

At the beginning it should be mentioned that when Poland lost its independence as a result of the Third Partition (1795), Polish territories were governed by the legislation of the occupiers. As W. Makowski explains, in the then district legislation the core offences against religion were offences "against the order of human coexistence, in particular – against the institutions of collective life, among which religion and religious associations occupy an outstanding place" [Makowski 1924, 194]. Generally speaking, in the regulations contained in the German and Austrian Codes, criminalisation was applied to acts that included behaviour consisting in "an offence against God's faith in general." The Russian code, on the other hand, regulated this issue differently, assuming the protection of faith in God "understood as it is understood by the Christian church" [ibid., 197].

After Poland regained independence in 1918, the decision of the legislative Sejm, headed by Marshal Józef Piłsudski, was to pass two legal acts of the highest rank, i.e. the Constitution of 17 March 1921 (March Constitution)[4] and then the Constitution of 27 April 1935 (April Constitution).[5] Both of these acts

[2] For more on the understanding of freedom of conscience and religion, see Article 2 of the Act on guarantees of freedom of conscience and religion of 17 May 1989. See Sobczak and Gołda-Sobczak 2012, 29 and the literature referred to therein; Maciaszek 2006, 210–34; Misztal 2003, 59–70; Paprzycki 2021.

[3] Judgment of the ECtHR of 26 June 2001, Saniewski v. Poland, Lex no. 40319/98.

[4] Constitution of 17 March 1921, Journal of Laws No. 44, item 267 as amended.

[5] Constitution of 27 April 1935, Journal of Laws No. 30, item 227 as amended.

contained legal regulations, including those relating to freedom of conscience and religion, as well as equality of all regardless of their religion. Of these, the wording of Article 114 of the March Constitution draws particular attention. Namely, this provision states: "the Roman Catholic denomination, being the religion of the overwhelming majority of the nation, occupies in the state the chief position among the authorized denominations."

The beginning of the development of regulations on crimes against freedom of conscience and religion dates back to the Polish Penal Code of 1932.[6] In Chapter XXVI, this code penalised behaviour directed against religious feelings. Although it did not accept crimes related to religious intolerance and discrimination [Wojciechowska 2001, 71], it did not describe or use the very concept of "crimes against freedom of conscience and religion." Following J. Makarewicz, it is assumed that this Code did not provide for the protection of civil liberties in the area of religious belief, but rather for the protection of the interest of the community against attacks on religion.[7] Chapter XXVI, entitled "Crimes against religious feelings," contained three provisions whose constituent elements included behaviour consisting in: 1) blaspheming God (Article 172), 2) public defamation or mockery of legally recognised religious associations, their dogmas, beliefs and rites as well as sites intended for conducting religious rites (Article 173), 3) mischievous disturbance of a religious act performed by a legally recognised religious denomination (Article 174).

With the change of the Polish political system after the Second World War, the penal legislation underwent infamous changes. The decision-makers of the time strived to adapt the criminal law to the reforms aimed at laicisation, especially at the legal level [Mojak 1989, 26]. Their goal was to deprive society of religious beliefs and values. First, in 1946, the Decree on particularly dangerous crimes in the period of national reconstruction, called the Small Penal Code,[8] was introduced, subsequently replaced in 1949 by the Decree on the protection of freedom of conscience and religion.[9] The latter repealed the legal force of the provisions of Chapter XXVI of the Penal Code of 1932 concerning offences against religious feelings and the provisions of the Decree of 1946.

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[6] Decree of the President of the Republic of Poland 11 July 1932, the Penal Code, Journal of Laws No. 60, item 571 as amended.

[7] As cited in: Wojciechowska 2012, 546.

[8] Journal of Laws No. 30, item 192 as amended.

[9] Journal of Laws No. 45, item 959. "Article 8 of the Decree criminalized not only the accomplished and attempted offence, but also the preparation of an abuse of freedom of religion and conscience for the purposes hostile to the political system of the Republic of Poland," while Article 9 of the Decree stated that: "whoever, by abusing freedom of religion in order to get personal or other gain, exploits human credulity by spreading false news or misleads others by fraudulent or deceptive acts." The utmost hypocrisy was the provision of Article 2 of the Decree: "whoever restricts a citizen in his rights due to his religious affiliation, religious beliefs or non-religion shall be punished by imprisonment for up to 5 years" [Wąsek 2003, 207–208].

A. Wąsek rightly wrote: "It is symptomatic that the decree of 5 August 1949 repealing the provisions of Chapter XXVI of 1932 «Crimes against religious feelings» was entitled «Crimes against freedom of conscience and religion. Indeed, a truly Orwellian title»" [Wąsek 1995, 27; Idem 2003, 207]. According to this author, "at the time of the adoption of the Decree on the protection of freedom of conscience and religion, state authorities of all levels and various degrees of competence applied to a large scale not only the restriction, but even the deprivation of civil public and social rights due to citizen's religious affiliation (even if concealed) with the Catholic Church. The communist state used to promote and implement in its activities the Marxist materialistic ideology. In the name of this ideology, the war on religion was declared, including primarily against the Catholic Church. The communist state wanted to fully subjugate its citizens also in the spiritual sphere. In the Stalinist period, during the «growing class struggle», as the Communist party propaganda of that time used to euphemistically define the intensification of terror in internal politics, the fight against the Catholic Church was waged on various levels: political, economic, legal" [Idem 1995, 28].

The decree of 5 August 1949, as A. Grześkowiak put it, was one of the instruments of the massive attack on the Church. In the decree, as A. Grześkowiak writes, "the protection of religious feelings of believers was also guaranteed, which was in fact only an appearance, because the provision prohibiting to offend these feelings was formulated in such a way that in practice it was almost impossible to seek this protection. This direction was strengthened by the interpretation of this norm, which used to be applied also under the relevant provision of the Criminal Code of 1969, and even persisted, especially in practice and under the rule of the Criminal Code of 1997, which unfortunately took over the general model of this crime from the norms of the Criminal Code of 1969" [Grześkowiak 2004, 81].

The Penal Code of 19 April 1969[10] – introductory provisions of the Penal Code – repealed the Decree of 1949. Nevertheless, most of the provisions contained in the Decree, with some mitigation of penal sanctions, were

[10] Act of 19 April 1969, the Penal Code, Journal of Laws No. 13, item 94 as amended. The Criminal Code contained the following types of crimes in Chapter XXVIII "Crimes against freedom of conscience and religion": Article 192 – restriction of civil rights due to citizen's religious affiliation or lack thereof; Article 193(1) – insulting, mocking or humiliating for reasons of non-religion or religious affiliation; Article 193(2) – assault and battery for reasons of non-religion or religious affiliation; Article 194 – abuse of freedom of conscience and religion; Article 195 – exploiting other people's religious beliefs; Article 196 – forcing to undertake or refrain from undertaking religious activities or participation in a religious rite; Article 197(2) disturbance of funeral rites or corpse desecration; Article 197(2) – looting of human corpse; Article 198 – offending one's religious feelings.

incorporated by the Penal Code of 1969 into Chapter XXVIII "Offences against freedom of conscience and religion."[11]

The structure of the language used by the lawmakers in the title of the chapter "Offences against freedom of conscience and religion" was aptly assessed by A. Wąsek: "many other concepts in the field of politics, morality and law have been linguistically distorted in the communist state" [Wąsek 1995, 27]. This distortion of the language used in the title of the chapter of the Penal Code resulted from the relationship between the State, society and the Church. Therefore, we should share the view expressed by J. Krukowski that "in the period of the People's Republic of Poland, when the State used to impose on society a materialistic worldview, the criminality of acts related to the protection of freedom of conscience and religion was used to combat the Church and discriminate against believers. Although the State declared the equality of citizens regardless of their attitude to religion, it in fact did provide for special protection for non-religion. The protection of the right to freedom of conscience and religion was limited by the overriding principle that it was to serve the interests of the socialist state, which imposed an atheistic ideology on society" [Krukowski 2008, 263].

Overcoming this linguistic distortion of "freedom of conscience and religion" towards giving the criminal provisions the correct meaning, consistent with the actual protection of rights and freedoms, took place after 1987, when the reformers' work on a comprehensive reform of the Polish criminal law began."[12] The systemic changes of the state system initiated in 1989 resulted in a reform of criminal law in order to adjust it to the requirements of a democratic state ruled by law and international human rights standards [Krukowski 2008, 263]. These efforts were crowned by the adoption of the Act of 6 June 1997, the Penal Code.[13]

The Act gave the correct meaning to the title "Offences against freedom of conscience and religion" in Chapter XXVIII. There was also a change in the place of this chapter in the structure of the Special Part of the Penal

[11] For more detail, see Bafia, Mioduski, and Siewierski 1987, 200.

[12] For more detail, see Wąsek 1993, 59ff. At this point, it must be stated after A. Wąsek that: "The change in the repressive attitude of the communist party and government bodies towards the Catholic Church was gradual, as the communist state began to disbelieve in the possibility of achieving full ideological and political control over society. When the powerful Solidarity movement was launched, subsequently banned under the Martial Law of 12 XII 1981, the communist party changed its attitude to a more amicable one, as an appreciation of the stabilising role of the Church in the country and also probably to shorten the front line against political opponents. The result was the adoption of the Act of 17 May 1989 on the attitude of the State to the Catholic Church in the Polish People's Republic (Journal of Laws No. 29, item 154). This Act repealed the provisions of Article 194 and Article 195 PC," see Wąsek 1995, 29 and the Author's comment referred to in footnote 7.

[13] Journal of Laws No. 88, item 553 as amended [hereinafter: PC].

Code, which demonstrated the significance of "freedom of conscience and religion" as the highest-level legal good [Fredrich-Michalska and Stachurska-Marcińczak 1997, 195]. The Code "took over" several types of offences from the Penal Code of 1969,[14] but introduced changes to their definition to point to the different axiology underlying the Code [ibid.]. At the same time, for reasons of axiological nature, the Code also lacked several types of offences, including those that had been repealed previously (Articles 194 and 195 PC) [ibid.] by the Act of 17 May 1989 on the relationship of the State to the Catholic Church in the Republic of Poland.[15] At the same time, the authors of the Penal Code of 1997 considered it reasonable to ignore the offences under Article 196 of the Penal Code of 1969 (forcing a person to perform religious practices) recognizing that the behaviour that meets the definition of this crime would now be punished under Article 191 of the Penal Code of 1997 as forcing to a certain action, inaction or forbearing [Wojciechowska 2012, 547; Kozłowska-Kalisz and Kucharska-Derwisz 2006, 220–21]. Similar changes concern previous Article 193(1), the equivalent of which is now Article 119 and Article 257 PC, and previous Article 197 PC, which is currently Article 262 PC. In both cases, these crimes, as offences affecting a legal good other than the freedom of conscience and religion, were included in the group of offences against public order.

It should also be added that following the Penal Code of 1932, also the Penal Code of 1997 introduces a provision that penalises mischievous disturbance of public performance of a religious act of a legally recognized or religious denomination or association (Article 195(1) PC) [Fredrich-Michalska and Stachurska-Marcińczak 1997, 195]. A variation of this type of crime, punishable by the same penalty, is mischievous disturbance of funeral ceremonies or rites (Article195(2) PC) [ibid.].

In the light of the above, the first item in the catalogue of "crimes against freedom of conscience and religion" in the current legislation (like it was in the Criminal Code of 1969) is the crime of "religious discrimination," which has its well-established position in Polish criminal law (although historically not always in a positive sense[16]). This offence is currently one of those crime types in which the concept of freedom of religion and belief as a generic object of protection has been described in the proper sense. The degree of this protection is an indicator of democratisation of social life [Krukowski 2008, 263].

[14] The Penal Code of 1997, changing the structure of the provisions contained in Chapter XXVIII of the Penal Code of 1969, took the following crime types from Article 192 PC: – the offence of restricting the rights of a citizen for reasons of non-religion or religious affiliation, the currently applicable equivalent of which is Article 194 PC and Article 198 PC; – the offence of insulting one's religious feelings, currently having its equivalent in Article 196 PC.

[15] Journal of Laws No. 29, item 154 as amended.

[16] Journal of Laws No. 45, item 959.

2. EVOLUTION OF THE CRIME OF "RELIGIOUS DISCRIMINATION"

2.1. In the light of the Penal Code of 1969[17]

The beginnings of this crime date back to the provision contained in Article 2 of the Decree on the protection of freedom of conscience and religion whose wording was replicated in Article 192 of the Penal Code of 1969.

Article 192 PC read as follows: "Whoever restricts a citizen in his/her rights due to his/her religious affiliation or lack thereof shall be punishable by imprisonment of up to 5 years." This provision in Chapter XXVIII of the Penal Code of 1969 opened the catalogue of criminal acts against freedom of conscience and religion (Articles 192 to 198 PC).

The provision did not define the concept of citizen's right. Such a definition was not provided for in the Penal Code either. This issue was addressed by other legal sciences and the literature, which defined citizen's rights not only as the fundamental rights set out in the Constitution, but also those guaranteed by civil, administrative, labour and other branches of law [Mojak 1989].

The protection of freedom of conscience and religion was guaranteed, paradoxically, by the Constitution of the Polish People's Republic that was in force under the totalitarian regime.[18] Its regulations stated that: "The Church and other religious societies and organizations shall freely exercise their religious functions. Citizens shall not be prevented from taking part in religious activities and rites. No one may be compelled to participate in religious activities or rites (Article 82(1) of the Constitution)" [Świda 1978, 557].

Paradoxically, the direct object of protection under Article192 of the Penal Code was the equality of all citizens regardless of their attitude to religious matters, their right to participate in state, political, economic and cultural life, regardless of their religion or non-religious status [Chybiński, Gutekunst, and Świda 1975, 236]. It was also assumed that the criminal-law protection covered the denominations legally operating in the Polish People's Republic

[17] The construction of the provision on the restriction of rights of a person due to religion or lack of religious affiliation was regulated in Article 192 PC and taken from Article 2 of the Decree of 5 August 1949 on the protection of freedom of conscience and religion. It should be noted that the Decree on the protection of freedom of conscience and religion of 5 August 1949, Journal of Laws No. 45, item 334, repealed the Decree of 13 June 1946, the Decree on particularly dangerous crimes in the period of national reconstruction, called the Small Penal Code, Journal of Laws No. 30, item 192 as amended. For more detail on this matter, see Kędzierski 2007, 78–80; Sobczak 2017, 1183; Janyga 2017, 637; Wąsek 1995, 27.

[18] Constitution of the Republic of Poland of 22 July 1952, Journal of Laws of 1997, No. 33, item 232 as amended; the translation of the Constitution into English is available at http://libr.sejm.gov.pl/tek01/txt/kpol/e1976.html [accessed: 13.09.2021]. Journal of Laws of 1976, No. 7, item 36 as amended.

[Bafia, Mioduski, and Siewierski 1987, 201].[19] It is worth noting that some authors of this period, when interpreting this provision, in the first place in their comments mentioned "denominational or religious affiliation" [Bafia, Mioduski, and Siewierski 1987, 200; Chybiński, Gutekunst, and Świda 1975, 236], despite the fact that the Penal Code in the provision of Article 192 placed "non-religion" as first item, and "religious affiliation" only in the second place [Sobczak 2007, 1183].

2.2. In the light of the Penal Code of 1997

Article 194 PC reads: "Whoever restricts another person in exercising the rights vested in the latter, for the reason of this person's affiliation to a certain faith or their religious indifference shall be subject to a fine, the penalty of restriction of liberty or the penalty of deprivation of liberty for up to 2 years." The protection covers freedom from religious discrimination, i.e. a discrimination based on a person's attitude to religion, in both internal and external aspects thereof [Janyga 2010, 144].

This provision protects freedom of religion in the sense of the right to maintain religious convictions [Kozłowska-Kalisz and Kucharska-Derwisz 2006, 220]. "Convictions" in the context of religion are understood as beliefs and convictions other than religious beliefs, but concerning the same sphere of problems, i.e. the origin, structure and purpose of the existence of the individual, mankind and the entire world [Łopatka 1995, 13]. These convictions may concern adherence to a particular religion or not adhering to any religion, and therefore include the right to hold a particular religious or non-religious worldview [Kozłowska-Kalisz and Kucharska-Derwisz 2006, 222]. This right, boiling down to the freedom to choose a religious world-view, is correlated with the freedom from all forms of pressure to adopt or renounce one's chosen view on faith and religion [ibid.]. The term "freedom" encompasses both the freedom "to" (positive liberty), i.e. to hold certain convictions concerning religion, and the freedom "from" (negative liberty), i.e. from any interference or imposition in this regard [ibid.]. From this understanding of freedom stems the principle of equality in terms of "the equality of all people, expressed in the fact that they have the same right to participate in social life (political, cultural or economic life) regardless of whether they belong to a particular religious group or not" [Hypś 2015, 970].

[19] Regarding the object of protection of freedom of conscience and religion, important remarks were noted by A. Wąsek: "Crimes against freedom of conscience and religion are associated by many with acts that were criminalised during the period of the Polish People's Republic as part of the campaign against the Catholic Church, the bastion of independence and resistance to the communist party and administrative apparatus of the totalitarian state" [Wąsek 1995, 27].

According to J. Krukowski, the term "discrimination" means different treatment of people who are in the same situation, with no rational basis for such differentiation. Such different treatment of people violates the fundamental principle of equality resulting from human dignity vested in every human being (Article 30). Therefore, the Constitution of the Republic of Poland of 1997 provides for the prohibition of discrimination in political, social or economic life for any reason whatsoever (Article 32(1)). This prohibition also includes discrimination because of religious beliefs [Krukowski 2008, 264].

As N. Kłączyńska put it, the religious criterion of discrimination has been "privileged" (in comparison with other types of offences) in a two-stage way: 1) it is listed in a closed catalogue of the criteria for which discrimination in its particular manifestations is prohibited (Articles 118 PC – extermination; 119 PC – violence and unlawful threat; 256 PC – propagation of fascism and totalitarianism; 257 PC – insulting a group or a person); 2) it is generally prohibited [Kłączyńska 2005, 176].

On the objective side, Article 194 of the Criminal Code uses the criterion of "restricting" a given person in exercising this person's rights [Wojciechowska 2004, 722]. The quite general formulation of the scope of the characteristics of the causative action raises controversy among scholars in the field. According to A. Wąsek, the types of offences under Article 194 of the project Penal Code of 1994 does not fully correspond to the requirements stemming from the principle of *nullum crimen, nulla poena sine lege certa* to precisely define the characteristics of the prohibited act [Wąsek and Wąsek-Wiaderek 2003, 211],[20] and due to the wide range of conduct criminalized by law – to the principle of *ultima ratio* of criminal policy [Janyga 2017, 641–42]. The "restricting in rights" may involve both action and omission. The set of restrictions may also include hindering or preventing the use of the catalogue of rights vested in the victim [Hypś 2015, 970].

S. Hypś rightly assumes that the restriction may also involve the failure to grant certain rights if the victim is entitled to obtain them [ibid.]. In view of this, commentators are unanimous that the scope of the rights that may be restricted covers "all kinds of rights, and thus both human and civil rights, including those constitutionally guaranteed, as well as other rights stemming from both administrative law (e. in the establishment and operation of schools, the practice of a particular profession or public service), the establishment of associations (where the relationship to religion is a prerequisite for refusing certain benefits or concluding certain civil-law contracts), labour law

[20] The authors considered as pointless in legislative terms (and therefore not used in modern penal codes) to define a criminal act e.g. in the following manner: "whoever restricts a person in their rights because of their political views, nationality or statelessness." According to the authors, the scope of criminalisation of restricting persons in their rights is sufficient, for example through the use of violence or unlawful threat (Article 191 PC).

(possibility of taking up employment, promotion, amount of remuneration), financial law (access to loans and other banking and financial services, grants, etc.), economic law (possibilities to carry out certain production, commercial or service activities, refusal to grant a licence), educational law (in the event of unequal treatment of pupils at school, preventing access to higher education for religious reasons), copyright law and any other laws" [Sobczak 2017, 1185] and even acceptable customs [Hypś 2015, 970].[21]

The offender under Article 194 PC can be whoever meets the general conditions relating to criminal liability. The literature rightly points out that the very nature of this crime implies that, although of a universal nature, it can only be committed by a person who holds a certain degree of power allowing to exclude or limit access to the exercise of rights [Paprzycki 2021]. For example, it is even pointed out that, in the first place, they will be holders of public functions, especially in central or local government bodies. There are also possible "restrictions of rights in schools, not only in public ones, due to the subordination of students to teachers and school authorities. A possible situation is also discrimination due to professional dependence in the private sector, for example between an employer and an employee, where the possible pressure results, for example, from the economic strength of the former" [ibid.]. On the other hand, "a refusal of admission to a religious organization because of candidate's failure to meet the required criteria, e.g. admitting a declared atheist to a religious association of a theistic nature" [ibid.], or the introduction of a religious criterion in the case of activities carried out by churches and religious associations, do not constitute discrimination [Sobczak 2017, 1185].

As regards subjective aspects, the act described in Article 194 PC may only be committed intentionally. The motivation of the perpetrator of criminal behaviour is precisely the religious affiliation of a particular person or the lack of such affiliation.[22] Due to this particular offender's motivation (contained in the statutory criteria of the offence), the offence can only be committed with direct intent (*dolus directus*). Since the criterion of "restriction" does not specify the conduct of the offender in more detail, it is quite complicated to take as a basis for qualifying the conduct of the offender and to prove the motives for his or her action (or omission) in the sphere of proof, as it entails the need to objectively establish the circumstances of a subjective nature [Kłączyńska

[21] Similarly also e.g. Chybiński, Gutekunst, and Świda 1975, 236; Wojciechowska 2004, 722; Bojarski, Giezek, and Sienkiewicz 2004, 457.

[22] J. Wojciechowska defines religious affiliation as "membership in a particular religious community recognized by the State, whose dogmas, beliefs or rites are not contrary to public order or public morals. They are defined by the religious community itself and can have a more or less formalized character." On the other hand, according to this author, "the concept of non-religion means, from a formal point of view, the lack of membership in any religious community, and from the point of view of beliefs an atheistic worldview" [Wojciechowska 2001, 78].

2005, 197–98] and the offender usually conceals the true intentions behind his or her action [Krukowski 2008, 264].

As a side note, it should be added that the situation is different when the provision of Article 194 PC contradicts other provisions. Thus, when the offender's conduct consisting in restricting rights due to someone's religious affiliation or lack thereof is at the same time combined with the use of violence or unlawful threats against the person affected or because of his/her national, ethnic, racial, political, religious affiliation or lack thereof, then Article 119(1) PC (violence and unlawful threat) excludes the application of Article 194 PC in accordance with the principle of consumption of cumulative provisions [Hypś 2015, 972; Wojciechowska 2012, 596]. On the other hand, where the criteria of the offence under Article 257 PC (insulting a group or a person) are all met at the same time, the behaviour of the perpetrator should be qualified cumulatively, i.e. under Article 194 and Article 257 PC (insulting a group or a person). The cumulative qualification under Article 194 PC and Article 231 PC (abuse of office) may take place where the religious discrimination was committed by a public officer.[23]

It is generally accepted that punishable discrimination under Article 194 PC is an offence characterised by its results and is committed when there has already been a restriction on the exercise of the victim's rights [Wojciechowska 2004, 722; Krajewski 2008, 66].

The offence of religious discrimination is punishable by a fine, restriction of liberty or imprisonment for up to 2 years. Under the current legislation, due to a regulation alternative to the sanctions provided for in the provision, it is possible to apply the directive set forth in Article 58(1) PC (choice of punishment) and Article 59 PC (renouncing the imposition of a punishment), in the latter case provided that the conditions specified in the provision are met.

CONCLUSIONS

In conclusion, it must be said that the State is obliged to provide "everyone" with protection in the sphere of values declared by this person. In the context of the issue of protection due to religion under Article 194 PC, such guarantees are secured through criminal law norms by the Polish state and it seems that it does so effectively. This can be evidenced by the negligible number of such crimes recorded by law enforcement agencies. On the other hand, the proceedings initiated and offences detected under Article 194 of the Criminal Code for the years 2006–2020 are as follows:[24]

[23] This position was first put forward by Wąsek 1995, 31.

[24] For more detail, see also Krajewski 2008, 77.

YEAR	Proceedings initiated	Offences detected
2020	2	0
2019	2	2
2018	1	0
2017	3	0
2016	6	0
2015	2	0
2014	4	0
2013	4	0
2012	1	3
2011	4	1
2010	1	2
2009	2	0
2008	5	0
2007	7	0
2006	4	1

Source:https://statystyka.policja.pl/st/kodeks-karny/przestepstwa-przeciwko-5/63489,Dyskryminacja-wyznaniowa-art-194.html [accessed: 10.09.2021].

In view of the above, it should be stated that the norm of Article 194 PC significantly contributes to limiting the behaviour consisting in violating someone else's religious beliefs or the right not to profess any religion.

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