

THE CONSTITUTIONAL PROTECTION OF FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION: AN ANALYSIS OF RELATED CRIMES IN POLAND

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Abstract. Freedom of thought, conscience, and religion is a universally recognized right, enshrined in human rights catalogues and the constitutions of democratic states governed by the rule of law. This freedom is also protected in the 1997 Constitution of the Republic of Poland, specifically in its second chapter. This paper aims to examine Article 53 of the Polish Constitution and analyse the level of crimes that violate this provision in Poland.

Keywords: Constitution of the Republic of Poland; crime level; freedom of religion; freedom of belief.

INTRODUCTION

Freedom of thought, conscience, and religion is a universally recognized right, enshrined in human rights charters worldwide. The Universal Declaration of Human Rights of 1948, adopted in the aftermath of World War II, established the protection for inherent dignity and inalienable rights of man, including freedom of thought, conscience, and religion, as a fundamental goal of humanity. This Declaration laid the foundation for subsequent conventions and international treaties designed to protect universal human rights. In democratic societies, the importance of safeguarding religious freedom is widely acknowledged, and this freedom is enshrined

in the constitutions of democratic nations, including Poland. This constitutional recognition underscores the significance of religious freedom and enables the establishment of systems to protect it. However, despite these comprehensive safeguards, the freedom of thought, conscience, and religion is not always fully respected. In this context, the principle of proportionality – considered a meta-principle of constitutional law – plays a crucial role. It imposes certain limitations on governmental decisions that impact individual rights and freedoms.

Cultural and religious diversity is increasingly common in the modern world and is visible also within individual European countries. Globalization, the war in Ukraine, migration, and the crisis facing the Catholic Church in Europe reflect a clash of civilizations and religions, as described by S. Huntington, underscoring the critical need to protect religious freedom. Nation-states play a crucial role in this context, as they are responsible for safeguarding religious freedom through their legal frameworks and institutions [Mikołajczuk and Maksymiuk 2023, 7-8]. Actions that infringe upon the freedom of religion and conscience may constitute criminal offences. This article aims to examine the Polish legal framework concerning the constitutional protection of freedom of conscience and religion. Furthermore, it analyses the level of related crimes and the relevant legislation designed to safeguard religious freedom.

1. FREEDOM OF CONSCIENCE AND RELIGION IN THE 1997 CONSTITUTION OF THE REPUBLIC OF POLAND

Article 53 (Chapter II) of the 1997 Constitution of the Republic of Poland¹ constitutes the basic guarantee of religious freedom. It reads as follows:

- 1) Freedom of conscience and religion shall be ensured to everyone;
- 2) Freedom of religion shall include the freedom to profess or to accept a religion by personal choice as well as to manifest such religion, either individually or collectively, publicly or privately, by worshipping, praying, participating in ceremonies, performing of rites or teaching. Freedom of religion shall also include possession of sanctuaries and other places of worship for the satisfaction of the needs of believers as well as the right of individuals, wherever they may be, to benefit from religious services;
- 3) Parents shall have the right to ensure their children a moral and religious upbringing and teaching in accordance with their convictions. The provisions of Article 48(1) shall apply as appropriate;

¹ The Constitution of the Republic of Poland of 2 April 1997, Journal of Laws No. 78, item 443 as amended.

- 4) The religion of a church or other legally recognized religious organization may be taught in schools, but other peoples' freedom of religion and conscience shall not be infringed thereby;
- 5) The freedom to publicly express religion may be limited only by means of statute and only where this is necessary for the defence of State security, public order, health, morals or the freedoms and rights of others;
- 6) No one shall be compelled to participate or not participate in religious practices;
- 7) No one may be compelled by organs of public authority to disclose his philosophy of life, religious convictions or belief.

The above provision guarantees freedom of conscience and religion to everyone, not just citizens of the Republic of Poland. This is not merely a vague declaration; six subsequent paragraphs explicitly outline what freedom of religion involves. These are: manifestations of one's religion, issues related to the moral and religious upbringing and education of children, and religious education in schools. The provision also includes a limitation clause on the freedom to publicly express one's religion, a prohibition on forcing religious practices on others, and the right to remain silent [Olszówka 2016, 1248-249]. The doctrine indicates that safeguarding freedom of religion in the constitution was essential for protecting other freedoms. Thus, freedom of religion is considered the fundamental freedom that "sustains the *raison d'être* of other freedoms deeply rooted in each person" and "is the first and indispensable right of a human being" [Sobczyk 2001, 212-13]. It should also be emphasized here that the constitutional provisions regarding religious issues were influenced by the Concordat signed in 1993,² as well as the doctrine of the Catholic Church [Krukowski 1993, 259-60; Maksymiuk and Szmulik 2023, 217].

The Constitutional Tribunal has also examined freedom of conscience and religion, recognizing it as a fundamental and essential human right. The Tribunal ruled that "the way in which freedom of conscience and religion is treated in the 1997 Constitution reflects respect for European democratic standards, while also acknowledging Polish traditions, social conditions, and the political changes that occurred before the Constitution was adopted" (ruling of the Constitutional Tribunal 2009). As Potrzeszcz notes: "[...] The Tribunal carried out a systematic analysis of constitutional provisions regarding freedom of conscience and religion. Conscience is referenced in the Preamble to the Constitution [...], as well as in Articles 48(1) [...], 85(3) [...], and 233(1) [...]; however, it is Article 53 that is undeniably central to defining freedom of conscience and religion [...]." The prominent position of this freedom in the catalogue of human rights is justified primarily

² Concordat between the Holy See and the Republic of Poland, signed in Warsaw on 28 July 1993, Journal of Laws of 1998, No. 51, item 318.

by its substantive significance and chronological priority, as noted by Sobczyk (Ruling of the Constitutional Tribunal 2015) [Potrzeszcz 2023, 12-13].

Freedom of conscience and religion is a personal right closely tied to an individual's identity. It allows each person to profess and practice their religion according to their own beliefs, whether publicly or privately. The protection of religious freedom is fundamentally linked to human dignity, as recognized in Article 30 of the Polish Constitution. In other words, it results directly from the constitutional principle of human dignity [Grądzka 2023, 297ff].

2. OFFENCES AGAINST FREEDOM OF CONSCIENCE AND RELIGION IN POLAND

2.1. Offences under Article 194 of the Penal Code

Given its significance, freedom of conscience and religion receives special legal protection, as it may be exposed to different forms of violations or crimes. These offences are addressed in Chapter XXIV of the Polish Penal Code.³ The first prohibited act is religious discrimination. Pursuant to Article 194 of the Penal Code, anyone who restricts another person from exercising their rights due to that person's affiliation to a certain faith, or due to their religious indifference, is liable to a fine, the restriction of liberty or imprisonment for up to 2 years. This provision directly relates to the constitutional principle of equality and its corollary – the prohibition of discrimination [Gądzik 2021, 6]. It states clearly that discrimination cannot be perpetrated for any reason, thus eliminating any circumstances that might justify it. This is a strict prohibition. The Penal Code prescribes punitive measures to prevent religious discrimination. The protection provided under this provision extends only to affiliations with religious groups or communities recognized by the state and whose activities do not violate public order and morality [Grądzka 2023, 323].

Table 1. Police statistics on offences under Article 194 of the Penal Code

Year	Number of initiated proceedings	Number of confirmed offences
2020	2	0
2019	2	2
2018	1	0
2017	3	0
2016	6	0
2015	2	0
2014	4	0
2013	4	0

³ Act of 6 June 1997, the Penal Code, Journal of Laws of 2024, item 17 as amended [hereinafter: the Penal Code].

Year	Number of initiated proceedings	Number of confirmed offences
2012	1	3
2011	4	1
2010	1	2
2009	2	0
2008	5	0
2007	7	0
2006	4	1
2005	1	0
2004	3	2
2003	6	1
2002	0	1
2001	1	1
2000	1	0
1999	3	1

Source: <https://statystyka.policja.pl/st/kodeks-karny/przestepstwa-przeciwko-5/63489,Dyskryminacja-wyznaniowa-art-194.html> [accessed: 25.06.2024].

The data show that both the number of initiated proceedings and the number of confirmed offences under Article 194, are minimal. Therefore, the level of crime under this provision is low in Poland. Offences under Article 194 are material in nature. Since the legislator does not specify or prioritize the rights of the injured party, any limitation of a right arising from Article 194 constitutes a violation of that Article. However, a certain set of such rights can be inferred from civil law, particularly in matters of culture and charity, or labour and business law, all of which stem from the principle of equality [Gądzik 2021, 5-6]. These include, for example, restrictions on establishing or running schools, limitations on the right to perform public service, the right to fair remuneration for work performed, and the right to professional advancement on equal terms [Makarska 2005, 87].

Importantly, not every type of behaviour constitutes discrimination, and not every limitation of a person's rights implies discrimination. In some cases, differentiation (when carried out in accordance with the principle of equality) can provide equal opportunities, and does not constitute discrimination. In this context, it is crucial to prove that the perpetrator's actions were motivated by the religious affiliation (or lack thereof) of the injured party [Gądzik 2021, 5; Paprzycki 2015, 103].

2.2. Offences under Article 195 of the Penal Code

Another offence defined in Chapter XXIV of the Penal Code is disturbance of a religious ceremony or mourning rites. Article 195 states: "§ 1. Anyone who maliciously disturbs the public performance of a religious

ceremony of a church or other religious association with regulated legal status, is liable to a fine, the restriction of liberty or imprisonment for up to 2 years. § 2. Anyone who maliciously interferes with a funeral, mourning ceremonies or rites is liable to the same penalty.”

Disturbance refers to an activity that interferes with or hinders the performance of a religious ceremony (it can be both an act or omission). It may include, for example, closing the doors to a church, attempting to demonstrate or shout over the leader of a religious rite, or blocking the road during a religious procession. A religious act can be defined as “any act of a religious nature, such as a worship service, prayer, blessing, meditation, consecration, baptism, wedding, procession, or pilgrimage,” provided it is performed in a place and in a manner specified by the ceremonial practices of a given faith [Kozłowska-Kalisz 2024].

Table 2. Police statistics on offences under Article 195 of the Penal Code

Year	Number of initiated proceedings	Number of confirmed offences
2020	27	14
2019	30	25
2018	29	13
2017	37	16
2016	13	0
2015	14	0
2014	16	8
2013	11	12
2012	13	15
2011	12	11
2010	14	13
2009	6	12
2008	19	26
2007	13	17
2006	15	22
2005	27	16
2004	20	25
2003	21	44
2002	17	15
2001	16	12
2000	14	15
1999	14	23

Source: <https://statystyka.policja.pl/st/kodeks-karny/przestepstwa-przeciwko-5/63491,Przeszkadzanie-publicznemu-wykonywaniu-aktu-religijnego-lub-obrzedom-zalobnym-ar.html> [accessed: 25.06.2024].

The level of crime under Article 195 of the Penal Code is visibly higher than that under Article 194; however, it is still relatively low. The number of initiated proceedings ranged from 6 in 2009 to 37 in 2017, while the number of confirmed offences ranged from 0 in 2015 and 2016 to 44 in 2003. There is no discernible trend indicating an increase or decrease in the number of offences involving disturbance of religious ceremonies or mourning rites.

Under Article 195 of the Penal Code, for a perpetrator's actions to be penalized, the religious ceremony must be conducted publicly. This provision applies to Churches and other religious associations with regulated legal status, aiming to eliminate any doubts concerning the behaviour of community members. Moreover, the disturbance must be malicious, i.e.; driven by a desire to offend, insult, or ridicule the feelings of those participating in a religious ceremony [Góral 2010, 311]. The duration and persistence of the disturbance are not relevant in this case, although they may indicate that the disturbance was malicious [Stefański 2005, 60-63].

2.3. Offences under Article 196 of the Penal Code

Finally, the third offence against freedom of conscience and religion is the offence of insulting religious feelings. Pursuant to Article 196 of the Penal Code: "Anyone who offends the religious feelings of others by publicly blaspheming an object of religious worship or a place dedicated to the public celebration of religious rites, is liable to a fine, the restriction of liberty or imprisonment for up to 2 years."

Religious feelings should be understood here as an element of religion that encompasses specific behaviour, way of speaking, or a set of beliefs. Thus, they express a personal attitude towards one's religion or faith [Kruczoń 2011, 40-41].

Table 3. Police statistics on offences under Article 196 of the Penal Code

Year	Number of initiated proceedings	Number of confirmed offences
2020	130	97
2019	80	53
2018	58	45
2017	70	60
2016	54	46
2015	59	32
2014	55	38
2013	51	54
2012	47	51
2011	42	33
2010	48	52

Year	Number of initiated proceedings	Number of confirmed offences
2009	33	39
2008	45	49
2007	55	57
2006	49	38
2005	44	88
2004	51	44
2003	30	32
2002	47	44
2001	54	56
2000	68	145
1999	61	59

Source: <https://statystyka.policja.pl/st/kodeks-karny/przestepstwa-przeciwko-5/63492,Obraza-uczuc-religijnych-art-196.html> [accessed: 25.06.2024].

Based on the above data, it can be concluded that insulting religious feelings is the most frequently committed offence against the constitutional freedom of conscience and religion. In the analysed years, the number of initiated proceedings varied between 30 in 2003 and as many as 130 in 2020. A slight (although irregular) upward trend can be observed here. The number of offences confirmed ranged from 32 in 2003 and 2015 to 145 in 2000.

Article 196 of the Penal Code provides protection against offending religious feelings. Such protection can be also derived from the constitutional freedom of speech (Ruling of the Constitutional Tribunal 1994). An insult should be understood as an expression of contempt, disregard, or offence that violates socio-cultural norms and customs. The perpetrator's behaviour must be directed at the religious feelings of an individual or a group. Additionally, the legislator confines the scope of the perpetrator's actions to places designated for public worship (e.g., churches) or places temporarily adapted for such purposes (e.g., field masses during pilgrimages) (Decision of the Supreme Court 2015). An insult can take various forms beyond just verbal expression. It may include offensive gestures, written texts, audiovisual materials, installations, or organized events that convey offensive content. Destroying an object of religious worship is also considered an insult. An insult may also be committed with the use of mass media (e.g. social media, television).

CONCLUSIONS

Freedom of conscience, belief, and religion is constitutionally recognized in Poland and is intrinsically linked to fundamental principles such as dignity and equality. Doctrine and case law have consistently defined this freedom as a foundational principle from which other rights and freedoms

derive. Consequently, it receives special protection under various laws, including the Penal Code. Among the offences enumerated in Articles 194-196 of the Penal Code (religious discrimination, disturbing the public performance of a religious ceremony or funeral rites, and offending religious feelings), offences that insult religious feelings constitute the highest percentage of reported and committed crimes in Poland between 1999 and 2020 (data provided by the police website). However, it is important to note that these statistics may not fully reflect the actual number of violations of religious rights, as many such violations may go unreported.

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