

Freedom of conscience and confession in acts of international law and European law

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Introduction

Of all human rights, freedom of conscience and confession is undoubtedly one of the foundations of a democratic society. The seriousness with which freedom of conscience and confession is considered today is confirmed by the fact that this freedom is recognised, regulated and guaranteed by currently applicable acts of international and European law¹. In modern democratic states this freedom is a universally binding law, as it has become an integral part of democracy. As a rule, it is guaranteed by the state constitution, which determines the right to express one's confession, to practice it, or to engage in worship².

After the end of World War II, the importance and significance of freedom of conscience and confession was confirmed in the international arena by the adoption of international legal acts, which exposed and consolidated the importance of these rights. In truth, the actual guarantees and the limits of their observance are usually determined by the practices of a given state. The main role here is played by the judicature, headed by the jurisprudence of constitutional courts and the European Court of Human Rights.

Freedom of conscience and confession evolved over a long period of time under the influence of many social, historical and philosophical processes. As a result of hundreds of years of deliberations and activities of philosophers and legal theorists, in the legal acts of individual states as well as in the acts of international law, the scope of religious freedom and other rights resulting from it can be found under various names: *freedom of conscience and confession*, *freedom of religion*, *freedom of belief*, *freedom of worship*, *freedom of thought and belief*, *freedom of conscience and religion*, *freedom of thought, conscience and religion*, *freedom to profess and proclaim religious, irreligious, and anti-religious ideas and doctrines*, etc. Most often, however, the terms freedom of conscience and confession and freedom of conscience and religion are used³.

Michał Pietrzak rightly noted that when it comes to the definitions of this freedom in the Constitution, treaties or international agreements, we encounter what is likely the largest diversity of names and terms⁴.

The situation is similar in the case of Polish legislation, which will be subjected to analysis. Article 53(1) of the Constitution of the Republic of Poland uses the expression

¹ P. JABŁOŃSKA, *Dziecko jako podmiot wolności religijnej. Nauczanie religii w polskiej szkole publicznej a wolność sumienia i wyznania osoby małoletniej w świetle prawa świeckiego i kanonicznego*, Warszawa 2023, p. 19, in https://centrumwolnosci.uksw.edu.pl/wp-content/uploads/sites/30/2023/06/Dziecko_jako_podmiot_wolnosci-Paulina_Jablonska.pdf [accessed: 12.04.2024].

² P. JABŁOŃSKA, *Wolność sumienia i wyznania osoby małoletniej w Polsce w latach 1918–2015* [Freedom of conscience and confession of minors in Poland from 1918 to 2015], Warszawa 2022, p. 17, <https://centrumwolnosci.uksw.edu.pl/wp-content/uploads/sites/30/2023/06/Wolnosc-sumienia-i-wyznania-osoby-maloletniej-w-Polsce-w-latach-1918-2015.pdf> [accessed: 12.04.2024].

³ M. PIETRZAK, *Prawo wyznaniowe*, Warszawa, Lexis Nexis, 2010, p. 20.

⁴ *Ibidem*.

freedom of conscience and religion, thus departing from the concept of freedom of conscience and confession, grounded in the literature and the Constitution of March 1921.

The meaning of the terms religion and confession

Most legal scholars and commentators point to the difficulty in explaining the term *religion*. Individual authors find this concept very difficult to define⁵. M. Sadowski claims that a *precise definition of the concept of religion poses a number of difficulties*⁶. A similar opinion is expressed by M. Pietrzak, who believes that *there has been no scientifically satisfactory definition of religion to this day*⁷. This sentiment is also shared by other authors who agree that *religion as a phenomenon is difficult to describe*⁸, *that it is impossible to create a satisfactory definition*⁹, *that every definition seems incomplete, insufficient, not always reliable*¹⁰. One exception is the doctrinal position according to which the *features of religion and confession do not seem to raise any major doubts*¹¹.

Religion is a very complex phenomenon, so it is difficult to provide a single definition, containing all the essential elements. As an example, *one can give definitions presented in the literature: "Religion is an experienced practical relationship to what and how one believes is a supernatural being or beings [...] Therefore, religion is a mode of conduct and a system of beliefs and feelings"*¹², *"personal individual, and at the same time positive attitude of a human being to religion... Religiosity, then, is all that human beings experience and feel, and everything that happens to them, takes place, functions in direct relation to their attitude to God"*¹³. Religion is often defined as *a system of interrelated beliefs and practices relating to sacred things, that is, the separated and forbidden things, the beliefs and practices that unite all believers into a single moral community referred to as the church*¹⁴.

The biggest problem with the definition of *religion* and *confession* is to define the boundary between these concepts. The term "confession" also poses certain problems. Some of the legal scholars and commentators hold that the terms "religion" and "confession" have a similar, and perhaps even synonymous, meaning. In turn, there are opinions among legal scholars and commentators that the term confession also refers to

⁵ T. BIAŁEK, *Unijna polityka antydyskryminacyjna na przykładzie dyrektywny 2000/78/WE* [in:] G. Baranowska et al. (editors), *O prawach człowieka. Księga jubileuszowa Profesora Romana Wieruszewskiego*, Warszawa 2017, LEX n. 369424232.

⁶ M. SADOWSKI, *Religie monoteistyczne o prawie I państwie*, in «*Studia Erasmiensis Wratislaviensis*», 5, 2011, p. 14.

⁷ M. PIETRZAK, *Prawo wyznaniowe...*, p. 11.

⁸ M. PIECHOWIAK, *Wolność religijna – aspekty filozoficzno – prawne*, Toruński Rocznik Praw Człowieka i Pokoju 1994-1995, vol. 3, p. 7.

⁹ R. PAPRZYCKI, *Prawna ochrona wolności sumienia i wyznania*, Warszawa, 2015, p. 2.

¹⁰ C. MASEK, *Status prawny sekt destrukcyjnych oraz nowych ruchów religijnych działających na obszarze Polski*, *Studia Prawnicze* 2017, vol. 1, p. 143.

¹¹ K. ŚMISZEK, *Komentarz do art. 1* [in:] K. Kędziora, K. Śmiszek (editors), *Ustawa o wdrożeniu niektórych przepisów Unii Europejskiej w zakresie równego traktowania. Komentarz*, Warszawa 2017, LEX n. 587722457.

¹² A. YERGOTE, *The religious man*, Dublin, 1969, p. 10.

¹³ CZ. WALESIA, *Psychologiczna analiza rozwoju religijności człowieka ze szczególnym uwzględnieniem pierwszych okresów jego ontogenezy*, in Z. CHLEWIŃSKI (ed.), *Psychologia religii*, Lublin, 1982, p. 144.

¹⁴ E. DURKHEIM, *Elementarne formy życia religijnego: system totemiczny w Australii*, Wydawnictwo Naukowe PWN, Warszawa, 1990, p. 31.

other beliefs based on a non-religious worldview, such as atheism¹⁵. It should also be noted that a literal definition points to the treatment of the concepts of “religion” and “confession” as synonymous expressions¹⁶.

A definition of the term ‘confession’ is given by Wikipedia: «a religious group based on a single set of truths of faith (“confession”, creed). In organizational terms, such a group may be concentrated in one organizational structure or in many. Such a structure under Polish law is referred to as a ‘religious association’, and in religious studies and the law of Anglo-Saxon countries also as a ‘religious denomination’. Sometimes, although imprecisely, a religious association is referred to as a confession»¹⁷.

In Polish legislation this term was defined in the Act of 4 March 2010 on the National Census of Population and Housing in 2011, in Article 2 point 12, which stipulates that whenever the Act refers to confession – religious affiliation – it is understood as formal participation or emotional connection of a person with a particular religious confession, church or religious association¹⁸.

This concept also has its place in religious studies, where *the term “confession”* is used interchangeably with such terms as *denomination*. These terms mean a specific religious option and generally refer to Christian Churches as well as ecclesial communities that were established as independent communities following the division of the Church after 1517¹⁹. In Polish legislation, the term *confession* (Polish: *wyznanie*) has become the equivalent of the term *religion*²⁰. As indicated in the literature of the subject, freedom of religion or confession consists of three components, i.e. freedom of confession (religious nature), freedom of thought (individual nature), and freedom of conscience (ethical nature)²¹.

Freedom of conscience and confession in the Constitution of the Republic of Poland of 2 April 1997

Freedom of conscience and religion was legally regulated primarily in the Constitution of the Republic of Poland of 2 April 1997. The most important guarantee of this freedom is Article 25(2), which reads as follows: «Public authorities in the Republic of Poland shall be impartial in matters of personal conviction, whether religious or philosophical, or in relation to outlooks on life, and shall ensure freedom of their expression within public life»²².

It contains two expressions: *Freedom of conscience and confession* (Article 48(1)) and

¹⁵ J. SZYMANEK, *Wolność sumienia i wyznania Konstytucji RP*, in «Przegląd Sejmowy», 14, 2, 73, 2006, pp. 49-54.

¹⁶ S. SKORUPKA, H. AUDERSKA, Z. ŁEMPICKA, (eds), *Mały słownik języka polskiego*, Warszawa, 1968, p. 952.

¹⁷ <https://pl.wikipedia.org/wiki/Wyznanie> [accessed: 11.04.2024].

¹⁸ P. KROCZEK, *Prawo wewnętrzne związków wyznaniowych w perspektywie organów władzy publicznej: Klauzule ogólne*, Kraków, 2017, pp. 17-18.

¹⁹ See: *Konfesja* [in:] H. VORGRIMMER, *Nowy leksykon teologiczny*, prepared by T. MIESZKOWSKI, P. PACHCIAREK, Warszawa, 2005, p. 152 and *Denominacja*, in *Ibidem*, p. 62.

²⁰ See: Article 67 (2), Article 81 (1) and (2), Article 95 of the Constitution of 1952; Article 53 (7), Article 233 (2) of the Constitution of the Republic of Poland of 1997.

²¹ K. WARCHAŁOWSKI, *Prawo do wolności myśli, sumienia i religii w Europejskiej Konwencji Praw Człowieka i Podstawowych wolności*, Towarzystwo Naukowe Katolickiego Uniwersytetu Lubelskiego Jana Pawła II, Lublin 2004, p.77.

²² Constitution of the Republic of Poland of 2 April 1997, Journal of Laws of 1997, No. 78, item 483.

freedom of conscience and religion (Article 53)²³. In the Constitution, among provisions that should be considered appropriate from the point of view of freedom of conscience and confession we should also include Article 35 (2) (the right of national and ethnic minorities to create their own educational institutions, cultural institutions, and institutions for the protection of religious identity), Article 85 (the right to refuse military service on the grounds of religious or moral beliefs) and Article 233 (prohibiting exceptional restrictions on religious freedom in times of martial law and states of emergency). Moreover, the following provisions are also important for the exercise of freedom of conscience and confession: Article 30 (granting human dignity as the source of freedom and human rights), Article 31 (setting out the principles and limits of restrictions on the exercise of constitutional rights and freedoms), Article 54 (guaranteeing freedom of expression and of obtaining and disseminating information), Article 57 (guaranteeing freedom to organise and participate in peaceful assemblies) and Article 58 (guaranteeing freedom of association). The legislator, through the content of Article 53 (1), guarantees freedom of conscience and confession to every person. The source of freedom of conscience and confession religion is human dignity, which is inherent and inalienable, and the legal protection of which results from the obligations of public authorities in a democratic state governed by the rule of law, whereas the Constitution solely proclaims the freedom of conscience and confession²⁴. In the Constitution the legislator did not define the concept of *freedom of conscience*, nor did it specify its possible restrictions. In the Constitution there is also no definition of the term *freedom of confession*, while in Article 53(2) the legislator defines the concept of *freedom of religion*, which is *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 also includes 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.*

With regard to the area of freedom of conscience and confession understood in collective terms, the Constitution of the Republic of Poland distinguishes churches and other religious associations from different types of organizations and also orders their equal treatment (Article 25 (1)). It grants them the right to have places of worship and temples, as well as the right to teach religion in schools, provided that the freedom of conscience and confession of others is not violated (Article 53 (4)). Article 53(5) of the Constitution provides for the possibility of restrictions on the manifestation of religion, while at the same time imposing requirements stating that this may occur only pursuant to statute and only if it is an exceptional measure. Therefore, the possibility of restriction of religious freedom by means of normative acts or regulations or by administrative organs of state and local government is excluded. Importantly, the reasons for the restriction of religious freedom include: The obligatory protection of state security, public order, health, morality or the freedom and rights of others. The above barriers, imposed by statute, may not violate the essence of freedom of conscience and confession in accordance with Article 31(3) of the Constitution of the Republic of Poland²⁵.

²³ P. JABŁOŃSKA, *Dziecko jako...*, p. 31.

²⁴ P. PETASZ, *Przemiany karnoprawnej ochrony wolności sumienia i wyznania w Polsce*, Wydawnictwo Uniwersytetu Gdańskiego, Gdańsk, 2022, p. 108.

²⁵ P. JABŁOŃSKA, *Dziecko jako...*, p. 68.

International agreements guaranteeing freedom of conscience and confession

Regardless of the regulations that are contained in the constitutions of individual countries, the standard of protection of freedom of conscience and confession is defined by numerous acts of international law. As a rule, their aim is to develop peaceful conditions of social life. Acceptance of provisions on religious freedom emphasizes their importance in the international arena. The most important acts in this area include: the 1948 United Nations Universal Declaration of Human Rights, together with United Nations General Assembly Resolution 217 (III), the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms, the 1966 International Covenant on Civil and Political Rights, the 1966 International Covenant on Economic, Social and Cultural Rights, the 1975 Final Act of the Conference on Security and Cooperation in Europe, the 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (adopted by the United Nations General Assembly), the 1990 Charter of Paris for a New Europe, and the 1989 Convention on the Rights of the Child.

Universal Declaration of Human Rights

An important part of international law is constituted by the agreements, declarations and conventions adopted by the United Nations, which belong to the global (universal) system of human rights protection.

A landmark act on a global scale is undoubtedly the Universal Declaration of Human Rights, adopted on 10 December 1948 by the General Assembly of the United Nations as a reaction of the world to the experience of war, when *disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind*, and the dignity of the human person has ceased to have any value²⁶. This document had a significant impact on the evolution of other acts of international law related to the sphere of human rights. The fundamental content of the right to religious freedom is defined in Article 18, which states the following: «Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance»²⁷. This freedom includes the possibility of changing one's religion or belief, the freedom to propagate the principles of one's religion or belief. The described freedom concerns both the sphere of activities of the individual as well as those of the communities created by the followers of a given religion. It should be emphasized that the subject of rights related to freedom of religion or belief is every human being²⁸. This article should be read in conjunction with Article 7 of the Declaration. It formulates the principle of equality before the law, non-discrimination and legal protection in this respect. It includes a prohibition of discrimination on religious grounds. According to the essential provision of Article 29 of

²⁶ Universal Declaration of Human Rights Adopted and proclaimed by General Assembly resolution 217 A (III) of 10 December 1948, in https://amnesty.org.pl/wp-content/uploads/2016/04/Powszechna_Deklaracja_Praw_Czlowieka.pdf [accessed: 12.04.2024].

²⁷ *Ibidem*, Article 18.

²⁸ P. JABŁOŃSKA, *Wolność sumienia i wyznania...*, p. 312.

the Declaration, the exercise of, for example, freedom of religion is subject only to such limitations as are determined by law, the purpose of which is to ensure the recognition and respect for the freedoms and rights of others and to satisfy legitimate ethical standards, general welfare and public order in a democratic society.

International Covenant on Civil and Political Rights

The next step in the development of a global system of human rights protection was the International Covenant on Civil and Political Rights, adopted by the United Nations General Assembly on 19 December 1966. This pact gave binding force to the principles of the Universal Declaration of Human Rights. Article 18(1) of the Covenant provides that: «Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching»²⁹. The provisions of the cited article set the general framework of religious freedom.

It is worth pointing out that the content of the above provision corresponds to the wording of Article 18 of the Universal Declaration of Human Rights³⁰. In turn, Article 18 (2) of the cited act states that: «No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice»³¹.

Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief of 25 November 1981

The *acquis* (i.e. accumulated legislation) of the international community includes legal acts of universal scope, which include the Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion and Belief of 1981, which is of particular importance due to the content and degree of religious regulation³². The above-mentioned act constitutes a model for human rights regulations. Given the nature of this act, it generally does not have the property of directly applicable law³³. It is a resolution of interstate bodies, not an international agreement³⁴, and therefore does not create binding law³⁵. The Declaration contains norms aimed at preventing the instrumental use of religious freedom for the purpose of restricting the rights of others³⁶. These norms concerned the elimination of all forms of intolerance and discrimination based on religion or belief³⁷.

²⁹ *International Covenant on Civil and Political Rights* (Journal of Laws of 1977, no. 38, item 167)

³⁰ *Universal Declaration*, cit. .

³¹ *Ibidem*.

³² *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief*, United Nations General Assembly <http://libr.sejm.gov.pl/tek01/txt/onz/1981.html> [accessed: 12.04.2024].

³³ P. JABŁOŃSKA, *Wolność sumienia...*, p. 311.

³⁴ A. KŁAFKOWSKI, *Prawo publiczne międzynarodowe*, Warszawa, 1971, p. 237.

³⁵ C. BEREZOWSKI, *Prawo międzynarodowe publiczne*, part 2, Warszawa, 1969, p. 64.

³⁶ P. JABŁOŃSKA, *Wolność sumienia...*, p. 315.

³⁷ Fragment of the preamble to the Declaration <http://libr.sejm.gov.pl/tek01/txt/onz/1981.html> [accessed: 12.04.2024]. Considering that religion or belief, for anyone who professes either, is one of the fundamental

This Declaration includes a definition of freedom of thought, conscience and confession. Although it is not a binding act but only a programmatic one, it is a model that all United Nations member states should strive for³⁸. Article 1 of the Declaration recognizes that:

- 1) Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have a religion or whatever belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
- 2) No one shall be subject to coercion which would impair his freedom to have a religion or belief of his choice.
- 3) Freedom to manifest one's religion or belief may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others.

Meanwhile, the scope of the concepts is clarified in the content of Article 6 of the Declaration. With regard to the rights that resulted from the freedom of conscience and confession, the following were taken into account in particular:

- (a) To worship or assemble in connection with a religion or belief, and to establish and maintain places for these purposes;
- (b) To establish and maintain appropriate charitable or humanitarian institutions;
- (c) To make, acquire and use to an adequate extent the necessary articles and materials related to the rites or customs of a religion or belief;
- (d) To write, issue and disseminate relevant publications in these areas;
- (e) To teach a religion or belief in places suitable for these purposes;
- (f) To solicit and receive voluntary financial and other contributions from individuals and institutions;
- (g) To train, appoint, elect or designate by succession appropriate leaders called for by the requirements and standards of any religion or belief;
- (h) To observe days of rest and to celebrate holidays and ceremonies in accordance with the precepts of one's religion or belief;
- (i) To establish and maintain contacts with individuals and communities in the field of religion or belief at the national and international levels.

The authors of the Declaration defined intolerance and discrimination on the basis of religion or belief as any distinction, exclusion, restriction or preference based on religion or belief and having as its purpose or as its effect nullification or impairment of the recognition, enjoyment or exercise of human rights and fundamental freedoms on an equal basis³⁹. The significance of the Declaration was also to be extended to national legislation. States were obliged to take all effective measures to counteract and eliminate discrimination on the grounds of religion or views.

elements in his conception of life and that freedom of religion or belief should be fully respected and guaranteed. Considering that it is essential to promote understanding, tolerance and respect in matters relating to freedom of religion or belief and to ensure that the use of religion or belief for ends inconsistent with the Charter, other relevant instruments of the United Nations and the purposes and principles of the present Declaration is inadmissible.

³⁸ P. Jabłońska, *Wolność sumienia...*, p. 316.

³⁹ J. MATWIEJUK, *Konstytucyjno-ustawowa pozycja związków wyznaniowych w Federacji Rosyjskiej*, Białystok, Temida 2, 2016, p. 169.

European Convention for the Protection of Human Rights and Fundamental Freedoms

An important role in guaranteeing freedom of conscience and confession is also played by international agreements of regional scope, concluded within the framework of the Council of Europe, the Organization for Security and Cooperation in Europe and the Commonwealth of Independent States. In post-war Europe, efforts undertaken under the aegis of the Council of Europe led to the creation of the first, exemplary system of regional human rights protection. The European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950,⁴⁰ is the most important document adopted within this framework. The Convention is an international agreement in the field of human rights protection, and its preamble contains a reference to the Universal Declaration of Human Rights⁴¹.

On the basis of the Convention's findings, the European Court of Human Rights was established in 1959, with its seat in Strasbourg. Significant importance should be attached to Article 9 of the Convention, which indicates that: «Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance»⁴². One breakthrough element included in the Convention was the indication of limits on restrictions of religious freedom, as well as the restrictions on activities of religious associations, which are permissible in a democratic state. In Article 9 (2), the Convention indicates situations in which freedom may be restricted: «Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others»⁴³. Of particular importance are two elements where the Convention defines the content of the definition of freedom of conscience and confession, combining them with freedom of thought. Another significant element is also the definition of the group of subjects enjoying the freedoms in question, which in the understanding of the Convention includes all human beings. The Convention therefore also applies directly to minors⁴⁴.

The European Convention on Human Rights and Fundamental Freedoms provides general guarantees of the right to freedom of conscience and confession, but it does not directly guarantee to parents or legal guardians the right to decide on the education of their children⁴⁵.

A State party to the Convention shall be responsible for guaranteeing the rights and freedoms provided by Article 9 of the Convention. Meanwhile, the measures taken should be adequate to the objective of respecting the freedom of confession. The measures include, in particular, legal instruments guaranteeing that others will not interfere with prayer and other religious practices⁴⁶.

⁴⁰ *Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950*
<https://sw.gov.pl/assets/22/49/76/8d016ca98d5b0c19c91fb69e1dc7cec88801c36a.pdf> [accessed: 12.04.2024].

⁴¹ K. WARCHAŁOWSKI, *Prawo do wolności myśli, sumienia i religii w Europejskiej Konwencji Praw Człowieka i Podstawowych Wolności*, Lublin, 2004, p. 48.

⁴² *Convention for the Protection of Human Rights...*, cit. .

⁴³ *Ibidem*.

⁴⁴ P. JABŁOŃSKA, *Wolność sumienia...*, p. 330.

⁴⁵ *Ibidem*.

⁴⁶ *Judgment of the European Court of Human Rights of 26 March 1985 in the Case of X and Y v. the*

When discussing international guarantees of freedom of conscience and confession, one should remember about the European Court of Human Rights as well as the institution of individual complaint, which is an inseparable part of the Council of Europe's human rights regulations. In the event of a violation of any of the rights provided for by the European Convention on Human Rights and Fundamental Freedoms, after exhausting the national legal protection remedies, citizens of individual countries have the ability to lodge a complaint. Such as complaint cannot be anonymous and must meet certain formal requirements.

The ECtHR recognized Article 9 of the Convention as the foundation of a democratic society, which is relevant to believers, atheists, agnostics, sceptics, as well as persons who are religiously indifferent⁴⁷.

Charter of Fundamental Rights of the European Union

The scope of the right to freedom of conscience and confession is broadly covered by the Charter of Fundamental Rights of the European Union, which was adopted at the Nice European Council in 2000. The preamble refers to the spiritual, religious and moral heritage of the European Union. It should be noted that Article 22 states that the European Union respects cultural, religious and linguistic diversity⁴⁸.

The scope of the right to religious freedom is defined in Article 10, which states the following: «Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change religion or belief and freedom, either alone or in community with others and in public or in private, to manifest religion or belief, in worship, teaching, practice and observance»⁴⁹. This regulation is similar to the provisions of the European Convention on Human Rights and Fundamental Freedoms. The difference lies in the absence of an autonomous limitation clause relating to freedom of religion. In such cases Article 52(1) is applicable: «Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others»⁵⁰.

The novelty contained in this article is the unequivocal indication and recognition of the right to refuse actions contrary to one's conscience. This entitlement is, in reality, subject to the relevant provisions of national law. The right to freedom of conscience and confession is also set out in Article 14, which declares respect for the right of parents to guarantee the upbringing and education of their children in accordance with their own religious and philosophical convictions⁵¹.

The guarantees of rights and freedoms arising from the Charter should be interpreted in

Netherlands, application n. 8978/80.

⁴⁷ *Judgment of the European Court of Human Rights of 25 May 1993 in the Case of Kokkinakis v Greece*, application n. 14307/88, § 31.

⁴⁸ *Charter of Fundamental Rights of the European Union* (2016/C 202/02), in <https://eur-lex.europa.eu/legal-content/PL/TXT/PDF/?uri=CELEX:12016P/TXT&from=DE>, [accessed: 12.04.2024], Article 22.

⁴⁹ *Ivi*, Article 10.

⁵⁰ *Ivi.*, Article 52.

⁵¹ P. JABŁOŃSKA, *Wolność sumienia...*, p. 332.

accordance with the European Convention on Human Rights and Fundamental Freedoms. The Court of Justice of the European Union also makes references to the standards developed by the Convention⁵². At the same time, the Court adopted the position that freedom of conscience and confession occurs at the internal level - possession of religious beliefs, as well as at the external level - all manifestation of religion.

Conclusion

The analysis of individual elements of the phraseme “freedom of conscience and confession” is complicated. This term is undoubtedly a cluster concept and is understood more broadly as a whole expression than as component parts of the above term.

The content of the concept of freedom of conscience and confession is equated by some researchers with freedom of confession or freedom of religion. On the other hand, other researchers distinguish in this concept the external aspect (revealing thoughts and beliefs about religion and acting in accordance with the adopted principles) as well as the internal aspect (formation of thoughts and beliefs of the individual in matters of religion)⁵³. However, it is broadly accepted that freedom of conscience includes the right of the individual to form, choose and change views and beliefs in matters of religion, while freedom of confession is the right to externalize and manifest one's views and beliefs. Thus, freedom of confession is a complement to freedom of conscience.

According to Michał Pietrzak, freedom of conscience and confession is an internal human activity associated with the formation of individual's thoughts and beliefs in matters of religion, as well as an external one, consisting in revealing these thoughts and beliefs and in acting in accordance with their commands, i.e. covering with its subjective scope both religious and non-religious persons⁵⁴. This freedom in Polish law is understood and analysed as a comprehensive phrase.

In conclusion, international law plays an important role in the system of protection of human rights, including the right to religious freedom. The article details the meaning of the concept of freedom of conscience and confession. It has been shown that the content of this concept is understood in a variety of ways. The literature on the subject interprets it with regard to the given research area, thus making it possible to speak of civil freedom, freedom of the country, or personal and religious freedom discussed in this article. Most experts on the subject consider it to be freedom of religion. However, legal scholars and commentators divide this concept into the external and internal aspect. Regardless of the positions of scholars, it is recognized that freedom of conscience and confession is the right of an individual to shape, choose and change their religious views and beliefs. Freedom of confession is complemented by freedom of conscience, which is understood as the right to manifest one's views and beliefs. The article attempts to show that in Polish law freedom of conscience and confession is interpreted holistically, as both an external and an internal activity of an individual.

⁵² *Judgment of the European Court of Human Rights of 6 March 2001 in the Case of Conolly v Commission*, C 274/99-P.

⁵³ J. SZYMANEK, *Prawna regulacja wolności religijnej*, in «*Studia Prawnicze*», 2, 168, 2006, p. 5.

⁵⁴ M. PIETRZAK, *Prawo wyznaniowe...*, p. 19.