
Respect for Religious Freedom as a Challenge for the Modern IUS Commune of Human Rights in Europe

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Abstract:

Purpose: Freedom of religion is a subject, which has throughout human history been a source of profound disagreements and conflict. In contemporary transcultural world, religious-based intolerance continues to provide challenge for the whole ius commune of human rights.

Design/Methodology/Approach: In this article, we take note that the protection of religious is an ethical and moral imperative for human rights standards in contemporary Europe.

Findings: The article provides an overview of the complexities inherent in the freedom of religion within human rights law, especially focus on an analysis of the cultural-religious relativist debate in contemporary philosophical and legal disputes.

Originality/Value: A philosophical and legal reflection on human rights in the aspect of religious freedom inspires to, if not requires, making a precise diagnosis of modern culture, analysing the causes of crises affecting modern man, in order to ultimately indicate the possible solutions and ways out.

Keywords: Human rights, ius commune of human rights, freedom of religion, inter-cultural dialogue, Article 9 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

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1. Introduction

In the modern, multireligious and transcultural world, religious freedom demands specific protection and correct interpretation. Religion penetrates social, political and even legal systems, becoming, on the one hand, a unifying factor, and, on the other hand, a source of conflict and even aggression. We are witnesses to a growing escalation of religious intolerance.

Religious freedom is deeply rooted in Article 18 of the Universal Declaration of Human Rights⁵, Article 18 of the International Covenant on Civil and Political Rights⁶, Article 9 of the Convention for the Protection of Human Rights and Fundamental Freedoms⁷, and the UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief⁸ of 1981.

On the European stage, the standards and premises are articulated in the Convention for the Protection of Human Rights and Fundamental Freedoms. They were inspired primarily by Article 18 of the Universal Declaration of Human Rights. Article 10 (1) of the Charter of Fundamental Rights⁹ is drafted almost identically, which, as indicated by L. Garlicki ‘must not be regarded as coincidental’ (Garlicki, 2010, 551). Furthermore, case law is invaluable in this respect; however, that based on Article 9 of the Convention is not very extensive despite being incredibly inspiring as regards the search for the appropriate solutions to disputes arising from infringements of religious freedom.

⁵*The Universal Declaration of Human Rights, 10 December 1948, Article 18 of the Universal Declaration of Human Rights: 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.*

⁶*Adopted as a result of the UN conference in New York, pursuant to General Assembly Resolution No. 2200A (XXI) of 16 December 1966. It entered into force on 23 March 1976. The Covenant on Civil and Political Rights (Journal of Laws of 1977, No. 38, item 167), the International Covenant on Economic, Social and Cultural Rights (Journal of Laws of 1977, No. 38, item 167) Article 18;*

⁷*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. The Convention for the Protection of Human Rights and Fundamental Freedoms (made in Rome on 4 November 1950 and amended by protocols No. 3, 5, 8 and 11). Its consolidated text was drawn up pursuant to Journal of Laws of 1993, No. 61, item 284 and Journal of Laws of 1998, No. 147, item 962; Poland signed the Convention on 26 November 1991 and ratified it on 19 January 1993.*

⁸*The UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, <http://libr.sejm.gov.pl/tek01/txt/onz/1981.html>*

⁹*The Charter of Fundamental Rights, OJ EU C83/389.*

Case law, however, leaves something to be desired in exegetical terms, which is due to the fact that a large number of cases which come to trial are completely new for the Court and characterised by various degrees of substantive gravity. Because of transculturality and multi-religiosity, the Court is yet to face some issues related to religious freedom and complement the interpretation of individual regulations included in the Convention (Brems, 2013).

Therefore, bringing up certain key issues considered by the Court may prove incredibly valuable when it comes to understanding present developments in Europe. Also, the analysis of the case law indicates that the problem of religious freedom demands appropriate interpretation.

This sphere is complex in nature, as it pertains to the most sensitive elements of human existence. Parties to a legal dispute often invoke standards of human rights to support their competing claims. Complaints, in which the conflict is related to human rights, result in true dilemmas being faced by judges. They must often make difficult choices between the paramount, sometimes fundamental standards and values, which deserve equal respect, and demand careful consideration of the axiological foundations of religious freedom.

Given the above, it is worth outlining the main themes found in the category of religious freedom. We should first focus on the main factors of the cultural crisis in modern Europe, and next point to the prevalent religious pathologies, closely related to those found in the field of human reason.

Such philosophical and cultural contexts of the issue of religious freedom will make it possible to understand the crux of the matter more comprehensively, i.e. its relationships with human rights and the necessity to ensure its systemic protection.

2. The European Value Crisis

A critical reflection on the issue of religious freedom in the context of human rights, in its search for satisfactory theoretical and practical solutions, focuses on strictly philosophical, religious and usually moral issues, as it strives to determine the ethical standards which integrate multicultural human communities. Considering the circumstances of the formation and development of human rights, philosophy plays a special role in this process.

One of its tasks is to accompany individual academic disciplines, so that the research results, the occasionally premature conclusions or apparent certainties, are referred to the human being, to who he is, to his origin and the purpose of existence. Excluding legal and religious considerations from the anthropological and axiological perspective is one of the forms of disguised reductionism, and, in some cases, relativism. Anthropological reductionism and ethical relativism have not and will not yield satisfactory answers to contemporary questions, since they do not take

into account the transcendent dimension of human existence, enclosing man in himself, and sentencing him to metaphysical death.

A philosophical and legal reflection on human rights in the aspect of religious freedom inspires to, if not requires, making a precise diagnosis of modern culture, analysing the causes of crises affecting modern man, in order to ultimately indicate the possible solutions and ways out. D. Murray states in *The Strange Death of Europe*, when analysing the cultural, philosophical and religious causes of this “death”, that in the age of conflicts and ideological wars, Europe has lost ‘If not the last vestiges of religion then certainly the last refuge of the idea of a merciful God ... but Christian Europe had lost faith not only in its God but in its people as well.

Any remaining faith that man had in man was destroyed in Europe. From the period of the European Enlightenments onwards, as belief and trust in God had waned, so belief and trust in man had partially replaced this. The belief in autonomous man had accelerated after the Enlightenment that had stressed the potential wisdom of mankind alone. Yet those who let reason be their guide now looked as ridiculous as everyone else. “Reason” and “rationalism” had led men to do the most unreasonable and irrational things’ (Murray, 2017, 287-288).

By adopting the aforementioned diagnosis of the European value crisis, or the crisis of humanity in general, scholars point to at least two solutions. One of these, which, by the way, leads to nowhere, consists in coming to terms with the fact that any given culture and the issues it brings about, has its birth, periods of maturation and senescence, a period of people becoming disappointed with it, and, ultimately, death. Will a given culture be able to pass its achievements (gifts) on to others? Perhaps yes, but there will be an end. Thus, one can mention the so-called end of history, death of man, death of god, or death of Europe.

This overtly “biological” postulate seems to enjoy little popularity, which is why more humanistic (religious) solutions are being proposed. As regards, for example, contemporary Europe, in which so much is being said about human rights and individual freedoms, and which is, at the same time, troubled by a religious crisis and advancing religious pathologies, the objective is to reintroduce the so-called religious factor, which would be able to bolster the foundations of human culture and existence.

3. Pathological Religious Attitudes and Mindsets

Given the above-mentioned models of thought, the question about the role of the religious factor and its internal form appears even more pertinent. An answer to this question must not disregard the issue of human dignity and human rights as preceding other rights. It must also take into account the image of man, implied by the aforementioned dignity, as a religious and moral being, as well as the numerous

and aggressive religious pathologies which are becoming more and more rife in the public space.

The essence of religious pathologies, including terrorism sympathising with religious fanaticism, boils down to it becoming detached from religion, and especially from faith, and from reason from *ratio* and *intellectus*. Subordinating God or a deity to individual interests, one's own power, is a religious pathology. Another example of this pathology is regarding what is empirical and relative, as absolute and infinite. God demoted to the role of an idol, and an idol promoted to the role of God distorts the entire religious order, which can be observed, e.g., in terrorism and its ideology of martyrdom, as well as in sectarian movements.

The dominant factor includes irrationalism, fundamentalism blind to the human being, aggression and even hatred towards other people or even oneself. Pathological religious attitudes and mindsets do not respect realities which are important to and sacred for other people, freedom of expression loses its boundaries and therefore infringes on the dignity of the other.

According to the developmental model proposed by Kazimierz Dąbrowski, religious pathologies have levels and practices which correspond to those levels (Kobierzycki and Kozłowski, 2017, 109-120). At the lowest level, religious behaviour and attitudes are motivated by fear of the forces of nature. There is no dialogue with God, and the religious attitude is based on private revelations (and delusions). 'The external dignity of a priest, lacking essential dignity, comes to the foreground in a power struggle with secular institutions and authorities, with confidence, ruthlessness and cruelty' (Dąbrowski, 1991, 26).

The second level of development lacks a stable image of God, i.e. religiousness boils down to the orders of religious leaders being followed mindlessly (blind obedience); faith is enclosed within procedures. This is today referred to as the so-called sacramentalisation of faith (Pope Francis) – a frequently observed symptom of a pathology. At the third level, religion starts to show a human face, where love and freedom count, where weakness does not instil fear but becomes a source of spiritual strength.

At the fourth level, the primitive confidence of "having" God gives way to one entering into dialogue with the invisible God, excessive external institutionality is rejected, and a religious person focuses on the individual path of faith. At the fifth level, 'it is not only God who is "holy" (*hosiotēs*), but also "Man" – becomes saint (*eusebein*)' (Kobierzycki and Kozłowski, 2017, 115).

With regard to the remarks presented above, the question concerning religious freedom, and indirectly freedom of conscience, and also more importantly that of circumstances in which 'religion makes one free', and those when 'it enslaves people' (Dudek, 2017, 103) still appears relevant. From the point of view of

psychology of religion, enslavement consists in instilling and perpetuating fear in the presence of distorted personality development.

Today, the positive impact of religious ideas on the internal freedom of man, as well as their therapeutic (redemptive) significance, should be underlined; however, the fundamental condition here is a level of personality development which facilitates religious experience. Separating religiousness from personality gives rise to a pathology, preventing complete human development and deforming the personal structures of interpersonal relations, in which holding dominion over other people starts to predominate.

On the other hand, dangerous consequences result from the pathologies of reason; of reason which, betraying its own nature, dissociates itself from the reality of faith among other things, detaches itself from existence, regarding itself as the paramount cognitive and creative instance. The pathology of reason consists in it reducing its activity to that which the ancient philosophical tradition defined as *ratio* and *intellectus*. This referred to reason and more specifically to the mind, which, in constant relation with that which is empirical, manifested in human activity (*ratio*) and reason which has the capacity to penetrate the deepest layers of existence (*intellectus*).

Nowadays, we can observe *intellectus* being replaced by *ratio*, where rational is only that which can be verified experimentally. Therefore, the entire domain of morality, religion, axiology is severed as “subjective” and irrational, and, in any case, falling outside the scope of reason. Thereby, the issue of truth, which in this case is impossible to cognise, becomes debatable. In addition to *ratio* and *intellectus*, philosophy also distinguishes terms which are more ontic, such as *animumus*, *anima* and *mens*. These refer to spiritual cognitive abilities, and in principle to the ultimate subject of comprehension and understanding, i.e., the individual.

The supplementary terms are *phren* (which specifies human spirituality and the person’s identity) and *thymos* (cognisance through the heart). One may not remove *conscientia*, which means consciousness and conscience, from the field of intellectual activity. This term is important as it situates the phenomenon of conscience in the mind and not within religious beliefs or world view, which is disregarded in discussions on freedom of conscience.

Pathological reason which completely rejects God and the possibility to transcend existence manifests itself in totalitarian ideologies, which have attempted at creating, in a number of ways, a new man and the new world. ‘Faith in God, the idea of God, can become instrumentalised and become lethal: religion is exposed to such risk.

Also, reason which completely breaks away from God and tries to confine Him to a purely subjective sphere, loses orientation and opens the door to the forces of destruction’ (Ratzinger, 2015, 93-94).

Therefore, in search of the foundations of human rights, both philosophical and religious alike, it is worth noting the comment made by Rudolf Bultmann, who, in the context of an in-depth analysis of the issues of law, said that ‘while a non-Christian state is possible in principle, an atheist one is not’ (Bultmann, 1957, 511).

It appears that today Christian faith and secular rationality should be brought closer to each other, to facilitate their mutual influence and purification, and – when integrated – to act as the basis for human rights and life. Christian faith presents a concept of God that is not detached from man, that is Logos and Love, that is the foundation and assurance of good, and His inviolable dignity is the reason for and the meaning of human rights. It should be strongly underlined that Christian faith rejects the idea of a political theocracy, which means that it has ‘adopted the rule of secularity of the state.

Christians, by benefiting from freedom, co-exist within a given state with people who hold other beliefs, united by the common moral responsibility based on human nature, the nature of justice’ (Ratzinger, 2015, 97).

The secularity of the state, as a result of the source Christian option, stands against secularity seen as an ideology, and even more strongly against religion understood in ideological terms. The relation between reason and faith is of pivotal importance in this respect. J. Ratzinger reminds the readers that ‘without peace between reason and faith there may be no global peace, since without peace between reason and religion, the sources of morality and law go dry’ (Ratzinger, 2015, 91).

4. Law (*Lex*) and Rights (*Ius*) in View of Religious Freedom

One should bear in mind that legal rights have both local and international effects. Joseph Ratz suggests that human rights strongly depend on the present international environment (Ratz, 1988). In this sense, one may be concerned that the foundations of these rights are too often disregarded. The case of religious freedom appears similar, the scope of which depends on the social role of religion at the national level.

There is, therefore, a very close correlation between the state, society and religion. Top-down, international regulations are not always appropriate. External judgement is simply ineffective. When it comes to religious freedom, by disregarding local conditions and invoking only international solutions, we are presented with a very unclear image of human rights in relation to religious freedom. For this reason, a more structured philosophical and religious consideration is needed, which should be placed within the framework of human rights, and historical and cultural conditions.

Also, a committed reflection in the fields of philosophy of religion and religious studies is needed, to redetermine the meaning of such terms as religion, faith,

religiousness and tradition. The ambiguities observed in the scope of these terms generate many misunderstandings, and surely point to the low level of development of society.

In their common sense, faith is identified with religion, and religion with faith. However, the problem is much more complicated, since, when talking about religion, we mean every form of relation between man and Absolute Reality (God, Transcendence). On the other hand, the notion of faith includes personal acts of the human being, of which the paramount is the acceptance of Revelation, an attitude of trust and devotion, placing trust in God. Religion and faith have their histories.

The history of religion covers the horizontal dimension of human (individual, and in particular social) existence, while the history of faith is reflected in the spiritual sphere of human life, creating and developing the relational vertical structures of personality. By applying such distinctions, we want to navigate the area delineated by the notion of the “faith of religion”, as, from a philosophical perspective, it is the faith which acts as the carrier of the element of freedom in religion.

In the 20th century, J.P. Sartre presented a radical philosophy of freedom stating that man has no nature, as man himself is freedom. However, devoid of meaning, freedom is hell for the human being. Thereby, Sartre presented the severance of ties between freedom and the truth, and freedom detached from the truth has no direction or measure.

Freedom and religious freedom are not philosophical abstracts, but describe one’s approach to other people. It is that which happens between people, which is why it is of an ethical and moral nature from the very beginning. That what happens will always include some truth or falsehood, some good or evil, man will stay either true to another individual or betray him. Freedom has a personal and thoroughly dramatic structure. It always means being with somebody, for somebody, or against someone, for something.

In relation to freedom understood in the aforementioned manner, the human rights protection system, as regards religious freedom, covers every individual, including religious people and those who do not identify themselves with any religion, in plain language (which, however, deforms reality) – believers and non-believers. This is because religious freedom is regarded as one of the human rights, and the analysis of its substance may take place at the level of those rights.

Therefore, the aforementioned pathologies of reason and faith, the pathologies of religiosity, and the reductionistic interpretations of human mental activity fall within the scope of freedom, and not strictly religiousness. It is philosophical sciences which are responsible for this aspect of thought, including philosophical anthropology, which, by corresponding with metaphysics and philosophy of religion, can throw light on fundamental problems and ways of solving them.

Human rights, in the context of not only religious freedom, but also of other freedoms, call and inspire modern times to such reflection, to a return to the values which have been lost and forgotten, to discovering the constant and strong reference points for thought and for life.

5. Conclusion

The right to freedom of conscience, thought and religion is one of the fundamental human rights and constitutes ‘one of the foundations of a democratic society’ (Garlicki, 2010, 551). As all other rights which relate to freedoms, they form part of a minimum standard referring to the correct application of law and legally protected values. The Court on many occasions highlighted that ‘the existence and realisation of this freedom constitutes an essential condition for pluralism which has been secured after centuries-long struggles, and which is now part and parcel of a democratic society’ (Garlicki, 2010, 553).

The freedom of thought, conscience, and religion points to respect for differences seen in other cultures. Indeed, cultural diversity is an essential characteristic of the human condition, and culture is expressed by human interaction, while cultural and religious diversity is typical of contemporary Europe in the face of migration-related challenges.

Human rights are a space which facilitates inter-cultural dialogue. This dialogue should respect the rules and standards stemming from individual human rights. One should bear in mind, however, that religion, when left to its own devices, outside the critical sphere of human reason striving for the truth, quickly loses its natural focus on the human being, too often negating the questions that it raises (about the meaning of life, death, and the value of the transitory and eternal).

On the other hand, reason, when detached from the horizon demarcated by religion and faith, becomes closed, paralysing personality development in individual and social domains. Human rights, if they are to truly refer to man, to protect that what he and other human beings are, will succeed in this only after focusing on the common *logos* – the *logos* of reason and the *logos* of faith and religion.

Only in such a space will a transcultural dialogue, based on human rights, be possible – a dialogue which will aim at developing the minimum standards of the legal and axiological recognition of human rights and freedoms, rejecting all forms of authoritarian and despotic solution. The core of democracy is the respect for freedoms and values of individual people and the entire community of *ius commune* of legal rights.

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