

MAREK BIELECKI

RELIGIOUS SYMBOL AT SCHOOLS AS AN EXPRESSION OF RELIGIOUS LIBERTY

1. INTRODUCTION

Recently, the passionate discussion concerning the existence of religious symbols at public schools has appeared in the media. The discussion was provoked by the judgement of the European Court of Human Rights (ECHR) on November 3rd, 2009. The court made a decision in the case of an Italian citizen of Finnish nationality who levelled an accusation against the State of Italy. The accuser stated that the presence of the crucifix at public schools, where her children attended, was an interference inconsistent with the idea of religious liberty and freedom of beliefs. Furthermore, the accuser's rights to the process of upbringing and education of her children in accordance with her religious and philosophical viewpoints were violated.¹ In response to the accusation, the Italian State referred to the existence of the crucifix at Italian schools. Moreover, it was stated that the crucifix could possess several denotations, not necessarily those associated with a particular religious outlook. The court granted the Lautsia's petition claiming that the symbol of a cross possesses numerous denotations, but that a religious interpretation is dominant. Additionally, according to the court, presence of the crucifix at school classrooms moves beyond the issue of the use of symbols in specific historical contexts. The exposure of one or several religious symbols cannot be motivated by the request of other parents who demand to

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¹ The European Court of Human Rights in Strasbourg execution. Lautsia vs Italy. Case no. 30814/06, text from: <http://www.racjonalista.pl/kk.php/s,6954>.

educate their children according to their beliefs. The respect of parental values concerning a child's upbringing should respect the rights of other parents to express their own philosophical points of view. The State should ensure religious neutrality at public educational institutions where attendance in classes is obligatory regardless of religious beliefs, and therefore, all educational institutions should make every effort to introduce the idea of criticism to students.²

The above-mentioned judgement has no direct implication with the current situation in Poland. Nevertheless, in a parallel case in which a Polish citizen wanted to put the law requiring the presence of a crucifix in any classroom, a e similar judgement would be pronounced. Some initiatives have already been taken. The most well-known case took place in Wroclaw where three students from secondary school No. XIV wanted the principal to remove the crucifix from all classrooms. In the petition, the students stated that the placement of religious symbols is perceived as a manifestation of a particular belief by the school. They relied upon the judgement of the ECHR from November 3rd, 2009, which could be construed as holding that the placement of religious figures in public schools is a violation of the freedom of conscience. In the students' conviction, it was also unacceptable to hang religious symbols over national ones. According to them, Poland is a common good, while a religious world-view is the personal matter of every human being³.

The ECHR in its judgement mentioned several points which need to be specified, for instance, the religious neutrality rule, the religious liberty of children and finally, the parental right to educate children according to their beliefs. Apart from the examination of the above-mentioned issues, the attitude of the sovereign power in Poland, which referred to the presence of the crucifix in public places, needs to be discussed.

2. THE WORLD-VIEW NEUTRALITY OF STATE

In the Polish constitution, the concept of the neutrality of a state towards religion does not exist. Nevertheless, the term of impartiality appears. According to Art. 22 of the 2nd act, the authorities of the Republic of Poland must stay neutral with respect to religious beliefs, world and philosophical outlook, and at the same time the freedom of an expression of these convictions in public life is guaranteed.

² Ibidem.

³ Petycja uczniów w sprawie symboli religijnych w szkole, <http://racjonalista.pl/kk.php/s.6975/q>

As it is emphasised in doctrine, this form was agreed on as a compromise between followers and opponents of the general rule claiming the world-view neutrality of a state.⁴ It was also in accordance with postulates declared by Polish Episcopate which frequently expressed its opinion in this matter. The standpoint of the Polish church evolved in this way because the introduction of the term “neutrality” to the Polish constitution was postulated at the very beginning and later on the term was transformed into „impartiality”.⁵

The terms of neutrality and impartiality are commonly recognized to be identical.⁶

R. Małajny regards the world-view neutrality as a policy of not promoting and not discriminating of any of the views incorporated in this field. Especially philosophical and religious standpoints are concerned. The neutrality perceived in this manner is associated with insensibility, indifferentism, lack of interest and involvement. Therefore, the true neutrality cannot be friendly or unfriendly, exact or inexact.⁷ The similar interpretation of the term of impartiality is noticed by A. Mezglewski, H. Misztal and P. Stanisz. They claim that impartiality is the objectified attitude, free of prejudice, assuming identical relation to all beliefs. It is connected with the prohibition of promoting only one or defined group of outlooks. It has been accurately noticed by the authors that the functioning of the impartiality rule in the constitution cannot be understood as a warrant of the elimination of religious factors from public activities.⁸

The State, following a neutral attitude towards every faith and belief, should create appropriate conditions to any citizen who desires to express his or her philosophy publicly and without any complications.

The only limitation results from the content of the constitution. According to Art. 31 of the act 3, the constitutional uses of liberties and rights can be legislated only in the form of an act and only when it is necessary for the safety and public order in the democratic state as well as the protection of the environment, health and public morality or freedom and rights of other individuals. The limitation cannot violate the essence of freedom and individual rights.

The judgement of the ECHR mentions the circumstances of the violation of minorities' rights by the major part of the society. The Court acknowledged that

⁴ J. KRUKOWSKI, *Polskie prawo wyznaniowe*, Warszawa 2008, p. 71.

⁵ D. TWARDY, *Stanowisko Episkopatu Polski wobec neutralności światopoglądowej państwa w toku prac nad konstytucją z 2 kwietnia 1997 r.*, “Studia z Prawa Wyznaniowego” 2009, No. 12, p. 296.

⁶ J. KRUKOWSKI, *Polskie prawo wyznaniowe*, p. 71; P. BORECKI, *Państwo neutralne światopoglądowo – ujęcie komparatystyczne*, “Studia z Prawa Wyznaniowego” 2006, No. 9, p. 75; R. MAŁAJNY, *Neutralność a bezstronność światopoglądowa państwa*, <http://www.racjonalista.pl/kk.php/s,6743/q>

⁷ R. MAŁAJNY, *Neutralność a bezstronność światopoglądowa państwa*.

⁸ A. MEZGLEWSKI, H. MISZTAL, P. STANISZ, *Prawo wyznaniowe*, Warszawa 2006, p. 73.

the catholic part of society cannot impose its will on minorities. Furthermore, absurd conclusions may be drawn. Does the Court indicate that the entity could dictate his or her will to the rest of the society? Will the law still continue to be the art of employing good and moral inspiration?

Polish administration of justice has already had a chance to issue an opinion on the presence of religious symbols in public places. According to the verdict of the Administrative Court in Łódź on 28.10.2008,⁹ the world-view, religious and philosophical impartiality of authorities refers to the execution of the governing function. However, this function does not refer to the internal decoration of educational buildings. According to the court, the placement of the crucifix is not forbidden neither by the constitution which in the preamble contributes to God, nor by any of the statutory acts.¹⁰ The Court clearly suggests that the presence of the crucifix in the buildings of a public entity, specifically school buildings, is allowed. This fact is advocated by the regulation concerning the education of religion at schools. It is mentioned there that the crucifix can be placed in every school room and moreover, that prayer may occur before and after every classes. Common prayer at school should be perceived as an expression of the universal objectives of students as well as the manner of tact and delicacy of teachers.¹¹

The legislator and the court seem to be in agreement with the matter of the presence of the crucifix at schools in view of the fact that it does not conflict with the rule of impartiality. It is worth considering that the presence of religion as a school subject does not violate any of the ideas included in the doctrine, since areligious perspective is presented only on that particular subject.¹²

3. RELIGIOUS LIBERTY OF A CHILD

Another issue that has been taken into account by ECHR is the matter of the religious liberty of a child. The present right of religious liberty should be considered as a collection of rights connected with the positive and negative self-approach of a child to the matters concerning his or her religious sphere. Re-

⁹ Case reference symbol: I ACa 621/98, "Wokanda" 1999, No. 11, s. 45.

¹⁰ A. MEZGLEWSKI, H. MISZTAŁ, P. STANISZ, *Prawo wyznaniowe*, p. 74.

¹¹ Rozporządzenie Ministra edukacji Narodowej z 14 kwietnia 1992 r., w sprawie warunków i sposobu organizowania nauczania religii w publicznych przedszkolach i szkołach ("Dziennik Ustaw" [Journal of Laws] 1992, No. 36, item 155, as amended).

¹² A. MEZGLEWSKI, *Polski model edukacji religijnej w szkołach publicznych. Aspekty prawne*, Lublin 2009, p. 104.

ligious liberty is associated with terms like: freedom of conscience, freedom of confession, freedom of beliefs and finally, religious liberty.¹³

A child has been legally objectified in the issue of religious liberty just after approval of the Convention on the Right of Child (CRC) on November 20th, 1989.¹⁴ This document, referring to international standards of law, recognized that a child is the subject of law as the possessor of the attribute of human dignity. Article 14 of the CRC states that nations will respect the rights of children to the freedom of thoughts, conscience and confession, although the execution of the law is dependent on the development of the abilities of a child. Therefore, parents are obliged to make children aware of the rights to which they are entitled. Poland, ratifying CRC in 1991, had doubts if the above-mentioned rule would not limit the power of parents and committees, and thus the following declaration was attached: “The Republic of Poland believes that the execution by a child of his or her rights described in the convention, especially those defined in articles from 12th to 16th (art. 14th religious liberty – M.B.), is implemented with the respect to parental power according to Polish customs and traditions concerning the position of a child inside as well as outside the family.¹⁵ The preceding document emphasizes only the intentions of the legislator, but not interpretational validity of the legal acts because of its character. The declaration, in opposite to the objection, is not an integral part of the convention.

With respect to the essence of art. 14th of CRC, the legislator referred to art. 48th of the 1st act of the Constitution of the Republic of Poland, which states that parents have the right to educate their children according to their philosophy. The education should consider the level of maturity of a child, as well as the freedom of his or her conscience, confession and beliefs should be taken into account. Both the CRC and the Constitution make the religious liberty of a child dependent on a child’s maturity level, although this term was not defined either in the first or the second document. Referring to the issue of the religion as a school subject, the legislator indicates that from the moment of becoming a student of a secondary school a child is mature enough to decide whether he or she wants to attend religion classes or not. At this level of education, parents can decide about this

¹³ M. BIELECKI, *Ewolucja wolności religijnej dziecka w latach 1989-2009*, [w:] *Prawo wyznaniowe w Polsce (1989-2009). Analizy – dyskusje – postulaty*, ed. D. WALENCIK, Katowice–Bielsko-Biała 2009, p. 94.

¹⁴ “Dziennik Ustaw” [Journal of Laws] 1991, No. 120, item 526.

¹⁵ Attachement to CRC.

issue as well; however, the legislator does not specify what will happen in the situation when a parental decision is different than that of the child.¹⁶

From the regulations mentioned above, it is concluded that a child, after attaining majority, can make use of the religious liberty rule. However, the range of the rights that are actually given needs to be specified. According to art. 53 of the 2nd act of the Constitution, religious liberty includes the freedom of confession or acceptance of religion in accordance with the entities' own choice. Moreover, individual or group, public or private manifestation of religion by cult, prayer, participation in rituals, practice and teaching is also included. The freedom of religion also includes the possession of temples or other places of worship dependent on the believers' needs. Additionally, individuals' right of receiving support in the places of their worship is also guaranteed by the religious liberty rule. Besides the positive sense of the religious liberty, being considered as a freedom to do something, the legislator also ensures the functioning of the freedom in its negative sense (freedom from something). It is stated that no one can be forced into participation or non-participation in religious practices (Art. 53 act 3). Moreover, no one can be obliged to reveal his or her world-view, religious beliefs and religious confession by the authorities (Art. 53 act 7). Undoubtedly, the presence of religious symbols in a classroom is the execution of the religious liberty rule appearing as the right of demonstration of personal religious values. It is difficult to imagine such a situation when one student, or his parents, can demand to remove the crucifix against the will of the other part of the class. It seems to me that the most reasonable solution would be the placement of the symbol expressing his or her beliefs. As far as I am concerned, the religious liberty rule proposed by the ECHR cannot be employed in this circumstances because all attention was focused only on the negative sense of the rule.

¹⁶ According to the 12th article of the Act from September 7th, 1991, Law on the system of education ("Dziennik Ustaw" [Journal of Laws] 2004, No. 256, item 2572), public kindergartens, primary schools and junior high schools organise the education of religion on the basis of parental application, public secondary schools on the basis of parental or students' application, after attaining students' majority they decide in the matters concerning religious education; the same in regulation from April 14th, 1992, about conditions and methods of organising religious education at public schools ("Dziennik Ustaw" [Journal of Laws] 1992, No. 36, item 155). As a part of a schedule, public kindergartens organize religious education on the basis of parental (committees') application. In primary schools, junior high schools, high schools and secondary schools, below called "schools", the education of religion and ethic is organized as a part of the schedule: 1) in primary schools and junior high schools – on the basis of parental (committees') application, 2) in high schools and secondary schools – on the basis of parental (committees') or students' application; after attaining students' majority they decide in the matters concerning religious education themselves (§ 1 act 1).

According to the court, the negative freedom is not limited to the lack of divine service and religious education. Furthermore, it is also connected with the practices and symbols expressing a particular faith, religion or atheism in general or specific manner. This negative right deserves special protection in cases when the state supports the particular faith and the given person is in the situation when he or she cannot be released from it. The ECHR derived this law from the 9th article of the European Convention on Human Rights on November 4th, 1950¹⁷ where religious liberty is regulated only in the positive sense. Naturally, the existence of the liberty in its negative sense cannot be denied but still the sense cannot be treated with the absolute character of primacy.

It is noteworthy that students being in the last year of secondary school obtain the complete ability of legal activities. Therefore, any of the limitations concerning the maturity level cannot be employed at that point. They should be guaranteed the full ability to perform the rights given them by law.

4. THE EDUCATION OF CHILDREN ACCORDING TO THEIR PARENTS' WILL

Students can personally make use of the religious liberty rule only after reaching the accurate maturity level. Otherwise, this rule is dependent on their parents' will. In the previously mentioned 48th article of the 1st act of the Constitution, the parents' primacy concerning their children's education is emphasized. The Polish Constitution refers to numerous standards of international law in this matter. Similar regulations are included in the 1st Protocol of European Convention on Human Rights.¹⁸

The European Court on Human Rights referred to this matter in its judgment. In the case *Kjeldsen, Busk, Masen and Pedersen v. Denmark*, the ECHR decided that parents, executing their natural obligations concerning children, are first to be responsible for the upbringing and education of their children and they can demand that the state respect their religious and philosophical beliefs.¹⁹ It is

¹⁷ European Convention on Human Rights, November 4th, 1950 ("Dziennik Ustaw" [Journal of Laws] 1993, No. 61, item 284).

¹⁸ "Dziennik Ustaw" [Journal of Laws] 1995, No. 36, item 175, Art. 2: "Nobody can be deprived of the right to education. Executing the functions of education and teaching, the state acknowledges parental right to ensure education and teaching according to their religious and philosophical beliefs".

¹⁹ Text from K. WARCHAŁOWSKI, *Prawo do wolności myśli sumienia i religii w Europejskiej Konwencji Praw Człowieka i Podstawowych Wolności*, Lublin 2004, s. 188.

without importance if a child was born in marriage or outside marriage and whether other circumstances appear (Decision *Maties Jolie, Chantal Jolie, Etienne Lebrum v. Belgium*, 15 May 1986). Committees acquire the parental power on the basis of the legal act (Decision *Eva Aminof v. Svedem*, 15 May 1985).²⁰ A state, considering parental rights, is not obliged to create any special forms of education only to respect the religious and philosophical outlooks of parents. It is satisfactory that states respect parental beliefs within the present and developing system of education (Decision *X v. The United Kingdom*, 2 May 1978).²¹ Besides the constitution, the primacy of parental will has been emphasized in the rules of the family code.²² According to Art. 95 § 2, a child being under parental or a committees' protection is obliged to be obedient. A child is also obliged to obey parental will in the matters concerning his or her education. Therefore, until the moment of reaching the accurate maturity level by a child, parents decide in all matters concerning the presence of the crucifix at school.

The ECHR in the judgement from November 3rd, 2009 pointed out that the state should not favor, even in indirect manner, a particular faith in the places where people are dependent on that place or where entities can especially be influenced. Thus, education is a critical sector because in this case the pressure of the state is put on young people without their ability (dependent on a child's maturity level) to use critical thinking, which is a crucial factor with respect to matters concerning religion that are chosen by the state. The court stated that the presence of the crucifix at school can be perceived as the indoctrination of immature children who do not have the ability of correct understanding of the given message. Consequently, the ECHR would exclude any part of the religious symbol from the public life. So, the roadside chapels should be removed, performance of carols in radio or TV should be forbidden and all national ceremonies should be deprived of religious symbols. The ECHR on the one hand highlights the agnostic or atheist parents' rights but on the other hand, the rights of the religious parents, who may wish to have holy symbols at school, are not acknowledged. If parents wish to have the crucifix at school, no law can prohibit that, even the protest of a person having the opposite opinion.

Several initiatives referring to the judgement of the ECHR have already appeared in Poland, but none of the instances resulted in a case being taken to the

²⁰ *Ibidem*, p. 188-189.

²¹ *Ibidem*, p. 203.

²² The act from February 25th 1964, The Family and Custody Code [*Kodeks rodzinny i opiekuńczy*], ("Dziennik Ustaw" [Journal of Laws] 1964, No. 9, item 59).

court. There is also the lack of political will to change the current legal status, which allows the placement of a crucifix in public places.

5. THE STANCE OF THE SUPREME AUTHORITIES

The judgement of the ECHR had an influence on the supreme authorities of the Republic of Poland. All politicians gave an opinion on this matter. In most cases it was the expression of disapproval, but in some instances politicians stated that the judgement was accurate.²³

The president of Poland Lech Kaczyński, during the celebration of the national independence day, stated that “nobody in Poland agrees that presence of the crucifix at schools will be forbidden”.²⁴ It is a very clear and emotional standpoint which demonstrates the personal belief of the president. The president seems to be unconscious of the fact of being on the verge of the impartiality rule which excludes the possibility of taking a stand and supporting a particular viewpoint by authorities.²⁵ He admitted that the matter was serious enough for him to express his standpoint.

The opinion was also expressed by the administrative powers of the Republic of Poland. On December 3rd, 2009, the Polish Parliament passed a bill stating that “keeping in mind the words spoken in Polish Parliament by the Pope John Paul the Second in 1999 that „democracy without values easily changes in official or camouflaged totalitarianism”, expresses the anxiety of decisions which strike at religious liberty, neglecting the rights and feelings of religious people and disturbing the common peace. Therefore, the judgement of the ECHR concerning the prohibition of the presence of the crucifix at Italian schools is criticised”.²⁶

The Polish Senate on February 4th, 2010, appealed in the bill for keeping some distance to the judgement of the ECHR and respect to the crucifix was specifically mentioned. It was also highlighted that “any attempts of the

²³ *Czy Polsce grozi ogólnonarodowe zdejmowanie krzyży*, blog J. SENYSZYN (<http://senyszyn.blog.onet.pl>).

²⁴ <http://www.gazetaprawna.pl/wiadomosci/artykuly/373393>.

²⁵ According to A. Mezglewski, H. Misztal i P. Stanisł – the impartiality rule does not allow the authorities to promote one particular or group beliefs. It is not allowed to express the official declarations about the rightness of any of the beliefs. A. MEZGLEWSKI, H. MISZTAŁ, P. STANISZ, *Prawo wyznaniowe*, s. 73.

²⁶ Uchwała Sejmu Rzeczypospolitej Polskiej z 3 grudnia 2009 (<http://www.klub.psl.pl/uplod/pdf/2009/Sejm>).

prohibition of the presence of the crucifix at schools, hospitals, offices and the public sphere in Poland have to be treated as a strike at our tradition, consciousness and national pride”.²⁷

No tendencies promoting the deletion of the crucifix from public sphere can be noticed. The crucifix as the symbol of the fight and revival of the state should always appear in the public sphere.

6. SUMMARY

The right of exposing religious symbols in public sphere is the practical dimension of the religious liberty of students and their parents. It is a liberty which possesses a positive as well as a negative dimension. The standpoint of the ECHR should be taken with disapproval since the absolute primacy of religious liberty in its negative sense is promoted. That understanding of the given right can lead to the situation when a unit dictates his or her will on the majority. Thus, there is no righteous and rational legislation. In such a case, some kind of form of “dictatorship” appears. The entire society cannot be under the pressure of an entity that can dictate his or her will in any manner. Naturally, the minority cannot be deprived of rights but the possibility of the manifestation of any belief should be ensured.

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²⁷ The Senate passed the bill in the matters concerning the respect to the crucifix (<http://wiadomosci.wp.pl/kat,1342>).

The act from February 25th 1964, The Family and Custody Code [Kodeks rodziny i opiekuńczy], ("Dziennik Ustaw" [Journal of Laws] 1964, No. 9, item 59).

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RELIGIOUS SYMBOL AT SCHOOLS AS AN EXPRESSION OF RELIGIOUS LIBERTY

S u m m a r y

The present article investigates the issue of religious symbols as an expression of the religious liberty at Polish schools. The essential condition for the conclusions drawn was the judgement of the European Court of Human Rights from November 3rd, 2009. The court stated that the presence of a crucifix at Italian schools is the violation of the parental right to educate their children according to their beliefs. The author of the article refers to the particular matters of the judgement of ECHR examining them with reference to current Polish legal regulations.

Key words: expression of the religious liberty; religious symbols; right to educate.

SYMBOLE RELIGIJNE W SZKOŁACH
JAKO WYRAZ WOLNOŚCI RELIGIJNEJ

Streszczenie

Niniejszy artykuł analizuje problematykę symboli religijnych jako wyrazu wolności religijnej w polskich szkołach. Zasadniczą podstawą dla wyciągniętych wniosków był wyrok Europejskiego Trybunału Praw Człowieka z 3 listopada 2009 r. Trybunał stwierdził, że obecność krzyża w szkołach włoskich stanowi pogwałcenie praw rodziców do wychowania dzieci zgodnie z ich przekonaniami. Autor artykułu odnosi się do poszczególnych kwestii w wyroku ETPC, analizując je w odniesieniu do obowiązującej w Polsce legislacji.

Słowa kluczowe: wyraz wolności religijnej; symbole religijne; prawo do wychowania.

Przetłumaczył Tadeusz Karłowicz