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## **THE ROLE OF CONSCIENCE CLAUSE IN THE POLISH LEGAL ORDER**

Freedom of conscience and religion is a determinant of a democratic state and society in the modern world. As emphasised in Art. 18 of the Universal Declaration of Human Rights of 1948, this right includes freedom to change religion or opinions, as well as freedom to manifest one's religion or opinions individually or collectively, in public or in private. Pursuant to Art. 9 of the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms and Art. 18 section 3 of the International Covenant on Civil and Political Rights of 1966, freedom to manifest one's religion or belief may be subject only to such limitations as are provided for by law and are necessary to protect public security, public order, health or morals, or the fundamental rights and freedoms of others. It is worth mentioning here, for example, Art. 10 of the Charter of Fundamental Rights of the European Union, which clearly states that the right to refuse to act contrary to one's conscience is recognised, in accordance with

national laws regulating the exercise of this right. The freedom to autonomously shape one's attitude towards faith and religion is an important manifestation of individual freedom [1, p. 73]. As Krzysztof Orzeszyna emphasises, conscientious objection is an individual objection of an entity to some legal norm formally applicable to it, and not a questioning of the validity of the entire legal system governing the state.

Currently, in Poland, the institution of the conscience clause is once again arousing much emotion, this time in the context of pharmacists filling prescriptions for early abortive drugs (the so-called morning-after pill). For many years in Europe, the individual's right to conscientious objection has been considered primarily in the context of cases related to refusal to perform military service. Today, its practical significance has also extended to the performance of certain medical procedures, in particular termination of pregnancy, as well as artificial insemination, sterilisation and assisted suicide.

As Ryszard Sztymiler rightly notes, the need to apply the conscience clause results from the conflict between natural law and positive law [2, p. 250] and it most often occurs in situations of refusal to perform military service, refraining from providing health services that are inconsistent with the conscience of medical staff, or refusing undergoing a medical procedure due to conscience or religion, as well as refusing to disclose information covered by the secrecy of confession or pastoral secrecy.

Some lawyers believe that the conscience clause can be used when it is expressly provided for in the law. In Polish legislation, the conscience clause is regulated, among others, by: in the Act of December 5, 1996 on the professions of doctor and dentist, where in Art. 39 clearly states that a doctor may refrain from providing health services that are inconsistent with his conscience. Another example may be the Act of 15 July 2011 on the professions of nurse and midwife [5]. However, others (including the author of this summary) believe that in the event of a conflict of conscience, while fulfilling an obligation imposed by law, a person may invoke directly the constitutional provisions, specifically Art. 53 section 1, which reads: "Everyone is guaranteed freedom of conscience and religion", because it also means the right to act in

accordance with one's conscience and freedom from compulsion to act contrary to it. Hence, in the literature on the subject one can find the thesis that the conscience clause can be considered a human right [6, p. 28].

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## **UGODA NOWACYJNA W POLSKIM PRAWIE CYWILNYM**

Z ogólnej perspektywy ugoda i odnowienie jawią się jako instytucje pełniące odmienne funkcje. Ugoda ma konserwować, umacniać więź prawną, a odnowienie ją likwidować [1]. Szczegółowy obraz tych instytucji jest jednak zbliżony.