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Received: 27.06.2024; revised: 10.08.2024; accepted: 18.08.2024

## LEGAL INSTITUTIONS AND COURT DECISIONS AS INSTRUMENTS OF EDUCATION FOR PEACE IN THE MODERN WORLD

### INSTYTUCJE PRAWNE I ORZECZENIA SĄDOWE JAKO INSTRUMENT WYCHOWANIA DO POKOJU WE WSPÓŁCZESNYM ŚWIECIE

**Streszczenie:** Autor podejmuje próbę analizy roli wybranych instytucji prawnych i orzeczeń sądowych jako instrumentów wychowania do pokoju we współczesnym społeczeństwie demokratycznym. Autor skupia się w pierwszej kolejności na francuskim sekularnym modelu konstytucyjnym, opisując napięcie między państwem a religią, środki podjęte w celu wykluczenia symboli religijnych ze szkoły publicznej i socjologiczne konsekwencje tych działań. Analiza wybranych orzeczeń sądów pokazuje, jak znaczenie wolności religii jest bagatelizowane w europejskim systemie prawnym, co ma ogromne konsekwencje dla wychowania na rzecz pokoju w coraz bardziej różnorodnym społeczeństwie. W drugiej części artykułu Autor analizuje jedno z polskich pytań referendalnych z 2023 roku, wskazując na erozję debaty demokratycznej i funkcji edukacyjnej instytucji demokratycznych.

**Słowa kluczowe:** wolność wyznania, demokracja, tolerancja, referendum, burka, Francja, pokój

**Abstract:** The author attempts to analyse the role of selected legal institutions and court decisions as instruments of education for peace in contemporary democratic society. The author first focuses on the French secular constitutional model, describing the tension between state and religion, the means taken to exclude religious symbols from public school and its sociological consequences. The analysis of selected court decisions highlights how freedom of religion is downplayed in the European legal system, which has huge implications on education for peace in the more and more diversified society. In the second part of the article, the author analyses one of the 2023 Polish referendum questions, pointing out the erosion of democratic debate and the educational function of democratic institutions.

**Keywords:** freedom of religion, democracy, tolerance, referendum, burqa, France, peace

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## Introduction

The article contributes to the discussion of the impact of modern legislation, legal institutions and jurisprudence on education for peace. Using selected rulings of international courts as an example, as well as the referendum question, the author analyses the impact of law on education for peace in the modern world, particularly in the context of the phenomenon of migration, which is one of the greatest challenges for the Western civilization.

It may seem a truism to state that law is an instrument for shaping the attitudes of society. This conclusion appears accurate with regard to both revealed law (e.g. the Decalogue, the Commandment to love God and one's neighbour) and state law (the Constitution, laws, international law, etc.). However, while revealed law has to do primarily with religious upbringing and is primarily concerned with believers, the rulers of states attempt, through statutory law, understood as a set of norms defining the behaviour of people, established by the state apparatus and secured by enforceable sanctions (Muras 2019), to impose on the public a system of attitudes they consider desirable. Meanwhile, the modern sociology of law, points out that "law is not only a system of norms established in a manner deemed legitimate by the state authority, but also a system of beliefs, feelings, ideas and values that, although not directly related to the activities of the state, have a decisive impact on economic, political, moral and mental development" (Kojder et al. 2014, 14).

The contradiction between statutory law and the prevailing belief system finds expression in actions of civil disobedience, which not only hinder the implementation and enforcement of legal regulations but have an impact on the broad masses of society, which may even lead to a change of government. On the other hand, an increasing number of NGOs are engaging in what is known as strategic litigation, which consists of "litigating in the public interest in order to change a practice or law that violates individual freedoms or rights, to implement a specific international or constitutional standard, to bring a specific, momentous issue to the attention of the public and authorities, or to raise public awareness" (HFPCz 2019). This phenomenon confirms that the law – in this case as interpreted by judicial decisions – can have a significant power to influence society.

Thus, there is a reciprocal coincidence of phenomena – law alone is not a sufficient instrument to create attitudes, but it remains an important instrument, influencing ideas, feelings and beliefs. In other words, legal regulations, or the lack thereof, shape ideas and beliefs but law alone (or lawlessness) is not sufficient to create them, leaving space for broadly understood culture and social phenomena, including education. In the process of upbringing, however, law has a prominent place.

## Definitions

When discussing education for peace, it is important to define terms precisely to avoid misunderstandings at the outset of deliberations. The PWN Dictionary of Polish Language defines „peace” in a negative sense, as a situation in which a state or nation is not at war (SJP PWN 2005). War, on the other hand, is an organised armed struggle between states, nations or social or religious groups, etc. This means that peace is a situation in which a state or nation does not participate in or is not subject to an organised armed struggle. This definition seems far from satisfactory and insufficient.

For the purposes of this article, I propose to adopt a working, positive definition of ‚peace’ as fraternal and benevolent coexistence, based on mutual respect, pluralism and tolerance of diversity, free from violence.

The term “education”, on the other hand, is understood for the purposes of this article as shaping both children and young people, as well as adults, according to the dictionary definition: “a set of interventions aimed at shaping a person physically, morally and mentally and preparing him or her for life in society” (SJP PWN 2023).

During the conference speeches and discussions, the thesis emerged that peace originates from, and is primarily composed of, ‚peace of heart’. This seems to be not only a beautiful idea, but the real basis of peace, understood according to the definition above. Without ‚peace of heart’, human coexistence will be at best a state of ceasefire or *ad hoc* truce. Therefore, it is appropriate to understand ‚education for peace’ as actions aimed at shaping peace in the hearts. Pope John XXIII expressed a similar thought in his encyclical *Pacem in Terris*: „And yet the Creator of the world has engraved deep in the heart of man the law which his own conscience reveals to him and commands him to observe faithfully. “They show that the content of the Law is written in their hearts when, at the same time, their conscience stands as a witness, namely, their thoughts alternately accusing or acquitting them” (John XXIII 1963, 5).

The last term in need of definition is ‚migration’, here understood as the mass movement of people, usually in search of better living conditions (SJP PWN 2023), regardless of the reasons (for profit or humanitarian).

### **Migrations and freedom of religion – French lessons learned**

Migrations are one of the biggest problems of the 21st century for democratic, developed countries. They are being tackled by the United States as well as by Western European countries. Despite years of experience, a satisfactory solution to migration is still being sought, and each of the solutions used is proving insufficient or even unreliable. It seems legitimate to analyse the experiences of other countries and to learn not from our own, but from others’ mistakes.

The social situation in France appears to be particularly difficult. Undoubtedly, it is in France that the tension between the state and the Muslim minority of immigrant origin is the highest in Europe. It is enough to recall the riots surrounding the shooting Nahel Merzouk in the spring of 2023. In November 2023, in turn, the victim of a racist attack was 16-year-old Thomas, whose killers were said to have shouted “we want to kill white people”. In the current polls (end of 2023), Marine Le Pen’s National Rally, which has criticised the European Union’s migration policy for years, has the highest support. President Macron’s ruling party, on the other hand, is tightening its already strongly anti-migrant course.

Clearly, the contemporary problems of the French Republic are a veritable Gordian knot, and the government’s successive actions seem to be making it even more tangled. It is not the purpose of this article to propose any solutions for French government. However, it is worth looking at the origins of the problem in order to understand it better.

France offered immigrants, needed as cheap labour force, employment, opportunities for social advancement and social rights, expecting in return to accept the laws of the republic, in particular respect for its secular character. In the case of religion, this meant that faith should remain in the private sphere. The public sphere, on the other hand, should be secular, as an expression of the state’s neutrality in the worldview sphere.

Meeting the above conditions was not a significant problem for the first generation of immigrants. However, their children, and especially their grandchildren (from the 1980s onwards) did not feel that they were beneficiaries of the French Republic. They experienced unemployment and social exclusion and found in the religion of their ancestors the source of their identity and strength. Moreover, Muslims were not integrating with the rest of society, but marrying within their community and becoming increasingly isolated from the native French.

The framework of this study necessitates discussing only a fragment of the issue, which, in the author’s opinion extremely relevant to the problem at hand. It is freedom of religion and its limits, i.e. one of the fundamental human rights. It should be noted that contemporary migration in Europe is primarily an influx of Muslim people from Africa and Asia. While migrants are often religious (believing and practising), Europeans are already a largely secularised society. Religion is often considered a relic of the past, not fitting into the modern or postmodern reality. At best, religion can be considered a private matter that should not be (at least too much) manifested in public. Consequently, freedom of religion as a human right – is losing ground in Europe, as the decisions of European courts and tribunals confirm.

At the same time, however, it should be explicitly stipulated that believing Europeans can enjoy real freedom of religion, as evidenced, for example, by events such as the World Youth Day in Lisbon. The thesis regarding the decline in the importance of freedom of religion as a human right should be understood here

in proportion to the wide sphere of freedom of religion provided by the European Union.

France stands out from the Member States of the European Union in this regard. The first article of the French Constitution of 1958 explicitly states that the French Republic is a secular state. The constitutional principle of secularity of the state directly and significantly translates into the internal political and social situation. Historically, secularism was intended to combat the influence of the Catholic Church. Once this objective was realised, secularism became an instrument to combat the religion and culture of Muslims. It can be argued that the policy of a secular public sphere was introduced inconsistently and not radically enough. For example, religious dress in public schools was only banned in 2004 (the ban applied to all religions) and the burqa only became illegal in public spaces in 2010. Muslim communities became strong (too strong) and became independent, posing a threat to the rest of society.

In the face of this pressure, the French government has consistently continued to reinforce the secularity of the state. Since the beginning of this school year, the wearing of the abaya, an outer garment, a type of dress traditionally worn in Gulf Muslim countries, has been banned in France. The government's decision was announced by Education Minister Gabriel Attal, who justified it on the grounds of the secular nature of public schools in France. It is worth pointing out that only a few hundred of the several million schoolchildren (similar bans mainly affect girls) wore the dress. However, the ban was taken very seriously, even demonstratively – police were sent to the schools and female students who refused to remove the outfit were sent home.

The problem is that the abaya, unlike the burqa or niqab, which was already banned in 2004 (at the time, crucifixes or Jewish kippahs were also banned), is not a religious garment, but a regional one. The French government is aware of this and makes no secret of its intentions – to hit the Muslim community on the assumption that the person wearing the abaya is a Muslim.

Translating this to the Polish reality, one could say that a person wearing a highlander outfit is certainly a Catholic, because the majority of the inhabitants of Podhale region are Catholics, and therefore such an outfit is an unacceptable manifestation of religion.

The Council of State, France's highest administrative judiciary body, upheld the ban on the wearing of the abaya at school because it did not violate "the right to education or respect for [...] the interests of the child and the principle of non-discrimination" (web 1). Already in this quotation, the specific approach to the right to education, assuming an obligation to comply with the requirements of dress code, respect and the interests of the child, is noteworthy. Particularly surprising is the failure to find a violation of the prohibition of discrimination. It is worth noting at this point how different the criteria for discrimination on the issue of religion are from those for discrimination in the case of race, sexual orientation

or gender. Amnesty International raised its concerns, pointing out ongoing breaches of France's international human rights obligations and its consequences on the lives of Muslim people in France (web 2).

Vasiliki Fouka and Aala Abdelgadir, Stanford University researchers, who examined the effects of the 2004 law, seem to think differently from the State Council. They found that the bans in question, over a 15-year period, doubled the percentage of Muslim women, who do not complete their secondary education, as well as increased the time it takes Muslim women to complete this level of education. The long-term effects of the ban have been to increase the employment gap by more than a third, the labour force participation gap by more than half, and the gap between Muslims and non-Muslims living with their parents by more than a third (Abdelgadir & Fouka 2020).

Additionally, Muslims experience ostracism and discrimination at school. In a radio programme, a French Muslim student spoke with great regret about the humiliation that Muslim girls experience from the teaching staff (web 3). She rightly pointed out that the countries where dress requirements are imposed on women are Afghanistan and... France.

The authors of the study point out that the 2004 ban presents young Muslim men, but especially women, with a dramatic choice: republican values or religious identity? There is no third option. Many of those for whom religious identity is more important, dissociate themselves from republican values (which leave no room for Muslim identity). Some isolate themselves from French society and become fundamentalist. The above example of statutory law is a painful exemplification of how a law that, was intended to build a consensual society, has contributed to its fragmentation and polarisation.

In other words, the ban had the opposite effect – although religious symbols and costumes were no longer present at schools, neither were the pupils, who felt rejected by French society. A part of these people, living in closed communities, became radicalised. It is still worth noting that the wearing of certain items of clothing for a believing Muslim woman (the effects of the laws and rulings primarily affect women) are not so much a manifestation of faith as a fulfilment of its precepts. It is no coincidence that the referenced studies found a decline in Muslim women's participation in the labour market – for some girls, not being able to wear a headscarf means dropping out of public school.

Interestingly and optimistically, some Muslims send their children to Catholic schools, which, being non-public, do not have to comply with religious dress bans and are open to Muslims.

## Judgments of international Tribunals on freedom of religion

I have devoted a separate, comprehensive article to the issue of freedom of religion in the jurisprudence of international Tribunals (Sewerynik 2023). Here, I will limit myself to a brief discussion of three relevant judgments.

The Council of State ruling cited above is not the first to treat freedom of religion and the prohibition of discrimination worryingly lightly. The European Court of Human Rights in the case of “S.A.S.”<sup>2</sup> held that the French ban on face covering in public places (outside places of religious worship) did not violate freedom of religion (2010 law). The Court found that respect for the minimum values of an open and democratic society, defined as ‘vivre ensemble’, is sufficient justification for laws prohibiting face covering and, consequently, the wearing of burqas and niqabs in public places, except places of worship.

However, due to the COVID-19, the understanding of “vivre ensemble” has changed. Covering one’s face has become an ordinary, even desirable habit. And here is the troubling question: if the only reason for the ban on burqas in public spaces is the requirement to show one’s face resulting from “vivre ensemble”, is this prohibition still in force? Or maybe the invention of “vivre ensemble” was just a trick to bypass antidiscrimination law?

The above case shows that by escaping from the essence of matters we do not actually solve real problems but instead create new ones. The society is not educated by such law or at least not educated to peace. Honest discussion about Islam, and the dialogue with Muslims is a necessity in Europe and must address difficult issues. Otherwise, the problems will be merely postponed.

Unfortunately, also the Court of Justice of the European Union seems to view freedom of religion as a right that should give way to freedom of establishment. This is the conclusion that emerges from an analysis of the high-profile “Achbita”<sup>3</sup> judgment, in which the Court ruled that the will of an employer to establish a policy of political, philosophical or religious neutrality in its relations with its customers deserves protection as an expression of the freedom of establishment formulated in Article 16 of the Charter of Fundamental Rights and thus outweighs the right to manifest one’s religion. It needs to be noted, that this case concerned not France, but Belgium, yet the outcome has implications for all the Member States of the European Union.

In the WABE<sup>4</sup> case decided in 2021, the legitimate expectations of the customers of a German entrepreneur, who runs a large number of day nurseries proved sufficient to outweigh freedom of religion. Indeed, since it is the wish of the parent-customers

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2 S.A.S. v France, Application No. 43835/11, ECtHR judgment of 1 July 2014

3 C157/15, Samira Achbita v G4S Secure Solutions NV, CJEU judgment of 14 March 2017.

4 Joined Cases C-804/18 and C-341/19, IX v WABE eV and MH Müller Handels GmbH v HJ, CJEU judgment of 15 July 2021.

that their children be educated by persons, who do not express their religion or beliefs in order to, in particular, „ensure the individual and free development of the children with regard to religion, faith and politics”, the employer can expect its employees to refrain from any religious symbols or costumes. It is worth emphasising that the case was not about imposing one’s beliefs on children and parents, but about any expression of one’s religion through items of clothing or religious symbols.

International Tribunals, through their prestige and status, can influence and educate society by demonstrating the axiology of law. The above judgments, however, seem to play the opposite role by downgrading the fundamental right to freedom of religion at the expense of the right to entrepreneurship. This applies not only to the sentences themselves, but also to their justifications, which often fail to meet the expected standards (Weiler 2018). The rhetorical question then remains: do such rulings, which directly affect Muslims but indirectly all religious people, bring up peace?

### **Referendum as an instrument of direct democracy and its educational role**

Public debate on issues of law – legislation, jurisprudence, fundamental rights – can undoubtedly educate for peace, but it can also deprave and “sow the wind” – if it is conducted in a distorted manner, in violation of rules and standards. Unfortunately, in recent years, and not only in Poland, we have witnessed an erosion of democratic standards, particularly in terms of a fair legislative process involving broad consultation and public debate. Increasingly, we are witnessing democratic violence, in which the ruling party or coalition ruthlessly enacts legislation that achieves its immediate goals, without looking at the opposition or minorities, bypassing debate or organising only a semblance of it.

It should be clearly emphasised, this is not a phenomenon peculiar to a single political faction but has become the *modus operandi* of both the Right and the Left (leaving aside the appropriateness of these terms), both in Europe and North America. Not only law, but also legal institutions are used instrumentally and *ad hoc*. This is well illustrated by the dispute over the solution of the migrant issue at the level of the European Union and Poland. It is worth remembering that this is one of the biggest, unavoidable problems facing the European Union as a whole, but also Poland.

It is a truism to note that the problem of migration is extremely difficult, complicated and multi-level. The issue raises many questions that are not easy to answer, but it is certainly worth asking such questions and seeking answers. These are questions that arouse strong emotions – fear, anger, irritation, indignation, apprehension. This is why migration, and migrants have become the subject of electoral campaigns, which further heighten these emotions.



An honest discussion has a cognitive value, allows knowledge to be expanded, prejudices to be broken down, and offers a chance to find solutions. Discussion allows myths and fears to be confronted with facts, real threats to be identified and action taken to counter them. One important question is that of attitudes towards the religion of migrants from other cultures.

However, not every place and time is conducive to an in-depth debate. Not every question is well posed and not every question serves to educate. By way of example, let us refer to Referendum Question no 4 from the Polish Referendum of 15.10.2023:

“Do you support the admission of thousands of illegal immigrants from the Middle East and Africa, in accordance with the forced relocation mechanism imposed by the European bureaucracy?”.

It is worth looking at the following words and the load of emotions they carry:

- thousands
- illegal immigrants
- from the Middle East and Africa
- forced mechanism
- relocation
- imposed
- European bureaucracy.

A basic knowledge of psychology allows one to conclude that the way the above question was phrased reinforces difficult emotions – fuels fear, a sense of threat, uncertainty. Both the question and the media coverage that followed it were not intended to provoke any discussion. The question was merely the wheels of the campaign mechanism, that accompanied the parliamentary elections. The question was asked in such a way as to fuel emotions – to arouse fear of migrants, who would be imposed on Poles by European bureaucratic forces – against our will and to our detriment. It is worth mentioning, that 48,4% of respondents negatively assessed the referendum question, while only 24,6% assessed them positively (web 4).

And yet migration is one of the biggest problems of the 21st century for democratic developed countries. It is being tackled by the United States as well as by Western European countries. Despite years of experience, a satisfactory solution to migration is still being sought, and each of the solutions used is proving insufficient or even unreliable. Contemporary problems of the USA, Italy, France or Germany show how extremely complicated, sensitive and dynamic the process of managing migration and migrants, as well as the assimilation of their descendants, is.

Poland, despite the rapid, spectacular admission of more than a million Ukrainians, a significant number of whom have already left the territory of the Republic of Poland returning to the homeland or moving further west, despite the admission of tens of thousands of economic migrants from Asia and Africa, for the time being, does not have to directly face the problem of culturally alien migrants who settle on the territory in significant numbers.

In this context, it is therefore worth discussing, reflecting on the best solutions, educating rather than... scaring. The instrumental use of the referendum in direct political competition also has negative consequences for the institution of the referendum itself, the public's willingness to participate in this form of democratic action, as well as for public debate. The complexity of the issue of referendum effectiveness has also been demonstrated by the most famous and fraught referendum of recent years – the one on Brexit, in which the debate on membership in the European Union was reduced to a simple alternative: to leave or to stay? By contrast, the information campaign was full of simplification and misinformation.

Referendums – as an institution of democracy – should serve for debate, participation and education. However, recent experience has called into question these functions of the referendum and its usefulness in democracy.

### **Conclusion**

The above considerations allow us to conclude that statutory law, court rulings, and democratic institutions are not sufficient instruments for effective education, and their importance has significantly decreased in recent decades. However, the law remains an important instrument capable of influencing ideas, feelings, and beliefs, provided that it is created appropriately and does not overlook cultural and social conditions.

An analysis of the French experience allows one to conclude that the path of secularism as a means of avoiding religious tensions leads to a dead end. The example of the French Republic shows what happens when freedom of religion and tolerance are downplayed in a diverse society. The suppression of religion from the public sphere has had the opposite effect, depriving values such as pluralism and tolerance of their true meaning.

In turn, the analysis of the referendum question asked in Poland shows that the educational potential of democratic institutions can easily fall prey to current political disputes and party games. Instead of informed debate and education, the instrumental use of tools such as the referendum can lead to the exacerbation of disputes.

At a time of crisis for democracy, it is worth drawing on the best experiences of history. In Poland, we have a rich tradition of religious tolerance, initiated by Paweł Włodkowic and endorsed at the Council of Constance, as well as the tradition of the 'Henrician Articles' and the 'Warsaw Confederation' of 1573. The 'Warsaw Confederation', passed by the Sejm (Polish Parliament), made Poland (Rzeczpospolita), despite the dominance of Catholicism, a free and safe country for Jews, Lutherans, Calvinists, and Muslims – a country without executions for heresy, unlike other European nations of the time. It was a country co-governed by people of different faiths who, while aware of their own identities and differences, were

able – though not without challenges – to co-govern the state. Today, in crafting a Polish response to the challenges of migration, it is worth drawing on these best traditions, particularly in education for peace.

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