

Protection of Property Rights of Legal Persons of Religious Associations in the System of Human Rights

Abstract

The chapter presents normative possibilities of protecting property rights Legal Persons of Religious Associations against discrimination. The discussed protection stems from the human rights system. It seems that the system of human rights protection does not apply to non-human entities, although at times it does protect the rights of legal persons. Research analysis of the human rights norms and the case law of the European Court of Human Rights in Strasbourg allow determining the – important protective elements defined in the human rights system. Three scopes of protection may be differentiated: protection of freedom of conscience and religion – Art. 9 of the ECHR; a person's right to peaceful enjoyment of his possessions – art. 1 Protocol 1 to the ECHR; prohibition of discrimination – art. 14 ECHR.

Keywords: Legal Persons of Religious Associations, – property rights, freedom of conscience and religion.

1. Introduction

The aim of this article is to present the possibilities of protection of property rights of legal persons of religious associations, for example protection of parishes from unequal treatment in the system of human rights. On the surface it seems that the system of human rights does not refer to the protection of rights of entities other than individual persons, but in fact it is not so. Sometimes this system also protects the rights of legal persons, which will be presented below.

The analysis conducted in the article indicates the normative framework of human rights as well as the case law of the European Court of Human Rights

in Strasbourg, which allow one to identify the relevant protective measures provided on the basis of this normative ground. The system of human rights, as a system of international agreements, allows one to indicate a hierarchically correct interpretation of lower-order legal standards, including national standards.

It also allows to indicate effective human rights that provide factual and not false protection. This is essential, as sometimes it happens that legal persons are treated differently by the state and its bodies only because they have been established by religious associations.

Therefore the article is an attempt to present an assessment of such unequal treatment, but on the basis of the system of human rights, which will be possible thanks to the analysis of the case of law of the ECtHR. It will allow to find a balance in and a correct interpretation of national regulations, as well as to find any possible effective complaints in proceedings before the Court in Strasbourg.

2. The system of human rights

It is necessary for the clarity of the analysis to present in short the essence of the division of human rights and freedoms¹ and the duties of the state that arise from them.

It should be emphasized that human rights are meant to express, more or less effectively, the inherent dignity of every human being², which is the source of all rights of individuals. One should agree that the definition of freedom “*is highly*

¹ Z. Hołda, et al., *Prawa Człowieka, Zarys wykładu*, Warszawa, 2011, p. 11 and K. Motyka, ‘Wprowadzenie’, in K. Motyka (ed.), *Prawa Człowieka, Wprowadzenie, Wybór Źródeł*, Lublin, 2004, p. 20; For more see: M. Skwarzyński, ‘Bluznierstwo w świetle standardów ochrony praw człowieka’, in F. Ciepły (ed.), *Odpowiedzialność karna artysty za obrazę uczuć religijnych*, Warszawa, 2014, pp. 91–95, M. Skwarzyński, ‘Sprzeciw sumienia w europejskim i krajowym systemie ochrony praw człowieka’, *Przegląd Sejmowy*, no. 6, 2013, pp. 18–19.

² For more on personal dignity and the dignity of personality see: K. Orzeszyna, ‘Godność ludzka podstawą praw człowieka’, in R. Tabaszewski (ed.), *Człowiek - jego prawa i odpowiedzialność*, Lublin, 2013, p. 23 ff.; J. Krukowski, ‘Godność człowieka podstawą konstytucyjnego katalogu praw i wolności jednostki’, in L. Wiśniewski (ed.), *Podstawowe prawa jednostki i ich sądowa ochrona*, Warszawa, 1997, pp. 39–42; W. Jedlecka, J. Policiewicz, ‘Pojęcie godności na tle Konstytucji RP’, in A. Bator (ed.), *Z zagadnień teorii i filozofii prawa. Konstytucja*, Wrocław, 1999, p. 146; J. Zajadło, ‘Godność jednostki w aktach międzynarodowej ochrony praw człowieka’, *Ruch Prawniczy, Ekonomiczny i Socjologiczny*, no. 2, 1989, p. 111; K. Complak, ‘Uwagi o godności człowieka oraz jej ochrona w świetle nowej konstytucji’, *Przegląd Sejmowy*, no. 5, 1998, p. 42 ff.

*controversial and difficult to grasp*³, yet “*freedom is a fundamental, natural (primary to written laws) attribute of human existence that is protected by law and refers to a person’s capability to autonomously and authentically command themselves, their freedom of choice and the way in which they realise their values as well as to their capability to freely guide their actions.*”⁴ Freedom is a sphere of capability to act in a certain way, e.g. action or omission, with which the state cannot interfere, so it is a right in a negative sense, and a person may choose to use or not use their freedom. Therefore the state is not fully released from acting for the protection of freedom and it consists in setting only the necessary boundaries of its protection. If there is freedom protected by law “*three simple modalities should be distinguished: prohibition of the state’s interference, prohibition of interference from other entities, order for the state to grant legal protection.*”⁵ Thus, the state is obligated to refrain from interfering and, at the same time, to grant protection to individuals, so that they can exercise their freedom.

On the other hand, attempts have been made to define human rights in the same way as subjective rights are understood in civil law, i.e. as a sphere of capability of a given entity to act in a certain way that is regulated by law and follows from the legal relationship.⁶ Thus, a human right is the sphere of capability in which individuals can exercise their: freedom as a possibility to act, entitlement, and/or competence⁷, yet in this case the state should be active and provide protection of the right by creating regulations of positive law. Therefore, human rights are the kind of freedom, entitlement or competence for which a person wanting to exercise them can request the state’s protection and the state is obligated to provide it. A distinctive feature of human rights is that the obligation to respect them is first of all the state’s obligation. The assumption is that this system allows to provide protection to individuals against the negative operation of the state apparatus and to order the state to protect the

³ D. Dudek (ed.) et al., *Zasady Ustroju III Rzeczypospolitej*, Warszawa, 2010, p. 105.

⁴ D. Dudek (ed.) et al., *Ibidem*, p. 105.

⁵ A. Michalska, *Podstawowe prawa człowieka w prawie wewnętrznym a paktów praw człowieka*, Warszawa, 1976, p. 64.

⁶ K. Motyka, ‘Wprowadzenie’, in K. Motyka (ed.), *Prawa Człowieka, Wprowadzenie, Wybór Źródeł*, Lublin, 2004, p. 18; A. Wolter, J. Ignatowicz and K. Stefaniuk, *Prawo Cywilne, zarys części ogólnej*, Warszawa, 2001, p. 128 ff.

⁷ P. Tuleja, *Stosowanie Konstytucji RP w świetle zasady jej nadrzędności (wybrane problemy)*, Kraków, 2003, p. 135, similarly: A. Michalska, *Podstawowe prawa człowieka w prawie wewnętrznym a paktów praw człowieka*, Warszawa, 1976, p. 62.

rights and freedoms of individuals. Thus, if one assumes that a given freedom, understood as the sphere of the possibility to act, entitlement and/or competence is a human right, then the state has the obligation to create a system of positive law in such a way so as to enable exercising individual rights arising from this human right.

3. The human right to freedom of conscience and religion

Intuitively, the first human right that should be analysed is the right to freedom of conscience and religion. The legal source of the freedom of conscience and religion is the International Covenant on Civil and Political Rights⁸, and in the European (continental) system the essential regulation is especially Article 9 of the Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950⁹ (hereinafter ECHR), the content of which is repeated in Article 10 of the Charter of Fundamental Rights¹⁰ (hereinafter CFR).

The freedom of conscience and religion contains two elements: internal – *forum internum* and external – *forum externum*. From the point of view of the European Convention on Human Rights, the internal element is the freedom of conscience, thought and religion.¹¹ *Forum internum* is less significant for the reasoning of the article.

The element important in the analysis is *forum externum*, which consists in the freedom to manifest religion¹² in four forms listed in Article 9 paragraph 1 ECHR: worship, teaching, practice and observance¹³, where the order is not accidental and with it the scope of permissible interference increases¹⁴. It should be noted that Article 9 paragraph 1 ECHR allows one to remain independent in

⁸ International Covenant on Civil and Political Rights opened for signature on 19 Dec. 1966, annex to Dz.U. 1977, no. 38, item 167.

⁹ Convention for the Protection of Human Rights and Fundamental Freedoms, Dz.U. 1993, no. 61, item 284, as amended.

¹⁰ Charter of Fundamental Rights of 7 Dec. 2000, Official Journal of the European Union C 83/02 of 2010, p. 389.

¹¹ L. Garlicki, 'Komentarz do art. 9 EKPCz', in L. Garlicki, P. Hofmański, A. Wróbel (eds), *Konwencja o ochronie praw człowieka i podstawowych wolności. Komentarz do artykułów 1–18. Tom I*, Warszawa, 2010, pp. 556–559, points 11–14.

¹² L. Garlicki, *Idem.*, point 23.

¹³ L. Garlicki, *Idem.*, point 26.

¹⁴ I. C. Kamiński, 'Komentarz do art. 10 KPP', in A. Wróbel (ed.) *Karta Praw Podstawowych Unii Europejskiej. Komentarz*, Warszawa, 2012, point 26.

the internal/spiritual sphere and this freedom cannot be limited in any way, “*yet it does not mean that manifestation of convictions and religion will be provided with the same protection*”¹⁵ that is provided to *forum externum*.

It seems that the freedom of conscience and religion in both its forms (*forum internum - forum externum*) does not affect the economic aspect of the functioning of religious associations. However, it was rightly indicated in the doctrine that the case law of the ECtHR allows one to point to the sphere of protection of religious groups’ freedom in the form of their autonomy, which in turn includes determining the organizational structure of the church, and its external premise is usually to obtain legal personality, which determines the protection of property rights.¹⁶

Thus, the property component of the activity of religious associations falls within the sphere of the exercise of *forum externum* and deserves protection from the perspective of Article 9 ECHR.

This was clearly stated in the judgement of the ECtHR of 1 October 2009 in the case of *Kimlya and Others v. Russia*, where the Court emphasized the right of a religious association to start and run a business.¹⁷ Therefore, the human right to property and its influence on the protection of the rights of religious associations and the rights of legal persons appointed by these associations should be discussed further. What is more, the Court emphasized that the rights resulting from legal personality, and related to the property sphere, are necessary to exercise the right to manifest religion, which ensures independent protection under Article 9 ECHR, which is supported by Article 6 ECHR (right to a fair trial) and Article 11 ECHR (freedom of assembly and association).¹⁸

¹⁵ M. A. Nowicki, ‘Komentarz do art. 9 Konwencji o ochronie praw człowieka i podstawowych wolności’, in *Wokół Konwencji Europejskiej. Komentarz do Europejskiej Konwencji Praw Człowieka*, Warszawa, 2017. Available from: System Informacji Prawnej LEX.

¹⁶ L. Garlicki, *Idem*, points 40, 42.

¹⁷ ECtHR judgement of 1 Oct. 2009, Case of *Kimlya and Others v. Russia*, Applications nos. 76836/01 and 32782/03, points 54, 85.

¹⁸ Such conclusion may be drawn from the reasoning of the above-mentioned judgement and other case law, cf.: ECtHR judgement of 31 July 2008, Case of *Religionsgemeinschaft der Zeugen Jehovas and Others v. Austria*, Application no. 40825/98, point 63; ECtHR judgement of 13 Dec. 2001, Case of *Metropolitan Church of Bessarabia and Others v. Moldova*, Application no. 45701/99, points 105, 118; ECtHR judgement of 5 April 2007, Case of *Church of Scientology Moscow v. Russia*, Application no. 18147/02, point 81; ECtHR judgement of 14 June 2007, Case of *Svyato–Mykhaylivska Parafiya v. Ukraine*, Application no. 77703/01, point 117; ECtHR judgement of 27 Feb. 2007, case of *Biserica Adevărat Ortodoxă din Moldova v. Moldova*, point 34.

Certain importance may only be given to the conditions of limitation clauses in Article 9 paragraph 2 ECHR.¹⁹ For the limitation of religious freedom to be possible, the restriction must result from a statute, so it must have the form of a specific legal regulation. Furthermore, the restriction must be necessary in a democratic society. Treating property rights of a religious association or of the legal person of a religious association differently only because it is the legal person of a religious association or the religious association itself is a violation of human rights. This is the case if the very course of proceedings of a given body is not necessary in a democratic society, which is essentially pluralistic in nature.²⁰ It seems obvious that the participants of the exchange are legal persons of religious associations and the associations themselves, and their activity is also based on economic activities. Especially given that legal persons of religious associations may appoint other legal persons governed by public law, in particular commercial law companies, just like other market participants.²¹

The structure of the freedom of conscience and religion indicates that although there is no *expressis verbis* reference to the property structure of legal persons of religious associations, the ECtHR indicates protection, legitimately claiming that rights arising from legal personality and connected with the property sphere are necessary to exercise the right to manifest one's religion.

Obviously, this legal standard "takes into consideration" the fact that individuals form a religious structure that participates in civil law transactions and within it legal persons of a religious association may run an enterprise or a company. However, this particular freedom serves to protect the element of human dignity that is associated with religion and conscience. This happens when a business entity is treated less favourably only due to its connections with the legal person of a given religious association. In other words, the protection under Article 9 ECHR is granted when

¹⁹ *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.*

²⁰ For more see: K. Orzeszyna, *Podstawy Relacji Między Państwem a Kościołami, w Konstytucjach Państw Członkowskich i Traktatach Unii Europejskiej. Studium Prawnoporównawcze*, Lublin, 2007, pp. 23 – 34. For more on an organised civil society see: K. Orzeszyna, 'Społeczeństwo Obywatelskie w Unii Europejskiej', *Teka Komisji Prawniczej Polskiej Akademii Nauk Oddział w Lublinie*, Vol. II, 2009, pp. 94 –108; A. Kość, 'Relacja prawa i wartości w społeczeństwie otwartym', in I. Bogucka, Z. Tobor (eds), *Prawo a wartość. Księga jubileuszowa Profesora Józefa Nowackiego*, Kraków, 2003, p. 135.

²¹ For more see: M. Skwarzyński, 'Ochrona przed nierównym traktowaniem spółek, powołanych przez osoby prawne związków wyznaniowych w europejskim systemie praw człowieka', *Przegląd Sejmowy* no. 2, 2018, p. 75 ff.

there are violations of equal treatment because of religious connections or character. Thus, the violation of the freedom of conscience and religion takes place to the extent related to the discrimination against the legal person of a religious association because of its religious nature. The nature of a legal person recognized in a state as the legal person of a religious association cannot restrict its freedom to participate in economic life because of its religious character.

Such a discriminatory treatment is connected with the human right to property, which allows for self-protection against unjustified unequal treatment.

4. The human right to respect for property

The key element of the analysis is analysing the human right to property, which is formulated in the European system as the right of every person to respect for property. It should be noted that in Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms, prepared in Paris on 20 March 1952²² (hereinafter Protocol No. 1 to the ECHR), Article 1 defines the human right to property. The content of this Article is intentionally expressed in general terms and the wording is: “*Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.*” This standard occurs in the European system as a first-generation human right, as opposed to the universal system, therefore the Council of Europe system can ensure its effective protection.

It should be indicated that Article 1 of Protocol No. 1 to the ECHR contains three standards: „*The first standard, expressed in the first sentence of the first paragraph, is general and introduces the principle of an undisturbed use of property; the second standard, contained in the second sentence of the first paragraph, refers to deprivation of property and subjects the deprivation to certain conditions, the third standard, included in the second paragraph, recognizes that States - Parties are entitled, among other things, to control the use of property for the general interest.*”²³ However, in the Charter of Fundamental Rights of the European Union²⁴, Article 17 paragraph 1, it was indicated that: “*Everyone has the right to own, use, dispose of and bequeath his or her*

²² Dz.U. 1995; no. 36, item 175/1 as amended.

²³ After: M. Balcerzak, in T. Jasudowicz et al. (eds), *Prawa człowieka i ich ochrona – podręcznik dla studentów prawa i administracji*, Toruń 2005, p. 373 ff.

²⁴ Of 7 Dec. 2000, Official Journal of the European Union C 83/02 of 2010, p. 389.

lawfully acquired possessions. No one may be deprived of his or her possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss. The use of property may be regulated by law in so far as is necessary for the general interest.” The content of the regulation of Article 1 of Protocol 1 to the ECHR *expressis verbis* refers to legal persons. There is also no exclusion of legal persons of religious associations in the limitation clause. However, due to the unfortunate wording of the provision of Article 1 of Protocol No. 1 as „*respect for his possessions*”, it is necessary to refer to the case law of the ECtHR. It is a way to determine whether the property rights of legal persons are protected and whether the rights to the company resulting from being a shareholder, stockholder, partner etc. „*respect his possessions*” or not.

The way to determine what is the subject of the protection of this human right is to trace the case law of the European Court of Human Rights in Strasbourg in the field of protection of the human right to respect for property.

It seems that a linguistic approach cannot include a share, a stock, or a business partner's role, because it is difficult to recognize it verbally as „*his possessions*”. However, the interpretation of the Convention's provisions by the ECtHR is not a linguistic interpretation but a dynamic one, focusing more on the purpose of the regulation than the linguistic side. The phrase „*his possessions*” cannot be understood in strict accordance with civil law. The Court's extensive case law will show that in specific cases, pursuant to Article 1 of Protocol No. 1 to the ECHR, the Court granted protection to goods that are difficult to recognize as one's own or as property.

As simple examples one should mention granting protection to the right of inheritance, intellectual property rights or the protection of the expectation itself.²⁵ In the conventional definition of property, apart from ownership, other property rights are also included²⁶ as well as rights granted to legal persons, not only to natural persons, which is unique in the system of human rights, but is included *expressis verbis* in Article 1 of Protocol 1 to the ECHR. In the European Convention on Human Rights and its Protocols, there is no provision specifying directly the

²⁵ For more see: M. Skwarzyński, *Specyfika prawa człowieka do własności intelektualnej*, Lublin, 2012, pp. 44–47, 49–51, 227–228, 233–235, 238, 241–243, 279–284. These issues can be of great practical importance, as an example one can indicate the problem of inheritance rights of legal persons of religious associations and their legal effects based on internal law, cf.: A. Mezglewski, 'Opinia prawna dotycząca następstwa prawnego po katolickich gminach kościelnych, istniejących w byłym zaborze pruskim', *Przegląd Prawa Wyznaniowego*, no. 7, 2015, pp. 277–287.

²⁶ ECtHR judgement of 16 Sept. 1996, Case of Matos de Silva, LDA., and Others v. Portugal, Application no. 15777/89, point 75.

human right to inheritance, intellectual property or even virtual property.²⁷ The same applies to the protection of expectation. A number of judgements regarding intellectual property may be found in the case law. One of the most important is the case of *Anheuser-Busch Inc. v. Portugal*, where it was noted that „*the complaining company could claim that it is entitled to a „legally legitimate expectation”*”.²⁸ In the Polish doctrine, when analysing this judgement, it was proved that the definition of ownership defined in Article 1 of Protocol 1 of the ECHR „*also covers the interests of legal persons that have a measurable asset value, and are not necessarily protected in a given legal system by the structure of a subjective right.*”²⁹

Therefore, the provision of Article 1 of Protocol No. 1 to the ECHR and the phrase „*peaceful enjoyment of his possessions*” cannot be treated as the source of property protection *strictly* as understood in civil law. The consequence of this autonomy of definition offered by the Convention is that the concept of „*possessions*” does not have to be equivalent to the concepts used in the constitution of a given state or in its civil law. It was rightly observed that the concept of „*possessions*” under the Convention also covers the protection of property in administrative proceedings.³⁰ It follows from the reasoning of the European Court of Human Rights that stated that “*The concept of “possessions” referred to in the first part of Article 1 of Protocol No. 1 has an autonomous meaning which is not limited to ownership of physical goods and is independent from the formal classification in domestic law: certain other rights and interests constituting assets can also be regarded as “property rights”, and thus as “possessions” for the purposes of this provision.*”³¹

Therefore, the ECtHR’s case law cannot be seen as surprising, as it indicates that rights arising from shares or stocks are protected under Article 1 of Protocol 1 to the ECHR.³² In the face of the content of Article 1 of Protocol 1 to the ECHR there is no

²⁷ See: M. Skwarzyński, ‘Prawa człowieka a „własność” wirtualna’, *Wrocławskie Studia Sądowe*, no. 4, 2014, pp. 206–210.

²⁸ ECtHR judgement of 11 Jan. 2007, *Case of Anheuser–Busch Inc v. Portugal*, Application no. 73049/01, point 76 and 78.

²⁹ Ł. Żelechowski, ‘Głosa do wyroku ETPC z dnia 11 stycznia 2007 r., 73049/01’, *EPS*, no. 4, 2008, p. 48.

³⁰ J. Chlebny, ‘Ochrona własności w sprawach administracyjnych na podstawie EKPCz’, *EPS*, no. 9, 2008, pp. 39 – 44.

³¹ ECtHR judgement of 29 Jan. 2008, *Case of Balan v. Moldova*, Application no. 19247/03, point 32.

³² For more see: M. Skwarzyński, ‘Ochrona przed nierównym traktowaniem spółek, powołanych przez osoby prawne związków wyznaniowych w europejskim systemie praw człowieka’, *Przegląd Sejmowy* no. 2, 2018, pp. 75-81, 84-85.

doubt that legal persons are entitled to the protection of the human right to property. The doctrine rightly indicates that the nature of this view follows from a permanent - fixed line in jurisprudence.³³ An example is the case of *Sovtransavto Holding v. Ukraine*³⁴, which concerned the protection of shares in the company or the case of *Pokis v. Latvia*³⁵, which concerned the protection of stocks of the company.

With such case law, there is no doubt that protection under Article 1 of Protocol 1 of the ECHR refers to property rights covered by the human right to property to which religious associations are entitled. Since the state grants legal personality to a religious association and its legal persons, by allowing them into the exchange it also provides them with rights resulting from protection of property. Therefore, it is clear that the legal person of a religious association, and the religious association itself, has the human right to property. It is granted to the legal person of a religious association or to the association itself as its subjective right. This does not change the nature of the entity being a shareholder, a stockholder or a partner, which is the legal person of a religious association, e.g. a parish, or the religious association itself. In this case, there are no reasons for the application of the limitation clause specified in Article 1 sentence 2 and 3 of Protocol 1 to the ECHR. This means that the unequal treatment of such companies, that is, treating them differently than other companies, is a violation of religious rights of legal persons who are shareholders, stockholders or partners. In addition, as indicated above, in the face of the ECtHR's case law this would mean violation of Article 9 of the ECHR, but it is also related to the prohibition of discrimination.

5. The prohibition of discrimination

The third normative source in the system of human rights that provides protection against unequal protection of property rights of legal persons of religious associations and religious associations themselves is the so-called prohibition of discrimination. This is one of the model examples of editing human rights from the negative perspective, i.e. the system of human rights indicates which behaviours are perceived in the system as incompatible, and not what right of an individual is protected.

³³ A. Wróbel, 'Komentarz do art. 1 Protokołu 1 EKPCz', p. 488, point 32.

³⁴ ECtHR judgement of 22 July 2002, Case of *Sovtransavto Holding v. Ukraine*, Application no. 48553/99, point 91.

³⁵ ECtHR decision of 5 Oct. 2006, Case of *Pokis v. Latvia*, Application no. 528/02, Part B Application based on Article 13 of the Convention.

From the normative point of view, it should be indicated that the prohibition of discrimination and the related principle of equality are included in most sources of international protection of human rights. The linguistic content of the prohibition of discrimination is important.

For example, it is specified in Article 7³⁶ of the Universal Declaration of Human Rights³⁷; in Article 2 paragraph 1³⁸ of the International Covenant on Civil and Political Rights³⁹ (hereinafter ICCPR) in the universal system of human rights. It is also included in the European system in Article 14 ECHR⁴⁰, or Article 21 paragraph 1⁴¹ CFR. Of course, the aim of the article is not to present any issues related to equality and prohibition of discrimination in international law⁴², but to discuss the elements of an effective system of

³⁶ *All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.*

³⁷ The content of the Declaration was not published in any official journal, it is in the collections of acts of international law and the version used in the article comes from the official UNESCO website, accessed on 3 May 2017: http://www.unesco.pl/fileadmin/user_upload/pdf/Powszechna_Deklaracja_Praw_Czlowieka.pdf.

³⁸ *Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.*

³⁹ Opened for signature in New York on 19 Dec. 1966, Annex to Dz.U. 1977; no. 38, item 167.

⁴⁰ *Prohibition of discrimination. The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.*

⁴¹ *Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.*

⁴² On that matter see the current research results that are especially valuable for the present article: J. Podkowiak, 'Konstytucyjna zasada równości i zakaz dyskryminacji w prawie cywilnym', *Kwartalnik Prawa Prywatnego*, no. 2, 2016, pp. 229–279, where crucial elements of equality and the prohibition of discrimination are analysed, although the Author of the present article does not agree with all the conclusions drawn by the Author of the cited text; P. Borecki, 'Zakaz dyskryminacji ze względu na wyznanie lub światopogląd w prawie polskim', *Studia z prawa wyznaniowego*, no. 18, 2015, pp. 142–162, 189–192, 195–198. Also see: K. Sękowska-Kozłowska, R. Wieruszewski, 'Komentarz do art. 2 MPPOiP', in R. Wieruszewski (ed.) *Międzynarodowy Pakt Praw Obywatelskich (osobistych) i Politycznych*, Warszawa, 2012, pp. 47–51 and all the literature and case law quoted therein; A. Wróbel, 'Komentarz do art. 14 EKPCz', in L. Garlicki, P. Hofmański, A. Wróbel (eds), *Konwencja o ochronie praw człowieka i podstawowych wolności. Komentarz do artykułów 1–18. Tom I*, Warszawa, 2010, pp. 754–794, point 4.

protection of human rights that indicate the existence of the prohibition of discrimination on account of property or financial issues.

Consulting the legal standards of the international system of human rights, defining equality and prohibiting discrimination, makes it clear that the system prohibits the latter „*on any grounds*”, „*in any circumstances*”, as well as directly because of „*religion*”, „*financial position*” or „*property*”. Although the view that „*in certain circumstances it may also justify different treatment of various religious communities or offer them different forms of cooperation. In this respect, relations between the state and religions can take various forms, depending on the context*”⁴³ seems justified in the case of religion, different treatment of religious associations because of their religious nature is not justified at the economic level.

The issue of indicating the *verba legis* of property shows that the economic situation and property rights cannot be the source of discrimination. As part of the prohibition of discrimination, it should be emphasized that the case law and the doctrine indicate that the prohibition of discrimination based on the ICCPR is underused in the practice of applying the Pact⁴⁴, so it is the source of fewer cases that could be connected with the problem of religious associations.

The essential regulation here is Article 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. The Court in Strasbourg, on matters relating to professional activity, remuneration, working conditions, etc., stated that the complaint made cannot only be about violation of Article 14 of the ECHR - prohibition of discrimination, but it should be connected with other material provisions of the Convention⁴⁵, although the case law recognizes the trend of an increasingly independent approach to Article 14 ECHR.

The European Court of Human Rights re-established certain standards and found that discrimination occurs when there is no objective and rational justification, and in this respect one should take into account the purpose and the effects of measures assessed in this regard and the principles applicable in democratic societies. Discrimination is particularly visible when it occurs in the

⁴³ M. A. Nowicki, ‘Komentarz do art. 14 Konwencji o ochronie praw człowieka i podstawowych wolności’, in *Wokół Konwencji Europejskiej. Komentarz do Europejskiej Konwencji Praw Człowieka*, Warszawa, 2017. Available from: System Informacji Prawnej LEX.

⁴⁴ K. Sękowska-Kozłowska, R. Wieruszewski, ‘Komentarz do art. 2 MPPOiP’, in R. Wieruszewski (ed.) *Międzynarodowy Pakt Praw Obywatelskich (osobistych) i Politycznych*, Warszawa, 2012, pp. p. 47 ff. and all the literature and case law quoted therein;

⁴⁵ M. A. Nowicki, *Ibidem*.

event of different treatment of persons in an analogous or similar situation.⁴⁶ The prohibition of discrimination in the Strasbourg system is open and does not limit the number of prohibited differentiation criteria.⁴⁷ What is more, in order to recognize that differentiation was discriminatory, it should be noted that: prohibited discriminatory criteria were applied to people in a comparable situation; the distinction is arbitrary, i.e. there is no objective and rational basis to justify differentiation; a person is treated less favourably than people in a comparable situation; the measure applied is disproportionate to the intended purpose, which must be a legitimate purpose.⁴⁸

Of course, each decision of the ECtHR should be treated as published in a specific case, in the context of a specific factual state and in a specific system of national law, in accordance with the so-called concept of margin of appreciation that has particular justification in the case of the prohibition of discrimination.⁴⁹

6. Conclusions

In the light of the analysis of international law on human rights and the case law of the European Court of Human Rights, it is obvious that religious associations and their legal persons are entitled to the protection of the human right to property.

The system of human rights prohibits the different treatment of property rights only because the entitled entities are religious associations or legal persons of these religious associations. It is similar when the legal person of a religious association appoints a company or does not have a majority of shares or stocks.

Such unequal treatment violates human rights at three levels. First, protection of freedom of conscience and religion - Article 9 ECHR, second, human right to respect for property - Article 1 of Protocol No. 1 to the ECHR, and third, prohibition of discrimination - Article 14 ECHR. Of course, unequal treatment, in fact discriminatory, will only be treated as such on the basis of these three standards. An independent indication of Article 9 ECHR as the source of

⁴⁶ M.A. Nowicki, *Ibidem*, and the case law quoted therein.

⁴⁷ A. Wróbel, 'Komentarz do art.14 EKPCz', in L. Garlicki, P. Hofmański, A. Wróbel (eds), *Konwencja o ochronie praw człowieka i podstawowych wolności. Komentarz do artykułów 1–18. Tom I*, Warszawa, 2010, p. 757, point 6.

⁴⁸ A. Wróbel, *Idem*, p. 769 ff., point 30 and case law quoted therein.

⁴⁹ A. Wróbel, *Idem*, pp. 792–994, points 74–80.

protection will be difficult despite the formal possibility, and the complaint about the violation of the Convention is definitely strengthened by connecting it with Article 14 ECHR, along with Article 1 of Protocol 1 to the ECHR. However, it is not possible to invoke separate protection of each of these human rights.

Thus, due to the content of the right to freedom of conscience and religion, the autonomy of associations and the state, and the fact that legal persons of religious associations and the associations themselves have legal personality, so also the right to incur liabilities and acquire rights, it is clear that this can only happen on the same terms that apply to other entities, under the human right to respect for property.

The second effective means of protection will be limiting the rights of religious associations and legal persons of religious associations to „respect for property”. This protection is independent of religious freedom and is limited to the exclusive protection of property rights. Its impact will be similarly strengthened if it is combined with the prohibition of discrimination due to property issues. The prohibition of discrimination itself should only be exceptionally applied as an autonomous protective provision due to the limited practice of applying Article 14 ECHR independently by the Strasbourg Court.

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