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Tekst jest udostępniony do wykorzystania w ramach dozwolonego użytku.

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Confiscation and nationalization as a timeless device of religious intolerance

Free exchange of ideas and opinions
is one of the most precious human rights¹

1. Ways and unbeaten tracks of tolerance

According to the Oxford Philosophical Dictionary, *ideology* means “a group of beliefs, ways of thinking and categories which is the basis of some political or social activity program”². Freedom of exchanging thoughts and outlooks numerously cited in various programs or normative acts, including the Universal Declaration of Human and Citizen Rights from 1789, is a theoretical message, commonly accepted. In practice, however, it is often disrespected.

Each human community, formal or informal one, has always needed ideological basis for its existence. Therefore, there are conflicts generated, so called ideological fights aiming at discrediting one social group by another one. Clearly, an ideological fight is expressed in a state division into democratic (especially the European countries and the USA), totalitarian (e.g. the North Korea or Cuba) and fundamental ones (Iran, Saudi Arabia). The example of such conflict is an attempt to implement, in Afghanistan, the first socialistic system by the former Soviet Union or, nowadays, democratic one by the USA and its allies. Interstates conflicts have been, however, of different kinds over centuries due to changing concept of a state, e.g. a state in the republic period of the ancient Rome was comprehended as an assembly of legal citizens. Jelinek builds the present dominant concept of a state, according to whom; a state means

¹ Art. 10 of Universal Declaration of Human and Citizen Rights from 1789, [in:] B. Lesiński (ed.), *Historia państwa i prawa. Wybór tekstów źródłowych*, UAM, Poznań 1995.

² S. Blackburn, *Oksfordzki słownik filozoficzny*, translation and analysis in the Polish language J. Woleński (scientific study), Warsaw 1994, p. 165.

a nation, territory and government. In this context of an ideological fight on numerous levels, all program declarations of those political parties which claims to be free from ideology, remain unreasonable. In each program, political, social or economic ones, there are elements of the assumptions concerning human nature, development, organization of social life, kind of economy or form of making politics in a state or on an international stage.

Realization of the adopted ideological assumptions demands the use of proper instruments implementing them into life. Thanks to them, creators of all ideologies aim at their dominance through marginalization or even elimination of other, competing ideologies. The process is performed in different ways, e.g. through a revolution (Russia, France), wars (conquers of ancient Romans), referring to god's mission (Saudi Arabia), new systems of values (human rights) or the use of legal mechanisms shaped through evolution over centuries (democratic system). In this context, a significant question about the possibility of real existence of multicultural and coexistence of many outlooks together must be aroused. Or, in other words, it is a question about tolerance towards outlook diversity.

Even in present theocratic countries, such as Saudi Arabia, or atheist such as the North Korea, there are completely marginalized national, religious or political minorities. Therefore, it is an error to force implementation unanimous and new system of values in the EU formulated in the Chart of Human Rights from 2000 through marginalization other systems, especially the Christian one, which Europe has been linked with for almost two thousand years. As a consequence there is a question of comprehending tolerance and the cases of its infringement or not observing in the context of religious diversity. According to the mentioned above Oxford Philosophical Dictionary, tolerance is understood as "restraining from actions against the phenomena that are not accepted, arouse objection because of political reasons or remain strange for us"³.

Special kinds of intolerance are any forms of religious combats. Religious tolerance overwhelms not only the right to perform religious cult or public expressing own religious beliefs (freedom of conscience and denomination) but also the right to bring up children in a religious spirit, religious education, building own administrative structures of a religious community, educating clergymen, existence of religious institutions or building and maintaining objects of religious cult⁴. Numerous humanists, especially in relation to the Catholic religion, announced the lack of religious tolerance. J. Locke in *The letter about tolerance* (1689) claimed that tolerance should not be shown to Catholics due to their ideological dependence on the pope, being the Head of the Church State. According to the humanist, the Catholic religion means a dangerous departure from the social and political unity, e.g. the pope could arrange enrollment of the foreign Christians to the army.

³ S. Blackburn, op. cit., p. 405.

⁴ J. Wichrowicz, s.v. *Tolerancja*, [in:] Z. Pawlak (ed.), *Katolicyzm A-Z*, Pallotinum, Poznań 1999, p. 378–379.

Such comprehension, however, is improper and unacceptable, since it includes false presumption of facts that it had never taken place and as a consequence, it causes intolerance⁵.

The subject of this dissertation is a presentation of the religious intolerance phenomenon through the view of confiscation and nationalization of religious property. The aim of the research is to define the result of the use of those legal instruments for political reasons, simultaneously being a warning against similar actions in future.

Therefore, a hypothesis that confiscation and nationalization of property is not the best instrument to realization of ideological fights and leads to even bigger social divisions. It leads to social or economy dysfunctions. The example may be the extermination of Jews in Nazis Germany in order to takeover their property, which, in the result, led Germany to economic, political and, finally, military crisis.

Together with economic development and technological advance, contemporary religious intolerance adopts new forms of discrimination leading to economic weakening of religious unions, especially Catholicism. New economic challenges basing mainly on the principle of increase of profits and enrichment of a unit, are directed to combat traditional system of values, especially religious practices. Thus, media present new forms of discouraging believers to the Church, religious practices, especially participation in the Holy Mass on Sunday. In that sub-context, the aim of such actions is the increase of the number of visitors to shopping centers. Simultaneously the money from the "tray" may flow in hypermarkets.

Another area of religious intolerance with economic and social sub-context is the question of life protection from conception until natural death. Negation of humanity in the prenatal period is an economical benefit mainly for producers of early abortifacient and contraception medicines. However, the right to euthanasia or good death is a benefit for insurance companies which spend more and more money for treatment and cure of the elderly or ill people. The main reason for the fight against the proponents of life protection is scientific argument and freedom of an individual. Life protectors are perceived as the representatives of backwardness.

Over centuries, a basic instrument to combat competitive ideologies was confiscation, and in the present times it is also nationalization. The further part of this dissertation a mechanism of ideological fight in the historical development with the help of legal instrument, confiscation and nationalization in the religious context, shall be presented.

2. Confiscation in historical comprehension

Confiscation of property of religious organizations or believers' communities is a very old practice. It is known in the civilizations of the ancient East, Rome, during

⁵ J. Locke, *List o tolerancji*, translated by L. Joachimowicz, PWN, Warszawa 1953, p. 53–56.

ancient Christianity, new age, in totalitarian, theocratic systems but also in contemporary democratic systems based on human rights especially freedom of an individual and the rules of economic freedom.

2.1. Confiscation of property of religious communities in ancient Rome

The institution of property confiscation in ancient Rome was used within the penal law as a sanction itself or an additional one. According to *lex Cornelia de scicariis et veneficis*, property confiscation of the sentenced in total or part was connected with the punishment of relegation (*relegatio*). Since then relegation was always connected with confiscatio⁶. Tiberius however, linked property confiscation with deportation. Property confiscation was most often connected with death penalty put e.g. for desertion in army (Suet. Aug. 24), state betray (*perduellio*), or later *crimen maiestatis* (Liv. 8.39)⁷. The specific kind of confiscation was proscriptions begun by Sulla, namely listing political opponents practically sentenced to death. Their property was sold in public auctions. That instrument was later used by other dictators and army leaders, including Julius Caesar, Octavian or Mark Anthony (Sallust. Cat 51,43). Property confiscation was also used as one of the accessory punishments, namely an additional form of repression towards Christians. The discriminations themselves undoubtedly derived from disrespect of contemporary public order (*pax romana*) by the new faith believers. As a consequence, aggression of society and public administration bodies was increasing. The first cases of the Christians' property confiscation from both physical entities and Christian municipalities took place during to governing by Caesar Valerian (the years 257 and 258 A.D.) According to Cyprian (80) Valerian made aim discrimination at Christians residing in cities. The property of bishops, priests and clergymen sentenced to death was the subject of confiscation. It was connected with the loss of social or political status as: *senatores, egregii czy equites Romani*. Moreover, the buildings of cult and cemeteries where Christians gathered were confiscated⁸.

Similar discriminations of Christians connected with property confiscation took place during the governing of Diocletian⁹. The beginning of those actions was the Caesar's edict against Manichaeism announced in 297. In the verdict, Diocletian made punish them and take over their property for the benefit of the state – *fiscus* (Coll. 15.3.6). As a result, similar normative orders were found in the decree of 303 directed against Christians. Diocletian's motivation was maintaining traditional social and political order guaranteed by the old Roman religion. Christianity, for Diocletian, destroyed the contemporary political and social order.

Property confiscation, among other kinds of punishment, e.g. infamy, incapability to be a witness or writing a testimony, was still used after the Christian religion was

⁶ Th. Mommsen, *Romisches strafrecht*, Duncker & Humbolt, Leipzig 1899, p. 979.

⁷ M. Jońca, *Parricidium w prawie rzymskim*, KUL, Lublin 2008, p. 288.

⁸ A. Barzano, *Il cristianesimo nella leggi di Roma Imperiale*, Paoline, Torino 1996, p. 46.

⁹ Th. Mommsen, op. cit., p. 577.

freed, however, this time towards Christianity fractions (heresy and apostasy), namely ideological trend that remained beyond in the lawful, dominating doctrine. Objects of cult and cemeteries were the main subjects of confiscation. It was, therefore, the continuation of the earlier practices, however with the role exchange. Those discriminated, Christians, became discriminators towards heretics, apostates and pagans¹⁰ (C.Th. 16.5.6; 10; 11; 12). As regards pagans, the confiscation punishment was linked with death penalty and it was executed mainly towards those who submitted bloody human sacrifice (C.Th. 16.10.2 and 4). Lands possessing objects of cult were confiscated (C.Th. 16.10.12.2). During the period of Christianity, separated policy, including the legal one together with the punishment system, towards Jews appeared. The Caesar Constantius in 352 ordered, in one of the constitutions, confiscation of Christians' property who would changed their religion for Judaism (C.Th. 16.8.7). Similar regulations appeared in the constitutions against Manicheans. In 372, Valentinian ordered the confiscation of houses and places where proponents of Manichaeism gathered (C.Th. 16.5.4)¹¹. Finally, the Caesar Valence ordered, in the constitution of 376, confiscation of all religious cult places belonging to heretics, regardless the location, namely both in cities and out of their borders. Religious cult objects, including altars, ought to be destroyed. The confiscated goods became in the tax office possession. The will of the holy faith, the only true one, defense motivated to those legislative actions (C.Th. 16.5.4).

2.2. Confiscation of religious communities' property during the Middle Ages

The Middle Ages were the period of relative peace and the time of new social order based on Christian values. It favored the development of architecture (amazing cathedrals and palaces), church and secular administration and development of art. That illusory peace was sometimes disturbed by wars against schisms, heresies and apostasies, including the most important ones, namely the Waldensians and Cathars. The latter ones acted in the south of France. The Bulgarian bishop Niketas began that heresy. The issue of the heresy was the creation of so called group of good Christians, who established own concept of God's dogma. They rejected the church hierarchy. The Waldensians, established by Peter Waldo, also acted in the south of France. They claimed extreme poverty and soon end of the world. Another claim, difficult to accept, was celibacy and abstinence, which was certain threat for the demography in the Middle Ages due to high death rate among children¹².

The combat against numerous exceptions from the only proper religion was conducted via the inquisition process, adopted from the Roman times. Reactions of contemporary rulers (Caesars, kings and dukes), including popes, on the heresies, schisms

¹⁰ Ibidem, p. 601.

¹¹ J. Gaudemet, *Politique ecclésiastique et législative religieuse après l'édit de Théodose I de 380*, AARC 1986, no. 6, 1–22.

¹² M. Banaszak, *Historia Kościoła Katolickiego*, vol. 2: *Średniowiecze*, ATK, Warszawa 1989, p. 165–166.

and apostasies in the Middle Ages were of different kinds: military, legislative and judicial. The legislation against heretics and apostates was established by common councils, especially by the 4th Lateran Council (1215). The constitution includes two significant principles for this dissertation, concerning heretics.

Principle 3.1. Any heresy against the holy, orthodox and Catholic faith presented above shall be the subject of excommunication and overwhelmed by anathema. We condemn all heretics: no matter their names. Although they have various faces but their tails are tied together, since they are all similar to one another due to their vanity.

Principle 3.2. The condemned heretics ought to be returned to the secular government or their officials in order to be punished relatively to their guilt. Clergymen first ought to be degraded from their positions. The property of the condemned, if secular, ought to be confiscated, or transferred to the church which remunerated the condemned clergymen¹³.

Principle 3.1 includes clear ideological message, which was an excuse for the solutions included in Principle 3.2. According to the Council officials, the Catholic faith was the only proper and holy. In that axiological perspective, other religions or faiths, doctrines, are of secondary importance. Therefore, any heresy from that religion ought to be severely punished, e.g. by property confiscation. The secular goods were transferred to the rulers and the Church took over the property of clergymen.

Before and after the 4th Lateran Council, also numerous local normative decisions appeared, made during diocesan synods. The most famous ones are: the synod in Verona (1184), Avignon (1209), Montpellier (1215) or in Toulouse (1229) where the inquisition proceedings norms were prepared. The circle of the persons, who were the subject of negative consequences of inquisition activity, was increased. For example, those who hid a heretic at own place were punished with property confiscation. The house in which a heretic was found ought to be destroyed and the land under the building confiscated. The regulations were implemented and specified by Gregory IX in 1231¹⁴.

Contemporary secular rulers proved a huge willingness in combating heresy, apostasy or schism. Those included the Caesar Frederic II who announced the decree against heretics and St. Louis the French who accused popes for too gentle treatment of heretics. Engagement of secular government in combating heresy was the result of the call of the Church for so called assistance in executions of the church bodies verdicts, including the cases of heresy (*brachium saeculare*). Also the Aragon King Peter II (1198) ordered property confiscation.

The punishment of confiscation, commonly used in the inquisition process, aimed at material weakening opponents of the existing ideology. Undoubtedly, the question of enrichment of those who took over the property, namely rulers, parishes, dioceses or church hierarchies should be noticed. While administrating the sanction of property

¹³ Transl. The Councils of the Catholic Church from the Nice to Vatican II ones [access: 2013], available on <<http://soborowa.strefa.pl/code-12/>>.

¹⁴ J. Umiński, *Historia Kościoła*, t. I, Wydawnictwo Diecezjalne Świętego Krzyża, Opole 1959, p. 475–476.

confiscation, nobody concerned the material situation of the sentenced heretics' apostates' or schisms' families. The idea was the superior matter to which other aims remained subordinate. Therefore, the Middle Ages legal regulations did not presume the possibility of the restitution of the confiscated property even in the case of converting or admitting to the fault by the sentenced person. Confiscation became not only legal and political fight instrument but also granting the new elite the right of ownership.

2.3. Confiscation of religious communities property in modern times

In modern times, an ideological platform, being an intolerance basis, widened. Atheism, referring to ideas of freedom, reasonability, scientific approach, and nowadays progress and innovativeness, became a new and modern ideological trend. It caused the return to the phenomena known from the past, namely outlook intolerance, including the religious one, which manifested the confiscation of the ideological opponents' property. The example may be the lofty ideas announced for the need of the French Revolution such as freedom, equality and brotherhood and which led to dispossession the two largest in strongest social groups then, namely clergymen and landed aristocracy. In the result, the French Revolution did not realized its presumed ideas but led to the damage of the previous order (*ancienne régime*) and creation of the new one, based on the Napoleon's Code or later called *Code Civil*.

The principle cited at the beginning of this dissertation, written in the Common Human and Citizen Declaration from August 26, 1789 concerning the freedom of outlook and ideas exchange, in fact became only a pure theory or ideology announced by the French revolutionists as an excuse for the new political and social order.

On December 2, 1789, The National Constituent Assembly announced a secular decree with the power of takeover of all properties belonging to church. Monastic orders were liquidated, church marriages invalidated. Many sacral object were destroyed, including the universal sights, such as the Abbey in Clune, destroyed in 1790.

Secularization was the consequence of the French Revolution ideology and became one of the main ideological trend not only in France in 18th and 19th centuries but also the cause of changes in other European countries also becoming the source and instrument of intolerance. The example was Austria, where the primary process of depending the Catholic religion on the state was begun by Maria Theresa (1740–1780) and continued by her son the Caesar Joseph II (1780–1790). This ideological trend built for the needs of the Austrian Caesars actions was called Josephinism. Paul Joseph Riegger (1705–1775) and Joseph von Sonnenfels (1733–1817) were the creators of the basic assumptions of Josephinism. The main instrument subordinating the Catholic Church was property confiscation especially of the orders which were the centers of the Christian's ideology development. Both lands and religious cult buildings or objects were confiscated.

Property confiscation or, more precisely, partial nationalization of political opponents' property was used in modern times by the tsarist Russian as a revenge sanction

towards the participants of the January Uprising. The property of the Uprising participants' but also other significant objects for the life and withstand of the Polish culture including sacral objects. Confiscation and nationalization of properties of political and religious opponents in modern times was also used in other parts of Europe and the world¹⁵.

2.4. Confiscation and nationalization nowadays

The development of the human rights concept and the principles of democratic rules which began in the 18th century, gave hope that the 20th and 21st centuries would be the time of tolerance and respect of other views, and the common acceptance of multi-culture would become a common phenomenon. However, the analysis of historical facts and legal regulations of various ages, beginning from the Roman law, have not been well thought-out. The old negative patterns of intolerance were reflected in a modified form, often stronger, in the totalitarian systems of the 20th century. Some intolerance elements can be found even in so called democratic systems based on liberal rules, namely free economy.

The fascist system, especially that in Germany, basing mainly on the racist philosophy and national socialism, led to defining the categories of supreme humans and sub-humans. The first social group started usurping more rights for themselves at the cost of others. Creation of a life space (*Lebensraum*) for the German determined such actions physical extermination of sub-humans, including Slavs, Gypsies and Jews, connected with the confiscation, less with nationalization. The legal basis were so called acts of Nuremberg. As a result, dozens of concentration and labor camps were built and the system of compulsory work was implemented. At that time BGB was out of date. Hitler's orders became the law. For the need of building the Third Reich, the Jewish and later Slavs' property was confiscated. Those actions aimed at gathering funds for leading the war and combat with the results of economy crisis in Germany which took place in 1920s and 1930s.

In the communism build on the basis of the ideology of K. Marks and F. Engels and political practice of Lenin and Stalin, also double class society was created, namely labor class and bourgeoisie together with kulaks, meaning farmers. Only the labor class was entitled to government. The remaining social groups, being a demoralized element of a society should be liquidated by resocialization in camps or physical extermination. The legal basis is difficult to be found in this case for such actions, since the law was considered the image of bourgeoisie's creature. The revolutionary consciousness of the Soviet commissars, and after the WW2, the secretaries' of the Party stated the basis for any actions.

As regards the political system, the basic instrument of realization of intended plans of creating a new society was nationalization and confiscation. The aim of the

¹⁵ P. Krajewski, *La globalizzazione come ostacolo del fenomeno migratorio*, [in:] *Post conference materials*, Bari – Olsztyn 2006, p. 242–249.

nationalization was deprivation of material basis of the combated social groups. Not only the representatives of bourgeoisie or land aristocracy but also clergymen were overwhelmed by nationalization. Confiscation was used by courts, which often announced verdicts basing on uncertain proof materials, collected by those loyal to communist government¹⁶.

In the age of liberalism and the political systems based on the principles of a democratic state and numerous international treaties defending human rights, including the freedom of speech and beliefs, there are too many examples of intolerance. In this case, however, it is not the matter of government but private media, newspapers, radio or televisions prove huge intolerance towards those with different outlook. The government remains relatively passive towards those practices, or sometimes stands in favor of those who cause intolerance adopting the practices for the needs of educating a society and opening for new problems. The popular practice is ridiculing the elderly, believers or religious institutions. It is a symptom of intolerance which may also adopt a shape or gradual economic weakness of those ridiculed, depreciated groups and, in a result, confiscation of their property with the use of legal instruments¹⁷.

3. Summary

A fight for political, and nowadays, political power has always led to intolerance including confiscation or nationalization of political or ideological opponents. Each time the acts of intolerance are ideologically excused referring to so called higher values. The experiences of the ancient Rome based on numerous cases show ruthlessness of government actions in order to defend actual state of affairs. One of the examples was persecution of Christians who remained beyond the contemporary social order. In a result, in order to bring order and social safety, there were many cases of physical extermination of Christians connected with confiscation of property of Christian municipalities and the believers themselves. The aim of such actions was weakening the position of that social group or even its liquidation.

After bringing freedom by Christianity in 313, there were many attempts of similar actions towards pagans and heretics or apostates. Intolerance and property confiscation of heretics took place in the Middle Ages. Christians became persecuted in the modern times, the age built on the idea of freedom and secularization.

The creators of the French Revolution and representatives of Josephinism in Austria proved their high level of intolerance. Nowadays, there were still numerous acts of intolerance including confiscation and nationalization of property of ideological, political or religious opponents.

¹⁶ G. Rouet, P. Terem, *Enlargement and European neighborhood policy*, Etablissements Emile Bruylant, Bruxelles 2008.

¹⁷ W. Breński, A. Oleksiuk, *Socio-economic differentiation of Polish regions*, "Economic" 2008, p. 220.

The above case study of intolerance over the ages, beginning from the ancient Rome until the present times, allows to claim that mankind has a long way ahead to reach full tolerance of ideas of any man.

Resumen

La confiscación y la nacionalización como instrumentos atemporales de combate legal de intolerancia religiosa

Palabras clave: Derecho romano, Derecho positivo, tolerancia, confiscación, nacionalización, lucha contra la oposición.

La confiscación de bienes, y después, la nacionalización son instrumentos atemporales de combate legal de oposición ideológica, incluida la religiosa. La intolerancia es la base de este tipo de acciones. La tolerancia es uno de esos conceptos que no puede describirse en su totalidad y que fue comprendido de manera diferente en el mundo de la antigua Roma y en la actualidad. El elemento común que une a los dos mundos es la instrumentalización de la religión con el fin de la confiscación o la nacionalización de los bienes de los opositores ideológicos. La tesis de este estudio se concentran en el cristianismo. El contexto del adoctrinamiento político y religioso influye en la legislación y provoca efectos negativos en materia de daños y perjuicios. La comparación de casos similares en supuestos de diferentes edades puede dar lugar a comentarios muy interesantes referidas a las actividades legislativas.

Streszczenie

Konfiskata i nacionalizacja jako ponadczasowe narzędzie religijnej nietolerancji

Słowa kluczowe: prawo rzymskie, prawo pozytywne, tolerancja, konfiskata, nacionalizacja, zwalczanie opozycji.

Konfiskata mienia, a w późniejszym okresie jego nacionalizacja to ponadczasowy instrument służący do zwalczania ideologicznej opozycji, także religijnej. Podstawą takich działań jest nietolerancja. Tolerancja jest pojęciem nie do końca sprecyzowanym, odmiennie pojmowanym w świecie starożytnego Rzymu i obecnie. Wspólnym mianownikiem dla obu okresów może być instrumentalizacja religii, przejawiająca się w dążeniu do karania ideologicznych oponentów poprzez konfiskatę lub nacionalizację ich majątku. Zawarte w tym artykule rozważania koncentrują się na chrześcijaństwie. Indoktrynacja polityczna i religijna wywiera szkodliwy wpływ na proces tworzenia prawa. Porównanie podobnych zjawisk z odmiennych okresów historycznych może prowadzić do niezwykle ciekawych spostrzeżeń w odniesieniu do działalności ustawodawczej.