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**The normative value of the reference to God and
Christianity in the preamble to the Constitution of
the Republic of Poland of 2nd April, 1997**

Keywords: constitutional law, preamble of the constitution, Christianity, God

Słowa kluczowe: prawo konstytucyjne, preambuła konstytucji, chrześcijaństwo, Bóg

Abstract

In the preamble of the Constitution of the Republic of Poland (of 2nd April, 1997) legislator refers to God and culture rooted in the Christian heritage of the Nation. The question arises whether the reference to religious elements in the legal text in some way affects the process of applying the law? The answer should be yes. It is not about favoring Christian denominations, or discrimination against people who do not believe in God. The crux is to create law and decode legal principle contained therein, taking into account the Christian moral values. This is due to the centuries-long contribution that Christianity has brought to the cultural and historical heritage of Europe, creating its unique identity. The reference to God highlights the human autonomy towards state and means prohibition of state totalitarianism.

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Streszczenie**Walog normatywny odwołania do Boga i chrześcijaństwa
w preambule Konstytucji RP z 1997 roku**

W preambule Konstytucji z 1997 r. ustrojodawca odwołał się do Boga i kultury zakorzenionej w chrześcijańskim dziedzictwie Narodu. Powstaje pytanie, jakie znaczenie mają przedmiotowe odwołania dla procesu stosowania prawa. Na pewno nie prowadzą one do faworyzowania chrześcijan czy dyskryminacji ludzi niewierzących w Boga. Odwołanie do chrześcijańskiego dziedzictwa przyczynia się raczej do opierania się na chrześcijańskich wartościach przy tworzeniu i aplikacji prawa. Proces ten jest dość naturalny i wynika z dziejowej roli chrześcijaństwa w Europie. Odwołanie do Boga podkreśla z kolei ludzką autonomię wobec państwa i oznacza zakaz totalitaryzmu państwowego.

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The role of the preamble is to axiomatically condition the content of a legal act. Therefore, in spite of its terseness and generality, it plays an important role in the process of decoding legal norms. It is not different in the case of the preamble to the Constitution of the Republic of Poland of 2nd April, 1997². Interpretation of Basic Law should go accordingly to the key included in its preface. Understanding of the specific constitutional regulations stays in the content relation with the ideological profile of the country, law and society. And this profile is revealed to the fullest extent in the preamble. According to the doctrine, the preamble expresses "constitutional identity of the country, being, at the same time, one of the basic directions for finding the system of values, on which the identity is based"³. Because of the hierarchical superiority of the Constitution, ideals and values included in its preface influence the entire legal system. This doesn't make the importance of the constitutional and sub-constitutional regulations relative, but it contextualizes them. However, in extreme cases, it is not excluded, that this can result in derogation of

² Dz.U. No. 78, item 483, <https://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm> (30.11.2018).

³ L. Garlicki, *Polskie prawo konstytucyjne. Zarys wykładu*, Warsaw 2011, pp. 40–41.

unconstitutional norms. There are, although, voices, that the preamble only fulfills function of the "constitutional mysticism". It is, certainly, an important political declaration, but it has no impact on the process of the practising of law. Looking at the mentioned above differences in the opinions on the normative character of the preamble of the Constitution, I would like to analyse the importance of the references to God and Christianity in it.

I. The normativity of the preamble

The doctrine differentiates between "normative meaning" and "normative value" of the preface of the Constitution. In the first take, the preamble fulfills the role of social and axiological directive, which influences the choice of a specific meaning of the norm. Its formulations can be also decoratively coapplied with other norms. In the second take, coapplying of the preamble really translates into the legal norm that is being constructed. Furthermore, it is assumed that preamble can be an autonomous source for a legal norm, that serves as e.g. a standard for the review of constitutionality⁴. Ascribing normative meaning to the preamble does not raise any doubts. What still is problematic, however, is whether or not the preamble has normative value as well⁵.

The controversies concerning defining the scope of normativity of the preamble should be resolved by case law, especially by the one of the Constitutional Tribunal. In this moment, there are usually quoted simply canonic words of the Tribunal from the judgement of the 11th of May 2005, in the case of the constitutionality of the Treaty of Accession 2003: "Legal norms, in the strict meaning, cannot be derived from the text of the preamble. However, the preamble provides advice based on the authentic statement of the legislator and concerning directions, in which the regulations of the normative part of the Constitution shall be interpreted"⁶. From this, it appears that,

⁴ K.A. Strzępek, *Znaczenie prawne wstępu do konstytucji z 1997 roku. Rozważania oparte na orzecznictwie Trybunału Konstytucyjnego, Sądu Najwyższego i Naczelnego Sądu Administracyjnego*, Warsaw 2013, p. 35.

⁵ M. Piechowiak, *Charakter normatywny Preambuły*, [In:] *Konstytucja RP. Tom I. Komentarz do art. 1-86*, eds. M. Safjan, L. Bosek, Warsaw 2016.

⁶ CT judgement of the 11th of May, 2005, ref. No.K 18/04, OTKZU 2005, No. 5, item 49, pt. 304.

even though the preamble is an integral part of the Constitution and, as such, it is “the supreme law of the Republic of Poland”⁷, it is not a normative part of the Constitution (at least, not in the normative value dimension). It is hard to agree with this statement. It is hard to accept a notion, that an integral part of a normative act does not have a normative character⁸. Even the Tribunal itself derived from the text of the preamble specific legal norms in the quoted judgement, if it referred to it as the indication of a higher-level norm for the review (pts. 1–5 of the sentence). Maybe the analysis of previous resolutions, as well as the outlook of the doctrine had led to a change in the standpoint of the constitutional courts, as the Tribunal admitted in the later judgements, that the preamble of the Constitution has a normative character⁹. The normativity of the preamble reveals itself in three aspects: 1) the interpretative dimension (the Constitution and other normative acts are being interpreted in the light of the preamble), 2) “in a situation of coapplying” (a legal norm is being reconstructed using the content of the introduction), 3) autonomously (the preamble is an independent source of a constitutional principle of normative character, when there are no constitutional regulations regarding the same matter)¹⁰.

This standpoint allows for a wide usage of the preamble of the Constitution in the practice of applying law, including the sub-constitutional law. It suffice to mention, that the Tribunal derives directly from the preamble e.g. the principle of cooperation between the public powers and social dialogue, as well as the principle of subsidiarity¹¹. Thus, it leaves a possibility of wider usage of its normative resources.

⁷ Ibidem, pt. 316.

⁸ It also concerns preambles of other legal acts, see sentence of the CT judgement in the case K 54/07, in which the CT rated compatibility of a bill with the preamble of the Convention 108 (Council of Europe).

⁹ The evidence of it are sentences and justifications of judgements in the cases K 39/16, Kp 5/08 and U 5/04.

¹⁰ CT judgement of the 16th of December, 2009, ref. No.Kp 5/08, OTK ZU 11A/2009, item 170, pt. 21 (in reference to L. Garlicki).

¹¹ See e.g. the CT judgement of the 18th of July, 2006, ref. No.U 5/04, OTK ZU 7A/2006, item 80, the CT judgement in the case Kp 5/08, pt. 22.

II. Contents of the preamble of the Constitution of the Republic of Poland of 2nd April, 1997

The Constitution, and particularly the prefacing it preamble, shall unite, not divide, the citizens. Its purpose is to extract fundamental values and rules, which are universally accepted in the given society, and, thus, are capable of being the foundation of the country. The legislator highlights the significant historical moment for country, which recovered, in 1989, the possibility of a sovereign and democratic determination of its fate (1989 – the fall of the communism), recalls the best traditions of the First and the Second Republic (by which it discreetly excludes Polish Peoples Republic), and is “mindful of the bitter experiences of the times when fundamental freedoms and human rights were violated in our Homeland”. On the other hand, it be- holdens to our ancestors for their labours, their struggle for independence achieved at great sacrifice, “for our culture rooted in the Christian heritage of the Nation and in universal human values” as well as “our over one thousand years’ heritage”. Using such formulations, the legislator shows bright and dark pages of the history of Poland, things good and worth continuing, as well as those, that should be left in the past, which does not mean, that they have to be accepted.

The legislator also highlights bound in community with our compatriots dispersed throughout the world, as well as the need for cooperation with all countries for the good of the Human Family. Taking all of this into account, the legislator desires to guarantee the rights of the citizens for all time, and to ensure diligence and efficiency in the work of public bodies. Therefore, “recognizing our responsibility before God or our own consciences”, the Constitution of the Republic of Poland is established as the basic law for the State.

The Republic of Poland and its citizens (Polish Nation), while fulfilling these tasks, shall follow universal values, both those who believe in God as the source of truth, justice, good and beauty, as well as those not sharing such faith but respecting those universal values as arising from other sources. All those who will apply this Constitution for the good of the Third Republic, the legislators calls to do so paying respect to the inherent dignity of the person, their right to freedom, the obligation of solidarity with oth-

ers, and respect for these principles as the unshakeable foundation of the Republic of Poland.

III. Reference to Christianity

The legislator states, that “our culture is rooted in the Christian heritage of the Nation and in universal human values”¹². At the beginning, it has to be stressed, that it is not about culture in the sense of a sum of monuments and other pieces of Art. Culture needs to be interpreted in the light of Art. 6 sec. 1 of the Constitution, as the source of the Nation’s identity, continuity and development¹³. In this context, culture is a civilizational normotyp – “a set of norms and higher values, which characterizes and enlivens [our] civilization”¹⁴. Culture creates and sets categories of the understanding of the world, as well as gives tools to accept a certain morality¹⁵. Therefore, it is a carrier of norms and values, which, passing from generation to generation, create a stretched in time community – Nation. It is significant, that the carrier of the Christian heritage is the Nation, not the country. What follows, is that the Christianity should not be tied to the structure of government or treat-

¹² It is hard to clearly state what universal human values are. We can adopt two concepts: 1) universal human, meaning those, which are accepted by the entire Human Family (expressed to the fullest extent in the Universal Declaration of Human Rights; the Charter of Fundamental Rights of the European Union and the European Convention on Human Rights are regional regulations, *a contrario* not universal human), 2) universal human, meaning those, to which everybody is entitled, based on their inherent dignity.

¹³ The products of culture, to which refers the quoted regulation, should be understood in a broad way, also as immaterial – spiritual – goods. Natural role of the country in giving access to them is limited. It does not mean, however, that they are not under constitutional protection, especially that they cannot be considered the source of the Nation’s identity, continuity and development. In this key, culture has a dynamic character, is something celebrated, experienced (e.g. in the form of tradition) and focused on the future.

¹⁴ B. Wolniewicz, *O pojęciu kłamstwa i zasadzie prawdomówności*, “Edukacja Filozoficzna” 2012, vol. 54, p. 7.

¹⁵ It is worth noticing, that, even though it is almost impossible to separate oneself from the mental categories of a culture, in which one was brought up, it is quite possible for people grown on the base of the same civilisation, to judge the same phenomenon in a different way. One can have a different opinion on, e.g. ritual slaughter, however, no matter the final judgement, both sides use the same value concepts, such as “good” and “evil”.

ed as state religion. The material substratum of the legacy of “Civitas Christiana” has currently a personal dimension, not institutional, even though it does not stay indifferent to the institutional aspects¹⁶.

As rightly said Henryk Kupiszewski: “[...] three fields of the Antiquity culture influenced the formation of spiritual and cultural face of Europe in a special way – Greek philosophy in the broadest meaning, Christianity and Roman law”¹⁷. This view is shared by many intellectuals. It was well captured by Pope Benedict XVI in his “Reflections on the Foundations of Law” – “The culture of Europe arose from the encounter between Jerusalem, Athens and Rome – from the encounter between Israel’s monotheism, the philosophical reason of the Greeks and Roman law. This three-way encounter has shaped the inner identity of Europe”¹⁸. Christianity is one of the elements constituting Europe. It does not mean, that Christianity is the only ideological movement on the Old Continent, but that the other movements are either a creation of other civilization (e.g. Arabic) or grown on the foundation of the Christian Europe (Enlightenment). Modern Europe cannot be separated from Christianity, because modern Europe has been created thanks to Christianity¹⁹.

Accepting Christianity as a civilisational pillar of Europe, and, with that, of Poland, does not determine a religious character of the country. “Public authorities in the Republic of Poland shall be impartial in matters of personal conviction, whether religious or philosophical” and “the relationship between the State and churches and other religious organizations shall be

¹⁶ It means that authorities of any church are not entitled to interfering with the process of law application. Of course, they keep full right to criticise accepted solutions and urge the government to change them. The voice, however, is not binding. It is different than, e.g., on Malta – “The authorities of the Roman Catholic Apostolic Church have the duty and the right to teach which principles are right and which are wrong”. Art. 2 sec. 2 of the constitution of Malta, see also Art. 2 sec. 2 <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8566> (30.11.2018).

¹⁷ H. Kupiszewski, *Prawo rzymskie a współczesność*, Cracow 2013, pp. 16–17.

¹⁸ Benedict XVI, *The Listening Heart. Reflections on the Foundations of Law*; Acknowledging Christianity as a pillar of Europe is not foreign to such thinkers as Leszek Kołakowski, Eric Voegelin or Rémi Brague; “Each of this religions (Islam, Buddhism, Hinduism, Shintoism, Judaism) is the proper foundation of a specific civilisation [...]”, P. Winczorek, *Polska pod rządami Konstytucji z 1997 roku*, Warsaw 2006, p. 163.

¹⁹ The ideological manifesto of Enlightenment in Emmanuel Kant’s *Beantwortung der Frage: Was ist Aufklärung*, even though it is critical towards Christianity, is set in a Christian world.

based on the principle of respect for their autonomy and the mutual independence of each in its own sphere, as well as on the principle of cooperation for the individual and the common good” (Art. 25 sec. 2, 3 of the Constitution)²⁰. Government institutions and Church institutions are separate and should not interfere in the internal matters of the other. The separation of Church and state has, however, an amicable character and opens many possibilities for cooperation²¹.

Practising a religion, also the Christian one, is a private issue of each person (this view was proclaimed even by the medieval Polish thinker, Paweł Włodkowic). However, an internal attitude towards religion is something else than basic rules of social system, on which the country is based. There has to exist an objective measure, which allows to set admissible and inadmissible behaviours, protected values as well as internal standards of law. In the cases concerning morality one shall also appeal to authorities²². Accepting Christianity as a measure for judging solutions is not non-confrontational. But it is necessary and useful.

When the legislator talks about the Christian heritage, they do not refer to a specific faith. However, it does not raise any doubts, that the key role in Polish reality is played by Roman Catholic Church and its teaching. The legislator refers to “over one thousand years’ heritage”, which corresponds to the baptism (in Latin rite) of Mieszko I in 966. Additionally, the special position of the Church results from historical experience and the fact, that the vast majority of Poles identifies as Catholics and Roman Catholic structures are the most widespread and the most influential. All of this, however, does not contradict that in Polish tradition there is a deeply rooted idea of religious tolerance, and the Republic of Poland used to be a homeland for the Christ followers of many churches (Orthodox, Protestants, Catholics from the eastern churches). Nowadays, Christian churches often give statements together and their standpoint concerning morality is usually almost identical. What is more important, however, is that all of them are based on Holy Bible and the

²⁰ M. Pietrzak, *Demokratyczne świeckie państwo prawne*, Warsaw 1999, p. 138.

²¹ L. Kołakowski, *Neutralność i wartości akademickie*, [In:] L. Kołakowski, *Moje słuszne poglądy na wszystko*, Cracow 2000, pp. 137–155.

²² Supreme Court judgement of 25th of April, 1989, ref. No.I CR 143/89, OSP 1990, No. 9, item 330.

person of Jesus from Nazareth. Therefore, it would be hard to say, that they are being discriminated. It should be also mentioned that, in Poland, relations with other religious groups (such as Jews or Muslims) were also good. It allowed for a peaceful coexistence of many religious communities in one country, which, in its core, is built on Catholic foundations.

IV. Normative consequences of the references to Christianity

Perceiving reality in Christian categories is a natural consequence of a country functioning in Christian culture. For the European civilization, the determinant is the content of the sermon on the Mount or the example of good Samaritan²³. On the other hand, in strictly juridical cases it is important that the Polish constitutional notions are not “axiologically indifferent”²⁴. Human dignity, common good or other constitutional principles are interpreted via Catholic teaching. Quite often, the interpretation happens subconsciously (axiological and cultural nativism) or the Christian source of a solution is not explained (e.g., principle of subsidiarity).

The influence of Christianity is also noticed in the process of making law, because “every making of law references certain axiological foundations”²⁵. On the other hand, in “a democratic country, axiology of the Constitution and, in consequence, the entire legal system should correspond to the values of the citizens (law, however, is constituted by its representants)”, there are, however, “discrepancies in that matter”²⁶. Considering, that over 87% of population of Poland declares, that they belong to Roman Catholic Church²⁷, it is rightful to believe, that Christian axiology is the basic axiology for Polish law.

²³ Even the judicature appeals to some of the rules, see Voivodship Administrative Court judgement in Gorzów Wielkopolski of 9th of August, 2005, ref. No.I SA/Go 1698/05, cbosa.

²⁴ F. Rakiewicz, *Poczucie tożsamości narodowej jako dobro osobiste w świetle polskiego prawa cywilnego. Część druga*, “Studia Prawa Prywatnego” 2011, No. 3, p. 100 (in reference to L. Garlicki).

²⁵ CT judgement of 7th of June, 1994, ref. No.K 17/93, OTK ZU 1994, item 11, pt. 43.

²⁶ CT judgement of 7th of October, 2015, ref. No.K 12/14, OTK ZU 9A/2015, item 143, pt. 114.

²⁷ G. Gudaszewski, *Struktura narodowo-etniczna, językowa i wyznaniowa ludności Polski. Narodowy Spis Powszechny Ludności i Mieszkań 2011*, Warsaw 2015, p. 93.

Ever since, after World War II, legal positivism was rejected, a search of ties between law and morality began anew. However, while law can be considered as some type of convention, it is not so in the case of morality. Deciding what is good and what is bad cannot be a result of a free decision of legislator. While searching for what is moral, one shall rather reach for “moral norms accepted in the society”²⁸. This is what the Constitutional Tribunal did, while researching constitutionality of ritual slaughter. The Tribunal decided, that an absolute prohibition of ritual slaughter is not indispensable to protect morality, because “religious freedom is not only guaranteed constitutionally and conventionally, but it is also one of the basic moral values in Polish society. This standpoint judicially strengthens the preamble to the Constitution, which refers to values rooted in Judeo-Christian tradition”²⁹. Morality is formed by religion, and if in the Polish reality Christianity plays key role, then Christianity is the determinant of morality. This standpoint is important, because “public morals” are one of the limitation clauses, allowing to introduce restrictions on exercising constitutional freedoms and rights (principle of proportionality³⁰).

This standpoint of the constitutional court is noteworthy because of one more reason. The Tribunal broadened the text of the reference in the preamble. The legislator referred only to Christianity, meanwhile the CT to the Judeo-Christian tradition. This operation, excluding its pragmatic character, should be rated negatively. Undoubtedly, Judaism and Christianity has plenty in common³¹. Jews lived in Poland practically from its very beginning. Therefore, going out of the frame of the preamble and judging morality of an act from a perspective wider than Christianity, is justified. Statement, that the preamble refers to the Judeo-Christian tradition, when it mentions only Christian heritage and universal human values, is baseless. Additionally, lack

²⁸ CT judgement of 10th of December, 2014, ref. No.K 52/13, OTK ZU 11A/2014, item 118, pt 281.

²⁹ Ibidem, pt. 290.

³⁰ Art. 31 sec. 3 and Art. 53 sec. 5 of the Constitution, see also Art. 45 sec. 2 and Art. 72 sec. 1 of the Constitution.

³¹ One should not, however, forget about the cultural differences, which are important for the functioning of society, e.g. traditions, celebrations, language, liturgy, clothing. In this aspect, the influence of Christianity is dominating and that is why the legislator noticed it.

of the reference to the ideals of Tatars (Muslims), who have been an integral part of Polish nation for ages.

V. References to Christianity out of Constitution

The legislator also references Christianity in sub-constitutional acts. Special place here have the resolutions of Sejm and Senate, which, even though they are not universally binding law, express beliefs of deputies and senators – the main players in the legislative process. Members of Parliament have stressed many times the great influence of Christianity, thanks to which Poland entered the precinct of the Western civilization.

The legislator referenced Christianity multiple times in statutes. It would be valuable to take a closer look at two of them: Act on Radio Broadcasting and Television (urt, Dz.U. from 2017, item 1414) and Act on Education (Dz.U. from 2018, item 996). Programs and other services of radio broadcasting and television shall, among other things, “respect Christian system of values, taking universal rules of ethics as a foundation” (Art. 21 sec. 2 pt. 6 urt), meanwhile “teaching and upbringing takes as its foundation universal rules of ethics, respecting Christian system of values” (preamble of Act on Education). What is interesting, is that in normatively important scope, those regulations were binding even before the current Constitution was adopted³². The organs of public authority are, therefore, obliged to respect Christian system of values, at least in the shown above areas, which are undoubtedly important.

The Constitutional Tribunal showed that the injunction to respect cannot be interpreted as an injunction to propagate Christian system of values³³. However, it should not be negated. What is important, is that the Christian values and religion should not be perceived as one and the same. This notion means “universal rules of ethics of the Mediterranean culture”³⁴. Christian norms apply, not because of institutional position of religion, but because of the power of its teachings and being the religion

³² Cf. with Act on Educational System (Dz.U. No. 95, item 425).

³³ W. Hrynicky, *Normatywne aspekty nadawania imion w orzecznictwie sądów administracyjnych*, “Ius Novum” 2013, No. 3, p. 205.

³⁴ CT judgement in case K 17/93, pt. 34–35.

of the majority of the Polish society. Of course, those solutions may cause conflicts in a country based on “worldview and cultural pluralism”³⁵. A legitimate plurality of positions does not mean, that all the opinions are equally valid³⁶. State and the law constituted by it do not have a neutral worldview. The myth of legal positivism was exposed as false a long time ago. Adopting Christian system of values is, on the other hand, quite natural and the consequences of this decision stretch over the entire pyramid of sources of law.

VI. Reference to God

The preamble to the Constitution of 2nd April, 1997 does not contain the classical *invocation Dei*. As opposed to some other constitutions, God is not called upon, only referred to (*nominatio Dei*). It is not known, however, to which God the legislator refers to³⁷. In general, the question of mentioning God in the Basic Law was a subject of many discussions. Unfortunately, the effect is still unsatisfying.

As it has been already mentioned, the constitution, and especially the preamble, should unite. Meanwhile, the legislator divides the citizens into those, who are religious, and those, who are not, just a few sentences in. God is described as the source of truth, justice, good and beauty. Why God is the source of these specific values and in what sense are they universal? Why was not He connected with love, if the three biggest monotheistic religions underline this aspect of Him? What also makes one think is the fact, that the legislator speaks about theological matters, even though they are not competent to do so³⁸.

There was also a reference to God in the context of taking responsibility for one's decisions. Polish Nation (all citizens of the Republic) adopted the Con-

³⁵ CT judgement in case K 52/13, pt. 289.

³⁶ John Paul II, *Encyclical letter “Fides et ratio”*, pt. 5.

³⁷ The legislator abandoned the formula of the Constitution of May 3 – “In the name of Father, Son and Holy Spirit” and the formula of the Constitution of March – “In the name of God Almighty”, see also, e.g., the constitutions of Greece, Ireland and Switzerland.

³⁸ H. Misztal, P. Stanis, *Prawo wyznaniowe*, Lublin 2003, p. 190.

stitution “recognizing our responsibility before God or our own consciences”³⁹. It corresponds with the regulation, that allows to add the words “So help me, God” after the swear oath⁴⁰.

The reference to God in the preamble of the Constitution, even though it was formulated in an unfortunate way, has its important normative consequences. The legislator assumes, that there is some higher order (for the religious people it is, in the first place, God, for others it might be universal values), which does not depend on the state or the law constituted by it. Therefore, human being has a natural right to seek it out and has a natural freedom to realize their own values. The source of this law and freedom is not the legislator, but the inherent human dignity (Art. 30 of the Constitution, Universal Declaration of Human Rights)⁴¹. Each human being, as a moral subject, makes, in their freedom, decisions and takes responsibility for them. For some people, the highest instance is their own conscience, for others conscience is their inner sanctuary, in which they are with God⁴². One way or another, moral choices depend on the human being and the state cannot make people act against their conscience⁴³. What is more, one has right to act towards oneself and others “because of the truth about God”⁴⁴. The reference to God highlights the human autonomy towards state and means prohibition of state totalitarianism⁴⁵.

³⁹ It reminds the solution of the German Constitution of 1949, in which there is a fragment about responsibility before God and man.

⁴⁰ Art. 104 sec. 2 (Deputies), Art. 108 with reference to Art. 104 sec. 2 (Senators), Art. 130 (President of the Republic), Art. 151 (Prime Minister, Deputy Prime Ministers and ministers) of the Constitution.

⁴¹ In the Christian optics, dignity “is a distinctive mark imprinted by the Creator on his creatures”, Benedict XVI, Post-synodal apostolic exhortation “*Verbum Domini*”, section 101.

⁴² Pastoral constitution on the Church in the modern world “*Gaudium et spes*”, section 16.

⁴³ CT judgement in case K 12/14, pts. 103–137.

⁴⁴ Supreme Court decision of 5th of March, 2015, files No.III KK 274/14, *Legalis* No. 1330104.

⁴⁵ B. Banaszak, *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, Warsaw 2012, pp. 3–4, p. 14 and the literature mentioned there. Of course, human freedom is not absolute and the state is obliged to take care of security and public order. Setting allowed and disallowed behaviours is, however, conditioned by the culture of the country.

VII. Conclusion

The topic of this article is undoubtedly controversial. Its thesis might be met with criticism and accusations of subjectivity. It does not change the fact, that law is not neutral and is always based on some kind of axiology. Karl Larenz was right, when he stated that “legal norms cannot be constituted and applied without referencing the values, which set the course and are the motive for human actions”⁴⁶. European values, in majority, stem from Christianity. Therefore, it is natural that legislator follows them. (As natural as it would be, if the legislator didn’t reference Christianity in the preamble.) Europe came into existence thanks to Christianity and is based on its moral assumptions. What is important, being based on Christianity does not mean being based on religious institution, but on the teaching, that comes from the Gospel. This teaching helped Europe to develop and created a plane of agreement between European countries and nations⁴⁷. The reference to God means admittance, that the state is not the most important, neither it can dominate a human being. A person, being a moral subject, makes decisions alone, following their own conscience, and alone takes responsibility for these decisions.

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⁴⁶ K. Larenz, *Methodenlehre der Rechtswissenschaft*, Berlin 1983, pp. 192–195, cited after *Prawo a wartości. Księga jubileuszowa Profesora Józefa Nowackiego*, eds. I. Bogucka, Z. Tobor, Cracow 2003, p. 144.

⁴⁷ CT judgement in case K 12/14, pt. 87 (in reference to M. Safjan), H. Suchocka, *Polska Konstytucja z 1997 roku jako element europejskiego dziedzictwa konstytucyjnego*, “Ruch Prawniczy, Ekonomiczny i Socjologiczny” 2018, No. 1.

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