

# THE RIGHT OF AN EMPLOYEE TO A DAY OFF GRANTED IN CONNECTION WITH RELIGIOUS HOLIDAYS NOT REGULATED IN THE ACT ON PUBLIC HOLIDAYS

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DOI 10.2478/in-2026-0023

## ABSTRACT

The article is devoted to issues relating to the right of employees belonging to churches and religious associations in Poland to be released from work in order to celebrate religious holidays other than those listed by the legislator in the Act on Public Holidays. The issue under consideration is also inextricably linked with respect for rights and freedoms and the prohibition of discrimination against every individual; therefore, the author also presents the most important regulations in this area. In undertaking a legal analysis of an employee's right to celebrate religious holidays observed in their faith, the author sought to determine the extent to which current legal solutions and case law safeguard against discrimination on religious and worldview grounds, and the extent to which they permit the restriction of these rights on account of the interests of others, including employers. The subject matter of the analysis is supplemented by views expressed in legal doctrine, decisions of the European Court of Human Rights, and the case law of the Court of Justice of the European Union.

Keywords: freedom, religion, discrimination, employer, employee, labour law, religious holidays

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## INTRODUCTION

Poland's accession to the European Union in 2004 undoubtedly influenced the development of migration, globalisation and the internationalisation of businesses in the country. Access to the EU's single internal market enabled investors to expand trade routes into new foreign economies. The exchange of goods and services also took place in the opposite direction through the expansion of foreign entities into the Polish market. Thanks to relatively low production costs at that time, companies decided to relocate or open production facilities in Poland, which further contributed to the internationalisation of Polish enterprises at the beginning of the 21st century.<sup>1</sup> European economic integration would not have been possible on such a scale without the fundamental freedoms of the European Union's single internal market, guaranteed by the Treaty of Rome of 1957.<sup>2</sup> One of these, the principle of the free movement of persons, now regulated by Directive 2004/38/EC,<sup>3</sup> guarantees every EU citizen the right to travel, reside, study, engage in economic activity and, above all, to work in another Member State. The opening up of the Polish economy has also contributed to greater diversity among employees. Labour migration, whilst highly beneficial, particularly in rapidly developing countries, presents employers with a number of challenges. One of the key issues arising within a multicultural workforce is discrimination. Such adverse treatment may result from certain personal characteristics, such as sex, age, race, nationality, disability, political beliefs, ethnic origin, sexual orientation, denomination or religion. Both Polish and EU legislation explicitly condemn such conduct and prohibit discrimination; however, the current changes taking place in the religious structure of Polish society also affect the employer-employee relationship, as membership of particular, often different, churches or religious associations may become a source of conflict in the workplace.

In addressing the issue of an employee's right to celebrate religious holidays observed in their faith, this article seeks to ascertain the extent to which current legal provisions and case law safeguard against discrimination on religious and worldview grounds, and the extent to which they permit the restriction of these rights for the benefit of others, including employers.

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<sup>1</sup> M. Komor, 'Internacjonalizacja przedsiębiorstw na rynku wewnętrznym UE w kontekście koncepcji euromarketingowej – perspektywy i wyzwania', *Studia Ekonomiczne*, 2014, No. 194, p. 13.

<sup>2</sup> Treaty establishing the European Economic Community (EEC) (Journal of Laws of 2004, No. 90, item 864/2, as amended).

<sup>3</sup> Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC, and 93/96/EEC (OJ L 158, 30.4.2004, p. 77).

## THE PROHIBITION OF DISCRIMINATION IN INTERNATIONAL AND NATIONAL LAW

The principle of equality, which derives directly from Article 32 of the Constitution of the Republic of Poland,<sup>4</sup> requires that all citizens be treated equally before the law and, at the same time, prohibits discrimination in the political, social or economic spheres, regardless of the ground on which it is based. This principle is reiterated in many other provisions of the Constitution; for example, Article 33 safeguards equality between women and men, Article 60 ensures equal access to public service, and Article 70(4) grants the right to equal access to education. Lower-level legal acts, such as the Civil Code (Article 1183),<sup>5</sup> the Criminal Code (Article 119),<sup>6</sup> the Act on the Promotion of Employment and Labour Market Institutions (Article 19c),<sup>7</sup> and the Trade Unions Act (Article 3)<sup>8</sup> also contain expressly formulated principles of equal treatment in various aspects of life. Procedural norms containing specific legal measures to ensure compliance with the prohibition of discrimination, however, are set out only in the Labour Code<sup>9</sup> and the Equal Treatment Act.<sup>10</sup>

The aforementioned Act was introduced into our legal system primarily in order to implement the European Union's anti-discrimination directives,<sup>11</sup> which over the years have gained even greater importance in the struggle for equality among citizens. Article 2 of the Treaty on European Union (hereinafter referred to as 'TEU')<sup>12</sup> identifies the principle of non-discrimination as one of the core values shared by EU Member States, while Article 3(3) second subparagraph TEU states that combating social exclusion and discrimination as well as promoting justice and equality between women and men represents both an objective and an area of Union action. Similar values have been normatively enshrined in the Treaty on the Functioning of the European Union (hereinafter referred to as 'TFEU'),<sup>13</sup>

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<sup>4</sup> Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws No. 78, item 483, as amended), hereinafter referred to as 'the Constitution'.

<sup>5</sup> Act of 23 April 1964 – Civil Code (Journal of Laws of 2023, item 1610, as amended).

<sup>6</sup> Act of 6 June 1997 – Penal Code (Journal of Laws of 2024, item 17, as amended).

<sup>7</sup> Act of 20 April 2004 on Employment Promotion and Labour Market Institutions (Journal of Laws of 2024, item 475).

<sup>8</sup> Act of 23 May 1991 on Trade Unions (Journal of Laws of 2022, item 854).

<sup>9</sup> Act of 26 June 1974 – Labour Code (Journal of Laws of 2023, item 1465).

<sup>10</sup> Act of 3 December 2010 on the implementation of certain European Union provisions regarding equal treatment (Journal of Laws of 2023, item 970).

<sup>11</sup> Council Directive 86/613/EEC of 11 December 1986 on the application of the principle of equal treatment for self-employed women and men, including in agriculture, and on the protection of self-employed women during pregnancy and maternity (OJ L 359, 19.12.1986, p. 56), repealed and replaced by Directive 2010/41/EU of the European Parliament and of the Council of 7 July 2010 on the application of the principle of equal treatment between men and women engaged in self-employed activities and repealing Council Directive 86/613/EEC (OJ L 180, 15.07.2010, p. 1); Council Directive 2000/43/EC; Council Directive 2000/78/EC; Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services (OJ L 373, 21.12.2004, p. 37) and Directive 2006/54/EC.

<sup>12</sup> Treaty on European Union (OJ C 202, 7.6.2016, p. 13).

<sup>13</sup> Treaty on the Functioning of the European Union (OJ C 202, 7.6.2016, p. 47).

where Article 10 sets out an exhaustive list of various forms of adverse treatment that constitute prohibited practices. Further provisions, such as Article 18 TFEU, protect every individual against discrimination on grounds of nationality within the scope of application of the Treaties, whilst Article 19 TFEU, by conferring upon the Council the power to adopt the necessary measures to combat unequal treatment, protects persons exposed to adverse treatment on grounds of sex, race, ethnic origin, religion or worldview, disability, age or sexual orientation. At this point, it is also necessary to mention the Charter of Fundamental Rights of the European Union<sup>14</sup> (hereinafter referred to as the 'Charter'), which is regarded as a source of protection against discrimination. Article 21 of the Charter lists the areas in which there is a risk of such stigmatisation. This list, however, is broader than that set out in Article 18 TFEU and, moreover, according to the literal wording of the provision, remains open-ended. Owing to the case law of the Court of Justice of the European Union (hereinafter referred to as 'CJEU'), an individual whose personal characteristics referred to in Article 21 of the Charter are infringed may, by relying on this provision, pursue claims for legal protection.<sup>15</sup>

## THE RIGHT TO FREEDOM OF RELIGION

In accordance with Article 25(2) of the Constitution of the Republic of Poland:

'Public authorities in the Republic of Poland shall be impartial in matters of personal conviction, whether religious or philosophical, or in relation to outlooks on life, and shall ensure freedom of expression within public life.'

This is also confirmed by Article 10 of the Act on Guarantees of Freedom of Conscience and Religion,<sup>16</sup> pursuant to which Poland is a secular state, neutral in matters of religion and belief. Freedom to profess and practise a religion of one's choice is one of the fundamental human rights guaranteed by national legislation and international treaties. In Article 53 of the Constitution, the legislature guarantees every citizen freedom of conscience and religion, which should be understood as the freedom to choose one's denomination or religion and to manifest religious worship, whether individually or in groups, for example during rites, prayers or teaching. At the same time, under Article 35 of the Constitution, Polish citizens belonging to national and ethnic minorities have the right to preserve and develop their own language, preserve their customs and traditions, and develop their own culture. Furthermore, as a party to the International Covenant on Civil and Political Rights, Poland is obliged to implement its provisions, pursuant to which every person has the right to freedom of thought, conscience and religion, including the right to manifest their religion individually or in community with others, in public

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<sup>14</sup> Charter of Fundamental Rights of the European Union (OJ C 202, 7.6.2016, p. 389).

<sup>15</sup> Judgment of the CJEU of 17 April 2018 in Case C-414/16, *Egenberger*, ECLI:EU:C:2018:257.

<sup>16</sup> Act of 17 May 1989 on Guarantees of Freedom of Conscience and Religion (Journal of Laws of 2023, item 265).

or in private, through worship, participation in rites, practice and teaching. This right may be restricted only for the protection of public safety, order, health or public morals, or the fundamental rights and freedoms of others.<sup>17</sup>

## RELIGIOUS DIVERSITY IN THE WORKPLACE

Although in Poland the vast majority of the population (almost 90%) declare affiliation to the Roman Catholic Church,<sup>18</sup> the number of believers, mainly from the two largest Eastern Churches, the Orthodox and Greek Catholic Churches, has risen significantly in recent years (figures for 2023 indicate that this now amounts to more than half a million citizens).<sup>19</sup> This may be influenced by the large number of immigrants, mainly from Ukraine, whose numbers have risen rapidly in Poland since 2022. The other churches registered in Poland, despite accounting for a small percentage of the total number of believers, still constitute a community of more than 300,000 people. The multi-faith nature of society is a constant challenge both at national level, which state authorities face, and in smaller communities such as workplaces. Employers hiring foreign nationals, in particular, should be mindful of possible differences in worldview among employees professing different religions, as this may affect relations within the workplace in various ways. Under Article 113 of the Labour Code, the legislature has prohibited any discrimination in the workplace, whether direct or indirect, including on grounds of religion, nationality, political beliefs, trade union membership, ethnic origin and denomination. In the Labour Code, the entirety of Chapter IIa is devoted to equal treatment in employment, which only demonstrates how significant this issue is.

It should be noted, however, that there are situations which the legislature itself has set out in Article 183b(4) of the Labour Code, thereby establishing an exhaustive list of circumstances in which differentiation between persons admitted to employment is permissible. This refers to persons employed by churches, religious associations, as well as organisations whose ethics are based on a specific religion, denomination or worldview, where the type or nature of the activities carried out by these entities means that adherence to certain values constitutes a genuine and determining occupational requirement imposed on the employee, proportionate to the achievement of the lawful aim of differentiating that person's situation. An apt example is the role of a 'church verger', that is, a person responsible for the care of a collegiate church and sacred objects in the Catholic Church. It therefore seems justified to make the employment of such a person dependent on their professed faith.<sup>20</sup> The position of the European Court of Human Rights in Strasbourg also

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<sup>17</sup> Article 18(1) and (3) of the International Covenant on Civil and Political Rights adopted on 16 December 1966 by the general Assembly resolution 2200A(XXI).

<sup>18</sup> Główny Urząd Statystyczny, *Sytuacja demograficzna, społeczna i ekonomiczna ludności Polski w świetle wyników Narodowego Spisu Powszechnego Ludności i Mieszkań 2021*, Warszawa, 2023.

<sup>19</sup> R. Bielak (ed.), *Mały Rocznik Statystyczny Polski 2023*, Warszawa, 2023, p. 117.

<sup>20</sup> M. Strzała, 'Gwarancje wolności religijnej w przepisach prawa pracy: zarys stanu prawnego *de lege lata* i postulaty *de lege ferenda*', *Internetowy Przegląd Prawniczy*, 2015, No. 4, p. 108.

confirms that freedom of religion must be respected in the workplace to the extent that this does not infringe the rights of other colleagues, and that the management of employees should also respect their other non-professional obligations arising from their religion.<sup>21</sup> In practice, however, this may give rise to issues with regard to the proper organisation of working time, which would need to take into account all the days off and holidays of a multicultural workforce.

## TIME OFF WORK ON ACCOUNT OF RELIGIOUS HOLIDAYS

Although Poland, under separate legal provisions, is classified as a secular state, most statutory public holidays<sup>22</sup> nevertheless fall in the same periods as holidays observed by persons professing the Roman Catholic faith. These include all Sundays and an additional 13 days during the year, including 6 January – Epiphany, the first and second days of Easter, Corpus Christi, and 1 November – All Saints' Day. The Constitution does not, however, leave other churches and religious associations without regulation, because, pursuant to its Article 25(5), they may determine their mutual relations with the Republic of Poland on the basis of individually concluded agreements. According to the established position of the Supreme Court, any statute which defines the rights and obligations of employees with regard to days off work constitutes a separate, special (*sui generis*) source of labour law.<sup>23</sup>

An example of such a regulation is the Act on the Relationship between the State and the Polish Autocephalous Orthodox Church,<sup>24</sup> under which persons belonging to that Church have the right to observe Orthodox holidays also according to the Julian calendar, on such days as 7–8 January – Christmas, 19 January – the Baptism of the Lord, 9 August – the Transfiguration of the Lord, and 28 August – the Dormition of the Most Holy Mother of God. Pursuant to Article 14 of that Act, members of the Orthodox Church may request to be released from work on the holidays specified therein, but without the right to remuneration if those holidays are not statutory public holidays.

Similar regulations have also been laid down with regard to Jewish religious communities in the Republic of Poland,<sup>25</sup> where, apart from the legal and property status of such entities, the Act also provides for days on which believers are entitled to obtain time off from work or study. These include, for example, the Day of Atonement – 1 day, the Feast of Tabernacles – 2 days, the Assembly of the Eighth Day – 1 day, as well as the period of the Sabbath, lasting from sunset on Friday until sunset on Saturday.

<sup>21</sup> Judgment of the European Court of Human Rights of 3 February 2011, 18136/02, *Siebenhaar v. Germany*, ECLI:CE:ECHR:2011:0203JUD001813602; judgment of the European Court of Human Rights of 20 October 2009, 39128/05, *Lautsi v. Italy*, ECLI:CE:ECHR:2009:1103JUD003081406.

<sup>22</sup> Article 1 of the Act of 18 January 1951 on Public Holidays (Journal of Laws of 2020, item 1920).

<sup>23</sup> Supreme Court judgment of 29 January 2008, I PK 196/07, *OSNP*, 2009, No. 7–8, item 89.

<sup>24</sup> Act of 4 July 1991 on the State's Relationship with the Polish Autocephalous Orthodox Church (Journal of Laws of 2023, item 544).

<sup>25</sup> Act of 20 February 1997 on the State's Relations with Jewish Religious Communities in the Republic of Poland (Journal of Laws of 2014, item 1798).

For the observance of all the holidays listed in the Act, pursuant to Article 11(3) of the same Act, employees belonging to Jewish communities are entitled to be released from work under the terms laid down in separate provisions, which constitutes an indirect reference to the Act on Guarantees of Freedom of Conscience and Religion.

Separate legal acts regulating the rights and rules governing release from work and study during religious holidays also apply to members of the following churches:

- The Baptist Church in the Republic of Poland – pursuant to Article 11 of the Act of 30 June 1995 on the Relationship between the State and the Baptist Church in the Republic of Poland,<sup>26</sup> members of the Church are entitled to time off work on two days each year: Good Friday and the Feast of the Ascension, for which they may apply under the terms laid down in generally applicable provisions of law.
- The Evangelical Reformed Church in the Republic of Poland – under Article 14 of the Act of 13 May 1994 on the Relationship between the State and the Evangelical Reformed Church in the Republic of Poland,<sup>27</sup> on each Good Friday and the Feast of the Ascension, persons belonging to this Church are entitled to be released from work under the conditions provided for in the Act on Guarantees of Freedom of Conscience and Religion. This therefore constitutes a direct reference to separate provisions.
- The Pentecostal Church in the Republic of Poland – in the light of Article 12 of the Act of 20 February 1997 on the Relationship between the State and the Pentecostal Church in the Republic of Poland,<sup>28</sup> the religious holidays in the year are Good Friday, the Feast of the Ascension, and the second day of Pentecost, and the members of the Church may obtain time off work on those days under the terms laid down in generally applicable provisions.
- The Evangelical Church of the Augsburg Confession in the Republic of Poland (also known as the Lutheran Church) – the Act of 13 May 1994 on the Relationship between the State and the Evangelical Church of the Augsburg Confession in the Republic of Poland<sup>29</sup> designates as Evangelical holidays each Good Friday, the Feast of the Ascension of Christ the Lord, and 31 October, which is Reformation Day. Article 14 of the same Act also contains a direct reference to the Act on Guarantees of Freedom of Conscience and Religion with regard to the rules for granting time off work on those days.
- The Old Catholic Mariavite Church in the Republic of Poland – pursuant to Article 9 of the Act of 20 February 1997 on the Relationship between the State and the Old Catholic Mariavite Church in the Republic of Poland,<sup>30</sup> members of the Church are entitled to be released from work on 2 August, which for them commemorates the Revelation of the Work of Great Mercy, under the terms laid down in separate provisions.

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<sup>26</sup> Journal of Laws of 2023, item 1874.

<sup>27</sup> Journal of Laws of 2015, item 483.

<sup>28</sup> Journal of Laws of 2015, item 13.

<sup>29</sup> Journal of Laws of 2023, item 509.

<sup>30</sup> Journal of Laws of 2023, item 47.

- The Mariavite Catholic Church in the Republic of Poland – pursuant to Article 9 of the Act of 20 February 1997 on the Relationship between the State and the Mariavite Catholic Church in the Republic of Poland,<sup>31</sup> persons belonging to this community are entitled to be released from work, under the terms laid down in separate legal acts, for religious holidays on 2 August, when the Revelation of the Work of Great Mercy is celebrated, and on 23 August, that is, the Feast of the Most Precious Blood of the Lord Jesus and the Sacrifice of the Mother.
- The Evangelical Methodist Church in the Republic of Poland – pursuant to Article 12 of the Act of 30 June 1995 on the Relationship between the State and the Evangelical Methodist Church in the Republic of Poland,<sup>32</sup> it is provided that members of this Church are entitled to time off from professional duties on each Good Friday, to commemorate the Day of the Crucifixion of Christ the Lord, and on the Feast of the Ascension of Christ the Lord. Article 12(2) contains a reference to generally applicable provisions concerning the obtaining of days off from employers by employees.

Other employees and students whose religion or denomination is not governed by individual arrangements with the Polish state may obtain a day off under the terms set out in the Act on Guarantees of Freedom of Conscience and Religion. Article 42 of that Act provides that such persons may, at their own request, obtain release from work or study for the time necessary to observe the religious holidays of their faith, provided, however, that the employee makes up that period of release without the right to additional remuneration for work performed on statutory public holidays or in overtime hours.

Requiring an employee to make up such a day is not, however, obligatory and depends solely on the employer's will. Moreover, the Regulation of the Ministers of Labour and Social Policy and of National Education sets a minimum period for submitting such a request by the employee, namely at least 7 days before the day of release, and requires the employer to specify the conditions for making up such time off no later than 3 days before the day of release.<sup>33</sup> In the author's opinion, there is no doubt that if the employee has complied with the time limit laid down in the legislation, the request is binding and should therefore be granted. In legal doctrine, however, views are divided on whether time off must be granted if the employee has failed to comply with the above time limit.<sup>34</sup> It should nevertheless be noted that failure to grant release from work for the period necessary to celebrate

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<sup>31</sup> Journal of Laws of 2023, item 8.

<sup>32</sup> Journal of Laws of 2023, item 85.

<sup>33</sup> § 1(1) of the Regulation of the Ministers of Labour and Social Policy and of National Education of 11 March 1999 on granting time off from work or school to members of churches and other religious associations for the observance of religious holidays that are not statutory holidays (Journal of Laws No. 26, item 235).

<sup>34</sup> Anna Martuszewicz and Katarzyna Piecyk take the position that if an employee fails to meet the 7-day deadline, the granting of leave is at the employer's discretion. See A. Martuszewicz, K. Piecyk, *Urlopy pracownicze i inne zwolnienia od pracy*, Warszawa, 2010; I. Nowak, 'Prawo do zwolnienia od pracy z tytułu świąt religijnych', *Humanities and Social Sciences*, 2015, Vol. XX, No. 1, p. 128.

religious holidays in accordance with the requirements of the religion professed by the employee, if the employee requests such time on their own initiative, may be regarded as a violation of Article 6 of the Act on Guarantees of Freedom of Conscience and Religion, which states:

'No one may be discriminated against or privileged because of religion or beliefs in matters of religion. Citizens may not be compelled not to participate in religious activities or rites, nor to participate in them.'

An employer who does not wish to infringe the prohibition of discrimination should also not require a person professing a different faith to use annual leave or unpaid leave, because the use of such leave is, under labour law, an employee's entitlement and should result from their own initiative.<sup>35</sup> Moreover, employers should treat absences from work connected with their employees' religious holidays as unpaid absences only in strictly defined cases. The legislature has expressly stated its intention in relation to certain churches or religious associations, as, for example, in the Act of 4 July 1991 on the Relationship between the State and the Polish Autocephalous Orthodox Church, where Article 14(2) clearly provides that members of this denomination are entitled to release from work without the right to remuneration if those holidays are not statutory public holidays.<sup>36</sup> It must therefore be inferred that it would be an impermissible practice for employers to apply the above provision to all employees of other religions. This view is also supported by state authorities, which agree that the above regulation is special in nature in relation to the generally applicable regulation which, in the Act on Freedom of Conscience and Religion, makes the use of release from work conditional upon making up that time, which consequently guarantees the employee the right to remuneration in full.<sup>37</sup> Exceptionally, however, if the specific nature of the employer's business does not allow the employee's request to be fully accommodated, for example because of the need to ensure continuity of the technological process, the employer should propose a change of position or, if that is not possible, a reduction in working hours corresponding to the employee's hourly availability.

## INDIVIDUAL WORK SCHEDULES: EMPLOYEES' RIGHT TO OBSERVE RECURRING HOLIDAYS

Persons whose religion designates holidays falling on a specific day of the week, but where these are not Sundays or other statutory public holidays, are covered by a separate regulation. In most cases, this concerns members of the Seventh-day

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<sup>35</sup> Judgment of the Court of Appeal in Kraków of 17 August 2022, III APa 1/22, LEX No. 3438647.

<sup>36</sup> Journal of Laws of 2023, item 544.

<sup>37</sup> *Odpowiedź sekretarza stanu w Ministerstwie Spraw Wewnętrznych i Administracji – z upoważnienia prezesa Rady Ministrów – na interpelację nr 4994 z 10 października 2008 r.*; <https://orka2.sejm.gov.pl> (accessed: 25 November 2024).

Adventist Church or followers of Judaism. In order that such employees may also properly cultivate their religious traditions, the law grants them the right to apply for an individual work schedule.<sup>38</sup> Moreover, some representatives of legal doctrine take the view that employers are bound by such requests, which means that it is the employer's duty to adjust the schedule to the needs of such an employee.<sup>39</sup> This view is also shared by representatives of state authorities, including the Commissioner for Human Rights and the Legal Department of the National Labour Inspectorate.<sup>40</sup>

When analysing the issue in question, it is worth noting the view prevailing in the literature that the members of the Seventh-day Adventist Church enjoy a 'stronger entitlement' to release from work for the duration of the Adventist holiday than followers of other religions.<sup>41</sup> This belief may stem from separate regulations other than those arising from the Act on Guarantees of Freedom of Conscience and Religion. In the light of Article 11(2) of the Act of 30 June 1995 on the Relationship between the State and the Seventh-day Adventist Church in the Republic of Poland,<sup>42</sup> the members of this Church have the right to release from work and study for the duration of the Adventist holiday, that is, from sunset on Friday until sunset on Saturday. It should be noted that there is no additional legislative provision making the grant of such a day off conditional upon making it up, without the right to additional remuneration, which, in turn, applies to other employees under Article 42 of the Act on Guarantees of Freedom of Conscience and Religion. Accordingly, in line with the principles of legislative drafting, namely that an expansive interpretation should not be adopted and that, in the event of doubt as to the meaning of a given provision, it should always be interpreted in favour of the employee (*in dubio pro libertate*), it should be concluded that employees belonging to the Seventh-day Adventist Church, in accordance with the legislature's intention, are entitled to remuneration for days off work taken in order to observe religious holidays.

An analysis of an employee's right to a day off work in connection with religious holidays leads to the conclusion that there is a lack of uniformity in the regulations governing this area. Indeed, both the obligations and the rights of both parties to the employment relationship may arise from the provisions of the Act on Public Holidays, the Labour Code, or specific legal acts, such as the Act on the Relationship between the State and the Seventh-day Adventist Church in the Republic of Poland. The position adopted in the case law, namely that one should always favour

<sup>38</sup> § 1(2), Journal of Laws No. 26, item 235.

<sup>39</sup> K. Piecyk, 'Zwolnienie od pracy z tytułu świąt religijnych', *Praca i Zabezpieczenie Społeczne*, 2010, No. 4, p. 38; I. Nowak, 'Wolność jednostki w zakresie przekonań religijnych i światopoglądowych a zwolnienie od pracy i nauki z tytułu święta religijnego – soboty (szabat, szabasu)', *Przegląd Prawa Publicznego*, 2013, No. 1, pp. 19–36; I. Nowak, 'Prawo do nauki a święta religijne mniejszości wyznaniowych na gruncie ustawy o systemie oświaty', *Przegląd Prawa Publicznego*, 2014, No. 5, pp. 41 et seq.

<sup>40</sup> K. Piecyk, 'Zdaniem Państwowej Inspekcji Pracy', *Praca i Zabezpieczenie Społeczne*, 2010, No. 4, pp. 38–39; Letter of 24 July 2007, RPO-563683-1/07/KJ; similarly: letters of 20 January 2011, RPO-560379-1/07/KJ and 18 May 2012, RPO-649337-1/10/KJ.

<sup>41</sup> Z. Hajn, 'Prawo pracowników należących do mniejszości wyznaniowych do zwolnień od pracy w celu uprawiania kultu religijnego', *Gdańskie Studia Prawnicze*, 2007, No. 2, p. 121.

<sup>42</sup> Journal of Laws of 2022, item 2616.

a solution which takes into account the interests of the entity to whom a given right or freedom is granted, rather than increasing the scope of restrictions on the exercise of constitutional rights and freedoms,<sup>43</sup> should not, however, in the author's view, be applied absolutely when deciding whether an employee should be covered by an individual work schedule. It seems, in fact, that the reasonable course of action is to leave the final decision in this matter to the employer and, in particular, to the logistical capacity of the organisation as a whole, since it is not difficult to imagine that changing the working hours or working days of a given employee, or perhaps even of an entire group of employees, will not be feasible in every workplace.

### LABOUR DISPUTES IN THE CASE LAW OF THE EUROPEAN COURT OF HUMAN RIGHTS AND THE COURT OF JUSTICE OF THE EUROPEAN UNION

The observance of religious ceremonies is a very important form of manifesting one's faith; therefore, under the Charter of Fundamental Rights of the European Union, it is one of the fundamental human rights (Article 10), and its restriction, for example on the basis of religious affiliation or lack of affiliation, constitutes, as a rule, a serious violation in a democratic state governed by the rule of law. In practice, however, as national and international case law shows, disputes often arise in this context. Employees' claims, for example claims to be placed on an individual work schedule, are not unconditional, as confirmed by the positions of the European Commission of Human Rights and, subsequently, the Court, according to which freedom of religion and obligations arising from specific standards of conduct established, for example, in the workplace, are not in conflict with one another.<sup>44</sup> According to the Commission, the freedom of religion guaranteed by Article 9 of the Convention for the Protection of Human Rights and Fundamental Freedoms<sup>45</sup> may be subject to restriction in the light of the interests listed in Article 9(2) of that Convention, including the freedoms of others. This position of the Commission is also reflected in its decisions, one of which expressed the view that a person employed as a teacher is obliged to observe their working hours, even if, in that person's opinion, they conflict with the time for prayer.<sup>46</sup> A rather radical, yet nevertheless logical, view of the Commission was expressed in the case of a Finnish railway official who belonged to the Seventh-day Adventist Church.<sup>47</sup> He was dismissed

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<sup>43</sup> Judgment of the Constitutional Tribunal of 5 June 2014, K 35/11.

<sup>44</sup> J. Sobczak, W. Sobczak, 'Ograniczanie człowieka w jego prawach ze względu na przynależność wyznaniową albo bezwyznaniowość', *Annales Universitatis Mariae Curie-Skłodowska. Sectio K, Politologia*, 2012, Vol. 19, No. 1, p. 83.

<sup>45</sup> Convention for the Protection of Human Rights and Fundamental Freedoms, Rome, 4 November 1950.

<sup>46</sup> Decision of the European Commission of Human Rights of 12 March 1981 in Application No. 8160/78, *X v. the United Kingdom*, DR 22, pp. 27 et seq, ECLI:CE:ECHR:1981:0312DEC000816078.

<sup>47</sup> Decision of the European Commission of Human Rights of 3 December 1996 in Application No. 24949/94, *Konttinen v. Finland*, DR 87 – A, p. 68, ECLI:CE:ECHR:1996:1203DEC002494994.

from work because of his failure to observe working hours. The Finnish employee justified his conduct on religious grounds, but, in the Commission's view, although there was undoubtedly a conflict in this respect in the employment relationship, the termination of his employment did not result from religious discrimination but from his failure to comply with his working schedule. In the Commission's opinion, the employee himself should even have decided to resign from his job if its hours could not be reconciled with the time which, in accordance with the requirements of his religion, he should devote to prayer.

Disputes concerning equal treatment in employment on grounds of religious affiliation have also been the subject of the case law of the CJEU. In answering one of the questions referred for a preliminary ruling in *Cresco Investigation GmbH v Markus Achatzi*,<sup>48</sup> the CJEU had to analyse the factual situation under Austrian law as it stood at the time, according to which Good Friday was a public holiday only for members of four churches, namely the Evangelical Churches of the Augsburg and Helvetic Confessions, the Old Catholic Church, and the Evangelical Methodist Church. If, however, an employee belonging to one of those denominations chose to work on that day, they received a wage supplement. This entitlement was provided exclusively for Christians, while adherents of other religions or atheists were deprived of that right. The Court of Justice held that the legislation of that country did indeed lead to direct discrimination against the remainder of the workforce; however, the further conclusion of the judgment deserves even closer attention. As the CJEU stated, the rule arising from Article 21 of the Charter of Fundamental Rights has direct effect also in horizontal relationships and therefore binds not only Member States but also all other entities, including private undertakings. According to the further reasoning in the judgment, until the national legislature brings its laws into line with the principle of equal treatment, the employer remains under an obligation to grant discriminated employees the same benefits as those enjoyed by persons in a more favourable position. Consequently, employers must also grant a day off for the observance of Good Friday to other employees, provided that those employees have previously requested to be released from the obligation to work on that day. It must therefore be accepted that such employees are also entitled to the wage supplement payable for work performed on that day if the employer rejects such a request. As the Court further argued, the fact that the state permits such discrimination under its laws does not mean that an employer applying those provisions acts lawfully. In the summary of the judgment, it was stated that the principle of non-discrimination also applies to private relationships, primarily between employees and employers, and that the line of case law applied is intended to ensure effective protection for those experiencing discrimination even in countries where the legislature has not taken the necessary legislative measures to protect such values.<sup>49</sup>

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<sup>48</sup> Judgment of the CJEU of 22 January 2019, in Case C-193/17, *Cresco Investigation GmbH v. Markus Achatzi*, ECLI:EU:C:2019:43.

<sup>49</sup> G. Gruew, 'Zmiany w rozumieniu niedyskryminacji w Unii Europejskiej', *swlex.pl*, 26 July 2022; <https://swlex.pl/zmiany-w-rozumieniu-niedyskryminacji-w-unii-europejskiej/> (accessed: 25 November 2024).

The cited judgment gave rise to considerable debate because of the burden imposed on employers, who, although they have no influence over the wording of the applicable provisions, may nevertheless be accused of acting unlawfully. The Court of Justice, however, chose to uphold the effective protection of employees, even if, as a result, the employer might be burdened with consequences disproportionate to its fault. It follows, therefore, that private entities employing workers must navigate the provisions of both national and international law with great care, even if the two legislative sources are not entirely consistent with one another.

There is no doubt that changes occurring within society influence the evolution of legal norms; therefore, when making legislative amendments, in this case to the catalogue of public holidays, the legislature should take into account the religious composition of society. Otherwise, the amendments introduced could produce an artificial effect, inconsistent with the 'culture rooted in the Christian heritage of the Nation' referred to in the Preamble to the Constitution.<sup>50</sup>

## SUMMARY

Relations between employees and employers should be based on mutual respect for each other's religious beliefs. Both national and international legal provisions safeguard rights such as freedom of thought, conscience and religion; however, as the case law demonstrates, conflicts arising on this basis do occur in the workplace. In analysing such disputes, it seems necessary to establish an appropriate balance between the right to freedom to practise one's chosen religion and the possible limitations upon that right. As the European Court of Human Rights has repeatedly emphasised, these freedoms must be respected in the workplace, but only so long as they do not infringe the rights of other colleagues. The examples of cases cited in this article indicate that conflicts of this kind arise not only in Poland, but also in other countries, which points to the transnational character of the issue under discussion.

In summary, an analysis of the current legal regulations and selected case law leads to the conclusion that, for the protection of the rights and freedoms arising from an individual's practised religion and held views to be effective, it should be grounded in national legal provisions, which in turn should reflect the cultural character of society.

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<sup>50</sup> M.A. Mielczarek, 'Święta wolne od pracy a równouprawnienie związków wyznaniowych', *Monitor Prawa Pracy*, 2014, No. 9.

## BIBLIOGRAPHY

- Bielak R. (ed.), *Mały Rocznik Statystyczny Polski 2023*, Warszawa, 2023.
- Główny Urząd Statystyczny, *Sytuacja demograficzna, społeczna i ekonomiczna ludności Polski w świetle wyników Narodowego Spisu Powszechnego Ludności i Mieszkań 2021*, Warszawa, 2023.
- Gruew G., 'Zmiany w rozumieniu niedyskryminacji w Unii Europejskiej', *swlex.pl*, 26 July 2022; <https://swlex.pl/zmiany-w-rozumieniu-niedyskryminacji-w-unii-europejskiej/> (accessed: 25 November 2024).
- Hajn Z., 'Prawo pracowników należących do mniejszości wyznaniowych do zwolnień od pracy w celu uprawiania kultu religijnego', *Gdańskie Studia Prawnicze*, 2007, No. 2.
- Komor M., 'Internacjonalizacja przedsiębiorstw na rynku wewnętrznym UE w kontekście koncepcji euromarketingowej – perspektywy i wyzwania', *Studia Ekonomiczne*, 2014, No. 194.
- Martusiewicz A., Piecyk K., *Urlopy pracownicze i inne zwolnienia od pracy*, Warszawa, LEX/el., 2010.
- Mielczarek M.A., 'Święta wolne od pracy a równouprawnienie związków wyznaniowych', *Państwo i Prawo*, 2014, No. 8.
- Nowak I., 'Prawo do nauki a święta religijne mniejszości wyznaniowych na gruncie ustawy o systemie oświaty', *Przegląd Prawa Publicznego*, 2014, No. 5.
- Nowak I., 'Prawo do zwolnienia od pracy z tytułu świąt religijnych', *Humanities and Social Sciences*, 2015, Vol. XX, No. 1.
- Nowak I., 'Wolność jednostki w zakresie przekonań religijnych i światopoglądowych a zwolnienie od pracy i nauki z tytułu święta religijnego – soboty (szabatu, szabasu)', *Przegląd Prawa Publicznego*, 2013, No. 1.
- Piecyk K., 'Zdaniem Państwowej Inspekcji Pracy', *Praca i Zabezpieczenie Społeczne*, 2010, No. 4.
- Piecyk K., 'Zwolnienia od pracy z tytułu świąt religijnych', *Praca i Zabezpieczenie Społeczne*, 2010, No. 4.
- Sobczak J., Sobczak W., 'Ograniczanie człowieka w jego prawach ze względu na przynależność wyznaniową albo bezwyznaniowość', *Annales Universitatis Mariae Curie-Skłodowska. Sectio K, Politologia*, 2012, Vol. 19, No. 1.
- Strzała M., 'Gwarancje wolności religijnej w przepisach prawa pracy. Zarys stanu prawnego de lege lata i postulaty de lege ferenda', *Internetowy Przegląd Prawniczy*, 2015, No. 4.

**Cite as:**

Przybycień P. (2026), *The Right of an Employee to a Day Off Granted in Connection with Religious Holidays Not Regulated in the Act on Public Holidays*, *Ius Novum* (Vol. 20) 2, 158–171. DOI 10.2478/in-2026-0023