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The Conscience Clause in the Healthcare System

Klauzula sumienia w systemie opieki zdrowotnej

ABSTRACT

Usually, studies of the conscience clause address only its selected aspects, drawing on multiple disciplines and often addressing the same research subject within an interdisciplinary approach. Consequently, a synthetic approach is needed, especially one that takes into account the healthcare system. From this perspective, the conscience clause is fundamentally about conscientious objection. Its clearest structural identification recognised and sanctioned by law can be found in the general reference clause. The conscience clause, understood in this way, is intended primarily for doctors, nurses, and midwives, although it indirectly concerns patients as well. Since the conscience clause is both a legal and a moral norm, it always legally enforces respect for natural values stemming from specific worldviews or religious beliefs.

Keywords: conscience clause; conscientious objection; health service; healthcare system

INTRODUCTION

The issue of the conscience clause has been the subject of numerous studies. However, no monograph has been devoted exclusively to it, and – unfortunately – no synthetic approach from a strictly healthcare-system perspective has emerged. This has been the case in both Polish and foreign research. The reason is that existing studies usually deal with selected aspects of the conscience clause, relying on multiple scientific disciplines, and often address the same research subject within

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an interdisciplinary approach. Naturally, the analysis is mostly embedded in law, philosophy, religion, and health sciences, but other disciplines are also of relevance. It is a unique situation, as the conscience clause eludes narrow scientific classifications due to its complex nature. On the one hand, emphasis is placed on the subject matter of the conscience clause, whose perception varies by discipline, particularly with regard to the presentation of its ontological essence. On the other hand, there is the issue of the subjective scope of the conscience clause – while there is uniformity in defining the relationship with the medical professions, taking into account both the patient's and the healthcare provider's perspective, it remains controversial to analyse the relationship with healthcare entities. As a result, a systemic methodology that would allow for more comprehensive answers to the identified research problems has not yet been used. Of course, systemic analysis should then focus on issues related to the beginning and end of human life. However, with more and more issues related to human life emerging as well, it becomes necessary to conduct wide-ranging research and propose the most comprehensive exemplification possible. Here, it is important not to focus specifically on case studies, since they lose sight of the general patterns, which escape the final conclusions of the analysis performed with their help.[1] Therefore, it is necessary to seek a model approach that provides a much more effective analysis, as it finally allows for the laying of uniform theoretical foundations.

THE ESSENCE OF THE CONSCIENCE CLAUSE

In essence, the conscience clause reflects a comprehensive approach to the underlying phenomenon in scientific thinking. It is certainly the intellectual equivalent of a term that reproduces a name formed from a double combination of words, which has been given a special conventional meaning. The term "conscience clause" itself is a combination of two nouns: 'clause' and 'conscience'. From an etymological point of view, it should be added that the noun 'clause' derives from the Latin noun *clausula*, which meant 'ending' or 'closure'. As for the noun 'conscience', it refers etymologically to the Greek noun *syeidesis* or *syneidos* and the Latin noun *conscientia*, which meant 'common knowledge' or 'shared knowledge'. In any case, "conscience clause" is now a legal term, and the noun 'conscience' that it contains is also a legal term.[2] The term "clause" as a legal term is usually a caveat or condition in a contract, treaty, or legal document. As such, it may refer to specific

[1] E. Jasińska, *Kontrowersje dotyczące klauzuli sumienia w kontekście przerywania ciąży – studium przypadku*, "Problemy Współczesnej Kryminalistyki" 2023, vol. 25, pp. 59–73.

[2] Article 39 of the Act of 5 December 1996 on the profession of physician and dentist (consolidated text, Journal of Laws 2024, item 1287, as amended).

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clause forms, such as derogation clause, delegation clause or enforceability clause.[3] Since the term "conscience" itself does not yet have a legal definition, various legal meanings are proposed. Of course, in each case these must be based on its dictionary meaning. Therefore, it should first be assumed that the term "conscience" is associated with the ability to assess one's own behaviour properly and, at the same time, with an awareness of moral responsibility for one's own actions.[4] Thus, the most reliable definition seems to be that the term "conscience" means an inner sense of what is good and what is bad, and a person's ability to choose between what is moral and what is immoral, as well as to act in accordance with what is considered right and wrong.[5] Hence, the term "conscience" is a complex set of obligations and actions that shapes the inner life of a morally mature person.[6] Certainly, the term "conscience" is also a deeply private, or even intimate, element of every human being's life and cannot be subjected to rational verification.[7] Based on the term "conscience", it is impossible to define standards of conscience, because they vary between cultural, ideological, or religious groups, and usually evolve.[8]

The history of the conscience clause is not particularly long, as it dates back to the early 1960s in the United States of America, where it became a key outcome of discussions following the introduction of contraceptive pills.[9] In law, however, the conscience clause first emerged as a response to the 1973 US Supreme Court ruling in *Roe v. Wade*, which concerned the legalisation of abortion throughout pregnancy.[10] In addition, it should be noted that the conscience clause was then linked to religious freedom and modelled on the refusal to perform military service, which is still emphasised today.[11] Furthermore, it is essential to underline that the conscience clause is based on the subjective right to freedom of conscience, which is protected in many ways by international law, as recognised by the International

[3] L. Leszczyński, *Kryteria pozaprawne w sądowej wykładni*, Warszawa 2022, p. 28.

[4] A. Sieńko, *Klauzula sumienia a samodzielność wykonywania zawodu pielęgniarki – refleksja prawna*, "Pielęgniarstwo i Zdrowie Publiczne" 2018, vol. 8(4), p. 322.

[5] C. Lamb, M. Evans, Y. Babenko-Mould, C.A. Wong, W. Kirkwood, *Conscience, Conscientious objection, and Nursing: A Concept Analysis*, "Nursing Ethics" 2017, vol. 26(1), p. 3; T. Mróz, U. Drozdowska, *Klauzula sumienia w praktyce lekarza ginekologa – wybrane problemy na gruncie prawa prywatnego*, [in:] *Wybrane prawne i medyczne problemy ginekologii dziecięcej*, eds. E.M. Guzik-Makaruk, V. Skrzypulec-Plinta, J. Szamatowicz, Białystok 2015, p. 89.

[6] D.P. Sulmasy, *Conscience, Tolerance, and Pluralism in Health Care*, "Theoretical Medicine and Bioethics" 2019, vol. 40, p. 508.

[7] A. Sieńko, *op. cit.*, p. 322.

[8] *Ibidem*, p. 323.

[9] K. Eide, *Can a Pharmacist Refuse to Fill Birth Control Prescriptions on Moral or Religious Grounds?*, "California Western Law Review" 2005, vol. 42(1), p. 122.

[10] D.P. Flynn, *Pharmacist Conscience Clauses and Access to Oral Contraceptives*, "Journal of Medical Ethics" 2008, vol. 34(7), pp. 517–520.

[11] T.B. Kane, *Reevaluating Conscience Clauses*, "Journal of Medicine and Philosophy" 2021, vol. 46(3), pp. 297–312.

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Covenant on Civil and Political Rights of 19 December 1966.[12] Meanwhile, the history of the conscience clause in the Republic of Poland dates back to the 1990s, when Article 39 was introduced into the Act of 5 December 1996 on the professions of physician and dentist, establishing the conscience clause for the two medical professions specified in its title. It should also be noted that the conscience clause was introduced in Article 12 (2) of the Act of 5 July 2011 on the professions of nurse and midwife.[13] Conscience clauses were subsequently enshrined in Article 4 of the Code of Medical Ethics of 2 January 2004 and in point 6 of Chapter II of the detailed section of the Code of Professional Ethics for Nurses and Midwives of 9 December 2003.[14] The issue of applying the conscience clause was also addressed by the Constitutional Tribunal. Initially, in its judgment of 15 January 1991 (U 8/90), the Tribunal made a general ruling that freedom of conscience is not only the right to act in accordance with one's conscience, but also the freedom from being forced to act against one's conscience.[15] Subsequently, the Constitutional Tribunal explicitly stated in its judgment of 7 October 2015 (K 12/14) that a doctor has the right to refuse to provide a health service that is contrary to his conscience in a precisely defined situation.[16]

The distinction of the concept of the conscience clause must, of course, aim to capture its central regularity, grouped around which are other significant regularities that occur together with it. Ultimately, the aim is to reduce its image to a finite number of structural elements that can be consistently identified with the content of the concept, which should then enable the formulation of the most accurate definition of equality. First of all, it should be emphasised here that this concerns the medical conscience clause, as it is intended mainly for healthcare workers.[17] Consequently, it is incorporated in medical law, where it is understood as both a moral and legal norm that allows selected medical professionals to refrain from certain activities due to moral doubts.[18] Thus, the conscience clause is considered to be a vague

[12] Journal of Laws 1977, no. 38, item 167.

[13] Consolidated text, Journal of Laws 2024, item 814, as amended.

[14] M. Blecharczyk, G. Bejda, *Dylematy etyczne w ochronie zdrowia*, [in:] *Pacjent odmienny kulturowo*, eds. E. Krajewska-Kułak, A. Guzowski, G. Bejda, A. Lankau, Poznań 2023, pp. 53–55; L. Krzyżak, *Etyka pielęgniarki i klauzula sumienia*, [in:] *Samotności, jakaś ty przeludniona*, ed. J. Zimny, Stalowa Wola 2016, p. 257.

[15] T. Mróz, U. Drozdowska, *op. cit.*, pp. 92–93.

[16] W. Zomerski, *Efektywność praw człowieka a lekarska klauzula sumienia. Teoria. Prawo. Praktyka*, "Folia Iuridica Universitatis Wratislaviensis" 2016, vol. 5(2), p. 87 ff.

[17] J. Hanc, *Klauzula sumienia a wykonywanie zawodu ratownika medycznego*, "Prawo i Medycyna" 2014, no. 3–4, pp. 39–41; W. Galewicz, *Jak rozumieć medyczną klauzulę sumienia?*, "Diametros" 2012, no. 34, p. 136.

[18] J. Czekajewska, *Ethical Aspects of the Conscience Clause in Polish Medical Law*, "Kultura i Edukacja" 2018, no. 4, pp. 206–208.

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concept in law, since it uses an ethical element in legal provisions.[19] This leads to a kind of symbiosis between the legal and axiological planes.[20] Naturally, the conscience clause each time serves to resolve situations in which there is a conflict between statutory law and moral norms of a worldview or religious nature.[21] At the core of the concept of the conscience clause lies the refusal to fulfil a duty imposed by law on ideological or religious grounds.[22] At the same time, these obligations not only arise from the law, but also has an inherently legal nature.[23] The content of the conscience clause is, therefore, negative in nature, as it involves refraining from fulfilling a statutory duty due to incompatible ethical views.[24] In this regard, it should also be added that the conscience clause is a privilege granted by positive law, and therefore its application must occur within the limits strictly defined by law.[25] Hence, it is clear that the definition of the conscience clause should indicate that it is an accepted possibility in the legal system to evade a duty whose fulfilment gives rise to a conflict of conscience, as it is considered morally reprehensible by the addressee of the duty because it reveals a contradiction with their worldview or religious beliefs.[26]

The legal nature of the conscience clause implies that we are dealing with a legal principle. While the definition of the term "legal principle" varies, its core elements include references to legal norms, complexity, integration through a common goal or value, permanence over time, and the possibility of change without losing identity.[27] In this regard, it can be further emphasised that the conscience clause is a conscientious objection that has been recognised and institutionalised by law.[28] This is because it creates an exception to the rule involving the legal obligation to provide certain medical services and exempts selected medical professions from liability for refusing do so.[29] Since the conscience clause specifies conditions that

[19] E. Zatyka, *Lekarska klauzula sumienia a prawo karne*, "Themis Polska Nova" 2012, no. 2, pp. 261–262.

[20] *Ibidem*, p. 262.

[21] L. Krzyżak, *op. cit.*, p. 256.

[22] P. Stanisz, *Klauzula sumienia*, [in:] A. Mezglewski, H. Misztal, P. Stanisz, *Prawo wyznaniowe*, Warszawa 2008, p. 105; J. Pawlikowski, *Klauzula sumienia w praktyce medycznej – pomiędzy etyką a prawem*, [in:] *Klauzula sumienia. Regulacje prawne vs rzeczywistość*, eds. R. Piestrak, S. Psonka, M. Szast, Stalowa Wola 2015, p. 347.

[23] J. Hanc, *op. cit.*, p. 39.

[24] L. Kubicki, *Sumienie lekarza jako kategoria prawna*, "Prawo i Medycyna" 1999, no. 4, p. 101.

[25] W. Zomerski, *op. cit.*, p. 80.

[26] W. Wróbel, *Problem klauzuli sumienia w prawie polskim w odniesieniu do ochrony życia*, "Annales Canonici" 2010, vol. 6, pp. 23–26.

[27] T. Gizbert-Studnicki, *Ujęcie instytucjonalne w teorii prawa*, [in:] *Studia z filozofii prawa*, ed. J. Stelmach, Kraków 2001, pp. 130–131.

[28] E. Łętowska, *Tylnymi drzwiami ku uniwersalnej klauzuli sumienia? (uwagi na marginesie „sprawy drukarza" przed TK)*, "Państwo i Prawo" 2022, no. 2, p. 4.

[29] *Ibidem*.

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must be met and situations in which it cannot be invoked, it is even considered a legal principle that restricts the freedom of conscience of certain healthcare workers.[30] Naturally, this limitation bears in mind the need to protect extremely important public goods, including in particular the life and health of patients.[31] As a next step, it is important to present the conscience clause through the legislative construct assigned to it. This requires presenting its key qualifying features. The most important qualifying feature is the general reference clause, which, for brevity's sake, is usually referred to as the general clause. The general reference clause is a normative phrase (legislative construct), which is a component of a legal provision authorising the entity (body) applying the law to use criteria (norms, values, capabilities) expressed (named) in the legal text but not incorporated (for various reasons) into the system of legal provisions in the process of operational interpretation of the law.[32] For the authorised entity (body), it is, therefore, a guideline to take into account the non-legal criteria specified therein when taking its own action.[33] Specifically, it refers to conscience, which is a vague normative term based on the criterion of ability. As for the other qualifying characteristics, they can be found in the healthcare system. These mainly include the chosen profession of medical personnel, refraining from providing healthcare services, indicating realistic possibilities of obtaining healthcare services elsewhere, and the obligation to provide medical assistance in urgent cases.

SCOPE OF THE CONSCIENCE CLAUSE

In this context, it is necessary to discuss the scope of the conscience clause. First of all, it should be emphasised that the scope is extensive due to the broad legal definition of healthcare provision.[34] In this regard, it is important to add that healthcare provision includes healthcare services, healthcare benefits in kind, and ancillary services.[35] Although the prevailing formal opinion is that the scope of the conscience clause must apply to all healthcare services, it has often been pointed out that it would be advisable to limit it to healthcare services, as only these are

[30] L. Krzyżak, *op. cit.*, pp. 257–258; B. Dobrowolska, *Sprzeciw sumienia w zawodzie pielęgniarki i położnej – założenia i praktyka*, [in:] *Sprzeciw sumienia w praktyce medycznej – aspekty etyczne i prawne*, eds. P. Stanisz, J. Pawlikowski, M. Ordon, Lublin 2014, pp. 197–209.

[31] L. Krzyżak, *op. cit.*, p. 258.

[32] L. Leszczyński, *op. cit.*, p. 30.

[33] *Ibidem*.

[34] E. Zatyka, *op. cit.*, p. 262.

[35] Article 5 (34) of the Act of 27 August 2004 on health care services financed from public funds (consolidated text, Journal of Laws 2024, item 146, as amended).

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controversial.[36] Healthcare services are understood as activities aimed at prevention, preservation, rescue, restoration, or improvement of health, as well as other medical activities incidental to the treatment process or separate regulations governing the rules for their provision.[37] In any case, the scope of the conscience clause is based on recognised conscientious objection, which has been legitimised. Therefore, the conscience clause certainly cannot be equated with extra-legal conscientious objection, as the latter has a much broader scope, with clear parallels to civil disobedience.[38] This is because extra-legal conscientious objection means refraining from fulfilling an obligation (including, but not necessarily limited to, a legal obligation) – with the objector being aware of the possible illegality of such act, and agreeing to potential sanctions – as a sign of protest (moral or civic), usually intended as a demonstration and an impulse to change the law.[39] A recognised conscientious objection occurs in the context of healthcare services when a healthcare worker decides not to perform a specific procedure because it is incompatible with their conscience.[40] However, this does not necessarily mean that the healthcare professional is opposed to the procedure, but rather that they do not feel morally capable of performing it.[41] Therefore, a recognised conscientious objection will identify a mechanism in which the conduct of a healthcare professional can be morally transparent.[42] Furthermore, it can also be said that a recognised conscientious objection is a form of refusal of treatment based on conscience.[43]

As regards the scope of the conscience clause, it should also be noted that it derives from human rights and freedoms enshrined in numerous ethical and legal documents, and therefore always constitutes a deontological and legal regulation.[44] Here, it is particularly pertinent to mention: Article 30 of the Constitution of the Republic of Poland of 2 April 1997, as it combines the prohibition of violating human dignity with human and civil rights and freedoms; Article 9 of the European Convention on Human Rights of 4 November 1950, which recognises the right of everyone to freedom of thought, conscience, and religion, although the freedom to manifest

[36] E. Zatyka, *op. cit.*, p. 262.

[37] Article 5 (40) of the Act of 27 August 2004 on health care services financed from public funds.

[38] E. Łętowska, *op. cit.*, p. 4.

[39] *Ibidem*.

[40] M. Martins-Vale, H.P. Pereira, S. Marina, M. Ricou, *Conscientious Objection and Other Motivations for Refusal to Treat in Hastened Death: A Systematic Review*, "Healthcare" 2023, vol. 11(15), p. 1; H. Shanawani, *The Challenges of Conscientious Objection in Health Care*, "Journal of Religion and Health" 2016, vol. 55, pp. 384–393.

[41] M. Martins-Vale, H.P. Pereira, S. Marina, M. Ricou, *op. cit.*, p. 1; H. Shanawani, *op. cit.*, pp. 384–393.

[42] C. Lamb, M. Evans, Y. Babenko-Mould, C.A. Wong, W. Kirkwood, *op. cit.*, p. 4.

[43] C. Lamb, *Conscientious Objection: Understanding the Right of Conscience in Health and Healthcare Practice*, "The New Bioethics" 2016, vol. 22(1), pp. 33–44.

[44] M. Blecharczyk, G. Bejda, *op. cit.*, p. 51.

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one's religion or beliefs may be subject to restrictions; Article 10 of the Charter of Fundamental Rights of the European Union of 7 December 2000, which guarantees everyone the right to freedom of thought, conscience and religion, including the freedom to manifest one's religion or beliefs; Resolution No. 1763 of the Parliamentary Assembly of the Council of Europe of 7 October 2010, which approved the right of doctors to invoke the conscience clause.[45] It is rightly emphasised that the conscience clause has become a legal standard, although it is not always understood uniformly. There are doubts as to the requirement of rationality of conscientious objection, which essentially identifies the subject matter of the conscience clause. In fact, it is a question of how to understand the rationality of conscientious objection, particularly when considering the standards of selected medical professions. Therefore, it now seems that the beliefs underlying conscientious objection must be sincere and consistent with minimally decent healthcare, and that conscientious objection should not cause disproportionate harm to others in healthcare.[46] Hence, refusing to provide healthcare services can be considered a right and even a duty of healthcare workers, among other things, because they must act in accordance with the principle of non-maleficence.[47] In this context, it is also necessary to mention the possibility of abuse of the conscience clause when the subjective declaration of healthcare workers is accepted "on faith", thus making it very dangerously similar to the infamous *liberum veto*.[48] Adequate justification for the application of conscientious objection should, therefore, be mandatory in each case it is used.

The subjective scope of the conscience clause is also an important aspect. Undoubtedly, it is directly related to the subjective scope of the healthcare system. First and foremost, this concerns healthcare system employees and patients, but auxiliary medical entities (hospitals, clinics, surgeries) should also be taken into account, as should supervisory institutions (the Minister of Health, the Patient Ombudsman) and professional self-government bodies (medical chambers, chambers of nurses and midwives). Healthcare workers are of key importance here, as the conscience clause applies directly to them. In other words, they become the direct addressees of the conscience clause, which arises from a legal regulation that applies exclusively to them. In this context, it is only the patient who appears as a subject, enjoying the

[45] *Ibidem*, pp. 58–59; I. Radlińska, M. Kolwitz, *Klauzula sumienia realizowana w prawie zawodów medycznych w Polsce w kontekście realizacji Europejskiej Konewncji praw człowieka*, "Pomeranian Journal of Life Sciences" 2015, vol. 61(4), pp. 460–461.

[46] D. McConnell, *Conscientious Objection in Health Care: Pinning down the Reasonability View*, "Journal of Medicine and Philosophy" 2020, vol. 46(1), p. 54.

[47] A.N. Wear, D. Brahams, *To Treat or Not to Treat: The Legal, Ethical and Therapeutic Implications of Treatment Refusal*, "Journal of Medical Ethics" 1991, vol. 17(3), pp. 131–135; T.C. Saad, *Conscientious Objection and Clinical Judgement: The Right to Refuse to Harm*, "New Bioethics" 2019, vol. 25, pp. 248–261.

[48] E. Łętowska, *op. cit.*, p. 5.

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so-called reflexive right through the application of the conscience clause. This is because reflexive law is generally a situation in which the legal interest of a given subject does not arise directly from legal provisions, but is a "reflection" of the rights or obligations of other subjects that have been granted to them on the basis of those provisions. Although only healthcare workers, i.e. natural persons, are directly covered by the conscience clause, there is increasing talk of the need to additionally include medical entities that have the status of organisational units with or without legal personality. Opponents of this solution argue that conscience applies only to human beings as natural persons and their specific views, and that there is no such thing as a "collective conscience".[49] Meanwhile, supporters of recognising healthcare entities directly as entities subject to the conscience clause emphasise that an institutionalised community may also have a similarly formed conscience and demand respect for freedom of conscience.[50] If a healthcare provider is formally recognised, e.g., as "defending life from the moment of conception", it should also be able to oblige its doctors to refrain from performing abortion procedures permitted by law.[51] This is most evident in the case of healthcare providers who run religious organisations, as they "defend life from the moment of conception" on religious grounds. This is confirmed by Resolution No. 1763 of the Parliamentary Assembly of the Council of Europe of 7 October 2010, which extended the application of the conscience clause to include healthcare providers.[52]

Here, it should also be noted that the subjective scope of the conscience clause has been limited to selected medical professions. The conscience clause applies only to doctors, nurses, and midwives, although other medical professions also aspire to be granted this right. First, it should be made clear that the conscience clause does not have a uniform legal structure, but exhibits similar qualifying characteristics. As a result, a distinction is made between the conscience clause for doctors and the conscience clause for nurses and midwives to account for the specific nature and mutual relations of these medical professions. In relation to doctors, the conscience clause not only includes the right to conscientious objection but also encompasses the associated obligations. The key obligations usually include: referring the patient to another doctor or healthcare provider who will be able to provide the required services; recording the fact of refusal to provide healthcare services in the medical records; notifying the superior in advance about the refusal to provide healthcare services, if the doctor practises their profession on the basis of an employment re-

[49] I. Radlińska, M. Kolwitz, *op. cit.*, p. 465.

[50] *Ibidem*.

[51] *Ibidem*.

[52] K. Radziwiłł, *Kto ma prawo powołać się na klauzulę sumienia*, "Menedżer Zdrowia" 2024, vol. 3–4, p. 96.

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lationship or as part of their service; providing medical assistance in urgent cases.[53] The most controversial aspect is the obligation to refer the patient to unopposed doctor or healthcare provider. This causes a conflict of conscience for doctors, as it indirectly forces them to take action that they do not approve of and clearly wish to avoid.[54] As regards the conscience clause for nurses and midwives, it covers the right to conscientious objection in the context of the autonomy granted to these professions, which entails additional responsibilities.[55] The conscientious objection of nurses and midwives means that they may refuse to follow doctors' instructions and perform other health services when they are contrary to their conscience or incompatible with their qualifications. In any case, doctors' instructions are not undisputable commands that can never be opposed.[56] At the same time, nurses and midwives are required to immediately provide the reason for their refusal in writing to their supervisor or the person who requested the assistance, unless there are circumstances in which a delay in providing assistance could cause an emergency health situation.[57] In turn, pharmacists and paramedics are clearly aspiring to be granted the conscience clause.[58]

CONCLUSIONS

To conclude, it should be noted that the conscience clause is a legally accepted device for doctors, nurses, and midwives to express certain values that have been systematically protected by law.[59] Therefore, it can be assumed that the conscience clause opens up the law to natural values, determining the obligation to respect moral norms.[60] Hence, underlying the reconstruction of the theoretical assumptions of the conscience clause are two concepts: natural law and positivism.[61] The natural law concept assumes that the conscience clause is in fact a restriction of freedom of conscience, while the positivist concept emphasises the privilege that allows exemption from compliance with the law. Since both of these approaches have obvious

[53] A. Marach-Andruszkiewicz, *Prawne aspekty klauzuli sumienia*, "Przegląd Prawniczy Europejskiego Stowarzyszenia Studentów Prawa ELSA Poland" 2013, no. 1, p. 177.

[54] J. Pawlikowski, *Prawo do wyrażania sprzeciwu sumienia przez personel medyczny. Zagadnienia etyczno-prawne*, "Prawo i Medycyna" 2009, no. 3, p. 37.

[55] A. Sieńko, *op. cit.*, p. 320.

[56] *Ibidem*, p. 321.

[57] *Ibidem*, p. 322.

[58] P. Merks, K. Szczęśniak, D. Świeczkowski, E. Blicharska, A. Paluch, A. Olszewska, J. Kaźmierczak, C. Dehili, J. Krysiński, *Klauzula sumienia dla farmaceutów w środowisku farmaceutów praktykujących w Polsce i Wielkiej Brytanii*, "Farmacja Polska" 2015, vol. 71(8), pp. 483–490; J. Hanc, *op. cit.*, pp. 38–54.

[59] T. Mróz, U. Drozdowska, *op. cit.*, p. 90.

[60] *Ibidem*, p. 103.

[61] W. Zomerski, *op. cit.*, pp. 81–83.

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shortcomings, as they can destabilise the healthcare system or make it oppressive, a guarantee concept was created, this time emphasising guarantees of freedom of conscience.[62] This is because systemic solutions in healthcare are essential to respect doctors', nurses', and midwives' right to conscientious objection without violating patient rights.[63] Such systemic solutions must, therefore, be multifaceted and regulated by the top-tier legislation.[64] This involves various areas of law, from constitutional and public international law to administrative, civil, and criminal law.[65] From the constitutional law angle, it is worth noting that the conscience clause does not restrict the patient's right to healthcare services, but rather that the right to these services may be restricted through the application of the conscience clause.[66] Public international law, in turn, provides a groundwork for creating legal procedures that allow for the use of the conscience clause while ensuring adequate access to healthcare services.[67] Administrative law, civil law, and criminal law jointly define specific situations in which the conscience clause applies. These include, in particular, performing an abortion or issuing a certificate confirming that the conditions for abortion have been met, prescribing hormonal contraceptives, in vitro fertilisation, artificial insemination, prenatal diagnosis, sterilisation and castration for contraceptive purposes, and blood transfusions (prohibited for Jehovah's Witnesses).[68]

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[62] *Ibidem*, pp. 93–94.

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[65] J. Plichtová, C. Moulin-Doos, *Discourses on Medical Interventions in Human Reproduction (PGD and ART), State Interventions and Their Justifications: Comparison of Slovak and German Cases*, "Human Affairs'' 2015, vol. 25, p. 215; T. Mróz, U. Drozdowska, *op. cit.*, p. 87; E. Zatyka, *op. cit.*, pp. 258–276.

[66] T. Mróz, U. Drozdowska, *op. cit.*, p. 93.

[67] I. Radlińska, M. Kolwitz, *op. cit.*, p. 466.

[68] A. Marach-Andruszkiewicz, *op. cit.*, p. 179.

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ABSTRAKT

Zazwyczaj mamy do czynienia z opracowaniami naukowymi tylko wybranych aspektów klauzuli sumienia, które są podejmowane na gruncie wielu dyscyplin naukowych, a przy tym dotyczą często identycznego przedmiotu badawczego w ramach interdyscyplinarnego ujęcia. W konsekwencji potrzebne jest podejście syntetyczne, z uwzględnieniem zwłaszcza systemu opieki zdrowotnej. Z tej perspektywy istota klauzuli sumienia sprowadza się do sprzeciwu sumienia, który został uznany i zalegalizowany przez prawo, co konstrukcyjnie identyfikuje najbardziej sumienie w generalnej klauzuli odsyłającej. Tak rozumiana klauzula sumienia jest adresowana przede wszystkim do lekarzy, pielęgniarek i położnych, chociaż pośrednio dotyczy oczywiście pacjentów. Skoro klauzula sumienia stanowi równocześnie normę prawną i normę moralną, to zawsze wymusza respektowanie przez prawo wartości naturalnych, które wynikają z określonych przekonań światopoglądowych czy religijnych.

Słowa kluczowe: klauzula sumienia; sprzeciw sumienia; świadczenie zdrowotne; system opieki zdrowotnej