



The “Other” in Court: Islam and Muslims in Polish Judicial Opinions Published Online

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Abstract

Muslims are a marginal minority in Poland, but research shows that they are often subject to negative perceptions and hostility from the majority. Orientalist stereotypes about Islam and the people associated with it are widespread and often reproduced in the media. Research from North America and the European Court of Human Rights suggests that such prejudices can affect the adjudication of cases involving Muslims. It may be presumed that Poland is no exception to that, and this assumption was the starting point for our empirical study. To date, there have been no studies on the perception of Muslims and Islam in the Polish legal system. This article presents the results of a qualitative thematic analysis of 57 judicial opinions issued by the common courts in Poland and published online, in which Islam or being Muslim was mentioned. The cases were categorised and texts of the judicial opinions closely analysed (with computer-assisted qualitative data analysis software) to identify recurring themes. The findings of this first exploratory study show that stereotypical representations and the “Othering” of Muslims do indeed occur in Polish courts, with some judges repeating Orientalist tropes that have become normalised in Polish society.

Keywords Qualitative thematic analysis · Orientalism · Othering · Racism · Cultural defence · Hate crimes

Ewa Górska and Anna Juzaszek contributed equally to the study conception and design, data collection, and analysis, as well as writing the final manuscript.

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1 Introduction

Poland is generally considered to be a religiously and ethnically homogeneous country, with a small Muslim community.¹ While there is no precise data, experts in recent years have estimated that the Muslim population is around 40,000, or 0.1% of the country's 38 million people [62]. However, due to immigration, the number of Muslims is growing, and in March 2023, the Mufti of Poland estimated that their number was approximately 75,000 (personal communication, 29.03.2023). This group includes Muslims of various origins, such as Polish Tatars who have lived in the area since the 14th century,² expatriates from various countries, their descendants who were born in Poland, and converts.

Despite modest numbers, this group has aroused serious antipathy amongst Poles in recent years³[4, 8, 9, 34, 36, 37, 61]. In 2019, 45% of Poles said that they had an unfavourable attitude toward Muslims, and 38% said they were indifferent to them [16]. The data also show a negative trend in attitudes. Since 2015, Muslims have been increasingly accused of violence, a lack of assimilation, a failure to condemn terrorism, and hostility towards other religions. Poles also have a growing perception that a violent conflict between “Islamic culture and Western culture” is inevitable, which is a perception based at least partly on media discourse [16]. The Polish legacy media frequently portrays Muslims (and members of other groups associated with Islam; i.e., Arabs, refugees) with images of young men, prone to violence and terrorism [56], invading Europe [6], using sexuality as a weapon [33, 8: 230], and unable to integrate into European societies [6]. Islam as a religion is described as monolithic and backward, culturally alien, characterised by fundamentalism and terrorism and seeking conflict with “Western culture” [81, 58, 6, 8: 23].

In this regard, Poland does not stand out from the rest of Europe and the United States, which have a long history of viewing Muslims through a stereotypical and Orientalising lens [75], which is also evidenced in both legal studies [e.g., 86, 71, 72, 18] and adjudications [13, 14, 28, 79]. “Orientalism” is a term coined by Edward Said [75] to denote the discursive formations in the “West” that construct the understanding of the “Orient” and the “Oriental Other”. Such a system of power-knowledge was produced in Europe in the post-Enlightenment period and used in colonial projects, presenting the “East” as passive, less developed, and waiting for European conquest. In Poland's case, the concept of “frontier Orientalism” [31, 32] is also relevant. This explains how the history of adverse interactions between European countries (such as Poland) and the Muslim countries with which they have borders produced a specific form of Orientalism, based on local collective memories of being under attack and the heroic mission of defending their borders against the onslaught of the Muslim “Other” [31, 32]. Such metanarratives are hegemonic in “Western” societies,

¹ Following Konrad Pędziwiatr [59], we would like to underline that Muslims in Poland are a very diverse group, and references to a single “Muslim community” may be essentialisation. However, we will use this term here for the sake of the clarity of the text. For discussion of the different ways of being “Muslim” in contemporary Poland, see (e.g.) [42, 35, 59, 60].

² Approx. 2,000 people, according to the 2011 National Census [39: 122].

³ Given these small numbers of Muslims and growing animosities toward them, Poland is described as a country nurturing “Islamophobia without Muslims” [9, 37].

normalised, repeated in public discourses, and may be used unknowingly by people socialised in these societies – including legal professionals.

Studies of court cases from Europe and North America show that when Muslims face courts, they are often judged based on negative presumptions. In the United States and Canada, these presumptions are mainly founded on clichés – repeated in the media and by politicians – about Islam being a threat to national security [e.g., 67, 78, 7, 3]. In Europe, the narrative of Muslims as a threat to tolerance, secularism, human rights, and democracy has also been visible in courts [17, 47]. Conflicts about the Islamic headscarf have undoubtedly gained most attention, including in legal research. Most European studies are thus focused on how the European Court of Human Rights (ECtHR) reproduces “gendered Islamophobia”, treating Muslim women as passive victims of religious oppression, devoid of agency [28, 57, 79], and at the same time, as threatening aggressors: proselytising, attacking European values and the rights of others by wearing a headscarf [28, 79]. Moreover, research shows that the ECtHR uses a different approach in such cases, focusing on the “Otherness” of Muslim migrants in Europe [14].

It is probable that Muslims in Poland are also treated differently in courts, but there is currently no information available on how they are perceived in the Polish justice system or even in which types of litigation they are involved. Notwithstanding the small size of the Polish Muslim community, one should assume that citizens, residents, and visitors professing Islam will encounter the Polish legal system from time to time. For example, every year, law enforcement agencies investigate more than a thousand⁴ cases of so-called “hate crimes”, which also include hostilities against Muslims. Members of all minorities are just as likely to participate in other legal proceedings as members of the majority society. However, the existing literature on Islam and law in Poland is unspecific. Studies tend to address the legal status of Muslims [80, 82, 83], the situation of Muslim religious associations [45], and the rights of Muslim patients [48]. Only one specific legal issue has attracted greater scholarly interest than others (and will be further discussed in this article): namely, conflicts related to the halal diet of Muslim prisoners [5, 49, 50, 53]. Even in this last case, however, the analyses are not based on empirical research. To date, there have been no comprehensive studies of the actual legal situations faced by Polish Muslims or the perceptions of this minority in the legal community, or specifically, amongst the judiciary.

This study is the first exploratory work of this kind, intending to fill the knowledge gap about perceptions of Muslims and Islam in Polish courts. The article presents the results of a thematic analysis of opinions issued by common courts and published online, in which “Islam” or “being Muslim” was mentioned in the written judicial opinion. The paper is divided into five parts. The first section outlines the study’s aims and the importance of undertaking a qualitative analysis of judicial opinions.⁵ The second section presents a detailed description of the methodology, including the

⁴ For example, in 2020, the Prosecutor’s Office registered 1,291[#] new crimes motivated by racism, anti-semitism, or xenophobia [24].

⁵ We use the term “judicial opinion” to denote the text prepared by the judges in which they state the overview of the facts and the reasons for their judgment [see: 68].

data-selection process, the investigation, and its limitations in order to increase the transparency of the research. The third part categorises the types of litigation that were analysed and the forms of participation by Muslims in them, introducing the reader to the research material. The following section details the most visible themes in the court narratives: stereotypes about Muslims being terrorists, opinions about gender roles in Islam, “Othering” in other forms, and legal discussions of religious diets in prisons. The conclusions situate the results in a larger context of narratives prevalent in Polish culture and the functions of judicial opinions.

2 Aim

The overall goal of this research is to learn more about social perceptions of Islam and the Muslim community in Poland from publicly available judicial opinions. The main objectives of the current study are twofold. First, it aims to identify the social context of litigations involving Muslims or mentioning Islam. It investigates the kinds of legal situations in which such actors or topics appear and the roles played by Muslims in these trials. This information provides insights into the lived realities of Muslims in Poland. Second, it reconstructs the main themes of the popular narratives about Islam in Poland—narratives captured by judges in their opinions. It includes the views of judges and the opinions of non-legal professionals (i.e., the general public) quoted in the texts, including examples of hate speech and other statements made by actors in trials and noted in judges’ opinions.

Research into judicial opinions is important due to their legal and social significance. The general and most apparent purposes of the opinions are to explain the reasons for the judges’ decision and to present arguments in support of them [68, 76]. The publishing of opinions also has additional goals, such as communicating legal decisions to the public, informing and guiding lawyers and courts in other cases, educating future lawyers, and allowing public control of court decisions [88]. It is impossible to assess the extent to which these functions are fulfilled in reality, as there is no empirical research on that question. Nevertheless, there is a growing tendency towards publishing court decisions on the internet, making them available to a wider audience and thus possibly performing these functions to a greater extent [88].

From a cultural perspective, the court reasoning is explained in a longer text that narrates the case, the argumentation raised by the parties, the court’s assessment of the facts, and the final conclusion. The judge or judges tell the story, or rather “retell the stories to themselves or to each other in the form of instructions, deliberations, a verdict, a set of findings, or an opinion” [2: 110]. Even though in the European civil-law tradition, judicial storytelling does not have as much power as it does in common law – in which precedent becomes law – legal opinions nevertheless influence the system and the legal community. First, there may be many recipients of the judicial opinion, such as parties to the proceedings, other courts, judges, administrative bodies, the legal community, legal scholars, the public, the media, etc. [73: 145–148]. Moreover, judicial opinions in the statutory law tradition may be perceived as quasi-precedents [90: 80–81] due to their influence on future settlements of court cases, in particular when the higher courts issue a judicial opinion. Therefore, the statement

of Reem Bahdi [3: 558], made in the Canadian context, that “the judicial rendition becomes the dominant narrative read in law schools, cited by judges and other decision-makers, and analyzed by legal experts” still rings true.

In Poland, legal theorists also highlight equally important specific functions of judicial opinions: namely, the formal, descriptive, rationalising, persuasive, culture-forming, educational, and controlling [74]. In particular, two of these functions deserve more attention in cases involving minorities or other groups that may be affected by discrimination. First, the culture-forming function is essential because it concerns the socio-cultural impact of judgments on two levels: (a) it affects the legal culture and future judicial decisions, and (b) it affects society by transmitting the protected values and an understanding of justice in a particular time [74: 117–118]. Second, the educational function is about communicating to the public the desirable and undesirable behaviours that have already been reviewed by the court [74: 119–120]. The practical fulfilment of these postulated functions has not yet been empirically measured. However, it is possible to hypothesize that if judicial opinions have even a small influence on other lawyers, courts, and members of the public – for example, through media coverage – then their importance increases. To speculate regarding the context of the Muslim minority: suppose the courts did not appear committed to punishing hate crimes, were vague about what constituted discrimination, or revealed their own biases or ignorance in their opinions. This could have a negative impact on future jurisprudence, law enforcement practices, and the trust of minority community members in the judiciary.

3 Methodology

The presented study focused on identifying ideas, perceptions, and narratives within the body of texts created by judges. Thus, we used qualitative thematic analysis (TA) and computer-assisted qualitative document-analysis software (CAQDAS). TA is a method similar to qualitative-content analysis but focused on identifying and investigating ideas, themes, and patterns of meaning [11]. It is mainly associated with research in psychology but has also been used in some studies of justice systems [e.g., 29, 70, 15]. In this research, we applied TA because we were not interested in the methods and techniques used by the judges to rationalise their decisions, but rather in the ideas and themes of the social narratives of Islam presented in these texts. We used CAQDAS tools to code and analyse the data. While CAQDAS is still rarely utilised in legal research [77], in empirical and explorative studies of legal texts such as this one, it allows for a more precise and reliable investigation of the source material. The following paragraphs share the research design in more detail.

3.1 Data Selection

In January and February 2022, we carried out an internet-based search for online publications of judicial opinions by the Polish common courts, the Supreme Court, and the Constitutional Tribunal, identifying interesting cases using a list of key-

words connected to Islam.⁶ We used five Polish jurisprudence retrieval systems: the Supreme Court,⁷ Common Courts,⁸ the Constitutional Tribunal⁹, Lex,¹⁰ and SAOS.¹¹ We excluded documents in which the keywords appeared exclusively in contexts not related to Islam (e.g., surnames, proper names – such as “Islamabad”) or as examples in other unrelated cases.¹² The first search yielded 96 judgments in which at least one word was related to Islam or Muslims. We narrowed down the number of documents in the preliminary dataset using purposive sampling, and we selected for further analysis only those in which there were at least short statements directly concerning Islam or Muslims. This amounted to 57 judicial opinions. The selected texts were issued between 2008 and 2022 and were of varying lengths, ranging from 2 pages to 99 pages. These included operative parts of the judgements¹³ and written justifications of the courts’ reasoning. The common courts had issued 47 judgments, including 16 from district courts, 19 from regional courts, and 12 from courts of appeal. We included five opinions from the Supreme Court and five from the Constitutional Tribunal, as these were thematically related to the topics raised in the common courts.

3.2 Analysis

TA is considered a technique rather than a method of research because it is unbound by concrete theories and can be applied within various paradigms and theoretical frameworks [19]. In our analysis of the collected data, we used an inductive approach: not imposing existing theories or categories on the source material but instead allowing the data to determine the categorisation and coding in order to gain insights into the lived realities of the authors of the texts [26: 109]. The choice of an inductive approach was motivated by the lack of knowledge about Polish legal narratives of Islam and an attempt to avoid narrowing the field of view by imposing specific optics and thus missing other important narratives specific to Poland.

The data (the judicial opinions) were systematised by the software, allowing us to construct a codebook and gather statements concerning similar topics around Islam. Based on the coding, themes were generated, compared against the data set, corrected, and defined. Other data, such as the type/level of the court, type of procedure, type of case, and the role of Islam/Muslim in the proceedings, were noted as vari-

⁶ Keywords in Polish: *Islam**; *muzułm**; *Tatar**; *Mahomet**; *Muham**; *Moham**; *Allah*, *koran**, *prorok*. The terms “Islam” and “Muslim” yielded results, while “Tatar”, for example, was associated with family names and not the Tatar minority.

⁷ Official database of the Supreme Court: http://www.sn.pl/orzecznictwo/SitePages/Baza_orzeczen.aspx.

⁸ Official database of the common courts: <http://orzeczenia.ms.gov.pl/>.

⁹ Official database of the Constitutional Tribunal: <https://ipo.trybunal.gov.pl/ipo/Szukaj?cid=2>.

¹⁰ Commercial database, used for the complementary search: <https://www.lex.pl/>.

¹¹ Free database used for the complementary search: <https://www.saos.org.pl/>.

¹² E.g., The Act of April 21, 1936, on the relationship of the State to the Muslim Religious Union is mentioned in cases concerning other religious minorities in Poland, mainly Jews, but without comments.

¹³ It contains information about the purpose of the case – including what the person was accused of/the plaintiff’s claim and the court’s verdict.

ables. We did not record data on nationality or ethnicity because such features, even if they were mentioned, were often anonymised beyond the point of recognition.

3.3 Limits of the Research

Judicial opinions published online have potentially the strongest impact on future decisions, legal practitioners, scholars, and society in general. Therefore, it is crucial to know what kinds of assumptions about Islam and its followers are made in them. However, research on adjudications, such as the one presented in this article, is limited by the representativeness and exhaustiveness of the analysed material. First, the databases used to gather source documents do not provide complete overviews of the adjudications in the country, but rather only selections¹⁴ of previous judgments. The documents published are those considered “relevant” for publication, but they are chosen according to different rules. For example, the decision to publish an opinion in the common courts database is made by the case clerk,¹⁵ and the presidents of the courts determine the exact operation of this database in each court.¹⁶ The Supreme Court and the Constitutional Tribunal both publish all their rulings on their websites¹⁷[27]. In addition to being selected via different methods, the adjudications published in the Polish repositories came from different time periods.

The second problem was that the contents of judicial opinions can sometimes seem to be taken out of context, and without access to the records of the court proceedings, it can be difficult to determine where a particular argument came from and what was the exact reasoning of the judges. Furthermore, since other readers of such opinions – including lawyers, other judges, and members of the public – also usually lack access to the records, a clear description of the court’s reasoning in the opinions becomes even more important. Therefore, there is all the more reason to study the published documents to identify and bring attention to ambiguities, which can ultimately promote greater clarity.

There are also general issues with research on legal documents issued by the courts, including the risk of wrong identification of the author of the text. Although the opinions are ascribed to the judge or judges, there is no certainty that the judicial clerk did author them or that parts have not been copied-and-pasted [20, 85]. Nevertheless, our approach assumed that if the signed author(s) of the judicial opinion did not provide background information in support of their factual statements, the opinion was theirs.

¹⁴ We estimate that only around 0.5% of judicial opinions are published online. This is based on the data of final and binding conclusions of proceedings per year [63] and the number of judicial opinions circulated on the official database of the common courts. However, this is a very rough estimation, due to the lack of precise data.

¹⁵ “The selection of the judgment to be posted on the portal is made by the clerk who participated in its issuance or a functional person” – § 144 Sect. 2 of the Regulations of the Operation of Common Courts [65]. The database can be found at www.orzeczenia.ms.gov.pl.

¹⁶ Email by the Ministry of Justice in response to an inquiry by the author [EG], 24.08.2022.

¹⁷ The Supreme Court at: www.sn.pl, the Constitutional Tribunal at: www.ipo.trybunal.gov.pl.

The analysis was also hampered because some courts issue judicial opinions in table form, according to a unified template.¹⁸ This leaves the judges with much less freedom when delivering their written reasoning, with the reasoning broken into pieces by the construction of the template. This means less information about the context of the case than in a regular textual opinion. This lack of context is also more apparent in appeals and in appeals against final judgments,¹⁹ where judges focus only on the issues raised in the appeal. (We had an opinion of the first and second instance only in one situation.) Although this limited the analysis material and possible interpretations, we treated it also as an important trait: if, after the proofs in the court of the first instance had been sieved, religious or cultural issues were mentioned in the judgment of the court of appeal, that meant that these factors were considered necessary for the ruling.

This research certainly has its limitations; and as it is an exploratory study, the results should be treated with some caution. Nevertheless, it offers insights into the ideas about Islam and Muslims that are popular in Polish society and thus may provide a basis for further analyses.

4 Topical Categorisation: Types of Cases and Roles of Muslims in Court Proceedings²⁰

In addition to the thematic analyses, even simple categorisations of the dataset were able to provide information about the social context of being Muslim in Poland. For example, topical cataloguing based on the situational similarities described in the adjudications revealed that the minority group was chiefly evoked in judicial opinions on hate crimes.²¹ For the purposes of this research, we define a “hate crime” as a crime (felony or misdemeanour) against a person, group, or property, motivated by bias or prejudice against particular groups of people and including verbal and written attacks (hate speech).²² One third of the adjudications we analysed (19) was ascribed to this category, though Muslims were not always the victims of these bias-motivated crimes. Here, we also included antisemitic onslaughts, in which Muslims were discussed (by reference to Hamas); situations in which the victims were mistakenly assaulted because they were perceived to be Muslims; and one offence against religious (Catholic) feelings by committing public blasphemy, in which Islam was also debated. The category of hate crimes used here encompasses three types of assault – written, verbal, and physical – without significant quantitative differences. The writ-

¹⁸ It is a new change in Polish criminal law, effective from 2020, which requires that in some criminal cases, the judicial opinion has to be issued on a template form imposed by the Ministry of Justice [64].

¹⁹ In the Polish legal system, this appeal is called cassation appeal in civil law and cassation in criminal law and falls within the jurisdiction of the Supreme Court of Poland.

²⁰ For a more detailed description see: [38].

²¹ When it comes to the specific articles of the Polish Criminal Code the ones which are the most often associated with hate crimes are: 118, 118a, 119, 126a, 126b, 126c, 256, 257 and additionally 194, 195, 196 (which are perceived as closely related to the main hate crimes in terms of the perpetrator’s motivation). However, this is not an exhaustive list [see: 46].

²² This definition is based on that of OSCE-ODIHR [55].

ten crimes were predominantly committed on the internet (mostly on social media platforms)²³ and directed at Muslims in general. The verbal crimes were generally public chants at gatherings and football games. Only in one situation was verbal assault directed at a specific person.

Three other cases were closely related to the hate-crime category but we decided to describe them separately because they were not criminal. Those were all contraventions (petty offences)²⁴ concerning the disruption of street marches. Anti-Muslim and anti-Palestinian slogans chanted at these rallies could be classified as criminal acts and assessed as hate crimes, hence they are associated with the first topical category.

Another substantial category (13²⁵) concerned the right to practise religion and matters of religious associations. It predominantly comprised lawsuits that mentioned the rights of prisoners and arrestees (10), especially requests for meals prepared according to Islamic dietary rules. In all of these legal actions, Muslims were the people launching the court procedures and were active participants against Polish state institutions. Two other judicial opinions were related to religious slaughter, which was the object of heated legal and constitutional-level debates in 2013 and 2014 [62]. The last one was about internal conflict within the Muslim Religious Union in the Republic of Poland.

The following category (6) concerned various familial matters, including parental authority, the division of conjugal property, and divorce. Two proceedings involved domestic abuse: in one, a Muslim-Arab man was a victim, and in another, a Muslim-Arab man was the perpetrator. In each case in this category, one of the parties was Muslim or in a romantic relationship with a Muslim, and this was mentioned in the judicial opinion.

Another five judicial opinions concerned work-related litigation, including wrongful dismissal from work – of a Muslim, in one case, and of a non-Muslim who had insulted a Muslim co-worker in another.

The other 11 judicial opinions concerned different matters and did not allow for any further topical categorisations. For example, there were cases concerning potential support for terrorist groups operating in Chechnya, compensation for a tourist trip to Egypt, and the derivation of material benefits from prostitution practised by another person.

Notably, the dataset did not contain other types of legal dispute involving Muslims that have been described in other European countries. For example, there were no conflicts involving the wearing of face-coverings, veils, or other religious symbols;²⁶ requests for the recognition of religious marriages;²⁷ or concerning "mari-

²³ In two cases, the comments about Islam were found on flyers and inscriptions on buildings.

²⁴ In Poland, those are behaviours prohibited by the criminal law (in a broad sense) which are not considered felonies or misdemeanours and for which the punishment is usually lower (e.g., a small fine).

²⁵ There were 13 judicial opinions but 12 separate cases, because – in one case – we have a judicial opinion from the I and II instances.

²⁶ This matter was discussed in Belgian, Swiss, and German courts and the European Court of Human Rights [13, 22, 44, 79]. However, Poland has no ban on religious symbols or face covering.

²⁷ The matter is discussed in many European countries: the United Kingdom, the Netherlands, Italy, Norway, Finland [see, e.g., 10, 43, 89, 52, 84, 51, 12].

tal captivity”.²⁸ There was, however, one request for the recognition in Poland of an Islamic divorce conducted unilaterally in Egypt by the husband. The Muslim religious marriage was registered in the Polish civil registry office, probably due to the provisions of international law. The divorce was not recognised in Poland due to the failure to deliver the declaration of it to the wife and to inconsistencies with the fundamental principles of the Polish legal order.

As the topical classification revealed that Muslims did not always take part in the analysed court cases, we also examined the forms of participation. In only around 44% of the proceedings were Muslims active participants, either initiators of the court cases or victims of hate crimes. In some cases, we do not know the religion of the parties or – in one case – the offender of hate crimes intended to assault a Muslim person but was mistaken about the victim’s religion. In many other opinions, Muslims were mentioned but not personally involved. These were primarily hate-crime cases, in which the offensive slogans or comments on social media were not directed at any specific person (i.e., there was no individual victim), and proceedings in which a Muslim person was mentioned but not directly involved in the trial (e.g., one wrongful termination litigation was launched by an employee who had insulted a Muslim colleague, but the case itself involved only the fired employee and his ex-employer).

Often, Islam was mentioned by the court or by other participants, either as a narrative about a foreign country or to illustrate an argument (even in cases unrelated to Islam). Examples include the constitutional case on ritual slaughter launched by the Jewish community; a case involving the constitutionality of regulations that permitted the destruction of civilian aircraft; a case involving the denial of services to the LGBT+ community; and a case concerning antisemitic hate speech. Generalised comments about Islam were also characteristic of rulings by higher courts, such as Supreme Court cassation decisions and Constitutional Tribunal opinions.

5 Main Themes in Polish Judicial Opinions Involving Muslims and Islam

5.1 Terrorism and Security Threat

The theme most associated with Muslims in the analysed material is terrorism (or “security threats”). Related terms were juxtaposed with statements about Islam in 18 judicial opinions (almost a third of all documents), and various forms of the word “terrorism” were used more than 200 times.

Such connotations are evident in the popular social imaginaries recorded in the descriptions of incidents leading to the litigation (e.g., hate speech, offensive jokes, the reason for the wrongful dismissal of a Polish–Tunisian flight-control intern). The theme of terrorism appeared primarily in the statements of non-legal professionals

²⁸ Meaning a situation in which one or both spouses cannot terminate a marriage. In European perspective it is predominantly discussed in the context of religious marriages and issues with acquiring a religious divorce [23, 87].

(usually offenders) quoted in judicial opinions. Examples can be found in chants sung during protest marches and at football matches – for example, “We don’t want Islam, terrorists, and Muslims here” [103, 104]. Moreover, some Poles used the word “Islamist” as a synonym for a “terrorist”. One person accused of hate-motivated crime even argued in their defence that, by using this term and not “Muslim”, they could not be said to be inciting hatred towards a minority but rather verbally criticising terrorists. As a rule, the judges did not accept these justifications. In two cases, the judges define “Islamism” in the opinion, explaining its various meanings and contexts and justifying their refutation of the accused’s argument.

In the hate-speech cases, the judges were critical of attempts to publicly associate Islam with terrorism, stating, for example, that “equating and identifying the followers of Islam with terrorists undoubtedly offends this religious group” [104]. Some used stronger and more evaluative language, saying that such ideas are “absurd” [93] and “blatantly insulting” [105]. In one judicial opinion, the judge additionally stressed that “it should also be borne in mind that organized crime with terrorist features occurs in the world regardless of the religion of the members of the terrorist organisations operating within it” [102]. Such judicial acknowledgement of bias is significant, as “naming and renouncing represent acts of counter-narration” [3: 570]. Recognition and calling out the stereotypes means actively defying discriminatory presentations of minorities in society.

Another example is the case concerning the wrongful dismissal of a Polish–Tunisian flight-control intern. The legal proceedings revealed that the Polish Air Navigation Services Agency (the employer) had considered the claimant a security threat only because he had a second Tunisian nationality. Tunisia is a Muslim-majority country in which there was increased terrorist activity at that time, which had raised red flags. Additionally, the decision to dismiss the claimant was sparked when his co-intern converted to Islam, posted a self-portrait on social media wearing a *kufiyya* (characteristic male headdress from West Asia), and began engaging in behaviour considered suspicious. (The co-intern was dismissed first.) The court did not find these reasons persuasive and qualified it as discrimination.

However, not all judiciary members have taken such a stand and challenged the linking of religion and violent extremism. For example, in one appeal, the Polish Supreme Court determined that the regional court had not sufficiently considered the defence’s argument that the concept of “*jihad*”²⁹ had been misunderstood during the trial. The judges of the Supreme Court also criticised the court of appeal for not considering the simplification in the reasoning of the court of first instance by “identifying every fight for Islam automatically with sympathy with terrorist organisations” [98]. This reductionism in the view of *jihad* as holy war against *infidels* echoes ECtHR judgments in cases involving Muslims [47]. Although the Polish Supreme Court has also reduced the meaning of the Islamic term to different “fights for Islam”,

²⁹ *Jihad* originally means struggle or effort. However, “The exact meaning of the term *jihād* depends on context; it has often been erroneously translated in the West as ‘holy war’. Jihad, particularly in the religious and ethical realm, primarily refers to the human struggle to promote what is right and to prevent what is wrong” [1].

overall, it criticised the bias, added that cases with complicated geopolitical backgrounds³⁰ must be handled with proper diligence.

The stereotypical thinking was also pronounced in one of the opinions of the Polish Constitutional Tribunal on the constitutionality of destroying a foreign civil aircraft used for illegal activities that threatened national security:

Thirdly, the target of attacks by terrorist organisations, usually linked to various branches of Islamic fundamentalism, is not usually a specific state or nation, but states that can be broadly defined as pluralist democratic states, referring to the tradition of Western civilisation, and other states cooperating with them [100].

The judges of the Constitutional Tribunal not only attributed most terrorist activities to Islamic fundamentalism (without quoting any sources³¹) but even went a step further, suggesting that it is specifically Western civilisations that are under attack. Huntington's concept of the "clash of civilisations", evoked here, is a popular and potent discursive frame for European and Polish Islamophobia [8: 75–83]. In fact, both narratives visible in the opinion of the Constitutional Tribunal – that Islam is a threat to the security of Europeans and that there is an ancient antagonism between European and Islamic "cultures" – are often used to justify public acts of Islamophobia [8: 49–50].

There were also other documents in which the judges attempted to define words and concepts associated with extremism. For example, in litigation regarding anti-semitic hate speech, the court, in a side note, defined both *jihad* and Hamas as follows: "it should be noted, however, that this organisation, whose purpose is primarily the destruction of Israel, i.e., antisemitic incitement, also calls for *jihad*, i.e., holy war against *infidels* – people of a religion other than Islam" [96]. This comment is problematic in two ways. First, there are simplifications in its content: ignoring the Israeli–Palestinian conflict and reducing *jihad* to violence against non-Muslims. Second, these definitions were not at all necessary for this litigation. This was noted by the judge, who reasoned that "chanting the name of this organization cannot be considered an incitement to hatred" and focused the judgment only on the second part of the slogan shouted publicly by the accused: "Jews to the gas". Cyra Akila Choudhury and Khaled A. Beydoun [18: 8] state that the redefinition of words such as *shariah* or *jihad* to tie them with violence and terrorism is a measure employed by people biased against Islam to discursively construct Muslims as a threat. In this context, the decision of the judge to explain their understanding of Hamas and *jihad* in a public legal document points to the bias of the judge.

Generally, in the court statements in which Islam was linked with security threats, the terrorist attacks were depoliticised and reduced to simple acts of aggression exercised by adherents to the Islamic religion. As Bobako [8: 59] shows, such construc-

³⁰ The discussed case concerned the provision of help to people operating in Chechnya who allegedly had terrorist connections.

³¹ The judgment in question was deliberated upon in 2007 and issued in 2008. The Global Terrorism Index [40] shows that the global impact of terrorism peaked in 2007. However, the same report also shows that, at that time, religion-motivated terrorism was receiving more widespread coverage, while at the same time, there was a significant level of terrorism from non-religious groups.

tions are normalised in popular European discourse. Linking Islam and terrorism has been, for example, a motif evident in Polish media for two decades. It appeared directly after the 9/11 attacks [81]; and after every terrorist event that takes place in Europe, there is a surge in reports portraying Muslims as extremists [6, 56, 58].

Altogether, as exemplified, the courts approached the association of Islam and terrorism in their adjudication in two ways: either countering the stereotypes or repeating them themselves. Some judges used encyclopaedic or dictionary definitions of specific terms (e.g., "Islamist") and, based on those, offered counter-narratives to stereotypes and essentialisations. This occurred predominantly in relation to hate crimes in which Muslims and Islam were directly targeted by members of Polish society. However, when the topic of Islam was in the background of the issue,³² the judges were less cautious. They made simplified comments in the side notes, without consulting other sources, thereby seeming to express their own personal opinions. In the discussed examples, we observe how those opinions mirror the Orientalist narratives popular in Poland and Europe.

5.2 Narratives About Gender Roles in Islam

Another theme in the analysed judicial opinions was the perception of gender roles in Islam, particularly the position and rights of women in Islamic (and Arab-Islamic) societies. This subject was recurring, especially in family cases involving domestic abuse and parental authority. Unlike the theme of terrorism, which was often recalled in the judicial opinions as a quote, here the stereotypes appeared in the judges' own statements. In family issues, the courts primarily commented on cultural differences between countries (e.g., Poland and Egypt), highlighting the different roles of women and men in the respective societies. Negative remarks on the position of women in Islam were also made forthrightly: "But S. C. (1) accepted all this, even the proposal to convert her daughter to Islam, where, as is known, women have no rights and are treated worse than men"³³ [101].

Such comments demonstrate that the conviction that women are universally discriminated against in Islam is prevalent and uncritically accepted. In these examples, the courts probably did not review statements made during the cases by other participants, but rather presented their own views in the judicial opinions. Moreover, these statements about the lower position of women in Islam (or in "Arab culture"³⁴) were made as undeniable fact:

³² For example, hate crimes against Jews, the constitutionality of destroying civil aircraft (the Constitutional Tribunal), and the aid provided to organisations in Chechnya (Supreme Court).

³³ In this case, the court discussed custody of a minor (a teenager) and her relationship with her parents. The minor was in a relationship with a Muslim and considering converting to Islam, which was one of the points raised by the court as a critique of the mother's parenting. The court did not state that the problem was the mother accepting her daughter's possible conversion, but it did evaluate the religion itself and the treatment of women within it.

³⁴ In this quote, the court writes about Arab culture, not Islam, but both terms – "Muslim" and "Arab" – were used in the judicial opinion. The terms are often used interchangeably in Poland (e.g., in the media) [6]. We decided to include this quote because the judge refers to the victim's religious and ethnic background, and it can be assumed that this statement reflects the speaker's opinion of Arab-Islamic culture.

Undoubtedly, the way women are treated in Arab culture, expressed in their much lower social position, differs from typical cultural patterns in Polish families. However, it cannot be concluded from this observation that the victim in the present case wanted to make the accused, his wife, his subject who would maintain him financially, and the accused rightly opposed him, avoiding enslavement [95].

In this particular example, the case context gives even more profound meaning to these descriptions: it was a criminal case brought against a Polish woman for abusing her Egyptian husband. The same judge also shared their views on the male role in Muslim-Arab culture, mentioning that the accused was right in saying that her husband could not be simply “a man of the house”.³⁵ The implication was that the victim could be partly blamed for provoking the marital conflict and violence if he had expressed culturally alien patriarchal expectations and sought to dominate his wife.

In this judicial opinion, the court presents a possible line of cultural defence of the accused, but in reverse. In the “regular” cultural defence, it is the representative of a minority who points to the customs of his community and how they differ from those of the dominant culture³⁶[25, 69]. Here, the court gave a possible explanation for the actions of the accused Pole by building a narrative that she was defending herself against the culture of the victim. The court eventually rejected this argumentation but nevertheless felt compelled to describe it in the opinion.

In the above-described opinions, judges made the quoted statements concerning gender roles without pointing to any sources of supporting information. The courts seemed convinced about the universal and generalised patriarchy of Muslim (Arab-Muslim) communities and Muslim men. The judges reinforced their comments by using words such as “undoubtedly” and “as is known“, implying that they were referring to facts that required no further evidence. At the same time, these comments were made in relation to relationships between Polish non-Muslim women and Muslim-Arab men. The courts assumed, on the one hand, that cultural differences are a source of conflict in relationships, and on the other, that women are mistreated in such relations. Such assumptions present an image of Polish culture as superior in terms of gender equality and respect for women. Defining one’s own culture in contrast with the “Other” is implied in defence by culture, which always highlights differences. But such definitions might lead one astray, as shown in a case study by Joanna Ptak-Chmiel [66: 117], concerning a Polish court case against a Turkish citizen found guilty of killing his Polish partner. In that ruling, the court used arguments related to gender equality but also noted that the perpetrator consumed alcohol and cohabited with their partner outside of marriage, which, in the judges’ view, were traits reflective of Polish – and not Turkish – culture. The truth of such a statement

³⁵ This role was described as not completing household chores and not working to pay for the cost of the housing and maintenance. It should be noted here that this stereotype of the male role and the facts of the case are somewhat confused: the stereotypical role of a man in Arab-Muslim culture is actually to work and financially support the family.

³⁶ The Polish legal system does not officially recognise cultural defences, but the judge has a right to consider various circumstances, including the culture of the accused. There is no data on how often this is done, but a case study by Ptak-Chmiel [66] suggests that there have been some cases.

is as questionable as the presumption that Polish society is characterised by gender equality.

The narratives about gender-based cultural differences between Polish and Arab-Muslim culture(s) do not simply exemplify imaginations about foreign cultures. In legal Orientalist representations, “the process of comparing creates the objects to be compared” [71: 188]. The central axis of Said’s concept of Orientalism is that notions of the “Other” essentially construct – through contrast – ideas about us. Therefore, the more we perceive the “Stranger” as primitive, the more we – as representatives of Europe or the so-called Western world – become “civilised” in our own eyes. In the presented examples, that superiority is more visible when we reconstruct the implied picture of Polishness: Poland is different because it is a culture of gender equality, in which women are not mistreated, enslaved, or expected to be breadwinners for the family. Of course, this reconstruction is a fantasy, much like the essentialised visions of the Arab and Muslim cultures found in the discussed judicial opinions.

5.3 Other Forms of “Othering”

In addition to drawing associations with terrorism and sharing negative opinions on the position of women in Islamic societies, the judicial opinions also reveal other social imaginaries and “Othering” of Muslims. However, the form and content of the comments about Muslims differed greatly, depending on whether they were quotes from the “public” (usually the accused in a hate crime) or expressions of the judges’ own views. We, therefore, divided these into two categories and present them here separately.

5.3.1 Othering and Orientalisation in the Eyes of the Public

The statements cited in the judicial opinions – examples of hate speech and arguments raised in defence of the accused – were more extreme than the remarks made by the judges. In the negative comments recalled during the trials, Muslims were portrayed as physically and sexually aggressive, prone to engaging in sexual harassment, capable of murder and rape, lazy, and disease-spreading. In one case, they were referred to as “genetic subhumans” [97]. There were also many anti-refugee statements – arguing against admitting Muslims/refugees into the country and calling for removing, isolating, or even killing them. These instigators seemed to be motivated by a belief in a need to defend Poland against Islamic rule, Islamic law, and the demographic threat to Poles of Muslims allegedly reproducing at higher rates.

Such examples of bias are consistent with popular manifestations of Orientalisation and dehumanisation evident in contemporary neo-racisms in Europe: stripping members of minority communities of their individual traits; presenting them as less civilised; promoting connotations of animals, dirt, and disease; highlighting the sexual ferocity of men [8: 62–63]. Especially since 2015, refugees have been increasingly portrayed in the media as young Muslim-Arab males, aggressive and harbouring terroristic inclinations [30]. Similarly, the popular press uses the rhetoric of sexual threat against European women and demographic threat against the culture at large [33]. In particular, right-wing outlets echo the “Great Replacement” con-

spiracy theory, according to which white populations are being replaced culturally and ethnically by mass migration – a theory which is feeding anti-Muslim extremism in Europe [54]. These associations and stereotypes, this mixing of “Muslims” with “migrants” and perceiving them as an immediate danger, are examples of a local “frontier Orientalism” [31, 32]. This concept emphasises the historical differences between the development of Orientalism in European colonial empires and on the outskirts of Europe. In the first instance, the “Oriental” was physically far away and seen as weak, feminine, and controllable. In the frontier regions, however, facing military confrontations with their immediate Muslim neighbours, the “Oriental” was deemed a violent male adversary, a threat at the border [31]. Defying and defeating this figure thus became the foundation of many national myths of heroic “eternal conflict” that are today feeding grounds for neo-nationalism [32]. In Poland, such narratives are used in populist political narratives and gain momentum with every “refugee crisis” (e.g., in 2015) [21].

5.3.2 Othering and Cultural Arguments in the Courts

The Orientalising and Othering remarks made by judges were sometimes more subtle. The most bizarre statements appeared without any explanation, and if read carefully, were confusing. For example, one judge stated, “For a Muslim, it is more offensive to be described as a dog or a donkey, not a pig” [91]. In this case, the defendant had sent an insulting email about his ex-employer (who was a Muslim), in which he quoted a Bible passage mentioning pigs. However, in the judicial opinion, the above-cited sentence appears without context. With further reading, it seems that the court was repeating the defendant’s explanation in the matter,³⁷ apparently without reflecting on the factuality or logic of it. While the defendant in this case was not making any negative remarks about the religion of the plaintiff, the reasoning in the judicial opinion involved “Othering” based on religion. The judge, after all, did not consider that the plaintiff might have been offended by being called a “pig” as a person in general, or as a Polish person – or if he was not Polish (this is not determined at any point in the opinion), as a person of another nationality. The judge took for granted that the feeling of being offended was somehow tied to, and determined by, the professed religion.

The second case in which the court made an unsettling comment on Islamic culture was more severe and had a noticeable impact on the final verdict and the imposed penalty. In the judicial opinion, the court explained its decision to apply an extraordinary mitigation of the penalty:

When assessing the behaviour of A. S. (1), one should also take into account cultural and religious conditions. The court had in mind that the accused is a

³⁷ The judge writes, “The defendant also convincingly explained what he meant by using the individual phrases in the disputed list and that he did not want to offend anyone. In particular, he justified the meaning of the word ‘pig’ used in the quotation from the Bible, stating that this word for a Muslim does not have as negative a meaning as the words ‘dog’ or ‘donkey’ in a description of a human being” [91].

Muslim (like the aggrieved party) and that in his culture, such behaviour as this is not considered reprehensible [94].

The case concerned human trafficking and the facilitation of prostitution of a Bulgarian female citizen – the victim was sold to the accused, who supposedly intended to be her procurer. The vague sentence quoted above was delivered as part of the court’s argument about mitigating circumstances. It was, however, not embedded into any broader commentary. No other facts, information about the situational background, explanations of the parties, or specific customs that might be prevalent in defendants and victims’³⁸ communities were referred to in the judicial opinion. We cannot even be sure whether the “behaviour” referred to is prostitution or human trafficking. Such phrasing may lead the reader (who has no access to court files to verify the origins of such assumptions) to conclude that the court believed that human trafficking and prostitution were not viewed negatively in Islam.

What is more, this kind of argumentation could be considered another instance of effective cultural defence if it were raised during the trial by the accused or his defence attorney. (Although it does not appear from the content of the justification that such arguments were raised in the proceedings, we cannot exclude the possibility.) It is therefore probable that it was the judge who brought to the forefront the cultural and religious background of the parties, which – in the case of one accused – served as the basis for extraordinary mitigation of the penalty. Furthermore, the judge argued about the educational function of punishment concerning people of foreign origin living in Poland, expressing hope that the punishment “will also play its role in shaping legal awareness among people of Bulgarian nationality and the Muslim religion residing in Poland”[94].

The final example of Othering shared here concerns the crime of possession and transporting of drugs across the Polish border without a prescription. According to the court, “these punishments are extremely severe in Islamic countries and E. M. comes from Albania, where Islam is the religion of the majority of people.” [99]. This kind of argument could be treated, in contrast to the examples of cultural defence, as one of “cultural accusation”. Here, the reasoning was that, if a particular act is severely punished in Islamic countries, and the defendant comes from such a country, they should be more aware that the act is also forbidden elsewhere.³⁹ There are few issues with this reasoning. First, this assumes the universalisation of crimes and penalties: that acts considered illegal are the same (to a certain extent) all around the world. Second, the court suggests that every Islamic country has the same penal politics towards drugs. Third, being a citizen of such a country is treated as an argument for a special legal awareness.

³⁸ The female was still referred to as the “victim” in the case, although the court seemed, in the end, to lean towards a conclusion that she was a willing participant.

³⁹ But following this line of reasoning, a person from a country where Islam is dominant, aware that drug possession is severely punished in “Muslim” countries, might think that the laws in this area are more liberal in Europe and use it as an argument in their defence.

5.4 Religious Diet and the Rights of the Incarcerated

The last theme emerging from the collected judicial opinions concerns religious diet – specifically, restrictions on eating certain kinds of meat. This subject was discussed in two situations: in the common courts, where it was raised in the context of depriving someone of the opportunity to maintain a religious diet (also as a form of domestic abuse), and in the Constitutional Tribunal, where it appeared in cases involving the general rights of minority communities to kosher and halal slaughter – discussed in light of the animal rights legislation introduced in 2014.

This theme would probably be marginal in the analysed material if not for the cases involving incarcerated people. We studied seven cases (eight judicial opinions) initiated by inmates who identified as Muslim and brought against directors of prisons for compensation for harm suffered while in prison. In two of those cases, the plaintiffs said that they had not received food adequate to the requirements of Islam, but these remarks were made on a margin, as they sued the prisons for general improper conditions. Four⁴⁰ cases were strictly centred around the lack of halal diet and violation of the right to religious practice. For example, one plaintiff indicated that, despite being a Muslim, he does not receive meals without pork, he is prevented from heating his meals after sunset during Ramadan, and he has no contact with Muslim clergymen [92]. In one case, the incarcerated person identifying as Muslim and criticising prison conditions did not raise any religious issues.

However, it would be premature to assume that these cases involved discrimination against Muslims. It rather seems that prison authorities treated these complaints as an exemplification of the “Jakóbski effect” [49]. The name of this is a reference to a case tried in the ECtHR [41], in which the Strasbourg Court agreed that prisoners had the right to religiously appropriate meals under conditions of penal isolation.⁴¹ The “Jakóbski effect” describes a rise in the number of convicts requesting a change of diet after the publication of the judgment in Strasbourg. For the most part, these requests are considered manipulation by inmates with the goal of – amongst other things – diversifying their diets [5]. According to the regulations, personal food preferences do not entitle a prisoner to, for example, a vegetarian diet; but religious and cultural motivations should be considered by the authorities, as far as possible, under Article 109 of the Executive Penal Code. Requests for a special diet are not described in any procedures, and the inmate must petition the director of the prison with a declaration of belonging to a specific faith [49].

As a result, prison authorities often doubt the sincerity of inmates’ declarations about their faith and intentions. In the judicial opinions analysed, most of the plaintiffs had converted during their incarceration. Some asked explicitly for a vegetarian

⁴⁰ Two of those concerned the same inmate but were not the same court procedure: one took place in a regional court and the other at the Constitutional Tribunal.

⁴¹ Jakóbski was a Buddhist inmate in a Polish prison who asked the prison authorities to provide him with vegetarian meals because he believed that eating meat was against the principles of his school of Buddhism. However, the prison authorities refused to accommodate this. The applicant considered this a violation of his right to manifest his religious beliefs, protected by Article 9 of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) regarding freedom of thought, conscience, and religion [41].

rather than a halal diet. Some judges also cited prison wardens observing that the inmates who had declared conversion continued to participate in Roman Catholic rituals. For illustration, in the judicial opinion quoted above, the court had established that the plaintiff’s request for a heating appliance to warm up meals during Ramadan had revealed that he was mistaken about the dates of the holy month that year.

The data obtained points to two conclusions. First, this may suggest a significant number of inmates converting to Islam in prison and highlight potential issues with the prison authorities’ management of religious diets, possibly due to mistrust. Second, these declared conversions and requests for dietary changes may be manipulations, with the Jakóbski effect an ongoing phenomenon in Polish prisons. Regardless of the inmates’ genuine beliefs, mistrust amongst prison staff could lead to arbitrary refusals and discrimination. However, the analysis of the judicial opinions indicated that the authorities were aware of that risk and in the end generally granted requested religious diets.

6 Conclusions

This research aimed to investigate the circumstances in which Muslims and Islam are invoked in judicial opinions in Poland and to reconstruct the societal perceptions (held by the public and the judges) of Islam, as expressed in these opinions.

In the analysed sample, in all cases in which Muslims personally encountered the Polish courts as parties to proceedings, they were either victims of hate crimes or “regular” participants in court cases that had nothing to do with Islam (e.g., domestic abuse or divorce). In the published judicial opinions, we observed no issues related to the headscarf debate or to Islamic family law – issues which have arisen in many other European countries. In many of the analysed cases, the judges mentioned Muslims or Islam only in the abstract.

Generally, the narratives – especially those of non-legal professionals, but also sometimes of the judges – about Muslims and Islam that we reconstructed from the judicial opinions seem to correspond to the hegemonic Orientalist tropes of Polish and European Islamophobia and anti-Muslim bias, as expressed in the regional media. These negative portrayals might fuel attacks against Muslims, strengthen stereotypes about them, and simplify the perception of Islam among Poles (including Polish judges). The synonymising of Islam with violence and terror was especially widespread amongst the public (particularly perpetrators) in the analysed court cases and, albeit less often, the judges. The second theme was a conviction of the universal mistreatment of women in Islam. This notion was stated by judges as an indisputable fact. There were also other general “Othering” remarks which associated Muslims with aggression and threats (by the public) or focused on the perceived cultural characteristics of Muslims (by the judges). The final theme identified concerned dietary requirements and appeared primarily in cases related to prison conditions. This might have been a manifestation of the so-called “Jakóbski effect”.

Overall, it seems that certain Orientalist narratives are “accepted racism” in Polish society and are not considered biased. Culturally based arguments and “Othering” remarks were sometimes made in judicial opinions. When Muslims were personally

involved in proceedings, the judges often paid attention to their putative religious or cultural differences. Possibly because Islam is exoticised in Polish society, there is no “presumption of assimilation” [69: 6] that would be an obstacle to raising such cultural arguments. Even when cultural or religious circumstances were ultimately assessed as irrelevant to the verdict, the judges still deliberated upon them in their opinions, often using clichés. Similarly, there were cases which had nothing to do with Islam but where it was cited nonetheless as an example in the court’s argumentation, including several instances of simplified comments by the judges on Islamic culture. These were usually short comments, presented without supporting sources of information, and they often seemed out of context in the whole text. Particularly such examples of “Othering” point to a conclusion that some Polish judges are prone to seeking cultural and religious arguments in trials involving foreigners or persons professing minority religions.

However, the results also show that the judges did not always repeat these Orientalist narratives. The differentiating issue seems to be the type of criminal act committed: specifically, the judges were more cautious and reflective when presiding over cases involving extreme prejudice against Muslims (e.g., hate crimes, including wrongful dismissal from work). In such instances, the judges openly criticised the stigmatising opinions held by the public (usually the accused) and paid attention to the dangers of repeating stereotypes and simplifications.

It should also be emphasised that, even in the rulings in which culture was mentioned, the final verdicts did not usually seem to be affected by the perceptions of Islam. In most cases, any negative remarks about Islam or being Muslim were peripheral. Nevertheless, it is an open question whether the courts’ overt and unconscious promotion of stereotypical ideas about Islam and generalisations about Muslims will lead to erroneous decisions in more critical cases. One example of such adjudication is the litigation on prostitution and human trafficking described here, in which vague arguments about what is and is not considered reprehensible in Islam strongly affected the punishment through the extraordinary mitigation. In another case, the judge proposed a line of defence for an accused Polish woman based on a stereotypical perception of the culture of her abused Muslim husband. The judge, in the end, refuted this due to the specific circumstances of the case, not as a general rule.

Nevertheless, it cannot be forgotten that Orientalist narratives are deeply rooted in Western societies (including in the law and amongst judges) and, therefore, often go unnoticed [75, 79]. An important hypothesis that emerges from the empirical data is that a lack of knowledge amongst judges – and their repetition of stereotypes – could lead to injustice and discrimination against members of minority groups in the legal system. The aim of judicial opinions is to explain the court’s decision; and if these opinions are published online, they have a potential to influence a larger audience, especially of legal professionals. Thus, the bias implicit in some of the opinions selected for publication is alarming. Moreover, the law is a powerful social institution with a pretension to objectivity and neutrality. Therefore, the repetition of the biased clichés by the judges representing the justice system may give those stereotypes an air of legitimacy and truthfulness in public perception.

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References

1. Afsaruddin, Asma. 2022. Jihad. Britannica. <https://www.britannica.com/topic/jihad>. Accessed 9 November 2022.
2. Amsterdam, Anthony G., and Jerome Bruner. 2002. *Minding the Law*. Cambridge, MA: Harvard University Press.
3. Bahdi, Reem. 2018. Narrating dignity: islamophobia, racial profiling, and National Security before the Supreme Court of Canada. *Osgoode Hall Law Journal* 55 (2): 557–591.
4. Balicki, Janusz. 2021. Islamophobia in Poland in the context of the Migration Crisis in Europe. *Ecumeny and Law* 9 (1): 117–140. <https://doi.org/10.31261/EaL.2021.09.1.06>.
5. Bartoszewicz, Jakub. 2012. Wolność Myśli, Sumienia i Wyznania w Polsce w Świetle Orzecznictwa Strasburskiego. *Polski Rocznik Praw Człowieka i Prawa Humanitarnego* 3: 55–72.
6. Bertram, Łukasz, Adam Puchejda, and Karolina Wigura. 2017. Negatywny obraz muzułmanów w polskiej prasie. Analiza wybranych przykładów z lat 2015–2016. Raport Obserwatorium Debaty Publicznej. https://bip.brpo.gov.pl/sites/default/files/%2FRaport_Negatywny_obraz_muzulmanow_w_polskiej_prasie_Analiza_wybranych_przykladow_z_lat_2015_2016.pdf. Accessed 9 November 2022.
7. Beydoun, Khaled A. 2020. “Muslim Bans” and the (re)aking of political islamophobia. *Islamophobia and the Law in the United States*. Ed. Cyra Akila Choudhury and Khaled A. Beydoun Choudhury. 113–131. Cambridge: Cambridge University Press. <https://doi.org/10.1017/9781108380768.009>.
8. Bobako, Monika. 2017. *Islamofobia Jako Technologia Władzy: studium z Antropologii Politycznej*. Warszawa: Universitas.
9. Bobako, Monika. 2018. Semi-Peripheral Islamophobias: the political diversity of Anti-Muslim Discourses in Poland. *Patterns of Prejudice* 52 (5): 448–460. <https://doi.org/10.1080/0031322X.2018.1490112>.
10. Bone, Amra. 2020. Islamic marriage and divorce in the United Kingdom: the case for a New Paradigm. *Journal of Muslim Minority Affairs* 40 (1): 163–178. <https://doi.org/10.1080/13602004.2020.1737412>.

11. Braun, Virginia, and Victoria Clarke. 2006. Using thematic analysis in psychology. *Qualitative research in psychology* 3: 2: 77–101.
12. Bredal, Anja. 2018. Contesting the boundaries between civil and religious marriage: state and Mosque discourse in pluralistic Norway. *Sociology of Islam* 6 (3): 297–315. <https://doi.org/10.1163/22131418-00603003>.
13. Brems, Eva. 2014. Face veil bans in the European Court of Human Rights: the importance of empirical findings. *Journal of Law and Policy* 22 (2): 517–551.
14. Brems, Eva. 2021. Islamophobia and the ECtHR: a test case for positive subsidiarity for the Protection of Europe’s Long-Term Migrants? In *Migration and the european convention on Human Rights*, eds. Başak Çalı, Ledi Bianku, and Iulia Motoc, 196–216. Oxford: Oxford University Press. <https://doi.org/10.1093/oso/9780192895196.003.0009>.
15. Buglar, Shannon. 2016. The “Focal Concerns” of parole Board Decision-Making: a thematic analysis. *Current Issues in Criminal Justice* 27 (3): 285–302. <https://doi.org/10.1080/10345329.2016.12036047>.
16. CBOS. 2019. Postawy wobec islamu i muzułmanów. Komunikat z badań. https://www.cbos.pl/SPIS-KOM.POL/2019/K_148_19.PDF. Accessed 9 November 2022.
17. Cesari, Jocelyne. 2012. Securitization of Islam in Europe. *Die Welt Des Islams* 52 (3/4): 430–449. <https://doi.org/10.1163/15700607-201200A8>.
18. Choudhury, Cyra Akila, and Khaled A. Beydoun. 2020. Introduction. *Islamophobia and the Law in the United States*. Ed. Cyra Akila Choudhury and Khaled A. Beydoun Choudhury. 1–18. Cambridge: Cambridge University Press. <https://doi.org/10.1017/9781108380768.008>.
19. Clarke, Victoria, and Virginia Braun. 2017. Thematic analysis. *The Journal of Positive Psychology* 12 (3): 297–298. <https://doi.org/10.1080/17439760.2016.1262613>.
20. Cohen, Mathilde. 2015. When Judges have reasons not to give reasons: a comparative Law Approach. *Washington and Lee Law Review* 72 (2): 483–571.
21. Cywiński, Paweł, Filip Katner and Jarosław Ziółkowski. 2019. Zarządzanie strachem: jak prawica wygrywa debatę publiczną w Polsce. Fundacja im. Stefana Batorego. <https://www.batory.org.pl/upload/files/Programy%20operacyjne/Forum%20Idei/Zarzadzanie%20strachem.pdf>. Accessed 14 November 2022.
22. Danchin, Peter G. 2008. Suspect symbols: value pluralism as a theory of Religious Freedom in International Law. *Yale Journal of International Law* 33 (1): 1–61.
23. Deogratias, Benedicta. 2020. *Trapped in a religious marriage: a Human Rights Perspective on the Phenomenon of Marital Captivity*. London: Intersentia. <https://doi.org/10.1017/9781780688435>.
24. Deputy Public Prosecutor General. 2021. Reply to the Ombudsman’s letter. Website of the Polish Ombudsman. https://bip.brpo.gov.pl/sites/default/files/2021-10/Odpowiedz_PK_12.10.2021.pdf. Accessed 9 November 2022.
25. Donovan, James M., and John Stuart Garth. 2007. Delimiting the Culture Defense. *Quinnipiac Law Review* 26 (1): 109–146.
26. Elo, Satu, and Helvi Kyngäs. 2008. The qualitative content analysis process. *Journal of Advanced Nursing* 62 (1): 107–115. <https://doi.org/10.1111/j.1365-2648.2007.04569.x>.
27. European e-Justice. 2022. National Case Law: Poland. European e-Justice portal. https://e-justice.europa.eu/13/EN/national_case_law?POLAND&member=1. Accessed 9 November 2022.
28. Evans, Carolyn. 2006. The islamic scarf in the European Court of Human Rights. *Melbourne Journal of International Law* 7 (1): 52–73.
29. Fawcett, Hannah, and Katie Clark. 2015. Linkage analysis as evidence in Court: a thematic analysis of mock juror deliberations. *Journal of Investigative Psychology and Offender Profiling* 12 (3): 247–266. <https://doi.org/10.1002/jip.1429>.
30. Georgiou, Myria and Rafał Zaborowski. 2017. Media coverage of the “refugee crisis”: A cross-European perspective. Council of Europe report DG1(2017)03. <https://rm.coe.int/1680706b00>. Accessed 9 November 2022.
31. Gingrich, Andre. 1998. Frontier myths of Orientalism: The Muslim world in public and popular cultures of Central Europe. In *MESS Mediterranean ethnological summer school, Vol. 2*. Ed. by Bojan Baskar and Borut Brumen, 99–127. Ljubljana: Inštitut za Multikulturene raziskave.
32. Gingrich, Andre. 2015. The nearby Frontier: structural analyses of myths of Orientalism. *Diogenes* 60: 2: 60–66. <https://doi.org/10.1177/0392192114568266>.
33. Goździak, Elżbieta M., and Péter, and Márton. 2018. Where the wild things are: fear of Islam and the Anti-Refugee Rhetoric in Hungary and in Poland. *Central and Eastern European Migration Review* vol. 7: 2: 125–151. <https://doi.org/10.17467/ceemr.2018.04>. no.

34. Górak-Sosnowska, Katarzyna, and Marta Pachocka. 2019. Islamophobia and the Quest for European Identity in Poland. In *The Routledge International Handbook of islamophobia*, eds. Irene Zempi, and Imran Awan., 225–236. Cambridge: Routledge. <https://doi.org/10.4324/97811351135559-19>.
35. Górak-Sosnowska, Katarzyna. 2012. From polish Muslims to Muslims in Poland: there and back. In *Perceptions of Islam in Europe: culture, identity and the muslim 'Other'*, eds. H. Yilmaz, and Ç.E. Aykaç., 107–124. London: I.B.Tauris. <https://doi.org/10.5040/9780755625369.ch-007>.
36. Górak-Sosnowska, Katarzyna. 2014. *Deconstructing islamophobia in Poland: story of an Internet Group*. Warsaw: University of Warsaw.
37. Górak-Sosnowska, Katarzyna. 2016. Islamophobia without Muslims? The case of Poland. *Journal of Muslims in Europe* 5 (2): 190–204. <https://doi.org/10.1163/22117954-12341326>.
38. Górska & Juzaszek, Islam w polskim sądzie, manuscript in preparation.
39. GUS. 2015. Struktura narodowo-etniczna, językowa i wyznaniowa ludności Polski. Narodowy Spis Powszechny Ludności i Mieszkań 2011. https://stat.gov.pl/files/gfx/portalinformacyjny/pl/defaultaktualnosci/5670/22/1/1/struktura_narodowo-etniczna.pdf. Accessed 9 November 2022.
40. Institute for Economics and Peace. 2012. Global Terrorism Index Report. <https://www.files.ethz.ch/isn/156010/2012-Global-Terrorism-Index-Report1.pdf>. Accessed 9 November 2022.
41. Jakóbski v Poland. 2010. ECHR 1974, (2012) 55 EHRR 8. <https://hudoc.echr.coe.int/fre#%22ite%22%22%22001-102121%22%22>}. Accessed 9 November 2022.
42. Jarecka-Stepień, Katarzyna. 2010. Muslims in Poland: Tatars, Refugees and Immigrants. *Electronic Journal of Political Science Studies June* 1 (1): 68–85.
43. Jones, Justin, and Yafa Shanneik. 2020. Reformulating Muslim Matrimony: islamic marriage and divorce in the Contemporary United Kingdom and Europe. *Journal of Muslim Minority Affairs* 40 (1): 1–5. <https://doi.org/10.1080/13602004.2020.1744841>.
44. Joppke, Christian. 2013. Double Standards? Veils and crucifixes in the european Legal Order. *European Journal of Sociology / Archives Européennes de Sociologie* 54 (1): 97–123. <https://doi.org/10.1017/S0003975613000040>.
45. Kaczmarczyk, Rafał. 2016. Status prawny i faktyczny muzułmańskich związków wyznaniowych w Polsce. *Studia z Prawa Wyznaniowego* 19: 263–287. <https://doi.org/10.31743/spw.135>.
46. Karsznicki, Krzysztof. 2012. Prześpięstwa popełniane z pobudek rasistowskich lub ksenofobicznych. *Prokuratura i Prawo* 2: 16–42.
47. Kayaoglu, Turan. 2014. Trying Islam: Muslims before the European Court of Human Rights. *Journal of Muslim Minority Affairs* 34 (4): 345–364. <https://doi.org/10.1080/13602004.2014.965975>.
48. Krzysztofek-Strzała, Katarzyna. 2019. Prawa Pacjentów Muzułmanów w Świetle Ustawodawstwa Polskiego, Ze Szczególnym Uwzględnieniem Ustawy o Gwarancjach Wolności Sumienia i Wyznania. *Studia z prawa wyznaniowego*. 22: 135–151. <https://doi.org/10.31743/spw.4797>.
49. Kwiatkowski, Mirosław. 2011. Dieta „religijna” – efekt Jakóbskiego. Forum Penitencjarne 10/31. <https://www.sw.gov.pl/assets/70/59/55/c9c007153681f064f746c2b523ac49739cb181c7.pdf>. Accessed 9 November 2022.
50. Maffei, Maria Clara. 2013. The Vegetarian Diet in Prison: A Human Right? The Case of Jakóbski v. Poland. In *International Courts and the Development of International Law*. Ed. Nerina Boschiero, Tullio Scovazzi, Cesare Pitea and Chiara Ragni. 489–96. Springer. https://doi.org/10.1007/978-90-6704-894-1_36.
51. Moors, Annelies, Martijn de Koning, and Vanessa Vroon-Najem. 2018. Secular rule and islamic Ethics: engaging with muslim-only marriages in the Netherlands. *Sociology of Islam* 6 (3): 274–296. <https://doi.org/10.1163/22131418-00603002>.
52. Mustasaari, Sanna, and Mulki Al-Sharmani. 2018. Between “Official” and “Unofficial”: Discourses and Practices of muslim marriage conclusion in Finland. *Oxford Journal of Law and Religion* 7 (3): 455–478. <https://doi.org/10.1093/ojlr/rwy029>.
53. Nikolajew, Jerzy. 2015. Prawo Osób Pozbawionych Wolności do Wyżywienia Przygotowanego Według Wymogów Religijnych. Regulacje Normatywne a Trudności Praktyczne. *Kościół i Prawo* 4 (2): 151–169.
54. Obaidi, Milan, Jonas Kunst, Simon Ozer, and Y. Sasha, and Kimel. 2022. “The “Great Replacement” conspiracy: how the Perceived Ousting of Whites can evoke violent extremism and islamophobia. *Group Processes & Intergroup Relations* 25 (7): 1675–1695. <https://doi.org/10.1177/13684302211028293>.
55. OSCE-ODIHR. 2022. What is Hate Crime. ODIHR <https://hatecrime.osce.org>. Accessed 9 November 2022.
56. Pasamonik, Barbara. 2017. „Malowanie Straszego Diabła”–Metamorfoza Obrazu Uchodźcy w Polsce. *Kryzys Migracyjny Perspektywa Społeczno-Kulturowa* 1: 15–45.

57. Peroni, Lourdes. 2014. Religion and Culture in the discourse of the European Court of Human Rights: the Risks of Stereotyping and Naturalising. *International Journal of Law in Context* 10 (2): 195–221. <https://doi.org/10.1017/S1744552314000032>.
58. Pędzwiatr, Konrad. 2010. Muslims in the polish media—the new folk devil. *Arches Quarterly* 4 (7): 89–95.
59. Pędzwiatr, Konrad. 2011a. ‘Muslims in Contemporary Poland’. In *Muslims in Visegrad Countries*, ed. J. Bureš., 10–24. (Ed.) Prague: Anna Lindh Foundation and Visegrad Fund.
60. Pędzwiatr, Konrad. 2011. “The Established and Newcomers” in Islam in Poland or the Intergroup Relations within the Polish Muslim Community. *Muslims in Poland and Eastern Europe. Widening the European Discourse on Islam*. Ed. Katarzyna Górak-Sosnowska. 169–182. Warsaw: University of Warsaw.
61. Pędzwiatr, Konrad. 2015. Islamophobia as a New Manifestation of Polish Fears and Anxieties. *Nations and Stereotypes Twenty Five Years After: New Borders, New Horizons*. Ed. Robert Kucek, Jacek Purchla, Joanna Sanetra-Szeliga Joanna. 132–150. Kraków: Międzynarodowe Centrum Kultury Kraków.
62. Pędzwiatr, Konrad. 2021. Halal certification as a source of intra-and inter-group tensions among Muslims in Poland. In *Rethinking halal*. Ed. Ayang Utriza Yakin and Louis-Léon Christians, 241–264. Brill.
63. Polish Ministry of Justice. 2017. Podstawowa informacja o działalności sądów powszechnych – 2016 rok na tle poprzednich okresów statystycznych. [Basic information on the operation of common courts of law – 2016 compared to previous statistical periods.] <https://isws.ms.gov.pl/pl/baza-statystyczna/publikacje/>. Accessed 9 November 2022.
64. Polish Ministry of Justice. 2019. Rozporządzenie Ministra Sprawiedliwości z dnia 28 listopada 2019 r. w sprawie wzorów formularzy uzasadnień wyroków oraz sposobu ich wypełniania. [Ordinance of the Minister of Justice of November 28, 2019, on standard forms of justification of judgments and the manner of filling them out.] <https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20190002349/O/D20192349.pdf>. Accessed 9 November 2022.
65. Polish Ministry of Justice. 2021. Obwieszczenie Ministra Sprawiedliwości z dnia 13 października 2021 r. w sprawie ogłoszenia jednolitego tekstu rozporządzenia Ministra Sprawiedliwości - Regulamin urzędowania sądów powszechnych [Announcement of the Minister of Justice of October 13, 2021, on the publication of the consolidated text of the Regulation of the Minister of Justice - Regulations of the operation of Common Courts.] Dz.U. 2021 poz. 2046, 2021. <https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20210002046/O/D20212046%20.pdf>. Accessed 9 November 2022.
66. Ptak-Chmiel, Joanna. 2022. “In This Case, Can There Be No Talk About Such a Justification Through Circumstances”? A Case Study of the Invocation of Cultural Defense Outside the Common Law. In *Law and Culture: Reconceptualization and Case Studies*, edited by Mateusz Stępień and Jan Bazyl Klakla, 107–26. Cham: Springer International Publishing. https://doi.org/10.1007/978-3-030-81193-8_6.
67. Quraishi-Landes, Asifa. 2012. ‘Rumors of the Sharia threat are greatly exaggerated: what american judges really do with Islamic Family Law in their Courtrooms’. *NyL Sch L Rev* 57: 245.
68. Raburski, Tomasz and Maciej Wojciechowski. 2014. Standardization of judicial opinions: work of judges in a changing environment. In *Legal professions at the crossroads*. Ed. Dariusz Jemielniak. 57–67. Frankfurt am Main: Peter Lang Academic Research.
69. Renteln, Alison Dundes. 2005. *The Cultural Defense*. Oxford, New York: Oxford University Press.
70. Roberts, Donna, Peter Chamberlain, and Paul Delfabbro. 2015. Women’s experiences of the processes Associated with the Family Court of Australia in the context of domestic violence: a thematic analysis. *Psychiatry Psychology and Law* 22 (4): 599–615. <https://doi.org/10.1080/13218719.2014.960132>.
71. Ruskola, Teemu. 2002. Legal orientalism. *Michigan Law Review* 101 (1): 179–234. <https://doi.org/10.2307/1290419>.
72. Ruskola, Teemu. 2013. *Legal orientalism: China, the United States, and Modern Law*. Cambridge, MA: Harvard University Press. <https://doi.org/10.4159/harvard.9780674075764>.
73. Rzucidło-Grochowska, Iwona. 2014. ‘Adresaci Uzasadnienia Sądowego a Jego Treść (Przykład Sądownictwa Administracyjnego)’. In *Integracja Zewnętrzna i Wewnętrzna Nauk Prawnych Cz. 2*. Ed. Małgorzata Król Adam Bartzak, Monika Zalewska. Łódź: Wydawnictwo Uniwersytetu Łódzkiego.
74. Rzucidło, Iwona. 2020. *Uzasadnienie Orzeczenia Sądowego: Ujęcie Teoretyczne a Poglądy Orzecznictwa*. Wolters Kluwer.

75. Said, Edward. 1978. *Orientalism: western concepts of the Orient*. New York: Pantheon.
76. Schauer, Frederick. 1995. Giving reasons. *Stanford Law Review* 47 (4): 633–659. <https://doi.org/10.2307/1229080>.
77. Schebesta, Hanna. 2018. Content Analysis Software in Legal Research: a proof of Concept using ATLAS.Ti. *Tilburg Law Review* 23 (1–2): 23–33. <https://doi.org/10.5334/tilr.1>.
78. Sinnar, Shirin. 2016. The Lost Story of Iqbal. *Islamophobia and the Law in the United States*. Ed. Cyra Akila Choudhury and Khaled A. Beydoun Choudhury. 95–112. Cambridge: Cambridge University Press. <https://doi.org/10.1017/9781108380768.008>.
79. Skeet, Charlotte Helen. 2019. Orientalism in the European Court of Human Rights. *Religion & Human Rights* 14 (1): 31–63. <https://doi.org/10.1163/18710328-13021145>.
80. Skowron-Nalborczyk, Agata, and Borecki Paweł. 2011. Relations between Islam and the state in Poland: the legal position of polish Muslims. *Islam and Christian-Muslim Relations* 22.3: 343–359. <https://doi.org/10.1080/09596410.2011.586514>.
81. Skowron-Nalborczyk, Agata. 2004. The Image of Islam and Muslims in the Polish Mass Media before and after 11 September 2001. *TRANS: Internet-Zeitschrift Für Kulturwissenschaften* 15. http://www.inst.at/trans/15Nr/01_4/nalborczyk15.htm. Accessed 19 January 2022.
82. Skowron-Nalborczyk, Agata. 2010. The outline of the legal situation of Muslims in Poland. *Rocznik Orientalistyczny* 63 (2): 5–15.
83. Skowron-Nalborczyk, Agata. 2016. Relations between the State and Islam in Finland and Poland. In *Muslim Minority-State Relations: Violence, Integration, and Policy*, edited by Robert Mason, 83–105. The Modern Muslim World. New York: Palgrave Macmillan US. https://doi.org/10.1007/978-1-137-52605-2_4.
84. Sona, Federica. 2018. “Mosque Marriages” and nuptial forms among Muslims in Italy. *Oxford Journal of Law and Religion* 7 (3): 519–542. <https://doi.org/10.1093/ojlr/rwy038>.
85. Stepień, Mateusz. 2019. Using Case Studies for Research on judicial opinions. Some preliminary insights. *Law and Method*. <https://doi.org/10.5553/REM.000045>.
86. Tan, Carol GS. 2012. On Law and Orientalism. *J Comp L* 7: 5.
87. Van Eijk, Esther. 2019. Khul’ Divorce in the Netherlands: dutch muslim women seeking religious divorce. *Islamic Law and Society* 26 (1–2): 36–57. <https://doi.org/10.1163/15685195-00254A04>.
88. Van Opijnen, M., G. Peruginelli, E. Kefali, and M. Palmirani. 2017. Online publication of court decisions in the EU. Report of the policy group of the project ‘Building on the European Case Law Identifier’. <https://bo-ecli.eu/uploads/deliverables/Deliverable%20WS0-D1.pdf>. Accessed 12 March 2023.
89. Wells-Greco, Michael. 2022. Recognition of Islamic Marriages in the UK: Continuity of Marriage Status or Non-Existent Marriages? In *Exploring Norms and Family Laws Across the Globe*. Ed. Melissa L. Breger. 53–70. New York: Lexington Books.
90. Wojdala, Magdalena. 2021. *Prawo w toku przemian. Praktyka wykorzystywania nietekstualnych elementów w uzasadnieniach sądowych* (Doctoral dissertation). **Quoted court cases**.
91. I ACa 1343/17, Court of Appeal in Krakow. [http://orzeczenia.krakow.sa.gov.pl/details/\\$N/152000000000503_I_ACa_001343_2017_Uz_2018-04-20_001](http://orzeczenia.krakow.sa.gov.pl/details/$N/152000000000503_I_ACa_001343_2017_Uz_2018-04-20_001). Accessed 18 March 2023.
92. I C 364/14, Court of Appeal in Słupsk. <https://www.ebos.pl/orzeczenie-ms/wyrok-i-c-364-14-sad-okregowy-w-slupsku-z-2015-05-20.html>. Accessed 18 March 2023.
93. II AKa 26/15, Court of Appeal in Warsaw. [http://orzeczenia.ms.gov.pl/content/muzu\\$0142manie/154500000001006_II_AKa_000026_2015_Uz_2015-04-20_001](http://orzeczenia.ms.gov.pl/content/muzu$0142manie/154500000001006_II_AKa_000026_2015_Uz_2015-04-20_001). Accessed 17 March 2023.
94. II AKa 42/13, Court of Appeal in Lublin. [http://orzeczenia.ms.gov.pl/content/muzu\\$0142manie/153000000001006_II_AKa_000042_2013_Uz_2013-05-07_001](http://orzeczenia.ms.gov.pl/content/muzu$0142manie/153000000001006_II_AKa_000042_2013_Uz_2013-05-07_001). Accessed 15 March 2023.
95. II K 1344/13, District Court in Legionowo. [http://orzeczenia.ms.gov.pl/content/muzu\\$0142manie/1545100500001006_II_K_001344_2013_Uz_2015-03-13_001](http://orzeczenia.ms.gov.pl/content/muzu$0142manie/1545100500001006_II_K_001344_2013_Uz_2015-03-13_001). Accessed 17 March 2023.
96. II K 279/12, District Court for Warszawa-Śródmieście in Warsaw. [http://orzeczenia.ms.gov.pl/content/muzu\\$0142manie/154505300001006_II_K_000279_2012_Uz_2013-10-25_001](http://orzeczenia.ms.gov.pl/content/muzu$0142manie/154505300001006_II_K_000279_2012_Uz_2013-10-25_001). Accessed 15 March 2023.
97. III K 202/20, Regional Court in Wrocław. [http://orzeczenia.wroclaw.so.gov.pl/regulations/\\$N/155025000001506_III_K_000202_2020_Uz_2020-10-30_002](http://orzeczenia.wroclaw.so.gov.pl/regulations/$N/155025000001506_III_K_000202_2020_Uz_2020-10-30_002). Accessed 18 March 2023.

98. III KK 92/19, The Supreme Court. <http://www.sn.pl/sites/orzecznictwo/OrzeczeniaHTML/iii%20kk%2092-19-2.docx.html>. Accessed 18 March 2023.
99. IV KA 476/17, Regional Court in Piotrkow Trybunalski. [http://orzeczenia.piotrkow-tryb.so.gov.pl/content/\\$N/15251500002006_IV_Ka_000476_2017_Uz_2017-10-03_002](http://orzeczenia.piotrkow-tryb.so.gov.pl/content/$N/15251500002006_IV_Ka_000476_2017_Uz_2017-10-03_002). Accessed 18 March 2023.
100. K 44/07, Constitutional Tribunal. <https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20081771095/T/D20081095TK.pdf>. Accessed 9 March 2023.
101. VI Nsm 2241/17, District Court for Capital City of Warsaw in Warsaw, [http://orzeczenia.mst.warszawa.so.gov.pl/content/\\$N/154505250003012_VI_Nsm_002241_2017_Uz_2018-10-08_001](http://orzeczenia.mst.warszawa.so.gov.pl/content/$N/154505250003012_VI_Nsm_002241_2017_Uz_2018-10-08_001). Accessed 15 March 2023.
102. VII Ka 139/18, Regional Court in Czestochowa. http://orzeczenia.ms.gov.pl/content/islam/151510000003506_VII_Ka_000139_2018_Uz_2018-04-13_001. Accessed 15 March 2023.
103. XI W 2059/17, District Court for Warszawa-Śródmieście in Warsaw, http://orzeczenia.ms.gov.pl/content/islam/154505300005506_XI_W_002059_2017_Uz_2018-10-04_002. Accessed 15 March 2023.
104. XI W 717/18, District Court for Warszawa-Śródmieście in Warsaw. https://sip.lex.pl/#/jurisprudence/522219350/1/iv-k-177-13-wyrok-sadu-okregowego-w-lublinie?pit=2021-12-29&keyword=islam*&cm=SREST. Accessed 20 March 2023.
105. XVII Ka 1098/16, Regional Court in Poznan. [http://orzeczenia.poznan.so.gov.pl/details/\\$N/153510000008506_XVII_Ka_001098_2016_Uz_2016-12-01_001](http://orzeczenia.poznan.so.gov.pl/details/$N/153510000008506_XVII_Ka_001098_2016_Uz_2016-12-01_001). Accessed 17 March 2023.

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