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AUTONOMY OF THE CHURCH AND FREEDOM OF RELIGION IN POLAND

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I. SOME STATISTICS

Religious structure in the Polish society is as follows:¹

Main groups of denominations	Followers	
	Number	Percentage
Population of Poland	38 660 000	100
Catholics of all rites ²	34 960 573	90,43
Orthodox	555 765	1,44

¹ See: Central Statistical Office, "Statistical Yearbook of the Republic of Poland 1998", Warsaw 1999, p. 90, 109-110; The data are taken from declarations of Churches and religious unions. According to the polls, in Poland there is only 4% of non-believers (CBOS: 96 proc. Polaków wierzy w Boga [Polling Research Institute CBOS: 96 percent of the Poles believe in God], <http://nowy.kai.pl/platne/showmess.cgi?mess=3709/99.03.23>).

² This is the number of those christened in the Catholic Church, which corresponds fairly well with the declared adherence to Catholicism.

Protestant of various denominations	156 170	0,40
Jehovah witnesses	122 982	0,32
Old Catholic	50 918	0,13
Religions of Far East	5 701	0,015
Muslims	5 228	0,014
Followers of Judaism	1 248	0,003
Other	2 038	0,005
No confession	~2 799 377	~7,24

Catholics live on the territory of 9 941 parishes where 26 911 diocesan priests and fathers are employed. They are aided by 1 312 friars, 24 926 nuns and a. 18 thousand of lay catechists. The number of faithful per one priest is 1 295.

In the last decades, the statistics of religiousness tended to show great stability. The number of priests in 1990 -1997 increased by over 3.5 thousand. However, a slow but steady decrease in priest vocations is observable. In 1990, 5 352 alumni were preparing themselves to be ordained, in 1994, their number was 4 914, and in 1998 – 4 614. This is still a major number, however, the demographic decline will reach seminaries in a. 10 years.

As it seems, the fluctuations of religiousness recorded in the past decade, representing some 1.5-3.0% can be ascribed to the statistical fault.³ Major fluctuations in the level of religious declarations (e.g. 80% at the end of 1990's)⁴ were only of a temporary nature and were primarily related to the shift in attitudes of those polled towards the Church as an institution (I have confidence – I do not have confidence), which took shape in the context of public disputes in which the Church participated.⁵ A special feature of the Polish Church which could be observed in the 1980's was the emergence of a large group of people who practised without being believers, sometimes estimated even as high as 5.2%.⁶ Perhaps this is the very group which showed the greatest transformation in the

³ Cf. *M. Marody*, Polak – katolik w Europie (A Pole – the Catholic in Europe), in: *W. Zdaniewicz* (ed.), *Znaczenie Kościoła w pierwszych latach III Rzeczypospolitej* (Significance of the Church in the Third Republic of Poland), Pallottinum, Warsaw 1994. p. 94; *J. Głodek*, Statystyka kościelna – więcej pytań niż odpowiedzi (Church statistics – more questions than answers), KAI Bulletin, 9.09.1997, p. 29.

⁴ Cf. *I. Borowik*, Religijność polskiego społeczeństwa w procesie demokratyzacji (Religiousness of the Polish society in the process of democratisation), *Więź*, 7/1992, p. 37.

⁵ Cf. *T. Szawiel*, Postawy i orientacje społeczne polskich katolików w trzy lata po rozpoczęciu reform politycznych i ekonomicznych (Social attitudes and orientations of Polish Catholics within three years from the launch of political and economic reforms) in: *I. Borowik/W. Zdaniewicz* (ed.), *Od Kościoła ludu do Kościoła wyboru. Religia a przemiany społeczne w Polsce* (From people's Church to the Church of choice. Religion and social transformation in Poland), Nomos, Cracow 1996, p. 60.

⁶ Cf. *W. Piwowarski*, Przemiany religijności polskiej – stan obecny i perspektywy

1990's. The surveys from 1998-1999 show however that even in the group of non-believers, estimated at present at a. 4%, one-fourth regularly goes to the Church⁷. Hence, the thesis of spontaneous secularisation as a result of systemic transformation cannot be proved in Poland.

The above religious structure of the Polish society does not stem from natural processes but is an outcome of decisions taken at the Yalta and Potsdam Conferences where an arbitrary shift of the borders of Poland took place. In consequence, in the years 1945-1950, over 3 million Germans, and half a million of Ukrainians, Belorussians and Lithuanians left the country. The Jewish community which before World War 2 represented over 3 300 000 people almost disappeared as a result of extermination during the war and subsequent emigration of those few who stayed alive. This way Poland evolved into one of the most homogenous countries of Europe both in terms of nationality and religion. In the Second Republic of Poland, established in 1918, national minorities represented 18% of population, whereas in the Third Republic of Poland there is only a. 1% of people who belong to national and ethnic associations. Religious minorities constituted in Poland in 1939 a. 35% of the total population, and in 1989 less than 3%.⁸

II. HISTORICAL BACKGROUND

1. THE FIRST REPUBLIC

In the period of the First Republic, i.e. from the adoption of Christianity in 966 to the third partition in 1795, Poland was a Catholic country being at the same time a multiethnic and multireligious community. The Catholics, Orthodox, Jews and Muslims, and subsequently also Protestants, lived side by side in full concord. In a Polish-Lithuanian Commonwealth, established by virtue of the Lublin Union (1569), tolerance was not merely a necessity, it was also founded on a previously developed theory. During the Council of Constance (1414-1418) Paulus Vladimiri, the rector of the Cracow Academy made one of the first lectures on natural rights of the heathen and condemned the crusades. To illustrate the effectiveness of the method applied by the Polish side, he brought with him a group of several dozens of voluntarily converted Lithuanians as his witnesses. In the period of Reformation, while religious wars were fought between Christians in Western Europe, Poland was a Catholic country showing an option

(Changes of the Polish religiousness – the present state and perspectives), *Więź*, 7/1992, p. 33.

⁷ Cf. CBOS: 96 proc. Polaków wierzy w Boga (Polling Research Institute CBOS: 96 percent of the Poles believe in God), op. cit.

⁸ Cf. Central Statistical Office, *Wyznania religijne. Stowarzyszenia narodowościowe i etniczne w Polsce 1993-1996* (Religious denominations. National and ethnic associations in Poland 1993-1996), Warsaw 1997, p. 15 and 166.

confessional openness.⁹ Such a model was also provided for in the Constitution enacted on 3 May 1791 the first democratic constitution to be passed in Europe. In the period of the First Republic, the Concordat Agreement with the Holy See was being concluded three times in issues concerning the granting of benefices.

2. THE SECOND REPUBLIC

In the Second Republic in which Catholics constituted 75%, the relations between the state and the Church were provided for in Constitutions of 1921 and of 1935, and in the Concordat of 1925. The 1921 Constitution secured freedom of religion in the individual dimension, where the Church and religious unions, based on the principle of equality, enjoyed the freedom to pursue their internal interests, to organize public services, the freedom to acquire and manage property (Art. 113). Subsequently, it granted to the Catholic Church “the leading position among religions, all having equal rights” (Art. 114) which was construed as an honorary distinction or as an assignment of prerogatives of the official Church. The entirety of Church issues was governed by the provisions of the 1925 Concordat. It secured to the Catholic Church, “irrespective of denominations, full freedom to pursue their activity” (Art. 1). However, it limited freedom of the Holy See as far as nominating bishops was concerned. It was the president of the country who received the “privilege” to express his prior consent to the nominations of bishops by the Holy See.

3. TIMES OF THE PEOPLE’S REPUBLIC OF POLAND

When Poland was included into the Soviet sphere of influence, the Interim Government of National Unity unilaterally terminated the Concordat on 12 September 1945. The Constitution enacted in 1952 formally proclaimed freedom of conscience and confession as a civil right granted to an individual by the state. It also stipulated for the separation between the state and the Church, and the legal situation and the property of the Church was to be provided for in separate laws. Upon termination of the Concordat, communist authorities conducted talks with representatives of the Polish Episcopate, as a result of which two agreements were made in 1950 and 1956. As of 1974, talks were also held with the Holy See with the view to sign a convention. The precondition of signing such an agreement was that the Church would respect constitutional principles of a totalitarian communist state. In spite of agreements made, communist authorities were able to pursue their hostile policy vis a vis the Church by way of arbitrary administrative acts and court judgements which were not founded on the legislation.

⁹ Cf. *J. Krukowski*, *Konkordat polski. Znaczenie i realizacja* (The Polish Concordat. Significance and implementation), Verba, Lublin 1999, p. 44.

4. THE THIRD REPUBLIC – PRESENT LEGAL STATUS

“Round Table Accord” signed on 5 April 1989, triggered off the process of systemic transformation. This also entailed a change in legal position of the Church which proceeded in two stages. Firstly, by virtue of laws, through a package of three Church laws dated 17 May 1989 (Journal of Laws, 1989, No. 29, Items 154-156). Subsequently, through ratification of the Concordat between the Holy See and the Government of the Republic of Poland. The Concordat, signed on 28 July 1993 and ratified on 23 February 1998, was chronologically the first agreement to be concluded between the Holy See and a post-communist state of Central and Eastern Europe. To some extent, concordats signed by such states as Croatia, Hungary, Slovakia and Czech Republic have drawn on this model.

The aforementioned laws, negotiated between representatives of the Government of the People’s Republic of Poland and of the Episcopate, and passed as unilateral legal acts include:

- the law on guarantees of freedom of conscience and religion;
- the law on the relation of the State to the Catholic Church;
- the law on social security of priests.

These laws instituted a system of co-ordinated separation to replace the system of hostile separation. Nevertheless, they should be seen in the context of the “round table”, i.e. as concessions made by the communist regime who decided to harmonise their laws with the international conventions previously ratified by the People’s Republic of Poland. The former provide a definition of freedoms different to that used in conventions, i.e. they are not understood as human rights but as civic rights granted by the state.

In accordance with the principle of equal rights of churches and religious unions, in 1991-1997 the Polish Parliament also passed eleven laws securing analogous rights to other religious communities, as those enjoyed by the Catholic Church (Polish Autocephalous Orthodox Church, Evangelical Lutheran Church, Polish Catholic Church, Old Catholic Church of Mariavites, Pentecostal Church, Church of Adventists of the Seventh Day, Baptists Church, Evangelical Methodist Church, Evangelical Reformed Church, Catholic Church of Mariavites, Judaistic Communities; Muslim Religious Union, Eastern Old Rite Church and Karaite Religious Union act under the law of the Second Republic of Poland). With the exception of the law from 1991 stipulating for the situation of the Orthodox Church, they were all modelled on the solutions adopted in the Concordat.

The principal change in relations between the state and the Church, which lent them stability, took place as a result of adoption of the Constitution of the Republic of Poland on 2 April, 1997, and of a follow-up event, i.e. the ratification of the Concordat. This entailed the necessity to amend some of the laws concerning those issues which governed in the Concordat based on new principles.

At present, legal position of the Church is defined by the Constitution from 2 April 1997, the Concordat ratified on 23 February 1997, as well as other laws pertaining to more

detailed issues. Among them, noteworthy is the law from 24 July 1998 introducing to the Polish law an institution of recognising civil effect of a canonical marriage. A particular procedure applied by the Parliament of the Republic of Poland towards the Polish Concordat delayed its ratification for almost five years. In the meantime, discussion on the future constitution proceeded. The sequence of events, i.e. signing of the Concordat and a subsequent adoption of the Constitution resulted in a situation where the latter would contain the same model of State-Church relationship which had been provided for in the agreement with the Holy See as a more detailed elaboration of constitutional norms.

III. INSTITUTIONAL RELATIONS BETWEEN THE STATE AND THE CHURCH

1. EQUALITY OF RIGHTS

Legal foundations for the relation between the state and the Church were laid down in Art. 25 of the Constitution of the Republic of Poland. In five clauses, this Article defines bases for institutional relations and guarantees of freedom of religion in the individual dimension. These are closely interrelated since in a democratic state the relations between the state and the Church are founded on the guarantees of an individual freedom of conscience and religion.¹⁰

Art. 25 Clause 1 provides that “Churches and other religious unions shall enjoy equal rights”. The term “churches” refers to Christian communities, and the term “religious unions” to non-Christian communities.¹¹ “Equality of rights” in the Polish reality implies the renouncement of any privileged treatment of the Catholic Church, as it was the case e.g. in the period of the Second Republic. The ultimate foundation for equality of rights of churches lies in the recognition of equal dignity of all men.

In a negative aspect, this principle is tantamount to the prohibition of privileges. Knowing the religious structure of the Polish society, however, it is obvious that this “equality of rights” cannot be construed in the spirit of primitive egalitarianism. “[...] identification of equality with identity of various subjects of law, as Józef Krukowski notes, is contrary to the requirements of distributive justice.”¹² Hence, it is necessary to define a criterion for equality of rights, in the form of a concrete feature that churches and religious unions would have. In accordance with such an interpretation of equality of rights, churches and religious unions should receive identical legal treatment wherever each of them shows the same feature in an identical degree, in consideration of this very

¹⁰ Cf. *idem*, p. 58.

¹¹ The distinction between “Church” and “religious union” is important. The English word “Church” and the German “Kirche” are derived from Greek “Kyriaké” which means “what belongs to the Lord”. Calling a group of believers “Church”, we say that they belong to Christ, i.e. they are Christians.

¹² *J. Krukowski*, *Konkordat polski. Znaczenie i realizacja* (The Polish Concordat. Significance and implementation), op. cit., p. 59.

feature, and receive different treatment where there are substantial differences among churches. Hence, if a given feature is shared by all religious unions, the law should make no difference between them. However, if only one or only selected religious unions show a given feature, such differentiation is necessary. This applies e.g. to the possibility of regulating the legal position of the Catholic Church through an international agreement. At the same time, this compels the state authorities to extend certain guarantees provided for in the Concordat upon other religious unions (for instance recognition of civil law effect of a Church marriage).

2. THE PRINCIPLE OF IMPARTIALITY

Art. 25 Clause 2 of the Constitution provides that “Public authorities of the Republic of Poland shall remain impartial in issues of religious, ideological and philosophical beliefs, securing freedom of their expression in public life.”

The above formula replaced the concept of “state ideological neutrality” as the one encumbered too much with the negative stamp of the past. In a literal sense of the word, the impartiality is a synonym of neutrality, i.e. it rules out any discrimination of persons and groups who would not share ideological and religious beliefs of the ruling elite. In order not to make it construed as a ban of manifestation of one’s beliefs in public life and an imperative to deprive it of any signs of religiousness, the provision was supplemented with an additional clause which obliges public authorities to ensure freedom of their public expression. It should be noted that as much as in some pluralist societies of the West the ideological neutrality is often interpreted today in its closed sense, in the awareness of the Poles the removal of Christian signs from the public space is immediately associated with the repression to which they were subjected by the alien rule, the most recent of which was the communist one.¹³ An example of the Polish difference in this area is placing of the crucifix in the Parliamentary hall.

The concept of ideological neutrality most frequently relates also to the issue of relations between the positive law and fundamental ethical values. The wording of the preamble of the Constitution of the Republic of Poland indicating the possibility of deriving these values from different sources points to the ethical relativism which underpinned the Constitution.

3. THE PRINCIPLE OF RESPECTING AUTONOMY AND INDEPENDENCE AND OF CO-OPERATION

Art. 25 Clause 3 contains the following formula “Relations between the state and churches and other religious unions shall be formed on the principles of respecting their

¹³ Cf. *J. Salij*, *Przestrzeń światopoglądowo neutralna? (An ideologically neutral space?)*, in: *A. Dylus* (ed.), *Europa – zadanie chrześcijańskie (Europe – a Christian challenge)*, Foundation for Academy of Catholic Theology, Warsaw 1998, p. 151-158.

autonomy and mutual independence of each of them in their respective scopes, and the principle of co-operation for the good of man and for the common good”.

The principle included in the Constitution (art. 1) and in the Concordat is derived from the constitution “*Gaudium et spes*” (GS 76). It is construed as an expression of the religious-political dualism which stems from the Gospel and has become firmly rooted in the European culture. “Autonomy” can be understood in the ontological and normative aspects. In its ontological sense, it means that each of those communities has its own objective value, thus it cannot be treated instrumentally by the other one. In its normative meaning it implies that a given being can govern itself with its own rules in a given field of activity. Independence is the supreme level of autonomy of one being in relation to another one. In international law, this is called sovereignty, whereas in relation to the Catholic Church – spiritual sovereignty.¹⁴ The state and the Church are thus fundamental institutions, not subordinated to one another in the hierarchy but also not isolated from one another, being mutually complementary.¹⁵

Inclusion of this principle in the Constitution means that the state does not grant autonomy to the Church but only decides to respect it, since it is vested in every religious union not by virtue of the will of a legislator but the will of its believers, as an exercise of freedom of religion in the community dimension. Therefore, the Catholic Church in itself has the power to legislate upon itself and to be governed by such a legislation in internal relations. Having said that, the independence of the state and the Church have no absolute nature since it is vested in them only “in their scopes respectively”. The point of reference for the definition of the limits of mutual independence is “the good of the man” and “the common good”.

As much as Art. 25 Clause 3 of the Constitution contains a unilateral declaration of respecting autonomy of the Church, Art. 1 of the Concordat contains a bilateral recognition, i.e. the Church also obligates itself to respect independence of the state. Art. 25 of the Constitution and Art. 1 of the Concordat evoke also the principle of co-operation which corresponds with the conciliar concept of “sound co-operation” (GS 76). The adoption of the principle of autonomy and independence means also the rejection of the concept of denominational state as well as the state domination over the Church. The principle of co-operation points to the impossibility of isolating totally the two legal orders which meet within the same one man if he is a state citizen and a member of the Church at the same time. Hence, the two institutions cannot simply ignore each other. Situations may happen where legal actions made on the basis of legal norms instituted by one of them will produce legal effect also in the second of the two legal orders.¹⁶ Respecting autonomy and independence excludes, however, any form of automatism. This may be only realised through a mutual “recognition” stipulated for in an adequate

¹⁴ Cf. *J. Krukowski*, *Kościół i Państwo. Podstawy relacji prawnych* (The Church and the State. Foundations of legal relations), Catholic University of Lublin, Lublin 1993, p. 82.

¹⁵ Cf. *R. Sobański*, *Autonomiczność i niezależności państwa i Kościoła* (Autonomy and independence of the state and the Church), in: the magazine *Przegląd Powszechny*, 9/1994, p. 178.

¹⁶ Cf. *J. Krukowski*, *Konkordat polski. Znaczenie i realizacja* (The Polish Concordat. Significance and implementation), op. cit., p. 70.

legal disposition. An instance of such action is Art. 10 of the Concordat which provides for the recognition of civil effect of the canonical marriage. This, however, is only possible owing to the fact that the state has expressed such a will which was made through ratification of this international agreement, and in this case required amendments in adequate laws.

The principle of co-operation obliges the two parties to define in their dialogue the areas of social life where this is necessary. As it seems, at present this is primarily the area of education and charitable activity, whereas in the future this will most probably also include the tax law.¹⁷

IV. PROTECTION OF RELIGION AND LIMITS TO FREEDOM OF RELIGION

The constitutional protection of the freedom of religion stems from the principle of equality of all men before the law (Art. 32 Clauses 1 and 2). The foundation of such equality in the Constitution (Art. 30) and in the Concordat (Preamble) is the dignity of the human being. This principle is formulated in the positive and in the negative form: "All men shall be equal before the law. All men shall enjoy the right to equal treatment from the public authorities. Nobody may be on any grounds discriminated in the political, social or economic life." The protection of freedom of religion is guaranteed by the state: "The freedom of man shall be protected by the law" (Art. 31 Clause 1). Respect of rights of the human being is everybody's duty: "Every man is obligated to respect freedom and rights of other people. Nobody must be compelled to do something that is not ordered by the law" (Clause 2).

Art. 53 Clause 1 of the Constitution provides explicitly that: "Freedom of conscience and religion shall be secured to every man." There are following subjects of freedom of religion: every man (Clause 1), family (Clause 3), children (Clause 3 and Art. 48 Clause 1), legally established churches and religious unions (Clause 4).

In Clause 2, the legislator defined more precisely that freedom of religion in its positive aspect entails:

freedom of confession or adoption of a religion according to one's own choice,

freedom of its manifestation – individually or with others, publicly or privately through worship, prayer, participation in rites, practising and teaching.

having temples and other places of worship,

right of persons to use religious assistance where they are situated.

¹⁷ Cf. *ibidem*, p. 72.

In the negative aspect, i.e. the freedom not to manifest one's own religious beliefs, the freedom of religion encompasses:

prohibition to force anybody to participate or not to participate in religious practises,

prohibition of making an obligation to reveal one's outlook on life, religious beliefs or confession, on the part of public authorities.

Such extended guarantees of freedom of religion in the negative aspect result from a substantial impact that non-believers' community had on the drafting of the Constitution. Art. 53 Clause 5 stipulates for limitations of freedom of religion "The freedom to manifest religion can be only limited by virtue of a law and only whenever it is necessary for reasons of protection of state security, public order, health, morality or freedoms and rights of other people". The provision about limitation of freedom of religion on the grounds of "state security" is at variance to the European Convention of human rights (Art. 9 Clause 2).¹⁸

Guarantees contained in the Concordat are a more detailed elaboration of the constitutional guarantees.

V. STATUS OF A LEGAL PERSON OF RELIGIOUS INSTITUTIONS

In the literature of the law on religious denominations, the public law personality of the Holy See is mentioned in the context of international law, the public law personality of local Churches on the territories of individual states, and the civil law personality in the context of individual organisational units of a local Church in a given country. The Constitution of the Republic of Poland from 1921 and the Concordat from 1925 provided for all three types of legal personality of the Church. In the period of People's Republic of Poland, as it is implied by the law from 20 March 1950 (Journal of Laws, 1950, No. 9, Item 887), the state would only recognise the civil law personality of parishes, dioceses, seminaries and monastic communities. A complex regulation of this issue could be only provided in the law from 17 May 1989 on the relation of the State to the Catholic Church. The law enumerates some legal persons by their names, including the Conference of the Episcopate of Poland, and categories of territorial and personal legal persons which exist at the time when the law enters into force (Art. 6-9). Moreover, a possibility of registration of new legal persons is admitted (Art. 10 and 13). The Concordat from 1993 extended the range of Church institutions capable of attaining legal personality on the state forum, as compared to the provisions of the above law.

In Art. 4 Clause 1 of the Concordat the state recognises the legal personality of the Catholic Church. Given that the very signing of the Concordat is a recognition of the legal personality of the Holy See, this Article presumably refers to the Catholic Church in

¹⁸ *H. Misztal*, Wolność religijna i jej gwarancje prawne (Freedom of religion and its legal guarantees) in: *H. Misztal* (ed.), *Prawo wyznaniowe III Rzeczypospolitej* (Law on religious denominations of the Third Republic), Lublin – Sandomierz 1999, p. 61.

Poland. Given that in the system of the Polish law there is no explicit recognition of public law personality of any legal entity, it is not unambiguous whether in the relation to the Catholic Church, the public law personality or the civil law personality is meant. Only using the functional interpretation one can deduct that the Catholic Church in Poland and its organisational units function as persons under the public law.¹⁹

The state recognises legal personality of all Church institutions, territorial and personal, which obtained canonical personality (Art. 4 Clause 2). Other Church institutions may, at the request from the Church authorities, obtain legal personality under the Polish law. This means that also Church institutions which do not have canonical personality may obtain the civil law personality. This includes Church associations, i.e. groups of natural persons or Church foundations with private status.

In respect to other churches and religious unions, the issue of legal personality is governed by the law on guarantees of the freedom of conscience and confession (Journal of Laws, 1989, No. 29, Item 55). Each church or each religious union obtains legal personality when it is entered into the state register (Art. 34 Clause 2). The internal law of those churches defines legal persons, their organs, competence, manner of appointment and representation thereof (Art. 28 Clause 2).

VI. SYSTEM OF EDUCATION

Under communism, the school in Poland became “nationalised”. This meant almost complete liquidation of private and religious schools. Public schools were treated by the Marxists as a tool of indoctrination of children and youth. The influence of parents on the course of education was minimised. The law on development of educational system from 15 July 1961 stated that “[...] the entire process of education and upbringing in these establishments shall be of lay nature” (Journal of Laws, 1961, No. 32, Item 160, Art. 1-4). A follow-up executive order by the minister of education has ultimately abolished religion lessons in public schools.

At present, the legal situation of public schools is determined in Art. 53 Clause 3 and 4 and Art. 70 of the Constitution of the Republic of Poland from April 1997 and by Art. 12 of the Concordat, by the law dated from 7 September 1991 on the system of education (Journal of Laws, 1991, No 95, Item 425) and executive order by the minister of national education from 14 April 1992 on conditions and ways of teaching religion in public schools (Journal of Laws, 1992, No. 36, Item 155).

1. THE NATURE OF THE PUBLIC SCHOOL

The starting point for consideration of nature of the public school is Art. 48 Clause 1 of the Constitution which states that “Parents have the right to bring up their children in accordance with their own believes. Such an upbringing should take into consideration the degree of maturity of the child as well as freedom of conscience and religion and the

¹⁹ Cf. *J. Krukowski*, Konkordat polski. Znaczenie i realizacja (The Polish Concordat. Significance and implementation), op. cit., p. 102-103.

child's believes". Art. 53 Clause 3 states that "Parents have the right to secure for their children moral and religious upbringing and education in accordance with their own believes".

In both cases, the legislator recognises that parents are the subjects of the right to religious and moral upbringing of children in accordance with their own believes. This right is to be secured in the system of public education as well as through the option to chose for their children other schools than public ones (Art. 70 Clause 3 of the Constitution of the Republic of Poland). Hence, the legislator recognises that it is the will of the parents that determines the nature of "moral and religious upbringing and education at school".

Recently, controversies in this area arose only in relation to the introduction to schools of a subject "science of man's sexual life", pursuant to the "abortion law" from 30 August 1996 (Journal of Laws, 1996, No. 139, Item 646). The post-communist minister of education at that time tried to remove this subject from parents' control.²⁰ After the judgement of the Constitutional Tribunal stating that the minister of national education has no full freedom in shaping the curriculum in this subject, given that he has to consider constitutional right of the parents to bring up their children, and also in the wake of the change of a ruling coalition, this issue was no longer a problem.²¹

2. TEACHING OF RELIGION AT PUBLIC SCHOOLS AND IN KINDERGARTENS

Teaching of Catholic religion on a facultative basis returned to public schools by virtue of an instruction issued by the minister of national education from 3 August 1990.²² An analogous instruction concerning churches and non-Catholic religious unions was published on 24 August 1990. The instruction called up the law on guarantees of freedom conscience and religion from 17 May 1989 (Journal of Laws, 1989, No. 29, Item 55). Ultimately, the issue was governed in the law on the system of education dated 7 September, 1991, where Art. 14 states that "Recognising the right of parents to religious upbringing of children, public primary schools shall organise lessons of religion at the request of parents, whereas public secondary schools – at the request either of parents or students themselves; upon coming of age the students will decide on having lessons of religion" (Journal of Laws, 1991, No. 95, Item 425). The executive document in this

²⁰ C. GAC Rodzice bez wpływu na szkoły (Parents without an influence on schools), daily *Życie Warszawy*, 9-10 March, 1996.

²¹ Cf. *Orzeczenie Trybunału Konstytucyjnego Rzeczypospolitej Polskiej z dnia 28 maja 1997 r.* (Judgement by the Constitutional Tribunal of the Republic of Poland from 28 May 1997), K 26/97 in: *Trybunał Konstytucyjny w sprawie życia. Dokumenty* (Constitutional Tribunal on issues of life. Documents), Library of the weekly "Niedziela", Częstochowa 1997, p. 110-112.

²² Cf. *Instrukcja ministra edukacji narodowej dotycząca powrotu religii do szkoły w roku szkolnym 1990/91* (Instruction of the minister of national education concerning the restitution of religion lessons at school in the school year 1990/1991). Circular note of the Episcopate, no. 32/90/1172.

respect was the executive order by the minister of national education from 14 April 1992 which emphasised that religion lessons in the number of 2 hours per week shall be provided within school curriculum (Journal of Laws, 1992, No 36, Item 155, Par 1.1, 8.1). Alternative lessons of ethics and notes from either of the two subjects on the school certificate (Par 9.1) were also introduced. The important provision in this law is the one stating that the school authorities not only provide an opportunity for religion lessons but also organise them. School curricula and handbooks are approved of by Church authorities (Par. 4), and catechists have to receive a written commission from the respective diocesan bishop (Par. 5.1.) which is explicitly defined in the Concordat as *missio canonica* (Art. 12 Clause 3). The withdrawal of the commission is tantamount to the loss of the right to teach religion in a given school (Par 5.2). From the time when religious instruction was introduced at schools, lay religion teachers are remunerated as other teachers. Priests receive salaries for their work done at schools only starting from September 1997, under the executive order of the minister of national education from 19 March 1997.

At present teaching of religion at public schools is governed by Art. 53 Clause 3 and 4 and Art. 70 of the Constitution of the Republic of Poland from 2 April 1997, and Art. 12 of the Concordat. The only novelty as compared to the previous legal status quo is the provision that the teaching of religion is to be conducted also in kindergartens which provides fuller guarantees for the parents as to their right to religious upbringing of their children. Moreover, the Concordat states more precisely that this article applies to schools and kindergartens ran by state administration bodies or local governments. Legal foundation of religion lessons in the Constitution and in the Concordat guarantees their greater stability.

Approximately 96% of pupils from primary and secondary schools attend religion lessons conducted in public schools.

3. CATHOLIC SCHOOLS

Only 10 schools managed to survive the times of the People's Republic of Poland. At present, there is some 220 of such schools working in Poland out of which 52 are primary schools, and 134 are secondary schools of general education. They educate some 40 thousand of children and youth which represent only 1% of pupils in the age group from 6 to 18 years.²³ The right to establish and operate such schools was already secured to the Catholic Church in the law on the relation towards the Catholic Church from 17 May 1989 (Journal of Laws, 1989, No. 29 Item 154, Art. 20). It was also reinforced in the Constitution of the 2 April 1997 in Art. 70 Clause 3: "Parents shall enjoy a free right to choose for their children other schools than public ones. Citizens and institutions shall have the right to establish primary, secondary and higher schools and educational establishments." This right is further precised in Concordat's Art. 14. Such

²³ Cf. K. Stozik Zielińska, Rozum i wiara (Sense and faith), weekly Gość Niedzielny, 7 March 1999; Handke oczekuje od szkół katolickich standardów wychowawczych (Minister Handke expects upbringing standards from Catholic schools), <http://nowy.kai.pl/serwisy/platne/showmess.cgi?mess=5827/99.03.24>.

establishments are obliged to maintain legal standards of both systems: that of the canonical law and that of state law (Art. 14 Clause 1). Schools are obligated to realise the minimum curriculum as determined by the ministry of national education (Clause 2). They may obtain the status of private, socially funded or public schools.²⁴ Such schools and establishments have access to subsidies from the state budget or from local government bodies “in cases and on conditions defined in appropriate laws” (Clause 4).²⁵

4. CATHOLIC HIGHER SCHOOLS

The Law from 17 May 1989 warranted to the Conference of the Episcopate of Poland, to dioceses and convents “the right to establish and operate higher seminaries” as well as “other higher schools” (Art. 23 Clause 1). The Agreement from 30 June 1989 in turn provided more detailed rules for the status of pontifical higher schools and determined the mode and extent in which the state would recognise notes and scientific titles granted by these higher schools (Polish Official Journal, 1989, No. 22, Item 174). This Agreement enumerates five pontifical higher schools. With the exception of the Pontifical Theological Academy in Cracow which under provisions of the Concordat is subsidised by the state (Art. 15 Clause 3), they all support themselves from own funds. In the nearest future, all these higher schools will most likely find their place in state universities becoming theological faculties. At present, theological faculties exist at the universities of Opole (as of 1994) and Poznan (as of 1998). When a Church theological faculty is included into the structure of a state university, the infrastructure along with the premises shall continue to be the property of the Catholic Church, whereas other costs related to the functioning of the faculty shall be covered from the state budget (Journal of Laws, 1994, No 55, Item 255).

The Academy of Catholic Theology and the Christian Theological Academy in Warsaw (with the ecumenical profile), established in 1954 from the theological faculties banished from the University of Warsaw, are state higher schools subject to the supervision of respective religious unions. The Academy of Catholic Theology, comprising now four faculties, strives to be transformed into a full-fledged university with the legal status corresponding with the present one.

Churches and religious unions also enjoy the right to establish non-theological higher schools. Applications in these issues are submitted by the authorities of a given church, and a higher school is then founded by force of a law. The only higher school of that kind in Poland is the Catholic University of Lublin which has the status of a private higher

²⁴ Cf. *J. Krukowski*, Konkordat polski. Znaczenie i realizacja (The Polish Concordat. Significance and implementation), op. cit., p. 144.

²⁵ Subsidies for public schools are granted in the amount which matches the expenditure per pupil born in schools of the same kind which are operated by state administration or local administration bodies. Non-public schools receive 50% of that amount. Under the reform of the education system, a possibility is considered to equalise subsidies for non-public and public schools (Cf. *Beąą stuprocentowe dotacje dla szkół katolickich?* (Are there going to be a 100% refunds to Catholic schools?), <http://nowy.kai.pl/serwisy/platne/showmess.cgi?mess=5817/99.03.24>).

school with state rights. As of 1992, it receives subsidies from the state budget on the same conditions as state higher schools do with the exception of subsidies for the construction projects which are covered from the school's own resources (Journal of Laws, 1991, No. 61, Item 259). Art. 15 Clause 3 of the Concordat confirms state responsibilities as to the funding of the Catholic University of Lublin and of the Pontifical Academy of Theology, this without ruling out subsidies for construction projects, as provided for in the law from 14 June 1991 on the Catholic University of Lublin and repeated in the law from 26 June 1997 on the Pontifical Academy of Theology (Journal of Laws, 1997, No. 103, Item 650).

Titles and scientific degrees granted in Church higher schools are recognised by the public authorities to the extent to which these schools have respective authorisations, and are equal in rights to the titles and scientific degrees granted by state organisational units.

VII. "CONCORDAT" MARRIAGE

In the Second Republic of Poland, civil law effect of marriages contracted in accordance with the internal law of the Catholic Church and other religious unions was in general recognised by the state, according to the principles in force during partitions. The exception was the Prussian partition where marriage was deemed to be a lay institution to be concluded, in accordance with the Prussian Civil code from 1896.²⁶ After World War 2, obligatory civil marriages were instituted and Church marriages were deprived of their civil law effect (Journal of Laws, 1945, No. 48, Item 270). The law on marital status acts from 1968 banned the contraction of church marriages before a civil marriage took place. A priest who failed to observe this regulation was threatened with the sanction of arrest or fine (Journal of Laws, 1986, No. 36, Item 180, Art. 63 and 84). This order was only repealed by the law from 17 May 1989 (Journal of Laws, 1989, No 29, Item 154, Art. 74 Clause 12). By that, the believers were no longer formally compelled to conclude two marriages, in practise, however, their Church marriage did not produce legal effect, which was received as a kind of discrimination. The Catholic Church required from the betrothed also to contract a civil marriage in order to obtain civil law effect.

An entirely new situation is created by virtue of Art. 10 of the Concordat and a follow-up amendment to the law dated 24 July 1998 (Journal of Laws, 1998, No. 117, Item 757). Art. 10 of the Concordat reads as follows: "From the time of contraction, canonical marriage produces the same legal effect as entailed by the contraction of marriage under the law of Poland, provided that" This means that the same event produces effect in the two legal orders concurrently. This statement is not unrestrained one but a conditional one. It requires that there be no obstacles provided for in the Polish law between the betrothed, that they make a statement of will as to causing such effect and that the contraction of marriage be recorded in the marriage and death register (Art. 10 Clauses 1-3).

The amendment of the law dated 24 July 1998 extends this institution onto other churches and religious unions which requested such a legal authorisation (Art. 1 Par 2 and 3 of the

²⁶ Cf. *J. Krukowski*, Konkordat polski. Znaczenie i realizacja (The Polish Concordat. Significance and implementation), op. cit., p. 192n.

Family and Guardianship Code). So far, laws pertaining to the Autocephalous Orthodox Church, Evangelical Lutheran Church, Evangelical Reformed Church, Evangelical Methodist Church, Church of Adventists of the Seventh Day, Baptists Church, Polish Catholic Church, Old Catholic Mariavites Church, Pentecost Church and Judaistic Communities, were amended to this effect.

At the moment, the law on institution of legal separation is under discussion in the Polish Parliament. Similar solutions are in force in Belgium, Denmark, Finland, France, Great Britain, Italy, Netherlands, Norway, Portugal, Spain and Switzerland. The law on divorce won't be changed. The proposition of the new rule provides that reasons for separation will be less severe than specified for divorce. The disintegration of conjugal life should be "complete" and it doesn't need to be "permanent". Giving a verdict the court will decide the partition of property and will grant to one part a guardianship over children. On unanimous demand of husband and wife will give up to adjudge the guilt. This rule, important for Catholics, should not provoke any conflicts or misunderstandings because it concerns only those who would like to deal with it.

VIII. CHURCH FINANCES

The Catholic Church in Poland is traditionally maintained from the offering of the faithful – the collections during Sunday Holy Masses and from pastoral visits paid by the priest in the Catholic households during the Christmas season. Priests make their living from *jura stolae* and from commemorative Masses. As of 1989, hospital, military and prison chaplains receive salaries from the state budget, and from 1997 also priests working as catechists in public schools.

The right to property of churches and religious unions are regulated by the Concordat, by the law on guarantees of freedom of conscience and by detailed laws on the relations between the state and a given church.

Art. 22 Clause 2 of the Concordat takes the Polish legislation and Church regulations which are in force as point of departure for consideration of financial issues of church institutions and properties and of priests. This way, the Parties have committed themselves to respect the status quo existing at the time of ratification. At the same time they obliged themselves to set up a special committee to deal with necessary changes, taking into consideration the needs of the Church and the practise of the Church life in Poland so far.

Art. 23 of the Concordat reads: "Church legal persons can in accordance with provisions of the Polish law acquire, use and sell immovable and movable property and acquire and sell property rights." This general disposition places Church legal persons on a par with other subject of the law. Certain property rights, however, are additionally governed by detailed regulations. This applies primarily to collections, Church foundations, Church Fund, and restitution of property seized by the state in the period of People's Republic.

Art. 21 Clause 2 of the Concordat provides as follows: "Provisions of the Polish law on public collections do not apply to collections made for religious purposes, Church charitable and guardianship activities, educational and upbringing activities and maintenance of priests and members of convents, if they are organised within Church

premises, chapels and other places and circumstances traditionally established in a given area and traditionally defined.” Art. 26 confirms the right of Church legal persons to set up foundations in accordance with the Polish law.

The Church Fund was established in 1950 after the state had taken over the Church property (Journal of Laws, 1950, No 9, Item 87). At present, the Church Fund supports educational activity, guardianship and upbringing activity pursued by churches and religious unions, maintenance and renovation works of the sacral premises. Also a part of social insurance premiums paid for the priests is covered from that Fund. (Journal of Laws, 1989, No. 29, Item 156, Art. 37). In relation to the reform of the pension fund which is carried out in Poland, the Church Fund received from the state budget the amount of PLN 36 million out of which PLN 31 million were transferred to the Social Security Company ZUS.²⁷

The Law from 17 May 1989 on relation of the state towards the Catholic Church (Journal of Laws, 1989, No. 29, Item 154, Section III and IV) determines the principles for restitution of property rights of Church immovable property which were seized by the state in 1950’s. A Property Committee was established to this end, composed of representatives of the Government and the Episcopate in equal numbers (Art. 62 Clause 1). Its decisions shall be final unless they are not appealed against on the ground of infringing third party’s rights (Art. 63 and 64). Using the opportunity afforded by this law, 3006 applications were filed to the Property Committee with the request to start regulation proceedings. Approximately 15% of them were rejected.

Under Art. 55 of the law from 17 May 1989 on the relation of the state to the Catholic Church the property and revenues of Church legal persons were made subject to universally binding tax regulations. The exception are revenues derived from non-profit activity (Clause 2), a business activity in the portion which is allocated in a given fiscal year or the following year for the worship, educational and upbringing activity, scientific, cultural, charitable and guardianship activities, catechists centres, renovation of monuments of history and sacral investments (Clause 3).

Priests working in parishes pay personal income tax either in the form of a lump sum or in the case of the waiver thereof, based on generally binding principles (Journal of Laws, 1998, No. 144, Item 930).

Recently, a discussion continues in the Church on the possibility of introducing a “Church tax” modelled on German and Italian solutions.

IX. CHARITABLE ACTIVITY

The law on relation of the state to the Catholic Church from 17 May 1989 warrants to Church legal persons “the right to pursue charitable and upbringing activity, adequate for such persons” (Art. 30 Clause 1). To this end, Church authorities called into being Caritas Polska on the national level, Caritas of Dioceses on the level of individual dioceses (Clause 2). Article 39 enumerates areas of operations of such charities, whereas Art. 40

²⁷ 36 mln zł z budżetu dla Kościołów (PLN 36 mln from the budget for the Churches), <http://nowy.kai.pl/serwisy/platne/showmess.cgi?mess=6124/99.04.02>.

defines means and ways of fund raising. The Concordat confirms in general terms the norms included in the law (Art. 21). The new element is bringing on the same footing of humanitarian activity, charitable and guardianship activity, scientific activity, educational and upbringing activities pursued by Church authorities and of activities serving analogous purposes conducted by state institutions (Art. 22 Clause 1). This applies in particular to taxation and to access to subsidies from the state budget.²⁸

X. LEGAL PROTECTION OF SUNDAY

Article 9 of the Concordat contains a list of holidays. Next to Sundays, there are seven holidays enumerated therein (Clause 1). This list may be extended in the future upon an agreement of the Contracting Parties (Clause 2). This catalogue complies fully with the list included in Art. 17 of the Law on relation of the state to the Catholic Church from 1989. There are four obligatory holidays missing in it, enumerated in canon 1246 Par.1 of the Code of canonical law. In his commentary to the Concordat, Rev. Jozef Krukowski states that the phrase “holidays” shall mean “day free from presence at the workplace and from obligatory labour done by workers against payment”.²⁹

The practise which developed recently in Poland upon introduction of free market mechanisms is by far detached from the intention expressed in the Concordat. Therefore, Polish bishops, additionally stimulated by the encouragement of John Paul II, have recently laid claim for legal protection of the institution of Sunday.³⁰ The arguments called up included the respect of Polish and European tradition, protection of social rights of hired workers and rights in the field of freedom of religion. The intention is to introduce solutions corresponding with those in Germany, Austria or Denmark. Politicians who second this initiative recall among their arguments also the will to protect domestic entrepreneurship against competition of “foreign supermarkets”.³¹

²⁸ Cf. *J. Krukowski*, Konkordat polski. Znaczenie i realizacja (The Polish Concordat. Significance and implementation), op. cit., p. 261.

²⁹ Ibidem, p. 125.

³⁰ “It is therefore only natural that Christians should undertake an effort to make sure that also under particular conditions of our epoch the civil legislation should consider their duty to celebrate Sunday” (*John Paul II*, *Dies Domini*, 67); Cf. *Prymas Polski*, pracujący w sklepach też mają prawo do wolnej niedzieli (The Primate of Poland: Shop workers also enjoy the right to have Sundays off), <http://nowy.kai.pl/serwisy/platne/showmess.cgi?mess=5549/99.03.14>.

³¹ Cf. Minister Czarnecki za ograniczeniem handlu w niedzielę (Minister Czarnecki speaks in favour of limiting trade on Sundays), <http://nowy.kai.pl/serwisy/platne/showmess.cgi?mess=6124/99.04.02>.

XI. CONCLUSION

As it seems, the system of freedom of religion, developed within nine years from the break-through, provided for in both individual and community dimension in the Constitution, the Concordat and the laws pertaining to religious unions other than the Catholic Church, has been designed with consideration and corresponds with the ideals of a democratic state of law. This is a system of co-ordinated separation where the two institutions: the state and the Church see each other as equal partners undertaking co-operation between them for the good of the citizens. Founded on solutions of the Second Vatican Council, it is distant from the hostile separation, as it is from the religious state. Shortcomings that it contains (e.g. limitation of the influence of parents on the upbringing of their children) have not produced any tangible negative results in the last two years of the functioning of the new Constitution.

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