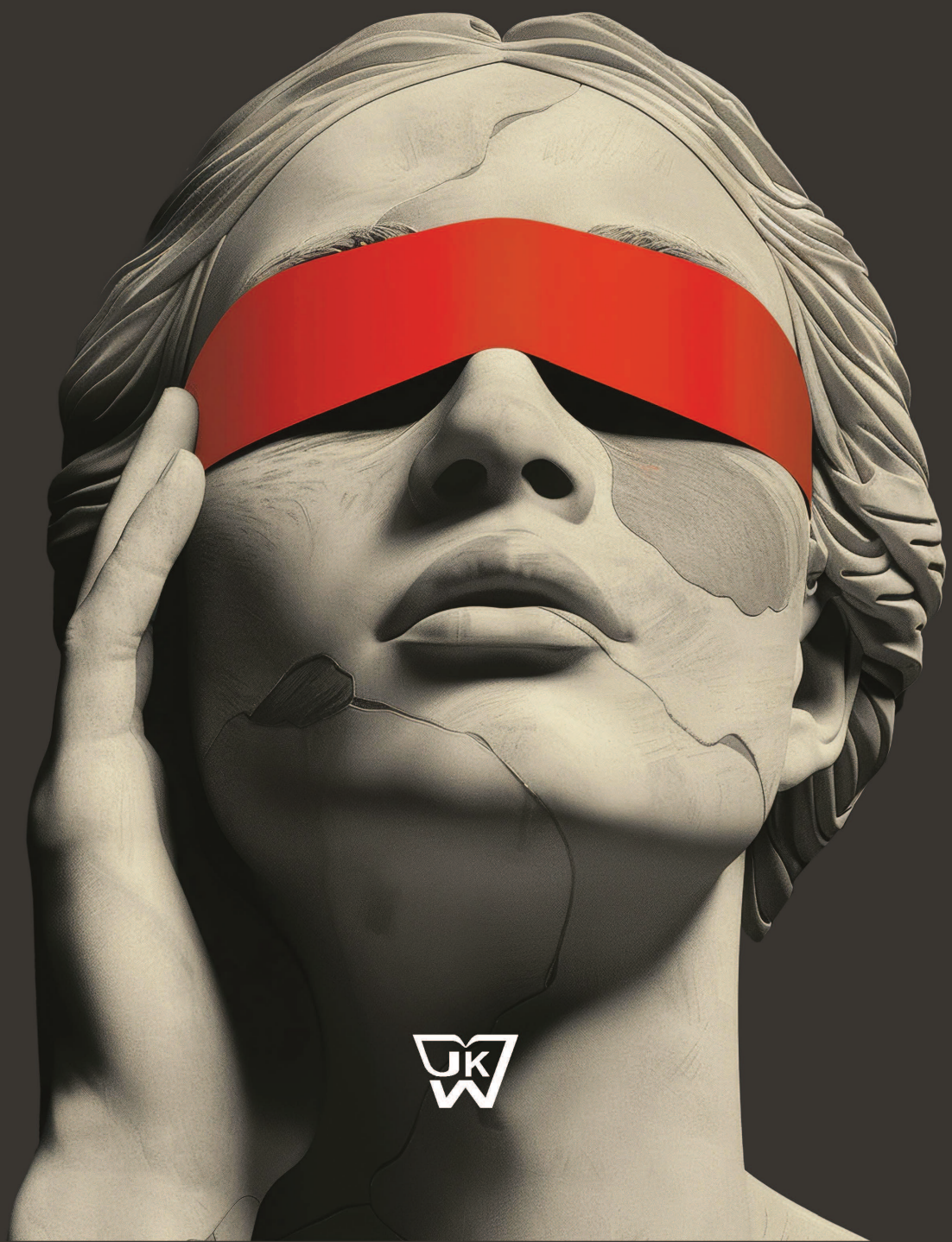
Paulina Jabłońska

Historical and Legal Determinants of Religious Freedom of Minors in Poland



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Warszawa 2024

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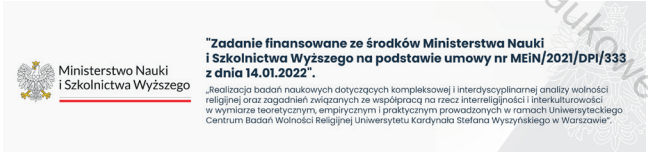

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This book could not have been written without the support and kindness of WZ, who was the spiritus movens behind this publication.

Thank you Waleed for BEING THERE FOR ME, that is… for EVERYTHING!

Janusz Korczak
Seek your own path. Get to know yourself before wishing to know children. Realize what you are capable of before you start setting out children's rights and responsibilities. Of all the people, you are the child you must know, educate, and train first and foremost.

In the photo:
the author's father Robert Jabłoński, 1967.

Foreword

Faith in God gives humans true freedom

"Remorse is an irresistible proof of our free will" – these words of Leszek Kołakowski (*Miniwykłady o maxi-sprawach*, Kraków 1999, p. 79) can be seen as an invitation to read this book directed at people looking for a meaning connecting religion with law. The author's chosen topic of freedom of conscience of minors is also connected with the difficult history of the Polish State, which was formed on the basis of an alliance between faith and patriotism. In the Polish reality, this often meant the necessity to seek a consensus between the social expression of Christian faith and the sphere of politics, the aim of which is to establish and guard over a just social order.

The struggle of these two realities was summed up in the words of the Blessed Cardinal Stefan Wyszyński, patron of the Cardinal Stefan Wyszyński University in Warsaw: "We recognise the enemies of our nation by their attitude towards God and Christian morality. They can appreciate the meaning of this morality for us, they know that it is the strength and power of our nation, and that it best serves its existence, its completeness, and its unity. And therefore, in order to destroy the nation, they destroy its faith and Christian morality. You must show that you understand that the nation lives and extends its existence through family. Since that is the case, we must remember that our nation's protection depends to a much greater extent on the family than on the state borders. The borders of the nation and the state depend on the cradles." (S. Wyszyński, *Wielka Nowenna Tysiąclecia*, Paris 1962, pp. 241–242).

Contemporary geopolitical changes as well as religious-moral and socio-cultural changes (which of them are dangerous, and which are

benevolent to mankind – who knows?) are transforming the world and humanity, and at the same time they are showing the societal importance of the value of freedom of conscience and confession in the education of the young generation. For any kind of "cultural upheaval", the most desirable goal is to gain power over human beings. Whoever controls human beings will indirectly "control" God as well. This is because God cannot be "reached", but it is possible to destroy faith – the supernatural gift bestowed upon humans, for whom God is the embodiment of all existence. For this reason, Christians who see religion as an opportunity to create a just society that develops "technologically" and exists in peace, would also like to see God present in social life. This is because for Christians in the social and cultural space the person of God is the safeguard of human rights, which are an important element of natural law as the law of reason. According to J. Ratzinger/Benedict XVI, human rights cannot be understood without the assumption that humans, by their very belonging to the human race, are the subject of law and that their very existence carries within it certain values and norms that must be discovered because they cannot be invented ("*Demokracja, prawo i religia*", Tygodnik Powszechny, 1.05.2005, p. 7). It can be said, however, that a close connection between the freedom of conscience and confession, and a justly established law, one which will support the education of the young generation in truth, is not only necessary but constitutes an important element of the further, integral development of contemporary Polish society.

The aforementioned summarises the value of this book, which should be read not only by scientists, but also by parents, teachers, educators, priests, politicians, and leaders of social and cultural life in Poland.

Dr Paulina Jabłońska continues to study the meanders of law, currently in the area of canon law. These efforts will certainly result in the preparation of further scientific works. I would like to personally express my respect and admiration for this scientific enthusiasm, and to add words of gratitude for the cooperation of the Cardinal Stefan Wyszyński University, and especially with the University Centre for Religious Freedom Research at UKSW, which serves as a patron in the publication of this book.

While doing research on this book, I had the opportunity to meet Paulina Jabłońska, who carried out her scientific explorations with a truly Benedictine diligence and utilised the wisdom of authorities in the field

of both examined rights with the humility of a promising lawyer. She also sought genuine inspiration in legal maxims, such as *Suum cuique (to each his own);* Summum ius – summa iniuria (the greatest law is the greatest injustice); *Dura lex, sed lex* (the law is harsh, but it is the law); and *Et non facere, facere est* (abstaining from action is also action). The latter principle in particular reminds us that we must not remain silent in the face of manifest injustice. The attitude of indifference can be treated as tacit consent to the evil being perpetrated. How true and realistic do these words ring out when a war is going on in Ukraine and millions of Ukrainians have been welcomed into the Polish "home" and into many hospitable countries in Europe and overseas!

A properly formed conscience, in true freedom, can "see, hear, taste, and feel", but above all else, it helps us to discover all the shortcomings of love and to act consistently. In light of the tragedy of the Ukrainian people, Poles did not remain indifferent – they are helping. Such an attitude of a sensitive conscience is the fruit of a Christian upbringing in Polish families as well as a patriotic upbringing, but also is the effect of the quiet, tedious, but very enriching work of scientists, whose ranks also include Dr Paulina Jabłońska. *Ad multos annos*.

Rev. Fr Prof. Jan Kazimierz Przybyłowski, PhD
Deputy Director of the University Centre for Religious Freedom
Research at the Cardinal Stefan Wyszyński University in Warsaw

List of abbreviations

AAS – "Acta Apostolicae Sedis" – official press body of the Holy See, Rome 1909

AAN – Archiwum Akt Nowych (The Archives of Modern Records)

ASS – "Acta Sanctae Sedis" – official press body of the Holy See (1865–1908)

ABGB – Allgemeines Bürgerliches Gesetzbuch – Austrian Civil Code of 1811

BGB – Burgerliches Gesetzbuch – German Civil Code of 1896

CCC – Constitutio Criminalis Carolina – codification of criminal law of 1532

CCT – Constitutio Criminalis Theresiana – Criminal Code of 1768

Dz. P.P.P. – Dziennik Praw Państwa Polskiego (Journal of Laws of the Polish State)

Dz. U. – Dziennik Ustaw (Journal of Laws)

Dz. Urz. – Dziennik Urzędowy (Official Journal)

Dz. U.P. – Dziennik ustaw Państwa (Dziennik Ustaw Państwa dla Królestw i Krajów w Radzie Państwa Reprezentowanych) – Journal of State Laws (Journal of State Laws for the Kingdoms and Countries represented in the State Council)

ECHR – European Convention on Human Rights and Fundamental Freedoms executed in Rome on 4 November 1950

ECtHR – European Court of Human Rights based in Strasbourg

k.c. – Ustawa z dnia 23 kwietnia 1964 r. – Kodeks cywilny – Act of 23 April 1964 – Civil Code (Journal of Laws of 2017, item 459 as amended)

KC PZPR – Komitet Centralny Polskiej Zjednoczonej Partii Robotniczej (Central Committee of the Polish United Workers' Party)

k.k. – Ustawa z dnia 6 czerwca 1997 r. – Kodeks karny – Act of 6 June 1997 – Criminal Code (Journal of Laws of 2016, item 1137 as amended)

k.k. 1932 – Rozporządzenie Prezydenta Rzeczypospolitej z dnia 11 lipca 1932 r. – Kodeks karny – Regulation of the President of the Republic of Poland of 11 July 1932 – Criminal Code (Journal of Laws of 1932, no. 60, item 571 as amended)

k.k. 1969 – Ustawa z dnia 19 kwietnia 1969 r. Kodeks karny – Act of 19 April 1969 Criminal Code (Journal of Laws of 1969, no. 13, item 94)

CCEC – Code of Canons of the Eastern Churches promulgated on 18 October 1990

k.k.w. – Ustawa z dnia 6 czerwca 1997 r. – Kodeks karny wykonawczy – Act of 6 June 1997 – the Executive Criminal Code (Journal of Laws of 2017, item 665 as amended)

k.p.c. – Ustawa z dnia 17 listopada 1964 r. – Kodeks postępowania cywilnego – Act of 17 November 1964 – Code of Civil Procedure (Journal of Laws of 2016, item 1822 as amended)

k.p.k. – Ustawa z dnia 6 czerwca 1997 r. – Kodeks postępowania karnego – Act of 6 June 1997 – Code of Criminal Procedure (Journal of Laws of 2016, item 1749 as amended)

KPK17 – Codex Iuris Canonici, Pii X Pontificis Maximi iussu digestus, Benedicti Papae XV auctoritate promulgatus (1917)

KPK83 – Codex Iuris Canonici auctoritate Joannis Pauli pp. II promulgatus (1983)

CFR – Charter of Fundamental Rights of the European Union, adopted on 7 December 2000

k.r.o. – Ustawa z dnia 25 lutego 1964 r. – Kodeks rodzinny i opiekuńczy – Act of 25 February 1964 – Family and Guardianship Code (Journal of Laws of 2017, item 682 as amended)

ICESCR – International Covenant on Economic, Social and Cultural Rights opened for signature in New York on 19 December 1966, adopted by Poland on 3 March 1977

ICCPR – International Covenant on Civil and Political Rights, opened for signature in New York on 19 December 1966, adopted by Poland in 1977

MWRiOP – Minister Wyznań Religijnych i Oświecenia Publicznego (Minister of Religious Denominations and Public Enlightenment – from 1 February 1918)

NKVD – People's Commissariat of Internal Affairs, USSR

NSA – Naczelny Sąd Administracyjny (Supreme Administrative Court of Poland)

NTA – Najwyższy Trybunał Administracyjny (Supreme Administrative Tribunal)

UN – United Nations

OSN – Orzecznictwo Sądu Najwyższego (Supreme Court case law)

OSNCPiUS – Orzecznictwo Sądu Najwyższego – Izba Cywilna/Pracy (Supreme Court Civil Chamber/Labour Chamber case law)

OSP – Orzecznictwo Sądów Polskich (Jurisprudence of Polish Courts)

OTK – Orzeczenia Trybunału Konstytucyjnego (Judgments of the Constitutional Tribunal)

UDHR – Universal Declaration of Human Rights, adopted by the UN General Assembly via Resolution 217/III A on 10 December 1948 in Paris

PiP – "Państwo i Prawo" (State and Law Gazette), Warsaw 1946

PKWN – Polski Komitet Wyzwolenia Narodowego (Polish Committee of National Liberation)

PPR – Polska Partia Robotnicza (Polish Workers' Party)

PPS – Polska Partia Socjalistyczna (Polish Socialist Party)

PRL – Polska Rzeczpospolita Ludowa (Polish People's Republic)

PS – "Przegląd Sądowy" (Court Review), Warsaw 1991

PZPR – Polska Zjednoczona Partia Robotnicza (Polish United Workers' Party)

CoE – Council of Europe

RP – Republic of Poland

RPEiS – "Ruch Prawniczy, Ekonomiczny i Socjologiczny" (Poznań Journal of Law, Economics and Sociology), Poznań 1921

SN – Sąd Najwyższy (the Supreme Court of Poland)

SO – Sąd Okręgowy (District Court)

TK – Trybunał Konstytucyjny (Constitutional Tribunal of the Republic of Poland)

EU – European Union

EC – European Community

USSR – Union of Soviet Socialist Republics

Introduction

There is currently a lot of talk about human rights and respect for human rights. One of the fundamental freedoms of a person, including minors, is the freedom of conscience and confession. In the 1990s, the U.S. Secretary of State Madeleine Albright stated that "where the right to religious freedom is not respected, there is no guarantee of respect for any other human right".[1] Freedom of conscience and confession is in certain ways a reflection of the state of democracy in a given country. As Professor Krzysztof Warchałowski, an eminent specialist in religious and concordat law, once stated, "the practical implementation of [this right] is a serious measure of the degree of democratisation of social life in a state".[2] In modern democratic countries, religious freedom is a universally binding law because it has become an integral part of democracy.

The subject of my book is the scope of freedom of conscience and confession enjoyed by minors in the law in force in the territory of the Republic of Poland.

What prompted me to take up this topic? First of all, the lack of a comprehensive monograph covering the period of nearly 100 years of religious legislation in our country guaranteeing the freedom of conscience and confession to minors. Indeed, there are studies covering individual eras and individual religious matters. My task was not to carry out archival queries of sources, but to analyse the systemic and normative guarantees within the three different legal eras in Poland. The chronological scope of the work covers three periods of the existence of the Polish

[1] Statement of Secretary of State M.K. Albright expressed in the introduction to a 1997 U.S. report on the situation of Christians in the world, quoted after: *Prawo wyznaniowe*, edited by H. Misztal, Lublin 2000, p. 207.

[2] Warchałowski, K. "*Prawnokarna ochrona wolności religijnej w Polsce w latach 1932–1997*", Studia z Prawa Wyznaniowego, no. 4, 2002, p. 59.

state, differentiated in terms of the recognised axiological foundations of the state. These are: the period of the Second Polish Republic (1918–1939), the period of existence of the Polish People's Republic (1944–1989) and the period of the Third Polish Republic after the country had regained its sovereignty (1989–2015).[3] I pursue my research efforts up to the year 2015, i.e. the entry into force in Poland of the so-called Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence, which was opened for signature in Istanbul on 11 May 2011. The point is that this international agreement is supposed to eliminate the use of various forms of violence against women, including minors, on the grounds of religious and cultural background, such as forced religious marriages, circumcision, tolerating honour killings, etc.[4]

The territorial scope of the work focuses on a discussion of the legislation in force in the territory of the Polish state in the subsequent periods of its existence. For this reason, it was necessary to indicate the norms inherited from the period of the partitions, which remained in force for a significant part of the Second Polish Republic's existence, as well as the norms of international law, which were incorporated into national legislation at that time.

[3] There is a wide literature in this area, including, for example, the following studies: Fijałkowski, Z. *Kościół katolicki na ziemiach polskich w latach okupacji hitlerowskiej*, Warszawa 1983; *W matni. Kościół w Polsce w latach II wojny światowej*, edited by B. Noszczak, Warszawa 2010; Szyling, J. *Polityka okupanta hitlerowskiego wobec Kościoła katolickiego 1939–1945*, Poznań 1970; idem, *Kościoły chrześcijańskie w polityce niemieckich władz okupacyjnych w Generalnym Gubernatorstwie (1939–1945)*, Toruń 1988; *Życie religijne w Polsce pod okupacją hitlerowską 1939–1945*, edited by Z. Zieliński, Warszawa 1982; Bonusiak, W. *Polityka ludnościowa i ekonomiczna ZSRR na okupowanych ziemiach polskich w latach 1939–1941 („Zachodnia Ukraina" i „Zachodnia Białoruś")*, Rzeszów 2006; Szyling, J. "*Kościół katolicki na wschodnich ziemiach II Rzeczypospolitej w latach 1939–1941*" in *Położenie ludności polskiej na terytorium ZSRR i wschodnich ziemiach II Rzeczypospolitej w czasie II wojny światowej*, edited by A. Marszałek, Toruń 2000, pp. 121–124; *Polacy w Kościele katolickim w ZSRR*, edited by E. Walewander, Lublin 1991; *Represje wobec osób duchownych i konsekrowanych w PRL w latach 1944–1989*, edited by A. Grześkowiak, Lublin 2004; Bartoszewski, W. "*Kościoły chrześcijańskie pod okupacją niemiecką na terenie GG*", Tygodnik Powszechny, no. 26, 1978, p. 1; Biernacki, S. and Kur, T. *Martyrologia duchowieństwa. II wojna światowa. Terror hitlerowski w Polsce*, Warszawa 1982; and Jacewicz, W. and Woś, J. *Martyrologium polskiego duchowieństwa pod okupacją hitlerowską w latach 1939–1945*, Warszawa 1978. In addition to the rich literature of the subject, an important information resource is contained in the archives of the Institute of National Remembrance (Main Commission for the Investigation of Nazi German Crimes in Poland).

[4] Jabłońska, P. "*Ochrona kobiet przed przemocą motywowana względami wyznaniowymi w świetle Konwencji stambulskiej z 11 maja 2011 roku*" in *Biznes rodzinny skarbem narodu*, Warszawa 2017, pp. 217–227.

Apart from considerations devoted to secular Polish law, the norms of Canon law regulating issues related to the freedom of confession of minors, who are included in the group of the faithful of the Catholic Church by virtue of baptism, were also presented. I devote the most attention to this section of the population because the majority of Polish society declares itself to be Catholic. In addition, in order to create a terminological base for research on the applicable regulations, basic issues and views on the matters of conscience, religion, and the notion of minors were also presented against the background of the evolution of individual legal and philosophical systems.

I deliberately omitted research on the Second World War due to the specificity of the legal solutions of the time and the actual policy of religious freedom of minors imposed by force on Polish citizens by the German and Soviet occupation authorities.

When developing my work, I was guided by specific research hypotheses:

1) Was the freedom of conscience and confession of the minor (child) a value that was recognised and accepted in the systems of secular law (in particular, in systems applicable within the particular chronological boundaries of the territory of Poland) and in the Canon law of the Catholic Church?

2) Was the method of determining, the content, and the limits of the minor's freedom to choose their beliefs a dynamic process, subject to evolution over the course of history resulting from changes in the perception of the role, position of the child, as well as the level of acceptance of human rights *in genere*, of the sociological processes taking place in a given community, and due to the axiological foundations of state policy?

3) Has Poland developed, over the course of the period of 100 years subject to examination, a system of legal institutions that guarantee, directly and indirectly, the freedom of conscience and confession of minors?

4) Are considerations concerning the meaning, shape, and functioning of the mechanisms guaranteeing and protecting the freedom of conscience and confession of minors much more widely recognised and analysed by the legal community than by their beneficiaries, i.e. the minors?

In my research I used a diverse set of source materials. The basic materials were normative sources of Polish law as well as partitions-era law inherited by the Second Polish Republic. Additional materials included

court case law, followed by the literature of the subject. All these sources have been subjected to appropriate, selective analysis. Some normative sources from the period of the Second Polish Republic required an archival query, which I conducted, among others, at the Archiwum Akt Nowych (Central Archives of Modern Records) and among the materials available in the Library of the Polish Parliament (Biblioteka Sejmowa); I also used digitised resources available on websites.

The collected material was examined by way of dogmatic and legal analysis, which is a basic tool in the case of research in the field of legal sciences. I have made extensive use of the legal-comparative or historical-legal methods, and this applies to those parts of the work that deal with the freedom of conscience and confession during the Second Polish Republic. This law was, to a large extent, inherited from the partitioning powers – this mainly concerns Chapter Three of this book. I also used, to a certain extent, the sociological method, which allows us to look at the functioning of the law in practice. I used the method of synthesis to summarise the results of my research.

As for the literature of the subject, I used domestic publications of a contributory but also analytical nature, as well as monographs, which concerned a given partial research problem, e.g. Artur Mezglewski's work on the teaching of religion.

I have analysed the sources of Polish and ecclesiastical law, including mainly the Canon law of the Roman Catholic Church. I supplemented the information obtained in this way with extracts from jurisprudence, i.e. the practice of the judicial authorities operating at the time. In this case I am referring to the case law of the Polish courts. Only in the final stage of my research did I reach for the case law of the EU and international tribunals covering the cognition of issues related to the freedoms of minors. The analysis also covered the legislative achievements of the Catholic Church and the legal acts of selected non-Roman Catholic Churches.

The work includes numerous interdisciplinary threads, as it covers not only the legal considerations concerning the religious freedom of minors, but also considerations from the widely understood fields of pedagogy, psychology, sociology, and even Catholic philosophy and theology; there are contents relating to not only Polish but also foreign law, including mainly Western European and American law.

The book consists of six chapters. Chapter One serves as a preliminary introduction to the others, and contains reflections related to the etymology of the terms conscience, religion, and confession, as well as the meaning of freedom of confession and freedom of religion. I also present the philosophical foundations for recognising freedom of conscience and confession as a subjective right and provide an outline of Christian philosophy in this regard. Chapter Two contains theoretical as well as historical and legal threads referring to the need to distinguish the category of children's rights in the area of religious freedom. I outline the different concepts of the religiosity of children, because the legitimacy of recognising and protecting the religious freedom of minors is a consequence of the recognition that children are mentally capable of developing feelings in the area of world view or religion. Chapter Three is devoted to a general analysis of selected regulations concerning rights and freedoms and the status of minors in individual legal acts. In these considerations, I distinguish between the Polish law and the Canon law of the Catholic Church. Within the scope of the Polish law, I carry out a synthesis in the area of criminal and civil law, while taking into account the different terminology within these branches of the law and in the regulations of international law. In Chapter Four, I discuss the regulations concerning freedom of conscience and confession within the constitutional law in force during the time of the Second Polish Republic. Theoretical considerations are intertwined with an analysis of the jurisprudence and administrative practice, which were a legacy of the period of partitions and of the specificity of the local legislation – all this in the conglomerate of the complex social and religious structure of the Polish state. During the Second Polish Republic, the religious structure of the population was as follows:

- Roman Catholicism – about 65% of citizens;
- Orthodox Christianity – about 12% of citizens;
- Greek Catholicism – about 10% of citizens;
- Judaism – about 9% of citizens;
- Evangelical Church – about 3% of citizens; and
- representatives of other faiths – about 1% of citizens.[5]

[5] https://pl.wikipedia.org/wiki/Zwi%C4%85zki_wyznaniowe_w_II_Rzeczypospolitej [20.01.2022]

I also note the disputes about the shape of the ideological norms of the newly-reborn state, which over time shifted to *strictly* legislative territory and were reflected in the wording of the laws. This stage can be defined as the period of formal acceptance of the freedom of conscience and confession of minors. At this point, I could not omit the theses of some representatives of the legal and political world, according to which religious legislation accepted the privileged status of the Catholic religion, the Catholic Church and its institutions, and of Catholics. An exemplification of these solutions is evident in Article 114 of the March Constitution, where the Catholic Church had a privileged position among the equally recognised confessions. The Catholic Church had the constitutional right to govern itself based on its own law. In addition, its position was governed by the Concordat, a bilateral international agreement concluded with the Holy See in 1925. As is known, it remained in force for twenty years, up until 1945, when the post-war government of communist Poland unilaterally terminated its validity.

Chapter Five of this work is devoted to considerations concerning the period of the Polish People's Republic, with particular emphasis on the Constitution of 22 July 1952. This period was characterised by a radically different approach of the state authorities to religious issues, including those relating to minors, as compared to the period of the Second Polish Republic. The state authorities of that time were inspired by the model of hostile separation of the state and religion, which had been introduced in the Soviet Union. The basis for this hostility was the atheistic ideology, ultimately aimed at the construction of a state and society completely devoid of religion and the values derived from it. Thus, religion and the Church were treated as an obstacle to the creation of a communist society. The attitude of the authorities towards religious issues was reflected in the legislation. In terms of the rights of minors, it was characterised by attempts to create a competitive system of values, to discourage people from religion and the Catholic Church, or to ridicule Christian values. Religion was seen as a category of political law, unilaterally regulated and instrumentally used by the communist state. One particular expression of this was the removal of religious education from public schools, which ultimately happened in 1961. In addition, the political and party authorities at the time, led by the Security Office (Urząd Bezpieczeństwa

– UB), did not exhibit a favourable attitude to the religious practice of minors. For example, more important party or state activists were severely restricted in the religious education of their minor children, could not baptise them or have them receive the First Holy Communion. At most they could do it secretly, taking into account the potential consequences.

In Chapter Six, I discuss legal solutions concerning freedom of conscience and confession in the period after Poland regained its sovereignty in 1989, and the further development of Polish legislation until 2015. This period was characterised by a redefinition of the authorities' attitude to religious issues and the rights of minors in this area. A manifestation of this was the return of religious instruction to schools in 1991, or the conclusion of the Concordat with the Holy See on 28 July 1993, and its subsequent entry into force in 1998.

In the last part of the work (conclusion) I present the conclusions drawn from analysis of the legal situation presented in earlier parts of the book. I also include comments on factors that may generate threats to the guarantee of freedom of conscience and confession of minors in the future. These threats include: concepts of a liberal and secularised state and society, calls to reduce or remove religious education from schools, alternative ways of raising children away from religious values, the use of minors for terrorist purposes, forcing minors to enter into religious marriages, or the mutilation of minors for religious and cultural reasons (circumcision of minors).

CHAPTER ONE

Freedom of Conscience and Confession in the Historical and Legal Perspective

The emergence of religious beliefs is considered by some scholars to be a breakthrough moment in the evolution of humanity. The realisation of the need to satisfy something more than purely biological needs constituted a transition of the ancestors of man from the stage of pre-humans to that of the Homo sapiens (thinking man).[1] The inability to understand the processes taking place in the surrounding world gave rise to the need to find an explanation for these phenomena, which was ultimately found in the supernatural sphere. In the understanding of sociology, religion is therefore a response to the fear and the powerlessness felt in the face of incomprehensible and often dangerous nature.[2]

In reality, in the early stages of human society, the problem of tolerance for attitudes and views different from those of the dominant Canon was of little importance. This was due to the priorities of ensuring survival in a purely biological sense, which in turn required the uniformity of goals of human groups and a focus on satisfying basic needs. In general, the struggle against the adversities of nature did not create good

[1] This view is expressed, among others, by K. Armstrong in *Historia Boga. 4000 lat dziejów Boga w judaizmie, chrześcijaństwie i islamie*, Warsaw 1998, p. 23.

[2] Cf. Casanova, J. *Religie publiczne w nowoczesnym świecie*, Kraków 2005, p. 69.

conditions for the development of attitudes different than those dominating in any given community. It was only the achievement of an appropriate level of development, allowing members of the community to focus on activities other than the fight for survival, that made it possible to take up reflections on abstract topics, such as issues of beliefs, among others. The increase in the number of people and the development of tribal and later state organisations resulted in the need for contact with other similar organisations, which led to learning about other cultures and the exchange of ideas and views. The need to ensure proper contacts with representatives of other cultures also forced the acceptance of beliefs of other human beings. Over time, the flow of ideas led to the emergence of individuals within a given community who preferred imported beliefs over those in force within their native community. Such a process resulted in the need to find an answer to the question of what attitude should be adopted by the community and its governing bodies towards people professing, promoting, or adopting a given belief or creed, often different from the one generally accepted within a given community.

The mechanism described above was obviously also applicable to the area of world view and religious beliefs. Interpersonal exchange therefore caused the need to define the limits of the individual's freedom, within which that individual was entitled to independently and without coercion determine their attitudes towards beliefs or moral principles – that is, to define the scope of freedom of conscience and confession of the human individual. It can therefore be assumed that the process of defining the meaning of "freedom of conscience" and "freedom of confession", determining the objective scope of these notions, indicating the limits within which the individual can make sovereign choices in terms of world view and choosing their own position towards religion in a positive or negative sense, has accompanied humanity since the beginning of organised societies.

A presentation of the evolution – over the course of centuries – of the views regarding the legitimacy or possible negation of the right to freedom of conscience and confession in relation to minors requires us to make an important point. It should be assumed that the scope of freedom of conscience and confession of minors was a consequence of two important relationships, i.e. the relationship and scope of freedom

of conscience and confession of adults, existing within a given community, and the model of parental authority prevailing at a given time. In this respect, a correct view was expressed by Adam Łopatka, who indicated:

> *When it comes to the exercise of religious freedom, children are not only subject to the same restrictions as everyone else, but also to additional restrictions associated with their submission to their parents or guardians.*[3]

The acceptance of the freedom of conscience and confession of an adult has been and is a prerequisite for the possibility of defining these freedoms in the case of minors. However, it should also be borne in mind that the status of human beings in the community and the level of freedom associated with it was also dependent on many other factors. In communities existing in the early stage of human development, the status of a person, and thus the scope of their rights and freedoms, depended on belonging to a specific social group possessing civil rights, the status of a free person, the model of family relations existing in a given community, property status, etc. All these factors influenced the scope of individual freedoms. This also applied to minors, whose situation was, to a basic extent, a reflection of the situation of adults, but modified – mostly, as I have emphasised above – by the model of parental authority accepted in the given community.[4]

At the initial stage of these considerations, it seems necessary to define basic notions related to the issue of freedom in the sphere of world view. However, due to the dynamic nature of the development of the attitude

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[3] A. Łopatka, *Prawo do wolności myśli, sumienia i religii*, Warszawa 1995, pp. 21–22.

[4] During most periods the position of the child within the family was, in principle, the result of the shape and scope of parental authority (generally, it was limited to the scope of paternal authority). Apart from a few exceptions (e.g. the Spartan state, which at some point in the child's life took full control of their upbringing), children remained at the mercy of the father of the family. Cf. Kłys, J. *Rodzina dziedzictwem ludzkości*, cz. 1: *Starożytność. Zarys etologii*, Szczecin 1995; Flandrin, J. L. *Historia rodziny*, Warszawa 1998; Kolańczyk, K. *Prawo rzymskie*, Warszawa 1973; Możdżeń, I. *Historia wychowania do 1975*, Sandomierz 2006; Kot, S., *Historia wychowania*, Warszawa 1996; *Wychowanie w rodzinie od starożytności po wiek XX*, edited by J. Jundziłł, Bydgoszcz 1994; Nowak, A. "*Pojęcie władzy ojcowskiej w rzymskim prawie klasycznym*", Studia Prawnoustrojowe, no. 1, 2002, pp. 35–54; *Dziecko w rodzinie i społeczeństwie, T. 1: Starożytność – średniowiecze*, edited by J. Jundziłł and D. Żołądź-Strzelczyk, Bydgoszcz 2002; Płaza, S. *Historia prawa w Polsce na tle porównawczym, cz. 1: X–XVIII w.*, Kraków 2002; and Tazbir, J. "*Stosunek do dzieci w okresie staropolskim*" in *Bici biją*, edited by J. Bińczycka, Warszawa 2010, pp. 19–33.

towards these freedoms, it is also necessary to discuss the ways in which the right of the human individual to freely express their beliefs was perceived throughout history. The subject matter of this work also makes it necessary to present the definition, the scope of powers and the limits of interference of third parties in the sphere of freedom of conscience and confession of minors.

It seems reasonable to begin the analysis of the issues covered by the scope of this work with a presentation of views on what religion, conscience, and confession are, and what the mutual relations between these notions are.

Next, it is necessary to present the way in which these notions were perceived during the evolution of philosophical and legal thought, both secular and derived from Christian philosophy.

In the last part of this chapter, I present current views on the perception of the scope of freedom of conscience and confession as a subjective right of the human individual in light of selected acts of international law and the achievements of legal practice.

1. Etymology of the terms "religion", "confession", and "conscience"

As indicated in the literature, defining the notions of "religion", "confession", and "conscience" poses many difficulties.[5] Attempts to find the proper definition of the phenomenon of religion are undertaken constantly, in various contexts, and by representatives of various scientific disciplines.[6] There is no single definition of religion. There are at least several dozen found in the literature. By way of example, some proposals for the definition of religion as presented in the literature can be shown: "Religion is an experienced practical relationship to what one believes is a supernatural being or beings [...] Therefore, religion is a mode

[5] Schwierskott-Matheson, E. *Wolność sumienia i wyznania w wybranych państwach demokratycznych*, Regensburg 2012, p. 149.

[6] Cf. Margul, T. *"Definicja religii w religioznawstwie porównawczym"*, Euhemer, no. 3(4), 1958, pp. 31–46, idem, *"Życie religijne, jako podstawowa kategoria religioznawcza"*, Studia Filozoficzne, no 2, 1973, pp. 153–164; Kriegelewicz, F. *"O trudności definiowania religii w ogóle"*, Euhemer, no 3(4), 1958, pp. 47–60; and Poniatowski, Z. *"Definicja religii a sytuacja w religioznawstwie"*, Euhemer, no. 3(4), 1958, pp. 6–28.

of conduct and a system of beliefs and feelings.";[7] "the internal experience of the individual in contact with the Transcendent, especially visible in the effects of this experience on the behaviour of the individual, when they try to harmonise their life with the Transcendent";[8] "personal, individual, and at the same time positive attitude of a human being to religion... Religiosity, then, is all that human beings experience and feel, and everything that happens to them, takes place, functions in direct relation to their attitude to God."[9]

Usually, two notions are distinguished: "religion" and "religiosity". By "religion" we mean a set of truths, commandments, and prohibitions regulating the relationship between man and God.[10] In this approach, religion can be defined as "the sum of beliefs and practices, both individual and collective, concerning an objective reality (or at least one understood as such), with regards to which people recognise their dependence in one way or another and with which they want to maintain a relationship".[11] Religiosity is the subjective attitude of the individual towards religion as an object.

The sources of terminological problems include, among others, the significant number and diversity of religious forms, difficulties in determining clear boundaries of the scope of the notions analysed, or the multifaceted degree of mutual interactions of cultural phenomena and phenomena of a religious nature. Difficulties in the process of developing definitions are also caused by the tendency to study only individual fragments of the whole of religious phenomena. Individual theories explain only certain isolated aspects or elements of the phenomenon of religion. While they may provide detailed knowledge of the selected components, they do not cover the entire phenomenon. It is also noted that such a method of analysing the phenomenon means that researchers tend to exaggerate

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[7] Yergote, A. *The religious man*, Dublin 1969, p. 10, quoted after: Kuczkowski, S. *Psychologia religii*, Kraków 1998, p. 23.

[8] Clark, W. H. *The psychology of religion*, New York 1968, p. 22, quoted after: Kuczkowski, S. *Psychologia religii*, p. 23.

[9] Walesa, C. "*Psychologiczna analiza rozwoju religijności człowieka ze szczególnym uwzględnieniem pierwszych okresów jego ontogenezy"* in *Psychologia religii*, edited by Z. Chlewiński, Lublin 1982, p. 144, quoted after: Kuczkowski, S. *Psychologia religii*, p. 23.

[10] Ibid, p. 22.

[11] Definition by A. Walters and R. Bradley. "*Motivation and religious behaviour*" in *Research on religious development, handbook*, edited by M.P. Strommen, New York 1971, quoted after: Kuczkowski, S. *Psychologia religii*, p. 22.

the importance of the selected aspect and reduce the complex phenomenon of religion in relation to that aspect.

The phenomenon referred to by the term "religion" is widely considered to have an important meaning, for the existence of both individuals and entire societies.[12] Despite the importance of religion, in the literature it is emphasised that a scientifically satisfactory definition of religion has not been developed.[13] However, there is no doubt that this is a significant phenomenon of a complex cultural and social character, which fills the lives of human individuals and communities to varying degrees and scopes. The serious impact of religion on the development of individual, social, national, and state life is also not questioned.[14]

Definitions of the phenomenon of religion indicate that it is a belief in a deity, associated with worship, and which entails a set of moral norms ordering specific behaviours. In general, the group of beliefs also contains answers to questions related to the genesis of mankind, the meaning of its existence, and what happens after the end of biological existence.[15] In

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[12] M. Jastrzębski, "*Wolność myśli, sumienia i religii*" in *Prawa człowieka. Wybrane zagadnienia i problemy*, edited by L. Koba and W. Wacławczyk, Warszawa 2009, p. 234. Adamski expresses the importance of religion even more clearly, pointing out that: "Religion as a social fact has accompanied mankind since the beginning of its history and for this reason, without being subject to discussion, it arouses interest, has become the subject of analyses of philosophy, psychology, sociology, geography, pedagogy, etc. as well as theology. Cultural historians unanimously emphasise that wherever mankind appeared, it revealed its religious activity and left various traces of it, which testify not only to its transcendent relation to private life, but also to the organisation of forms of social life and culture. This is clearly expressed by Erich Fromm in a well-known statement proclaiming that 'there was no such culture in the past and – it seems – there cannot be such a culture in the future that would not have religion'." – *Socjologia religii*, edited by F. Adamski, Kraków 2010, *introduction*. It is also necessary to cite the thesis proclaimed by C. Dawson: "Throughout most of human history, in all eras and at all stages of society, religion has been a great central unifying force in culture. It was the guardian of tradition, it protected moral laws, it educated, and it taught wisdom [...] From the very beginning, mankind considered its life and social life to be strictly dependent on forces beyond its power – dependent on superhuman powers ruling the world and human life [...] Religion is the key to history: one cannot understand the inner forms of society until one understands its history. One cannot understand its cultural achievements until one understands its underlying religious beliefs. In all centuries, the first creative works of a given culture are the result of religious inspiration and the pursuit of religious goals. Religion is the starting point of all the great literatures of the world, and philosophy is the offshoot of religion and its child [...] The temples of gods are the most enduring works of human hands." – see: Dawson, C. *Religia i kultura*, Warszawa 1959, pp. 57–58.

[13] Cf. Pietrzak, M. *Prawo wyznaniowe*, Warszawa 2010, p. 11.

[14] Ibid.

[15] As an example, I quote the definitions presented in the literature of the subject. Religion is: "faith in God and worship rendered to Him, divine worship, a way of praising God, faith, confession, church, rite, principles of faith and morality" – *Słownik języka polskiego, t. 5*, edited

sociological terms, religion is a form of social consciousness that creates an entirety of beliefs, images, and views, the essence of which boils down to the belief in the existence of supernatural forces, figures, phenomena, or regularities.[16] Religion also functions as a social ideology, determining the behaviour of followers who, by definition, should strive to live in accordance with its commands and an accepted system of values. Beliefs are usually associated with practices and rituals relating to the objects of these beliefs. They satisfy the emotional and moral needs of believers and integrate religious communities. Religion also provides members of a religious group with a specific set of views explaining the phenomena of the surrounding world and the meaning of human life.[17]

The term "religion" is derived from the Latin language, in which the noun *religio* means "fear" or "fear of God".[18] A different etymology of the term "religion" was indicated in ancient times by Cicero, according to whom the term comes from the verb *relegere*, meaning "to read anew".[19]

Another origin of the discussed term was indicated by Lactantius, according to whom the term "religion" should be derived from the verb *religare*, i.e. "to bind" or "to connect".[20] In turn, one of the most prominent

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by W. Niedźwiedzki, Warsaw 1900, p. 510; "a set of beliefs concerning the existence of God or gods, the origin and purpose of life, as well as moral principles and rites related to these beliefs" – *Słownik język polskiego, T. 2*, Warszawa 2000, p. 43; "a set of beliefs concerning the genesis, structure, and purpose of the existence of man, humanity, and the world, faith in God, deities, and immortality of the soul, as well as associated behaviours and organisational forms" – *Uniwersalny słownik języka polskiego, T. 4*, edited by S. Dubisz, Warsaw 2003, p. 63; "a set of beliefs based on tradition, concerning the world (including man and humanity) and the forces governing it, which reflect the attitude of man to *the sacred* (supernatural forces) – which is variously understood – manifesting itself in religious doctrine, religious cult, and religious organisation" – *Słownik wiedzy o religiach*, edited by K. Banek, Bielsko-Biała 2007, p. 22. Among the attempts made throughout history to define the term "religion", one can point to the classic definition given by Emil Durkheim, according to which "religion is a system of interrelated beliefs and practices relating to sacred things, that is, separate things, and to forbidden beliefs and practices that unite all believers into one moral community called the church" – Durkhei, E. *Elementarne formy życia religijnego: system totemiczny w Australii*, Warsaw 1990, p. 31.

[16] Pietrzak, M. *Prawo wyznaniowe*, p. 11.

[17] Ibid.

[18] *Słownik języka polskiego*, http://sjp.pwn.pl/ [12.10.2014].

[19] Cicero referred to the urgent observance of everything related to the worship of the gods: "Those who diligently decomposed and, as if, once again recomposed (*relegerent*) that, which is related to the worship of the gods." – Cicero, *De natura deorum*, II, 28 *ex religendo, ut elgentes ex eligendo, tamque a deligendo diligentes, ex* intelligendo intelligentes; idem, "*O naturze bogów*" in *Pisma filozoficzne, T. 2*, Warszawa 1960, p. 114.

[20] So, according to Lactantius, religion means man's moral relationship with God – see: Lactantius, *Institutiones divinae*, IV, 28, *hoc vinculo pietatis obstricti Deo et religati sumus, unde ipsa*

representatives of Christian philosophy, Augustine, derives the origin of the term "religion" from the verb *religiere*, meaning "to choose again", referring this act to the re-election of God as Lord[21].

Genetically speaking, that is, based on an analysis of the structure, the notion of "religion" is defined by indicating the sources and process of the formation of the religious phenomenon. According to this method, religion is defined as "objectification and projection of human qualities into some outside world", as "the result of mental vulgarity, fear, delight, which the primitive man experienced when he saw the wonders of nature",[22] or as "collective neurosis induced by conditions similar to those which produce childhood neurosis, [which] has its origin in man's helplessness in the face of the external forces of nature and the internal forces of instinct."[23]

Structurally speaking, that is, based on an analysis of the structure, religion is determined by indicating the structure of the phenomenon. According to this group of definitions, the notion of religion should be understood as "a man's personal relationship to the transcendent, real, genuine Absolute".[24]

According to the definition presented in studies of the Polish language, the term "religion" should be understood as "a set of beliefs regarding the genesis, structure, and purpose of the existence of man, humanity, and the world (usually it is faith in God, deities, immortality of the soul), as well as related rites, moral principles, and organisational forms".[25]

One can also point to the definition that was constructed by the Supreme Administrative Court, which indicated that: "Religion is […] the relationship between man and God, in other words, the relationship

religio nomea accepit. English text: *Divine institutes*, translated with an introduction and notes by A. Bowen and P. Garnsey, Liverpool 2003.

[21] "[…] For we have forgotten God, but we choose him again as our Lord." – Augustine of Hippo, "*De civitate Dei*", X, 3 in *Państwo Boże*, translated by W. Kubicki, Kęty 1998.

[22] According to A. Comte: "Religion is the lowest stage of the development of knowledge, and therefore is the result of mental vulgarity, fear, delight, which the primitive man experienced when he saw the wonders of nature. As religion develops, it turns into metaphysics and then turns into a positive science." – see: Comte, A. *Metoda pozytywna w szesnastu wykładach*, Warszawa 1961, p. 306.

[23] Freud, Z. *Człowiek, religia, kultura*, Warszawa 1967, p. 13–17.

[24] E. Gilson, quoted after: Zdybicka, Z. J. *Religia i religioznawstwo*, Lublin 1988, p. 367.

[25] *Słownik wyrazów obcych PWN*, Warszawa 2002, p. 955.

between man and holiness (*sacrum*). It presupposes the activity of the human person in the pursuit of holiness by getting closer to God."[26]

It is noted that religiosity is a process that is subject to evolution. In the evolution of forms of religiosity, the following stages are specified: religiosity of the primitive mind, religiosity of the "Mana" level, the stage of magic, animatism and animism, totemism, worship of nature, original monotheism.[27] The sources of religiosity are thought to be located in mankind's psychological sphere.[28]

As is the case with the definition of the term "religion", an attempt to create a commonly accepted definition of the term "confession" poses problems. Part of the doctrine holds that the terms "religion" and "confession" have similar meaning. In such a case, the term "confession" would include broadly understood religious and philosophical beliefs. In this understanding, the term "confession" means "an act, a formula containing the content of one's religious belief".[29] Other representatives of the doctrine argue that the scope of the term "confession" also includes other beliefs, including ones that are based on a non-religious world view, pointing to systems based on secular humanism or systems denying the existence of some form of supernatural being.[30]

A definition of confession is also given by Wikipedia: "Confession – a religious group based on one set of truths of faith ("confession", *creed*). In organisational terms, such a group may be concentrated in one organisational structure or in many. Such a structure under Polish law is referred to as a religious association, while in religious studies and the law of Anglo-Saxon countries it is referred to as a religious denomination. Sometimes, although imprecisely, a religious association is referred to as a confessional association."[31]

In Polish legislation, the term "religion" was defined in the Act of 4 March 2010 on the national census of population and housing in 2011, Article 2, point 12, which stipulates that "whenever the Act refers to

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[26] Judgment of the Supreme Administrative Court of 23.01.1998, case ref. no. I SA 1065/97.

[27] For more, see: Kuczkowski, S. *Psychologia religii*, pp. 26–28 and the literature indicated there.

[28] This issue has been the subject of extensive research. For more information, see: ibid, pp. 32–43, and the literature indicated there.

[29] Jastrzębski, M. *Wolność myśli*, p. 234.

[30] Cf. Szymanek, J. *"Wolność sumienia i wyznania w Konstytucji RP"*, Przegląd Sejmowy, no. 2(73), 2006, pp. 49–54.

[31] https://pl.wikipedia.org/wiki/Wyznanie [05.10.2021]

confession – religious affiliation – it is understood as formal participation in, or emotional connection of a person to, a specific religious confession, church, or religious association".[32]

The term "confession" has its place in religious studies, where the term is used interchangeably with such notions as "denomination". In general, these terms mean a specific religious option and mainly refer to Christian Churches, as well as to ecclesiastic communities that were established as independent communities following the division of the Church after 1517.[33] In the Polish legal language, the term "confession" has become the equivalent of the term "religion".[34] In Polish legislation, the term is collective but also individual in scope, which is contrary to the approach to religion found in religious studies.

In some definitions, emphasis is placed on the indispensability of the belief system being based on supernatural beings or phenomena. Under this assumption, all other beliefs, views, philosophical concepts, or systems of moral principles should not be considered religions if there is no supernatural force in their doctrine, if they do not point to the transcendental absolute as the source of their beliefs, principles, and their validity.

Definitions broadly describing the foundations of the religious phenomenon are based on the views presented, among others, by Paul Tillich, according to whom the essence of religious experience became that, which constituted for man the depth of life, the highest value, that which is treated most seriously, accepted as a given, without any conditions.[35]

As a side note, the position presented in jurisprudence should also be mentioned. The European Court of Human Rights has recognised its lack of competence to define religion for the purposes of assessing freedom of conscience and confession, as set out in Article 9 of the ECHR.[36]

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[32] Kroczek, P. *Prawo wewnętrzne związków wyznaniowych w perspektywie organów władzy publicznej: Klauzule generalne*, Kraków 2017, pp. 17–18.

[33] See the terms *konfesja and denominacja* in: Vorgrimler, H. *Nowy leksykon teologiczny*, translated and edited by T. Mieszkowski and P. Pachciarek, Warszawa 2005, p. 152 and p. 62.

[34] See: Article 67 (2), Article 81 (1) and (2), and Article 95 of the Constitution of 1952; and Article 53 (7) and Article 233 (2) of the Constitution of the Republic of Poland.

[35] See: Potz, M. *Granice wolności religijnej*, Toruń, 2016, p. 70.

[36] See: Decision of the ECHR in Kimlya and Others v. Russia, no. 76836/01 and 32782/03, decision of 1.10.2009; HUDOC: http://hudoc. Echr.coe.int/sites/eng/pages/search.aspx?i=001–119363 [20.10.2016].

The Supreme Court of the United States advocates for a broad definition of religion as a phenomenon based on a belief in God and other beliefs and value systems – in this sense, value systems based, among others, on secular humanism have been recognised as religion.[37]

The etymology of the term "conscience" is derived from the Latin term *conscientia* and the Greek term *syneidiesis*. The genesis of the term "conscience", derived on the etymological level, leads to the conclusion that the word comes from the Latin *cum alio scientia*, meaning "with separate knowledge".[38]

In the literature, there are many proposals for the definition of conscience. However, according to analysis of the publications and what is raised in the literature of the subject, these definitions are diverse and often contradictory.[39] The number and variety of proposed concepts indicate the level of difficulty associated with an exhaustive description of the essence of conscience.[40] In modern literature, there are several models of defining conscience. One relatively often invoked model of describing conscience constitutes an evolution of the concept of Saint Thomas Aquinas. In this view, described as an objectivist model, conscience is seen as an act of reason, a judgement made by the mind on the basis of the objective norms of natural law.[41]

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[37] See: U.S. Supreme Court Decision in Torcaso v. Watkins, 367 U.S. 488 – content of the judgements at https://supreme.justia.com/cases/federal/us/367/488/case.html; and United States v. Seeger, 380 U.S. 163 – content of the judgements at https://supreme.justia.com/cases/federal/us/380/163/case.html [20.10.2016].

[38] Jastrzębski, M. *Wolność myśli*, p. 233.

[39] Gałecki, S. *Spór o sumienie. Źródła i konsekwencje etyki Johna Henry'ego Newmana*, Kraków 2012, p. 10.

[40] Schockenhoff, E. *Jaką pewność daje nam sumienie? Orientacja etyczna*, Opole 2006, pp. 9–12; Kowalski, J. "*Współczesna interpretacja sumienia*" in *Sumienie wyznacznikiem ludzkiej moralności w nauce św. Alfonsa Liguori na tle współczesnych tendencji teologicznych*, edited by W. Bołoz, Warszawa 1997, pp. 65–83.

[41] As an example, one can point to definitions according to which: "Conscience is, in light of a general judgement or norm, a formed judgement about the moral good/evil of a person's own concrete act, the execution of which becomes a source of inner approval or a sense of guilt for them, a sense of being a good or bad person." – Ślipko, T. *Zarys etyki ogólnej*, Kraków 2002, p. 371 – or "The voice of conscience, the cognitive state described here and conditioning a decision, is the closest guide and the norm of moral conduct. The voice of conscience constitutes a concrete knowledge of a practical judgement on moral good, which must be realised in the perspective of the ultimate objective, the good of man, combined with theoretical judgements, which are the system of human understanding of the world of men and things." – Krąpiec, M.A. "*Etyka jako teoria moralnego działania*" in *Powszechna encyklopedia filozofii, T. 3*, edited by A. Maryniarczyk, Lublin 2002, p. 287.

The objectivist model is critiqued from the position of a model described as autonomising and anti-metaphysical.[42] This concept is analogous to the model of formal conscience presented in the philosophy of Immanuel Kant.

A different definition of conscience is provided by the existentialist model, according to which conscience is the result of mystical awareness.[43] Models assuming the religious basis of conscience, and its origination from the Supreme being, are similar to the existentialist model.[44]

Elements of existentialist definitions and religious definitions are combined in the dialogical model.[45] It is also necessary to mention very pop-

[42] In accordance with this concept, conscience is defined as "a kind of mechanism that harmonises our action with the code of moral norms that we recognise as valid. The reliability of this mechanism is based on innate human dispositions: The ability to think, emotional sensitivity, the survival instinct. As a kind of automaton embedded in human nature, conscience regulates relations between people according to a system of norms recognised as beneficial to society, the species, or the individual." – Górnicka-Kalinowska, J. *Idea sumienia w filozofii moralnej*, Warszawa 1991, p. 277. Similar accents can be found in concepts combining ethical issues with biology: "[...] an individual acts in accordance with conscience if he diligently seeks to determine what is right and intends to do so, and at the same time puts in the appropriate effort and is adequately motivated to do so. [...] Conscience has an individual nature [...] and it implies self-reflection, as a result of which we compare our conduct with the professed models. [...] Contrary to many traditional authorities, conscience is formal in nature and is empty in itself. A conscience that draws its own content out of itself, provokes sacrifices, and defies external justification becomes a blind and dangerous force." – Beauchamp, T. L. and Childress, J. F. *Zasady etyki medycznej*, Warszawa 1996, p. 494–497.

[43] "Conscience, as a firm protest of the heart against moral evil, is the most attentive 'advisor', always worthy of trust and obedience, and thus a 'guardian' of the freedom of the human individual who, in a concrete situation of freedom, projects his own being in the face of values." – Siemianowski, A. *Sumienie*, Bydgoszcz 1997, p. 98.

[44] "Conscience is that depth of human nature in which it comes into contact with God and where it receives a message from God and hears the voice of God. [...] Conscience is an organ of perception of religious revelation, justice, goodness, overall truth. It is the totality of man's spiritual nature, its core or heart in the ontological, not psychological, sense of the word. Conscience is also the source of original, primal judgements about life and the world. Moreover, conscience judges even God or makes judgements about God, because it is the organ of perceiving God. [...] Conscience is the memory of who man is, to what world he belongs according to his idea, by whom he was created, how he was created, and for what purpose he was created. Conscience is a spiritual, supernatural principle in man." – Bierdiajew, M. *O przeznaczeniu człowieka. Zarys etyki paradoksalnej*, Kęty 2006, p. 172. The emphasis on the origination of conscience from a deity is evident in the following definition: "Conscience means, simply speaking, man's recognition of himself and others, as the creation of God and the respect of him as the Creator." – Ratzinger, J. "*Sumienie w dziejach*" in *Kościół – Ekumenizm – Polityka*, edited by L. Balter [et al.], Poznań – Warszawa 1990, p. 215 (*Kolekcja Communio*, vol. 5).

[45] "Conscience is the constant disposition of the rational and free person, its function is expressed not only in the awareness and free acceptance of God's call, but also in a fully free and rational response to that call. [...] It is therefore a place of special encounter and dialogue between two parties: the absolute person of God and the created person of man. In this dialogue, God does not impose absolute obedience on man; on the contrary, he expects from him a fully free

ular definitions that link conscience to human dignity. These definitions are derived from personalist ethics.[46]

In the literature, we encounter a definition – one which is very valuable from the point of view of issues related to the freedom of conscience and confession of minors – according to which conscience is a social construct, created during the development of a given community, and which is a kind of model or matrix that can be "imprinted" onto children in order to ensure their acceptance of the moral norms prevailing within the given human group.[47] Since conscience is a product of society, it can be shaped by appropriate conduct towards the subject of education. The possibility of forming conscience through education raises the fear that the freedom of the subject of conscience may be violated if his inner convictions do not conform to the model desired by the community.

The notion of freedom of conscience is a product of modern times. In ancient and medieval philosophy, it is difficult to find more than mere individual indications of concepts aimed at the recognition of freedom of opinion.

In the literature, we find various classifications of the notion of "conscience".[48]

response." – Rosik, S. "*Sumienie między wolnością a prawdą"* in *Człowiek – sumienie – wartość. Materiały z sympozjum KUL, 2–3 XII 1996 r.*, edited by J. Nagórny and A. Derdziuk, Lublin 1997, p. 104.

[46] "Conscience belongs to the essence of the person. For it is the mental capacity to know the good, that is, to love the good, and thus constitutes the centre of the person's life." – Bajda, J. "*Sumienie i osoba a autorytet Magisterium"* in *Jan Paweł II, Veritatis splendor. Tekst i komentarze*, edited by A. Szostek, Lublin 1995, pp. 197–205; and "Conscience, as the awareness of what man has done and therefore a witness to the truth about him, is at the same time the guardian of his dignity: the dignity of the human person as truly, rationally free, capable of self-determination. It is also the guardian of freedom, insofar as it does not allow the subject to forget the act of its violation, and indicates the only way to regain personal freedom and dignity: by returning to obedience." – Szostek, A. *Wokół godności, prawdy i miłości. Rozważania etyczne*, Lublin 1995, p. 166; or "To speak about conscience is to speak about human dignity [...]" – Spaemann, R. *Podstawowe pojęcia moralne*, Lublin 2000, p. 64–65.

[47] See: Schockenhoff, E. *Jaką pewność daje nam sumienie?*, p. 123.

[48] Here we can mention the classification of conscience according to the following approaches: biological (Darwin, Hertwig), sociological (Comte, Durkheim, Bergson), psychological (Freud), ethnographic-religious, ethical-philosophical, and theological – see: Greniuk, F. "*Dzieje kształtowania się koncepcji sumienia*" in *Człowiek – sumienie – wartość*, p. 75. A different division points to a psychological interpretation (Freud and successors), sociological interpretation (Durkheim), ethical interpretation, and religious interpretation – see: Witek, S. "*Problem sumienia. Opinie współczesne w konfrontacji z Vaticanum II*", Ateneum Kapłańskie, vol. 387, no. 81, 1973, pp. 242–246. Rationalist and voluntaristic concepts, still rooted in medieval philosophy, are also mentioned – Hintz, M. *Chrześcijańskie sumienie. Rozważania o etyce ewangelickiej*, Katowice 2006, s. 156; as well as concepts that are their modification and combine in one

The evolution of the understanding of conscience began in ancient Greece. As the literature indicates, already the first ponderings on the ability to assess the conformity of action with a moral model were pursued by Plato (427–347 BC) and Aristotle (384–322 BC).[49]

Proper considerations of conscience were taken up by the philosophers of the Stoic School.[50] In the works of Cicero (106–46 BC) and Seneca (4 BC – 65 AD), one can find an attempt to link conscience with a natural law (*rex innata*) derived from a higher power. In Seneca's work, conscience is an expression of the awareness of good and evil.[51] The Stoics emphasised the self-control function of conscience as a factor that is to dissuade people from doing objectively evil things.[52]

The first Christian philosopher to consider the question of conscience was Origen (185–254 AD). His concept of conscience, based on the doctrine of conscience of St. Paul, combines Christian elements with elements that are derived from ancient philosophy. He defines conscience as the educator of the soul.[53] A laconic but particularly important contribution to the understanding of conscience must be attributed to St. Jerome (347–420 AD). In his reflections, he introduces the term *syneideisis*, which is identified with conscience.[54] Jerome defines conscience as the inner source of judgements about good and evil originating from God.[55]

In the Middle Ages, there appears within Christian philosophy a division of conscience into two elements – *synderesis* and *syneidesis*. It is visible

group the intellectual (the Thomistic trend) and attenuated intellectual (the Franciscan school) models, and, in another group, concepts derived from phenomenological philosophy treating conscience as a part of the emotional and volitional sphere – see: Olejnik, S. *Wartościowanie moralne*, Warszawa 1988, p. 93–94. Moreover, we can distinguish between autonomous concepts (the autonomous-subjectivist concept promoted by existentialism and the autonomous-objective concept derived from phenomenological ethics) and axiological concepts derived from Christian ethics – see: Ślipko, T. *Zarys etyki ogólnej*, p. 365.

[49] Schockenhoff, E. *Jaką pewność daje nam sumienie?*, p. 60; as well as: Reale, G. *Historia filozofii starożytnej, T. 2*, Lublin 2001, pp. 325–326. See also: Gałkowski, J. W. *"Wolność moralna w ujęciu Sokratesa i Arystotelesa"*, Roczniki Filozoficzne, vol. 21, 1973, pp. 13–30.

[50] Kowalski, J. *Współczesna interpretacja sumienia*, p. 67.

[51] Reale, G. *Historia filozofii starożytnej, T. 4*, Lublin 2001, p. 111.

[52] "The scourge against vices is an unclean conscience, and its greatest torment is that it is afflicted and tormented with constant restlessness." – Seneca, *Listy moralne do Lucjusza (Moral Letters to Lucilius)*, translated by W. Kornatowski, Warszawa 1961, p. 512.

[53] In particular, see: Orygenes, *Komentarz do Listu św. Pawła do Rzymian, T. 1*, translated by S. Kalinkowski, Warszawa 1994, p. 106–107.

[54] Szewczuk, W. *Sumienie*, Warszawa 1988, p. 28.

[55] See: Greniuk, F. *Dzieje kształtowania się koncepcji sumienia*, p. 80.

in concepts derived from the Dominican school.[56] Such a two-element system of conscience is visible in the reflections of the main representatives of the rationalist movement: Albert the Great (1200–1280) and Thomas Aquinas (1225–1274).[57] Generally speaking, conscience is, according to St. Thomas, the innate ability to judge a concrete action, based on the confrontation of an act with general knowledge resulting from pre-conscience.[58] In the concepts of St. Thomas, conscience is an element of a system composed of natural law, pre-conscience, and proper conscience.[59] There is no room here for detailed reflections presenting the structure and functioning of conscience in the concepts of St. Thomas. However, due to the topic of the present dissertation, one should pay attention to Aquinas' postulate that obedience to an erroneous conscience is necessary,[60] which – some

[56] "Synderesis (habitual conscience) is the innate faculty of practical reason, enabling the cognitive power of man to know the fundamental moral principles. It is an innate ability, because every man possesses it, and from it, without any additional reasoning, he learns basic moral principles, such as: good is to be done and evil is to be avoided; love your neighbour as yourself; don't do unto others what you don't want others to do unto you. In this tradition, the actual conscience is understood as the conclusion of practical reasoning (syllogism), the result of which is the voice of conscience." – ibid, p. 82.

[57] On the concept of conscience of Thomas Aquinas, see: Krokos, J. "*Punkt wyjścia Tomaszowej nauki o sumieniu"* in *Thomas Aquinas. Dysputy problemowe o synderezie, o sumieniu*, edited by A. Maryniarczyk, pp. 175–185; A. Andrzejuk, "*Synderezа i sumienie w tekstach św. Tomasza z Akwinu*" in ibidem, pp. 111–128; Swieżawski, S. *Św. Tomasz na nowo odczytany*, Poznań 2002, pp. 168–170; Szewczuk, W. *Sumienie*, pp. 28–29; Maryniarczyk, A. "*Czym jest synderezа? Analiza pierwszego artykułu kwestii «De synderesi»"* in *Thomas Aquinas, Dysputy problemowe*, pp. 93–101; Copleston, F. *Historia filozofii, T. 2*, translated by S. Zalewski, Warszawa 2004, pp. 367–369; Andrzejuk, A. *Filozofia moralna w tekstach Tomasza z Akwinu*, Warszawa 1999, pp. 53–56; and Schockenhoff, E. *Jaką pewność daje nam sumienie?*, pp. 88–89.

[58] This understanding of conscience can be derived from the statement that "Conscience is in a sense a command of reason, for it constitutes a certain application of knowledge to an action." – Thomas Aquinas, *Suma teologiczna, T. 9*, translated by F.W. Bednarski, London 1985, p. 325; and the statement that "The name 'conscience' is used in accordance with both ways of applying it. In accordance with the application of knowledge to action as a guide, we say that conscience inspires or introduces or obliges. But in accordance with the application of knowledge to action on the basis of an evaluation of actions that have already taken place, we say that conscience accuses or torments when it is found that the action taken is incompatible with the knowledge according to which it is judged. And we say that conscience defends or justifies when it is shown that the action carried out was in accordance with the form of knowledge." – idem, *Kwestie dyskutowane o prawdzie, T. 2*, Warszawa 1998, p. 56.

[59] "Thus, it is clear how synderesis, the natural law, and the conscience differ from each other. Natural law is the name of the universal rules of law, synderesis means having them, and conscience means applying this natural law in doing something according to a kind of inference." – Thomas Aquinas, "*Scriptum super Sententiis"* in *Thomas Aquinas. Opuscula*, edited by A. Andrzejuk and M. Zembrzuski, Warszawa 2011, II, d. 24, q. 2, a. 4 (*Opera Philosophorum Medii Aevi*, vol. 9, fasc. 2).

[60] "This means that anyone who acts against his own conscience sins." – Thomas Aquinas, "*Quaestiones de quodlibet"* in *Thomas Aquinas. Opuscula*, III, q. 12, a. 2: "From this it is seen that

scholars conclude – leads to the recognition of the need to accept freedom of conscience and confession.[61] Thomas Aquinas also accepts the view that forming a conscience is possible.

Of importance from the point of view of rationalistic concepts of conscience are the considerations of I. Kant (1724–1804), for whom, to generalise as much as possible (since it should be remembered that the concept and definitions of conscience in Kant's reflections evolved over time), conscience is a moral self-awareness assessing the subject in light of moral norms.[62] It is, therefore, a factor which warns against a morally evil act ("a warning conscience"), and if the act has already been committed, it becomes a factor which weighs the good and the bad elements in the assessment of the act.

Rationalist concepts prevailed from antiquity until the end of the Middle Ages. Briefly put, conscience in these concepts was understood as *conscientia* – "co-knowledge" or "co-consciousness". Conscience was therefore a part of reason.

Another model of understanding conscience are voluntaristic concepts. In the literature, although not without the respective critical voices, there are attempts to ascribe the beginnings of these voluntaristic concepts to the philosophy of Socrates (ca. 470–399 BC).[63] The conscience is an "inner voice"[64] – *daimonion*. What is important is that it manifests itself

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something, permitted in itself, becomes unlawful for one who does it against his conscience, even though his conscience is false. [...] To this we reply that a false conscience also binds in matters which are themselves evil. For conscience binds to such an extent, as the extent to which from the fact that one acts contrary to conscience it flows that he has the will to commit sin. Thus, if one thought that not to commit fornication was a mortal sin, and if one decided not to commit it and thereby decided to commit mortal sin, one would thus commit a mortal sin. [...] Thus, even in matters which are themselves wicked, a false conscience binds." – idem, *Wykład Listu do Rzymian* (*Super epistolam S. Pauli Apostoli ad Romanos*), translated by J. Salij, Poznań 1987, p. 218–219.

61 Among others, J. Crell in *O wolności sumienia*, Warszawa 1957, p. 46–49.

62 "The consciousness of the internal court in man (the court before which his thoughts accuse and justify one another") is conscience. Every human being has a conscience and feels himself watched by an inner judge who threatens him and arouses respect in him in general (respect combined with fear). This power that upholds in him the applicable norms is not something that he (by his own choice) produces, but belongs to his essence. [...] He [the human] can, at most, in his extreme wickedness, lead to a situation where he is no longer bothered by that voice; but he cannot make himself not hear it." – Kant, I. *Metafizyczne podstawy nauki o cnocie*, translated by W. Galewicz, Kęty 2005, p. 110.

63 Siemianowski, A. *Sumienie*, p. 55.

64 "This ordinary, prophetic voice of mine (the voice of the spirit) has always, before, and very often, spoken to me, and opposed me even in small matters whenever I had to do something wrong. Well, and now it happened to me, you see for yourself, here, what many may consider, and really do consider, to be the ultimate misfortune. Meanwhile, I, even when I left the house

in the resistance of conscience to the will to perform some intentional act. Therefore, it is not a commanding voice, but only a forbidding one. The literature also points to the context in which Socrates revealed his thoughts, i.e. this being the first recorded example of a conflict of beliefs between an individual and a system of values that is universally accepted and protected by the power of the state. In such a situation of conflict, it is absolutely necessary, according to Socrates, to act in accordance with what the conscience says, regardless of the expectations of the authorities, orders imposed by the religious system, or coercion on the part of other people.[65]

In the case of Christian philosophers, we should point to the concepts developed by St. Augustine of Hippo (354–430 AD). Augustine points to the existence of a natural law that is innate, present in every human being. Based on this innate system, man avoids doing evil things. According to Augustine, conscience is both the voice of God and the place where man can meet God.[66] Through conscience, God can show man the right choices. To generalise, in St. Augustine's philosophy "conscience has the function of moral evaluation and of determining moral good and evil".[67] One of the philosophers continuing the voluntaristic movement visible in St. Augustine's works was Peter Abelard (1079–1142), whose concepts were regarded as extremely voluntaristic.[68] Ab-

in the morning, was not opposed by this sign of God, neither when I went up here to the court, nor during my speech anywhere, when I was to say anything. And yet in other speeches, it happened to me sometimes, I pause in the middle of a word. Meanwhile, nowhere in this whole story, neither in my actions nor in speech, does anything resist me. What, I think, would be the cause? I will tell you: it seems that this adventure is just a good thing for me; it is impossible for us who assume that death is a bad thing to be right. I have a great testimony to that. Because it cannot be that my usual sign would not oppose me if I were not to do something good." – Platon, *Obrona Sokratesa*, https://wolnelektury.pl/media/book/pdf/obrona-sokratesa.pdf [14.04.2015], p. 580.

[65] For more on the philosophy of Socrates, see: Guthrie, W. K. C. *Sokrates*, translated by K. Łapiński and S. Żuławski, Warszawa 2000; Krońska, I. *Sokrates*, Warszawa 1983; and Kraut, R. "*Sokrates, polityka i religia*", Teologia Polityczna, no 2, 2004–2005, pp. 198–207.

[66] "Let him look at his own conscience, and there he will see God. If love does not live there, God does not live there, and if love lives there, God also lives there. Perhaps she desires to see him sitting in heaven; let him have love, and then he dwells in him as in heaven." – Augustine of Hippo, *Objaśnienia Psalmów* (*Enarrationes in Psalmos*), translated by J. Sulowski, Warszawa 1986, Ps 124–150.

[67] Greniuk, F. *Dzieje kształtowania się koncepcji sumienia*, p. 80.

[68] Schockenhoff, E. *Jaką pewność daje nam sumienie?*, p. 93. Regarding Abelard's views and their assessment, see: Maneli, M. *Historia doktryn polityczno-prawnych. Średniowiecze*, Warszawa 1959, pp. 21–27.

elard's theory places particular emphasis on man's inner experience, the realm of intention which determines whether action (inherently indifferent in terms of values) is good or bad. Abelard also assumes the possibility of shaping conscience, for he does not exclude that conscience can be distorted.[69]

A different concept of conscience, although still falling within the voluntary trend, was the one presented by Peter Lombard (1095–1159). The fundamental difference was in the recognition of the existence of a natural law containing norms of a higher order than the dictates of conscience.[70] Voluntaristic concepts in Christian philosophy were developed by the so-called Franciscan school (founded in the thirteenth century). In the dissertations of the main representatives of this school (St. Bonaventure, Henry of Ghent, John Duns Scotus), there are visible influences of the thinking of St. Augustine.[71] In the aforementioned understanding, conscience was a tendency towards good.[72] Martin Luther (1483–1546) also accepted to a large extent the understanding of conscience as presented by the voluntaristic trend.[73] Like St. Augustine, Luther emphasises the understanding of conscience as the voice of God, having a superior value over other norms.[74] Such an understanding of conscience

[69] "Some people think that a good or right intention is when someone is convinced that he is doing good and what he is doing pleases God, just as those who persecuted the martyrs did [...] But since they are deluded in their zeal and the pursuit of the spirit, their intention and the insincere eye of their heart are wrong, so that they cannot see clearly, that is, so that they can keep themselves from error. When, therefore, Christ distinguished works according to right and wrong intention, He rightly called the eye of the soul, that is, the intention, 'sincere' and, as it were, cleansed of filth, so that it might see clearly, but in the opposite sense He called it 'dark'." – Abelard, P. *Rozprawy: Etyka, czyli poznaj samego siebie. Rozmowa pomiędzy filozofem, Żydem i chrześcijaninem. Tak i nie. Wykład Heksameronu. Rozprawa o pojęciach ogólnych*, Warszawa 1969, p. 204–205.

[70] Schockenhoff, E. *Jaką pewność daje nam sumienie?*, p. 94.

[71] More broadly: Hintz, M. *Chrześcijańskie sumienie*, p. 156 et seq; Saint Bonaventure of Bagnoregio, "*Droga duszy do Boga*" in *Mistyka w życiu człowieka*, edited by W. Słomka, Lublin 1980, pp. 132–145. See: Gilson, E. *Duch filozofii średniowiecznej*, Warszawa 1958, p. 321; Veuthey, L. "*Filozofia chrześcijańska św. Bonawentury*" in *Z filozofii św. Augustyna i św. Bonawentury*, edited by B. Bejze, Warszawa 1980, p. 385–387 (*Opera Philosophorum Medii Aevi*, vol. 3); and Gogacz, M. *Problem istnienia Boga u Anzelma z Canterbury i problem prawdy u Henryka z Gandawy*, Lublin 1961, p. 73–97.

[72] See: Greniuk, F. *Dzieje kształtowania się koncepcji sumienia*, p. 83.

[73] Valadier, P. *Pochwała sumienia*, Warszawa 1997, p. 30.

[74] "I do not believe the Pope and the Councils alone, for it is certain that they have often been wrong and contradicted themselves. Therefore, I cannot and do not want to revoke anything, because acting against conscience is neither safe nor fair." – Küng, H. *Nieomylny?*, Kraków 1995, p. 182.

has given rise to the development of philosophical foundations which would undermine the teaching previously proclaimed by the Church.

One of the continuators of the voluntaristic trend was Georg Hegel (1770–1831), who treated conscience as an element of morality, defining the quality of good or evil of a given act.[75]

The third group of concepts of conscience are theories representing the emotivist trend. These concepts treat conscience as a manifestation of the emotional and affective sphere of man.[76] Blaise Pascal (1623–1662) is considered the precursor of the emotivist movement. The essence of his perception of conscience lies in the assignment of primacy to the sphere of inner feelings that are separate from reason and which, coming from God, allow us to evaluate the properties of behaviour.[77] Jean Rousseau (1712–1778) is another representative of the emotivist movement. According to Rousseau, conscience is an innate trait[78] independent of reason, operating on the basis of emotions and feelings rather than knowledge.[79]

The emotivistic concept of conscience was in later times developed, among others, by Johann Fichte (1762–1814) and Arthur Schopenhauer (1788–1860).[80] In general, for the authors mentioned, conscience was an

[75] "Because of the abstract nature of good, the second moment of an idea, namely the particularity in general, falls on subjectivity, which in its reflexively directed generality is in itself an absolute self-confidence, a factor which presupposes detail, a determining and decisive factor – it is conscience" and "the true conscience is the basis which expresses itself in wanting what is good in itself and for itself. Conscience also has, therefore, fixed principles, and these are, for it, the objective definitions and duties. Separated from this content, from the truth, conscience is only the formal side of the activity of the will, which, as such, has no specific content. An objective system of such principles and obligations and a connection with this system of subjective knowledge only takes place on the ethical standpoint. Here, in the formal position of morality, without this objective content, conscience is an infinite, formal self-confidence, which is precisely for this reason the certainty of this subject." – G.W.F. Hegel, *Zasady filozofii prawa*, translated by A. Landman, Warszawa 1969, pp. 139–140.

[76] See: Biesaga, T. "*Sumienie"* in *Powszechna encyklopedia filozoficzna, T. 9*, Lublin 2008, p. 269.

[77] Pascal called this sphere of feeling or instinct the heart. "The heart has its reasons, which the reason does not know." – Pascal, B. *Myśli*, translated by T. Żeleński (Boy), Warszawa 1983, p. 189.

[78] "The innate principle of virtue and justice is engraved on the bottom of souls, and according to it, contrary to our own beliefs, we often judge our actions and those of our neighbours as bad and good. I call this principle conscience." – Rousseau, J. J. *Emil, czyli o wychowaniu*, translated by W. Husarski, Kraków 1955, p. 121.

[79] "The activity of conscience is manifested not in judgements, but in feelings. Although all our notions come from outside, their emotional evaluation lies within ourselves. And through it we know what is good and what is bad in ourselves and in objects, whom we should respect, and whom we should avoid." – ibid, p. 122.

[80] Cf. Schopenhauer, A. *O podstawie moralności*, translated by Z. Bassakówna, Kraków 2015.

inner feeling arising from the synthesis of knowledge, fear of the opinion and assessment of both other people and a higher being, and the influence of habits and superstitions.[81]

To obtain a full picture, attention should also be paid to the issue of conscience appearing in the Christian tradition and in the teaching of the Church.

In the Old Testament, the term "conscience" was not used directly. The term for what corresponds to conscience is "heart",[82] which is the carrier of the law coming from God.[83] In the New Testament, the term "conscience" is seen mainly in the theology of St. Paul.[84] In St. Paul's writings, conscience is an independent tribunal judging human actions and an authoritative awareness of duty.[85] Conscience is innate and is linked to the essence of humanity. It should be highlighted that according to St. Paul, conscience is something individual and cannot be imposed on another person.[86] Conscience is the place where God communicates His will to a concrete person in a particular situation. This emphasises the individual character of conscience. The question of the autonomy of conscience is also emphasised by the tradition of St. Peter,[87] where the will of God expressed in conscience is placed above the laws made by men.

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[81] "Some people see the existence of conscience as an argument against a sceptical view. But the natural origin of conscience is also doubtful. In any case, there is also the so-called *conscientia spuria*, which is often taken for the former. The remorse and anxiety that many feel after the act is often nothing but fear of what may happen to them. Often, a failure to respect some external rules, arbitrary or even senseless, becomes the cause of internal torments, quite similar to remorse. [...] Religious men of any faith, under the term conscience understand a set of dogmas and precepts of their religion, as well as the examination of themselves as to their exercise; in this sense the following expressions are used: oppression of conscience, freedom of conscience. Theologians, scholastics, and casuists of the Middle Ages took them in the same sense. The individual's conscience was all he knew about the laws and regulations of the Church, combined with his determination to carry them out. Accordingly, there was a conscience that doubted, judged, erred, etc. To what extent was the vague notion of conscience, how varied was the content attributed to it, and what unsteadiness various writers showed in this respect, we can see from Staüdlin's work *History of the Theory of Conscience*. Facts of this kind do not at all support the reality of conscience; indeed, they still contribute to the question of whether there really is an innate conscience." – ibid, p. 80.

[82] See: Schockenhoff, E. *Jaką pewność daje nam sumienie?*, p. 61 et seq.

[83] "I will put my law in the depths of their being and write it on their hearts." – Jeremiah 31:33.

[84] Poplatek, W. *Istota sumienia według Pisma Świętego*, Lublin 1961, pp. 83–126.

[85] More in: Schockenhoff, E. *Jaką pewność daje nam sumienie?*, pp. 67–70.

[86] Romans 14:22–23.

[87] Acts 5:29, "We must obey God rather than men."; similarly: 1 Peter 2:19.

In the Middle Ages, after reaching the status of the ruling religion, the Catholic Church saw no need to discuss freedom of conscience.[88] The Church emphasised the primacy of conscience over any other authority.[89]

During the First Vatican Council (1869–1870), the Church did not speak about conscience and its role in moral and religious life.

The turning point was the Second Vatican Council (1962–1965), particularly the positions contained in the *Lumen gentium* constitution adopted on 21 November 1964 (especially nos. 16 and 36),[90] the *Gravissimum Educationis* declaration adopted on 7 December 1965 (no. 16),[91] the *Gaudium et spes* constitution (No. 1, 31, 41), and the *Dignitatis Humanae* declaration (n. 1, 3, 8, 14). Of the post-conciliar popes, John Paul II in particular made many reflections on conscience and freedom of conscience.[92] The *Dominium et Vivificantem* encyclical letter (18 V 1986),[93] and especially the *Veritatis splendor* encyclical letter (6 VIII 1993) are particularly worthy of mention in this regard.[94] Benedict XVI also raised the issue of conscience and its freedom several times. The *Deus Caritas*

[88] "The successful constellation which placed the papacy and the spiritual authority of the Church on the side of those who fought for the right to freedom of conscience was not to be repeated for a long time in the following centuries. The medieval Church, in relation to apostates and heretics, did not tolerate any reference to individual consciousness of the truth […]. In essence, the medieval social order does not recognise religious or political freedom of conscience; the monopoly of truth, administered by the Church, by recourse to secular instruments, rendered any attempt to appeal to one's conscience in matters of faith a matter of life and death." – Schockenhoff, E. *Jaką pewność daje nam sumienie?*, p. 13.

[89] As a contradiction of God's will, acting against conscience was to lead to hell. "Since 'everything that is not of faith is sin' (*omne quod non est ex fide, peccatum est*), by the decision of the Council we decide that no provision – neither canonical nor civil – is valid without good faith." – "*Sobór Laterański IV* (1215)" in *Dokumenty soborów powszechnych*, edited by A. Baron and H. Pietras, Kraków 2004, p. 279.

[90] Vatican Council II, Dogmatic Constitution on the Church *Lumen Gentium*, AAS, 57(1965), pp. 5–75, http://www.vatican.va/archive/aas/documents/AAS-57–1965-ocr.pdf [12.10.2016].

[91] Vatican Council II, Declaration on Christian Education *Gravissimum Educationis*, AAS, 58(1966), pp. 728–739, http://www.vatican.va/archive/aas/documents/AAS-58–1966-ocr.pdf [10.09.2016].

[92] See: Wojewoda, M. "*Problem sumienia w myśli antropologiczno-etycznej Karola Wojtyły"* in *O antropologii Jana Pawła II*, edited by M. Grabowski, Toruń 2004, pp. 217–240; and Kaczyński, E. *Prawda – dobro – sumienie*, Warszawa 2007, pp. 115 et seq.

[93] John Paul II, Encyclical *Dominum et Vivificantem*, AAS, 78(1986), pp. 809–900, http://www.vatican.va/archive/aas/documents/AAS-78–1986-ocr.pdf [17.09.2016]; see: Zatorski, W. *Dar sumienia*, Kraków 2006, p. 13–23.

[94] John Paul II, Encyclical *Veritatis Splendor*, AAS, 85(1993), pp. 1133–1228, http://www.vatican.va/archive/ aas/documents/AAS-85–1993-ocr.pdf [20.08.2016].

est encyclical (25 XII 2005)[95] and the *Spe salvi* encyclical (30 XI 2007) should be mentioned here.[96]

The issue of conscience is also raised in *the Catechism of the Catholic Church* of 1992[97] and the *Compendium of the Catechism of the Catholic Church*.[98] The Catechism (in nos. 1776–1802) discusses the question of conscience in a historical and philosophical context, defines conscience as a "judgement of reason", and also defines the admissibility of and conditions for the formation of conscience.

Based on the documents mentioned, it can be assumed that the current concept of conscience in the Church imitates the concepts derived from the Dominican school. Conscience is therefore judgement of an act, a verification of the act in light of natural law. It does not constitute this law itself – it merely compares the act with the "matrix" of divine law.[99]

2. The concept of "freedom of conscience and confession" and the concept of "freedom of conscience and religion"

As indicated in the literature of religious law, analysis of the terms "freedom of conscience" and "freedom of confession" led to the formation of two opposing views as to the scope of the meaning of these notions.

The first view identifies freedom of conscience with freedom of confession and does not note any significant differences between these terms. The second one distinguishes two components in the notion of freedom of conscience and confession, which are justified by two forms of manifestation of man's religious-philosophical activity. The first is the inner

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[95] Benedict XVI, Encyclical *Deus Caritas Est*, http://www.opoka.org.pl/biblioteka/W/WP/benedykt_xvi/encykliki/deus_caritas_25122005.html. [20.03.2015].

[96] Idem, Encyclical *Spe Salvi*, 30 XI 2007, AAS, 99(2007), pp. 985–1027, http://www.vatican.va/archive/aas/documents/2007/dicembre%202007.pdf [28.10.2016].

[97] *Katechizm Kościoła katolickiego*, Poznań 1994.

[98] *Kompendium Katechizmu Kościoła katolickiego*, Kielce 2005.

[99] "The function of conscience, then, is to determine the true good in actions. The freedom guaranteed to conscience here always implies dependence on truth. The maturity and responsibility of judgements of conscience will not be measured by the attempts to liberate it from objective truth, which ultimately leads to the autonomy of its decisions, but by an intense search for truth and being guided by it in action. The judgement of conscience does not establish a law, but merely attests to the authority of natural law and practical reason in relation to the objective good. Conscience cannot be regarded as an autonomous and exclusive source of determining what is good and what is bad. Conscience does not create truth and moral good." – Góralczyk, P. "*Sumienie a prawda i wolność*", Communio, 20, no. 1, 2000, p. 103.

activity associated with shaping the thoughts and beliefs of an individual in matters of religion. The second is the external activity of revealing these beliefs and acting in accordance with their orders.[100] Such a bi-faceted way of perceiving the meaning of the notion of freedom of conscience and confession is reflected in the wording of contemporary acts of international law.[101]

Freedom of conscience includes the individual's right to choose, shape, and change their world view. It should be noted that these rights are not only the result of the influence of factors related to religion. The increasing secularisation of life in Europe, a process which has been ongoing in Europe since the Age of Enlightenment, means that non-religious or atheistic factors have greater importance in shaping world views and beliefs.

Freedom of confession is the right to express and manifest one's views and beliefs in religious matters individually and collectively, privately and publicly, and to act in accordance with one's beliefs. The scope of freedom of confession is understood by some researchers in a restrictive or extensive manner. According to the view that advocates a narrow understanding of the notion of freedom of confession, this term covers only the expression and manifestation of religious views. Often, the term "freedom of religion" is indicated as a more precise description of such a way of understanding the scope of freedom. On the other hand, according to the view advocating an extensive interpretation of the notion of freedom of confession, this term includes the freedom to manifest not only religious beliefs, but also non-religious or atheistic views.

This dispute – whether the notion of freedom of conscience and confession, or of freedom of conscience and religion, is more precise – is visible in the Polish doctrine of law.[102] The reason for discussion became the wording given to Article 53 of the Constitution of 2 April 1997,[103] which used the term "freedom of religion", while in the prevailing majority of acts of international law, the term "freedom of confession" was used. The use

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[100] Szymanek, J. "*Prawna regulacja wolności religijnej*", Studia Prawnicze, no. 2, 2006, p. 5 et seq.

[101] Pietrzak, M. *Prawo wyznaniowe*, p. 21.

[102] Cf. Szymanek, J. "*Wolność sumienia i wyznania w Konstytucji RP*", Przegląd Sejmowy, no. 2(73), 2006, pp. 49–54, also see: Pietrzak, M. *Demokratyczne świeckie państwo prawne*, Warszawa 2000, pp. 77; *Prawo wyznaniowe*, edited by H. Misztal, Lublin 2003, p. 211; Skrzydło, W. *Konstytucja Rzeczypospolitej. Komentarz*, Kraków 2000, p. 53; and Pietrzak, M. *Stosunki państwo – Kościół w nowej Konstytucji*, PiP, 1997, vol. 11–12, p. 184.

[103] Journal of Laws of 1997, no. 78, item 483.

of this term was a departure from the tradition of Polish constitutionalism, because not only in the wording of Article 111 of the 1921 March Constitution,[104] which remained in force in accordance with the provisions of the April Constitution [of 1935], but also in the Constitution of the Polish People's Republic of 1952,[105] as well as in the literature on the subject, the notion of freedom of conscience and confession is generally accepted. Inconsistency in the naming of this freedom is also observed in individual provisions of the Constitution of the Republic of Poland of 1997, because Article 48 (1) provides for freedom of conscience and confession, while Article 53 (1) guarantees freedom of conscience and religion. The assessment of this issue presented in the doctrine varies. B. Banaszak assumes that the terms used by the authors of the constitution should be assigned the same meaning, because it is clear from the wording of Article 48 (1) that it refers to the same freedom guaranteed in Article 53 (1).[106] A similar position is presented by H. Misztal.[107]

On the other hand, M. Pietrzak[108] and K. Pyclik[109] are more critical, pointing out that the inconsistency of the legislator is the result of insufficient consideration of the issue of the freedom regulated.

As is indicated in the literature, the use of the term "freedom of conscience and religion" is the result of the adoption of terminology contained in the Second Vatican Council's 1965 Declaration on Religious Freedom, *Dignitatis Humanae,* [110] or an imitation of the American Convention on Human Rights of 1969.[111]

Some of the doctrine, however, ignores this terminological problem. This approach is represented, among others, by L. Garlicki, using the term "freedom of conscience and religion, i.e. confession".[112]

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[104] Act of 17 March 1921 – Constitution of the Republic of Poland (Journal of Laws of the Republic of Poland of 1921 no. 44, item 267).

[105] Constitution of the Polish People's Republic of 22 July 1952 (Journal of Laws of 1952 no. 33, item 232 as amended).

[106] Banaszak, B. *Konstytucja RP. Komentarz*, Warszawa 2009, p. 250.

[107] *Prawo wyznaniowe*, edited by H. Misztal, p. 234.

[108] Pietrzak, M. *Stosunki*, p. 181.

[109] Pyclik, K. "*Wolność sumienia i wyznania w Rzeczypospolitej Polskiej (założenia filozoficzno-prawne)*" in *Prawa i wolności obywatelskie w Konstytucji RP*, edited by B. Banaszak and A. Preisner, Warszawa 2002.

[110] Winiarczyk-Kossakowska, M. "*Wolność sumienia i religii*", Studia Prawnicze, vol. 1, 2001, p. 27.

[111] The American Convention on Human Rights, adopted on 22 November 1969, http://libr.sejm.gov.pl/tek01/txt/inne/1969a-c0.html [13.12.2014].

[112] Garlicki, L. *Polskie prawo konstytucyjne. Zarys wykładu*, Warszawa 2005, p. 113.

It should be mentioned here that, apart from the terminological inconsistency, the doctrine has noted another issue related to the terms adopted in the Constitution.[113] As is rightly noted, in international law, there is a certain standardisation of the contents of the notion of freedom of opinion, consisting in the assumption that it includes "freedom of thought, conscience, and religion". Such a formula, which covers the widest possible aspect of human activity in the sphere of beliefs, philosophy, or morality, limits the possibility of a restrictive interpretation of freedom by limiting it only to strictly religious matters. Meanwhile, the terminology used in the Polish Constitution may lead to the assumption that the legislator only referred to freedom in the sphere of narrowly understood religion. Among other authors, M. Bielecki wrote extensively and accurately about the deliberations of representatives of the Polish doctrine regarding the content of the terms used to describe the freedom to hold and express beliefs regarding world view or confession.[114]

3. Freedom of conscience and confession as a subjective right

The concept of freedom of conscience and confession has evolved over a long period of time. Contemporary views on the understanding of such rights and their meaning are the result of hundreds of years of research and the activities of philosophers, theorists, and practitioners of law. The effects of this work were gradually incorporated into the legal systems of the emerging state organisms and, over time, supranational organisations as well. It should be borne in mind that the process of developing a contemporary concept and understanding of freedom of conscience and confession took place not only within universities or courtrooms. It was also often the case that dramatic events (e.g. wars, revolutions, etc.),

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[113] See: Łopatka, A. *Jednostka. Jej prawa człowieka*, Warszawa 2002, p. 106 et seq; and Małajny, R. "*Regulacja kwestii konfesyjnych w Konstytucji III RP (refleksje krytyczne)*" in *Ze sztandarami prawa przez świat. Księga dedykowana Profesorowi Wieńczysławowi Józefowi Wagnerowi von Igelgrund z okazji 85-lecia urodzin*, edited by R. Tokarczyk and K. Motyka, Kraków, 2002, p. 301. Additionally, see: Szymanek, J. "*Konstytucjonalizacja prawa do wolności myśli, sumienia religii i przekonań*", Studia z Prawa Wyznaniowego, 10, 2007, pp. 89–114.

[114] Bielecki, M. "*Godność dziecka jako przesłanka korzystania z wolności religijnej*" in *Dziecko. Studium interdyscyplinarne*, edited by E. Sowińska, E. Szczurko, T. Guz, and P. Marzec, Lublin 2008, p. 241 et seq.

generating millions of victims, served as the catalyst for the need to regulate certain issues. The modern understanding of freedom of confession in fact originated from wars and religious persecution. The experiences derived from these events have become a decisive factor in the emergence and gradual acceptance of the belief that there is a need to regulate the scope and content of the right of individuals to have and freely express opinions in the sphere of religious beliefs.

This increasingly widespread conviction of the need to recognise individual rights has led to the development of the concept of subjective rights. The theory of subjective rights has been the subject of a considerable number of studies and publications. In general, for the purposes of this dissertation, it should be assumed that a subjective right is a legal state enabling an individual to exercise certain rights, which entails the obligation of others to respect the sphere of a person's individual freedom.[115]

The question of whether the concept of subjective rights was recognised in the teaching of Roman law remains controversial. A fragment of Digesta Ulpiana (D.1.1.10 – *ius suum cuique tribuere*) is sometimes cited as the basis of a formula defining subjective law. This view is derived from the reflections of Hugues Doneau (Hugo Donellus; 1527–1594).[116] Donellus defined the subjective right as *facultas et potestas iure tributa*. This definition was referred to by the legal works of the Enlightenment period.[117] The foundation of the concept of subjective rights as primary and fundamental rights derived directly from the fact of "being" human was a consequence of the superiority of natural law over constituted law.[118] Attempts to derive subjective rights from freedom occurred in the considerations of nineteenth century scholars. In this regard, one should mention the reflections of Friedrich Carl von Savigny (1779–1861)

[115] Freedom of conscience and confession lies within the scope of a subjective right, understood as "the possibility or freedom of human action and behaviour", the possibility of demanding that others do not interfere with these actions. Longchamps, F. "*Z rodowodu prawa podmiotowego*", Zeszyty Naukowe Uniwersytetu Wrocławskiego. Nauki Społeczne, Prawo 8, series A, no 34, 1961, pp. 110–117. A similar position was held by F. Zoll (senior). See: Zoll, F. *Rzymskie prawo prywatne (Pandekta), T. 2: Część ogólna*, Warszawa – Kraków 1920, pp. 18–19.

[116] See: Pyziak-Szafnicka, M. "*Prawo podmiotowe*", Studia Prawa Prywatnego, no. 1, 2006, p. 43, http://czasopisma.beck.pl/studia-prawa-prywatnego/artykul/prawo-podmiotowe-2/ [20.07.2017].

[117] Ibid.

[118] Identification of subjective rights with individual freedom is visible, among other places, in the work of I. Kant – e.g. in *The Metaphysics of Morals*.

or the "theories of will" of Bernhard Windscheid (1817–1892). Concepts deriving subjective rights from the will of the individual were contrasted with concepts that link these rights to real benefits (both tangible and intangible) that the individual would gain from using them, which at the same time could be exercised through formal elements (the institution of a claim/lawsuit). This trend was represented, among others, by Rudolf von Ihering (1818–1892), who is credited as the founder of the "theory of interest". The doctrine also contained positions denying the existence of subjective rights. One of the main critics of the concept of subjective rights from the positivist movement in legal science was Leon Duguit (1859–1928). The positivist concept of subjective rights was negated to some extent by representatives of the normative stream, including Hans Kelsen (1881–1973). The concept of subjective rights was negated by representatives of legal sciences influenced by the ideologies of both totalitarian regimes of the mid-twentieth century. In Nazi Germany, the concept of subjective law was criticised by Karl Larenz (1903–1993), a propagator of the concept of "legal position". Meanwhile, in the legal sciences in the Eastern Bloc countries one can point to the views of Krzysztof Opałka[119] and, to a certain extent, Stanisława Wronkowska.[120] In consequence of experiencing the distortion of the rule of law during the Third Reich, after its collapse, a wave of strong criticism of the positivist school appeared in German legal sciences. Critics of legal positivism included, among others, Gustav Radbruch (1878–1949), the creator of the "Radbruch formula". One new trend was the emergence of concepts attempting to reconcile the opposing positions of advocates of legal positivism and advocates of the law of nature. In this regard, it is worth mentioning the views of Ronald Dworkin (1931–2013) and John Finnis (b. 1940).[121]

In the literature, numerous authors presented many different concepts describing the term "subjective rights". As an example, one can point to the concepts developed by Polish representatives of the doctrine.[122]

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[119] See: Opałek, K. *Prawo podmiotowe. Studium z teorii prawa*, Warszawa 1957, p. 408.

[120] See: Wronkowska, S. *Analiza pojęcia prawa podmiotowego*, Poznań 1973, p. 48. However, this position is challenged by the author herself in the further part of this work – see: ibid, p. 91.

[121] See: Finnis, J. *Natural Law and Natural Rights*, Oxford 1980 [Polish edition: *Prawo naturalne i uprawnienia naturalne*, Warszawa 2001]; and Dworkin, R. *Taking Rights Seriously*, Harward 1977 [Polish edition: *Biorąc prawa poważnie*, Warszawa 1998].

[122] Chaciński, J. *Prawa podmiotowe a ochrona dóbr osobistych*, Lublin 2004, pp. 9–35; Gandor, K. *Prawa podmiotowe, tymczasowe, ekspektatywy*, Wrocław – Warszawa – Kraków 1968,

Subjective rights can be described as the legal situation of an entity with specific characteristics, which refers to a certain type of behaviour or behaviours in the system of legal norms under consideration, and the qualification of behaviours based on the norms of the legal system under consideration.[123]

In general, subjective rights can be understood as the freedom of conduct of an individual entity, which is its right and competence to perform certain actions, combined with a claim in a procedural sense.[124] It should be mentioned that the rights deriving from freedom of conscience and confession create public subjective rights.[125]

While presenting the aforementioned concepts of subjective rights, it should be noted that in this science, the view that there is in fact no developed definition of "subjective rights" has also been expressed. What is more, doubts are raised as to the possibility of creating a satisfactory definition, and especially a universal definition that is useful for various branches of the law.[126]

At present, it is widely recognised (at least in the sphere of Western civilisation) that freedom of conscience and confession have the character of a subjective right. The legal subjectivity of every person (and,

pp. 43–44; Ritterman, S. *Pojęcia materialne w prawie cywilnym. Studium z zakresu metodologii nauki prawa cywilnego. Rozważania ogólne*, Kraków 1962; Wronkowska, S. *Analiza pojęcia prawa podmiotowego*, pp. 7–8; Opałek, K. *Prawo podmiotowe*, p. 215; Redelbach, A., Wronkowska, S. and Ziembiński, Z. *Zarys teorii państwa i prawa*, Warszawa 1962, p. 143 et seq; Pyziak-Szafnicka, M. "*Prawo podmiotowe*" in *Prawo cywilne. Część ogólna*, edited by M. Safjan, Warszawa 2007, pp. 671–771 (*System prawa prywatnego, T. 1*); and Szpunar, A. *Ochrona dóbr osobistych*, Warszawa 1979, p. 103. In this regard we could, in particular, point to the views expressed by Z. Radwański, who deduced that subjective rights equal a positive assessment of the individual's favourable situation in society – while defining the term subjective rights, he pointed out that it is a complex legal situation assigned to entities by the standards in force and protecting the legally recognised interests of these entities – Radwański, Z. *Prawo cywilne. Część ogólna*, Warszawa 1999, p. 83 and 88; by A. Wolter, who pointed out that the subjective rights constitute the sphere of possibilities of proceeding in a certain way, which is granted and secured by a legal norm – Wolter, A. *Prawo cywilne*, Warszawa 1972, p. 112; and by S. Grzybowski, who defines subjective rights as "a sphere of possibility of proceeding in the manner specified in a legal norm and granted by a legal norm to a party to a legal relationship" – Grzybowski, S. *System prawa cywilnego, T. 1*, Wrocław 1974, p. 216. Wolter, A., Ignatowicz, K. and Stefaniuk, K. *Prawo cywilne*, Katowice 2001, pp. 128–129.

123 Wronkowska, S. *Analiza pojęcia prawa podmiotowego*, p. 17.

124 Ibid, p. 50 et seq.

125 According to representatives of the doctrine of law, public subjective rights mean the legal situation of a citizen within which that citizen, based on the legal norms protecting their legal interests, can effectively demand something from the state or can do something in a manner unchallenged by the state. Cf. *Prawo administracyjne*, edited by J. Boć, Wrocław 1994, p. 307.

126 See: Pyziak-Szafnicka, M. *Prawo podmiotowe*, p. 43.

therefore, also of the child) is stressed by Article 6 of the Universal Declaration of Human Rights as well as by Article 16 of the International Covenant on Civil and Political Rights. In the context of the Convention, attention should be paid to Articles 7, 8, and 12. In addition, regional acts should be mentioned, such as the recommendations of the Council of Europe, in particular: Recommendation 874/1979 on the European Charter of the Rights of the Child[127] and Recommendation 1121/1990 on the Rights of the Child,[128] and the European Convention on the exercise of Children's Rights of 1996[129].

This is determined by acceptance of the view that it is a right belonging to every person. However, there is no approval for the thesis that this right depends on the criteria of citizenship, place of residence, place of stay, sex, race, education, or age. It should be noted, however, that the extent of the ability to fully exercise the freedom may depend on the ability of the person to take thoughtful and prudent actions, which is tantamount to linking the rights derived from freedom in the sphere of beliefs to the capacity to take legal action, which is generally granted to persons who have reached an appropriate level of emotional and mental development. The most commonly adopted assumption is that a person who has reached the appropriate age is a person capable of acts in law, and thus one should be led to support the view that it is impossible to completely disregard the criterion of age as a factor differentiating human beings in the scope of, at least, the effective exercise of the rights resulting from the freedom of conscience and confession. However, these restrictions are more due to the need to act through the people exercising parental authority or custody and not a restriction of freedom as such.

Freedom of conscience and confession has a personal form (it is a personal freedom) and, as such, has an absolute subjective character, that is, it is effective towards all (it is therefore effective *erga omnes*). In spite of this, there is no doubt that freedom of conscience and confession is not unlimited. The power of the authorities to impose restrictions on this freedom is motivated by reasons related to the need to ensure public order and to avoid the exercise of rights derived from freedom in such a way

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[127] Text in: Jaros, P. *Prawa dziecka. Dokumenty Rady Europy*, Warszawa 2012, p. 843.

[128] Ibid, p. 849.

[129] See: Smyczyński, T. "*Pojęcie dziecka i jego podmiotowość*" in *Konwencja o Prawach Dziecka. Analiza i wykładnia*, edited by idem, Poznań 1999, pp. 39–47.

that leads to abuses and violations of the rights of other individuals or communities. While, as indicated, it is generally accepted that introducing certain limitations on the use of freedom is necessary, controversies arise during the consideration of the extent of these limitations.

As a result of discussions on this issue, a model was adopted, which assumes that the freedom to manifest religion can be limited only by law and only if it is necessary to protect the security of the state, public order, health, morality, and the freedom and rights of others.

It should be mentioned that in some legislations, in certain historical periods, a criterion was applied, which made the recognition (or the scope) of the freedom of conscience and confession of an individual conditional on them being a citizen of a given country. It is important that freedom of conscience and confession in institutional terms is always secondary to the original right of every man to profess their religion, to profess no religion, to be guided by beliefs based on non-confessional systems of values, etc. In this situation, freedom of conscience and of confession is a freedom which, in the first place, belongs to a particular person. Only in consequence of the existence of freedom understood in such a way does the freedom of conscience and confession appear as the possibility of organising according to religious criteria, creating churches and religious associations. The freedom to create confessional organisations is supposed to ensure the realisation of the individual rights of individuals. Therefore, legislation regulating freedom of conscience and confession should at least to a minimum extent regulate the confessional situation of the individual and of a religious community in which such an individual may be included.

The view that freedom of conscience and confession is a subjective right is also confirmed by the case law of the European constitutional courts and the European Court of Human Rights in Strasbourg, which explicitly declare that freedom is a fundamental subjective right, guaranteeing the existence of an intimate clause of beliefs. This term is usually understood as the space of individual self-determination.[130] In the literature, it is emphasised that freedom of conscience and confession is not only a moral norm, but also a very specific human freedom, because it concerns religious and philosophical activity, i.e. one that differs

[130] See: Sobczak, J. and Gołda-Sobczak, M. "*Wolność sumienia i wyznania jako prawo człowieka*", Annales UMCS, 19, no. 1, section K, 2012, p. 36.

significantly from all other manifestations of human activity. In exercising this freedom, a person can demand that others respect their freedom. Freedom of conscience and confession is recognised as a freedom inherent in the human person, as an inalienable and personal freedom. It is worth noting, however, that in the literature, there are also views according to which freedom of conscience and confession is a natural human right. Such a position is presented, among others, by Z. Łyko, who defines freedom of conscience and confession as the personal right of all human individuals, protecting the social spheres of their existence and the churches of these human individuals as communities of believers.[131] In the concepts of religious ethology, especially in Christianity, freedom of conscience and confession derives from the law of nature, from the divine gift, and from the dignity of the human person as created by God. Atheistic or deistic orientations see the genesis of this freedom in the dignity of the human person, as a thinking, autonomous free being who is a member of a specific social community. Their representatives take the view that this freedom is granted to every person regardless of nationality, citizenship, race, social status, world view, gender, age, etc.[132]

In the opinion of many commentators, the view about the validity of ecumenical aspirations, which have been present in the Catholic Church since the Second Vatican Council, has been shaken by the announcement of the *Dominus Iesus*[133] declaration by the Congregation for the Doctrine of the Faith. In the opinion of its critics, the Declaration, which attempts to respond to relativistic tendencies, challenges the views developed during the work of the Second Vatican Council.[134] In particular, the wording of Chapter IV of the Declaration may in fact give rise to such an impression, for the Declaration clearly favours the position of the Catholic Church and its dogmas at the expense of other branches of Christianity.

Freedom of conscience and confession is also understood as a freedom that is enjoyed not by individuals (individual freedom), but as the freedom

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[131] Łyko, Z. "*Wolność sumienia i wyznania w relacji człowiek – kościoły – państwo"* in *Podstawowe prawa jednostki i ich ochrona*, edited by L. Wiśniewski, Warszawa 1997, p. 88.

[132] Łopatka, A. "*Wolność sumienia i wyznania*" in *Prawa człowieka. Model prawny*, edited by R. Wieruszewski, pp. 407–421.

[133] Kongregacja Nauki Wiary (Congregation for the Doctrine of the Faith), *Deklaracja Dominus Iesus. Tekst i komentarze*, 6 VIII 2000, Poznań 2006.

[134] See: http://www.opoka.org.pl/biblioteka/T/TD/kosciol_po_dominus_iesus.html [19.05.2017].

to create and operate organisations (churches and religious associations) through which the followers of a given religion can exercise worship (institutional freedom). It is necessary to fully support the view that "religious associations have long been treated as separate entities with the right to exercise freedom of confession. They secure the exercise of individual rights of their members. For the individual satisfies a substantial part of their religious needs through or with the participation of the organisational and personal structures of religious associations".[135] The view that it is necessary to recognise the right of religious associations to freedom is also consistent with the teaching of the Catholic Church.[136] The smallest collective considered by modern legislation to be an entity enjoying the rights resulting from freedom of conscience and confession is the family.[137] Analysing the provisions of civil law and the norms of the 1983 Code of Canon Law, it should be assumed that both civil law and Canon law do not negate the recognition as a family of a union not confirmed by a formal act of marriage.[138] Therefore, families will be formed – with all the consequences in terms of duties directed, for example, to the upbringing of children – by those living in informal relationships as well. In the case of informal relationships, we can only talk about the traditional model of a relationship between a woman and a man. Of course, the shape of the parent's rights after termination of the marriage may be modified by a court decision or an agreement between the former spouses.

The various terms found in legal acts (such terms as "freedom of thought, conscience, and religion"; "freedom of conscience and confession"; "freedom of conscience and religion" may be mentioned here) have the same content, which boils down to the guarantee of the freedom to profess different religions, the prohibition of religious discrimination, the possibility of belonging to different churches, religious associations, and religious communities.[139] The development of a conceptual scope

[135] Pietrzak, M. *Prawo wyznaniowe*, p. 29.

[136] This is confirmed, to give one such example, by the fragment of *Dignitatis humanae*: "Freedom, or protection from coercion in religious matters, which is the right of individual persons, must also be granted to them when they act together. For both the social nature of man and the social nature of religion itself require the existence of religious communities."

[137] Sobczak, J. and Gołda-Sobczak, M. *Wolność sumienia i wyznania jako prawo człowieka*, p. 36.

[138] Within the scope of Canon law, see the article of J. Sokołowski: "*Instytucja rodziny w prawie kanonicznym*," Studia nad Rodziną, 17, no. 1(32), 2013, pp. 291–313.

[139] It should be noted that in the literature we find the view that the term "freedom of conscience" is not well-established in history. Both ancient and medieval philosophy did not

of terms defining human rights in the sphere of world view has led to the creation of a kind of mosaic of terms defining this range of freedoms of individuals as well as organisations within which individuals cultivate rituals associated with a given religion. Due to the multiplicity of concepts and the adopted range of concepts such as confession, religion, and conscience, we encounter in the literature and normative acts various terms describing the discussed freedom. The terms used in this respect include, among others, "freedom of confession", "freedom of conscience and religion", "freedom of religion", "freedom of belief", "freedom of worship", "freedom of thought and convictions", and "freedom to profess and proclaim religious, irreligious, and anti-religious ideas and doctrines". One example is the terminology used in the text of the Constitution of the Republic of Poland from 1997, which uses "freedom of conscience and religion" – a term rarely seen in the literature of the subject, in which the preferred term is "freedom of conscience and confession".[140]

In the light of the foregoing considerations, there is no doubt that freedom of conscience and confession is one of the pillars of a democratic society. The nature of freedom of conscience and confession is that of a subjective right, that is, belonging to every human person, regardless of their citizenship, race, sex, education, place of residence and, to a certain extent, age.[141] The subjective nature of the right to freedom of conscience and confession has been repeatedly emphasised by the case law of the European constitutional courts and the European Court of Human Rights in Strasbourg. According to the legal sciences, subjective rights are understood as the possibility or freedom of action or behaviour of a person, accompanied by the right to demand that the actions or behaviour of other entities not interfere with the sphere of freedom

know the aforementioned expression. Moreover, it is worth mentioning that some scholars of medieval Christian thought pointed to the existence of a primacy of personal conscience over objective, constituted, or natural conscience. For the first time, the phrase "freedom of conscience" was used in modern times, in the period of the Reformation and religious wars. The landmark moment was the Union of Utrecht of 1579 and later the Peace of Westphalia of 1648, where the freedom of conscience became a binding law. Initially, freedom of conscience was understood as freedom from the compulsion to adhere to certain religious and moral beliefs. Cf. Crell, J. *O wolności sumienia*, p. 22 et seq.

[140] An analysis of the diversity of terms used in legislation and describing freedom in the sphere of world view was presented by J. Sobczak and M. Gołda-Sobczak in the article "*Wolność sumienia i wyznania jako prawo człowieka*".

[141] Łopatka, A. *Wolność sumienia i wyznania*, pp. 401–421.

of the beneficiary of that freedom.[142] To use another approach, a subjective right is defined as the freedom of conduct of an entity, which is its right and competence to perform certain actions, combined with a claim in a procedural sense.[143]

Freedom of conscience and confession can be seen as the freedom of belief or world view.[144] Various definitions of "world view" can be found in the literature. A world view in philosophical terms is an objective, extra-individual, repeatable reality (just like in sociological terms). A world view creates a certain theoretical system. A world view is an ordered description and reflection on reality and man's relation to that reality.[145] In sociological terms, world view is identified with an ideology accepted in a certain social group. In psychological terms, world view is considered a subjective, individual, non-repeatable, and unique phenomenon. It is the world view of a particular person, an individual, a philosophy of life of a specific person.[146]

4. The origin and evolution of the concept of "freedom of conscience and confession" in light of secular philosophy from ancient philosophy to modern times

What is, and from whom or what comes the natural moral pattern that causes human acts and behaviours to be considered "good" or "bad"? Attempts to find an answer to this question began in the prehistory of European civilisation. Initially, people assumed the supernatural origin of the aforementioned "pattern of behaviour". In later periods, under the influence of Christianity, the divine origin of conscience was recognised. Along with the development of secular science there was a process of departing from the understanding of conscience as something bestowed

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142 Longchamps, F. *Z rodowodu prawa podmiotowego*, pp. 110–117.

143 Wronkowska, S. *Analiza pojęcia prawa podmiotowego*, p. 17.

144 The substitutive role of world view in relation to, for example, religion can be evidenced by the roles assigned to it (the directive function, evaluative function, ordering function, the function of behaviour regulator, the motivating function, etc.) – see: Godlewski, J. F. *Kontrowersje wokół światopoglądu*, Warszawa 1980, pp. 46–70; and Walesa, C. *"Światopogląd a motywacja do pracy, cz. 1*: *Światopogląd człowieka dorosłego w ujęciu psychologicznym"*, Życie i Myśl, no. 11(299), 1976, pp. 30–43.

145 Kuczkowski, S. *Psychologia religii*, p. 145.

146 Ibid, p. 147.

by supernatural forces. The supernatural factor is replaced by psychological or sociological motives that determine the existence of conscience.

A strict and precise separation of reflections on the nature of freedom of conscience and confession based on the distinction of secular philosophy from the philosophy connected with the values present in the social life of given state organisations is difficult. However, the difficulty of making such a separation is variable over time. The original political organisms, for various reasons – with the dominant reason being the legitimacy of power derived from some higher power (e.g. Divine) – linked the political sphere with the religious sphere. Basing political, secular power on the foundation of divine endowment strengthened the position of those in power and was therefore desirable. Along with the development of power structures, the development and dissemination of knowledge about the surrounding world, and the possibility of scientifically explaining certain phenomena previously considered by the community as manifestations of inconceivable divine power, secular rulers were no longer forced to legitimise their existence with religious authority. Moreover, the increase in the legal or actual strength of religious organisations could, under certain circumstances, pose a threat to secular authorities. Under such conditions, it was possible to separate the paths leading to the explanation of the essence of, and the need for recognition of, freedom in the sphere of world view.

Originally, ancient states in the Mediterranean basin identified religious worship with a public institution. The monarch was treated as the head of state, also acting as the high priest. Divine qualities were attributed to him, and subordinates were required to worship him.[147]

One example of the strengthening of the authority of secular authorities through religion is the ancient Egyptian state.[148]

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[147] Warchałowski, K. *Prawo do wolności myśli, sumienia i religii w Europejskiej Konwencji Praw Człowieka i Podstawowych Wolności*, Lublin, 2004, p. 14.

[148] In ancient Egypt, the omnipresent notion of God was associated primarily with the sense of the reckoning that a man should make after his death before God and Pharaoh. In the imagination of the Egyptians, man had two organs: the heart and the ear. The heart was the organ of understanding both divine and state commands, while the ear was the organ of contact with both divine and state authorities. The two organs, according to the Egyptians, were to be in contact with each other so that they could receive the dictates of conscience. Such an understanding led to the identification of divine and state power as one, and consequently to the unity between the religious beliefs of the individual and obedience to state power. Conscience formed in the stated way was referred to as "maat". Conscience was understood

In the literature[149] it is mentioned that the concepts of conscience originated from Socrates. It is in Socrates' reflections that the idea of the voice of a caring deity *daimonion*[150] appears. The views attributed to Socrates can be considered the first documented example of an individual's struggle for freedom of conscience, fought in the name of recognising the right of the individual to have and to follow his own convictions contrary to the beliefs adopted by the dominant social group.

In ancient Greece, conscience was described using the term *syneidesis*, which had a primarily political dimension. The changes consisting in marginalisation of the democratic system of the polis by the aristocracy, which was gaining increasing influence, led to the development of the oligarchic system. These changes also led to the generation of internal conflicts of individuals. In the works of Socrates and Epicurus, and in the writings of the Cynics, it was pointed out that the organisation of political life of the *polis* was contrary to the "freedom of knowledge and conscience".[151] Particularly noteworthy are the views presented by the Stoics, who juxtaposed the negative assessment of the influence of the system and internal principles of the *polis* against the cosmopolitan Roman state, which was held up as a positive model.

The Roman Empire, which was identified by the Stoics as a desirable model, implemented the concepts of so-called "Western monism" in the sphere of contact between the state and religion.[152] Despite the division of the legal system into *ius sacrum* and *ius profanum*, the *ius sacrum* was treated as *ius publicum*. Moreover, the issues of performance of religious rituals were included in the tasks of the state administration. The territorial expansion of the Roman state, resulting from the conquest and incorporation of other – often culturally divergent – communities and state organisms, caused the need to resolve the issue of accepting or denying the possibility of practising other religions. The pragmatic

as a determinant of the sense of morality, law, justice, and truth. In this way, religion and conscience were united and at the same time constituted the basis on which the social order was based – cf. Schwierskott-Matheson, E. *Wolność sumienia i wyznania*, p. 23.

149 Tischner, J. "*Refleksje o istocie sumienia*" in *O sumieniu*, edited by A. Grajcarek, Kraków 1996, p. 11 et seq.

150 Cf. footnote 69.

151 See: Chmielowska, L. "*Filozofia polityczna Sokratesa*", Prace Naukowe Akademii im. Jana Długosza w Częstochowie, Seria: Res Politicae, 3, 2009, pp. 7–31.

152 Krukowski, J. *Kościół i państwo. Podstawy relacji prawnych*, Lublin 2000, p. 15.

approach of the Romans on this issue meant that the peoples who were conquered by them could preserve their religion. Foreign deities were included in the Pantheon. In order to preserve religious and political unity, both the citizens of Rome and the newly conquered peoples had to worship the emperor, to whom temples were built and sacrifices were made in front of the temples. Insulting the gods or refusing to worship them were considered political crimes and entailed severe penalties.[153] The Romans did not know the concept of religious freedom in individual matters. However, it is legitimate to say that in the Roman state there was a principle of tolerance understood as the right of each people to preserve their own traditions and beliefs. The requirement for the state to respect freedom of conscience and freedom to exercise religious practices as rights due to the individual was unknown.[154] Tolerance towards foreign beliefs did not apply to Christians, which, however, was mainly due to the refusal to worship emperors. Christianity as a monotheistic religion, proclaiming the belief in one God for all men, took a critical attitude towards the official polytheistic religion.[155] This was due to the concept of rejecting political and religious unity.[156] Therefore, the persecution of the followers of Christianity resulted not so much from the lack of acceptance for the truths of the faith they proclaimed, but from purely

[153] Pietrzak, M. *Prawo wyznaniowe*, p. 24.

[154] Krukowski, J. *Kościół i państwo*, pp. 15–16.

[155] Pietrzak, M. *Prawo wyznaniowe*, p. 24.

[156] Christ for the first time rejected the identification of religious and political unity in one person, instead introducing Christian dualism, manifested primarily in the establishment of a new, hitherto unknown social structure: the Church, which was completely independent of the political structure. In addition to the new structure of the Church, Christ spoke twice about the separation of the state and the Church (Matthew 22:21; Luke 20:25). For the first time, answering the question of the Pharisees: "Is it lawful to pay taxes to the Caesar?", to which Christ answered: "Render unto Caesar what is Caesar's, and unto God what is God's." (quoted after: Sczaniecki, M. *Powszechna historia państwa i prawa*, Warszawa 1997, p. 36). Christ pointed to the existence of two subjects of power, religious and political, and the consequences resulting from such a division, and also stated that one should not equate duties to God and duties to the emperor. During the trial in Jerusalem, Christ pointed to the separation of religious and political power. In answer to the question of whether he is a king, Christ declared: "Yes, I am a king. For this I was born, and for this I came into the world to bear witness to the truth. Everyone who accepts the truth hears my voice." (John 18:33–37). Christ appears here as the founder of a new religious community opposing state power based on physical strength. At the same time, he points out that only the power of truth gives moral strength. From the beginning, the disciples of Christ defined themselves as followers of a new religion completely separate from both the pagan and Jewish religions. Peter and the other apostles preached the words of Christ: "We must obey God rather than men." (quoted after: Rahner, H. *Kościół i państwo we współczesnym chrześcijaństwie*, Warszawa 1986, p. 36).

political reasons. This thesis is confirmed by the popularity of Mithraism in the Roman state, which in fact was very similar to Christianity in terms of conceptual assumptions. The latter, of course, eventually acquired, during the reign of Theodosius I, the status of a state religion (392).[157] It should be mentioned that there was a fairly long tradition of religious persecution in the Roman state. In fact, religious persecution was a relatively frequent occurrence in the history of Rome. It occurred already in the early periods of Roman statehood, and was generally, to a greater or lesser extent, the result of political[158] or social conflicts.[159]

The views promoting the dualism of power[160] were clearly opposed to the order prevailing in the Roman state. Christians were accused, among other things, of crimes against the state for not participating in religious rites.[161] Persecution of the followers of the new religion began during the time of Nero (64 AD – the excuse was the fire of Rome, the persecution basically affected only the city and its immediate vicinity[162]) and lasted intermittently and to varying degrees until the time of Emperor Diocletian (around 305 AD, which is the date of abdication of Diocletian – however, persecution in the eastern part of the empire under the rule of Galerius and Maximinus Daza lasted until 313). The Church in those times demanded a clear distinction between spiritual and secular powers, and respect for the right to freely profess religion without coercion.

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[157] Unlike Christianity, Mithraism was not persecuted, and during the reign of Aurelian it was recognised as the state religion. The followers of Mithraism included Aurelian, Commodus, and Constantine I. Cf. Deschner, K. *I znowu zapiał kur – Krytyczna historia Kościoła, T. 1*, Gdynia 1996, pp. 108–109.

[158] Krajewski, P. "*Prawnopolityczne aspekty prześladowań pierwszych chrześcijan w starożytnym Rzymie"* in *Urzeczywistnianie wolności przekonań religijnych i praw z niej wynikających*, edited by S.L. Stadniczeńko, Opole 2012, pp. 46–51.

[159] See: Sadowski, P. "*Czy starożytni Rzymianie prześladowali tylko chrześcijan?"* in *Urzeczywistnianie wolności*, pp. 23–51.

[160] The separation between earthly and divine power was emphasised, among others, by Theophilus of Antioch: "I will therefore honour the emperor more, not by praying to him, but by praying for him. [...] After all, he is not God, but a man whose calling is not to be prayed to, but to make righteous decisions, for he was in a certain sense entrusted with stewardship."; and by Justin Martyr, the author of *Apology*, who wrote: "Simple reason says that whoever is truly pious, and still considers himself a philosopher, loves and values only the truth, and never follows commonly held views if he considers them to be wrong. Moreover, this sound reason not only forbids following those who say and do wrong, but also demands that the friend of the truth give witness to justice everywhere and always, in word and deed, even if death threatens him for it." – M. Michalski, *Antologia literatury patrystycznej, T. 1*, Warszawa 1975, p. 91–100.

[161] Dębiński, A. *Sacrilegium w prawie rzymskim*, Lublin 1995, p. 111–120.

[162] Cairns, E. E. *Z chrześcijaństwem przez wieki. Historia Kościoła powszechnego*, Katowice 2003, p. 83.

A breakthrough in the relations between the institutions of the Roman state and the Christian Church came with the Edict of Milan of 313, issued by the Roman emperors Constantine the Great and Licinius.[163] It should be noted, however, that the edict meant the recognition of freedom of religion for other religions as well.

[163] The Roman State recognised religious freedom by granting the religion professed by Christians equality with other religions tolerated in the territory of the state. This freedom allowed for the profession of the religion chosen by the individual, which was the first instance of religious freedom provided by the state to citizens. The edict recognised the legal personality of the Catholic Church and accepted the right of the Church to own temples and cemeteries, and provided for the possibility of public Christian worship – "When we, Constantine and Licinius, emperors, fortunately met near Mediolanum, and conferred together with respect to the good and security of the commonwealth, it seemed to us that, amongst those things that are profitable to mankind in general, the reverence paid to the Divinity merited our first and chief attention. Therefore, we have deigned to give Christians and all others the freedom to follow the religion that anyone wants, so that for us, as well as for all those under our authority who remain, Deity exists on the heavenly throne as an object of prayers and a source of mercy. Therefore, with sound advice, and on the basis of the most just principle, we have decided that liberty should not be denied absolutely to anyone who would direct his mind either to the Christian rite or to the religion which he considers most suitable for himself. So that the Supreme Deity, whose religion we freely yield to, may in all things grant us his grace and favour. Therefore, it pleased us to inform Your Grace that after removing all the conditions that were previously contained in the letters addressed to Your office regarding the name of Christians, any of those who have the same will to maintain the Christian religion could maintain the same freely and simply, without any anxiety and violation. We have decided to make your concern known as thoroughly as possible, so that you may know that we have given these Christians a free and absolute opportunity to profess their religion. When you learn that we have permitted it, you understand your Grace that for others, too, it has been granted a similarly free and open opportunity in our peaceful times to choose the object of worship, because in no way do we wish to offend the honour of any man or religion. In addition, we decide for Christians that the places where they had previously gathered, and which were also mentioned in the earlier letters to your office, are to be returned to them free of charge, without any compensation, without any delay or hesitation, even if they were sold, whether by our treasure or by anyone else. Also, those who have received these seats as a gift or bought them should return them as soon as possible, and those who have received some promises should turn to our governor so that their request will be met. All these things should be handed over to the Christian congregation immediately through you. And since it is known that Christians had not only those places where they usually gathered, but also those belonging to them as an organisation, that is, to churches, and not to individuals, you will order their return without any delay or dispute, as above told to these same Christians, that is, to organisations and churches. You will do this in the manner mentioned above, and so that those who, as we said, will return without payment, are to expect compensation from our kindness. In all this, you should lend the most effective help to the above-mentioned body of Christians, so that our order is carried out as soon as possible, so that also in this way, thanks to our kindness, public calm is brought about. Henceforth will be with us, as expressed above, the kindness of God, which we have experienced in such important moments, and which will all the time generously accompany our progress in achieving universal happiness. And in order for the news of the decision of our kindness to reach everyone, this writing, rewritten by you, is to be laid out everywhere and announced by you to everyone, so that the order of our kindness will not remain hidden." – quoted after: Laktancjusz, *Pisma wybrane*, translated by J. Czuj, Poznań 1933, s. 73–75 (*Pisma Ojców Kościoła, T. 16*).

The position of pagan religions was undermined only by the edict of Constans issued in 341,[164] and the legislation of Constantius II, which went in the same direction.[165] It should be noted that the acceptance of the Christian religion and the subsequent process of its increasing dominance in the religious sphere was used for strictly political purposes.[166] The actual assumption by Christianity of a monopolistic position in the religious sphere was made possible by successive acts of secular authorities.[167] Here we should mention the edicts issued in the years 380–382, according to which pagan religions and factions of Christianity considered to be illegitimate were banned.[168] Supported by the authority of the state, the struggle for the purity of the faith ultimately led to the edict of Theodosius of 386.[169]

[164] The above edict meant, first of all, limitation of the freedom of pagans in the exercise of worship by prohibiting sacrifice – "Let superstition cease, let the stupidity of sacrifices be abolished." – this edict introduced a sanction in the form of the death penalty for blood sacrifices – Codex Theodosianus, XVI, 10.2, http://ancientrome.ru/ius/library/codex/theod/liber16.htm#10 [10.08.2016].

[165] Ibid. "It is decreed that in all places and all cities the temples are to be closed at once, and, after a general warning, the possibility of sinning is to be taken away from the wicked. It is also decided that we will no longer make sacrifices. And if anyone commits such a crime, let him be struck with the sword of vengeance. In addition, we decide that the goods of the one who will be executed will be taken over by the city and that the provincial administrators will be punished in the same way if they neglect to punish such crimes."

[166] This is evidenced by the assumption by emperors of the role of the ruler of the Church, the enforcement of decisions of Councils which are beneficial to secular power, etc. – Banaszak, M. *Historia Kościoła katolickiego, T. 1*, Warszawa 1986, p. 84.

[167] Another ruler who revealed tendencies towards the introduction of monism in the Christian version was the emperor Theodosius the Great. In the Edict on the Catholic Faith he established the Catholic religion as the official state religion – see: Banaszak, M. *Historia, t. 1*, p. 86. The edict published in Constantinople in 391 forbade any pagan worship throughout the Empire – see: Pietrzak, M. *Prawo wyznaniowe*, pp 24–25. Following Emperor Theodosius' victory over the usurper Eugenius in 394 AD, there was a complete disappearance of tolerance toward pagans – see: Eliade, M. *Historia wierzeń i idei religijnych, T. 2*, Warszawa 2007, p. 269.

[168] Codex Theodosianus, XVI, 1.2. "It is our desire that all the various nations which are subject to our Clemency and Moderation should continue to profess that religion which was delivered to the Romans by the divine Apostle Peter, as it has been preserved by faithful tradition, and which is now professed by the Pontiff Damasus and by Peter, Bishop of Alexandria, a man of apostolic holiness. According to the apostolic teaching and the doctrine of the Gospel, let us believe in the one deity of the Father and of the Son and of the Holy Spirit, in equal majesty and in a holy Trinity. We order the followers of this law to embrace the name of Catholic Christians; but as for the others, since in our judgement they are foolish madmen, we decree that they shall be branded with the ignominious name of heretics, and shall not presume to give to their conventicles the name of churches. They will suffer in the first place the chastisement of the divine condemnation and in the second the punishment of our authority, which in accordance with the will of Heaven we shall decide to inflict."

[169] Ibid, XVI, 1.4. "Emperors Valentinian, Theodosius and Arcadius, Augustus, to Eugene, Praetorian Prefect. We give permission to congregate to those who hold views consistent with what was enacted in the time of the holy Constantius at the Council of Rimini and confirmed in Constantinople to remain for eternity after priests from all the Roman world have been

The Middle Ages stand out as a period of non-acceptance of the idea of freedom of conscience and confession. Issues of the choice of religion remained outside the scope of the powers of individuals. Religion continued to be used as an element of strengthening the authority of secular rulers. Both these authorities complemented each other – the Church provided the ideological basis, which was guarded by the "secular arm".[170]

"Christianity, as a monotheistic religion, proclaimed the exclusive truth of its faith. This principle, taken from the Jewish religion and strengthened by the dogma that the Church is the indispensable and sole mediator between God and man (*extra Ecclesiam nulla salus*), led to an intolerant attitude towards all those who do not profess the Christian religion. For it was recognised that the subject of religious freedom could be only the Catholic Church, as the only preacher of objective truth, and Catholics, as followers of this truth. Followers of other religious and philosophical beliefs and other religious communities – Christian and non-Christian – should only be tolerated [...] It was only the Second Vatican Council that made a fundamental change in the Church's attitude toward freedom of conscience and confession."[171]

One should agree with the view presented in the literature of the subject indicating that the concept of freedom to choose a world view and religious beliefs did not exist in practice.[172] Religion was considered to be an element supporting state power and as such was protected by state coercion. It is understandable that the desire to preserve the existing

convoked, and those who are known to have different views have made a profession of faith. We have also ordered that they be free to decide to assemble, and that those who believe that only they have been granted the right to assemble should know that if they attempt to make any confusion contrary to the command of Our Grace, as the perpetrators of riots and disturbances to the peace of the Church, they will pay with their head and blood for the insult to majesty. The same death penalty will await those who, contrary to our disposition, would insidiously and secretly try to pray. Given 10 days before the February Calends in Milan, under the Consulate of the noble young man Honorius and Evodius [23 January 386]."

[170] One example of the absolute lack of freedom in the sphere of religion were the edicts of Emperor Frederick II from the years 1224–1231: the Edict of Padua, then extended to Sicily and later to the whole Empire, which ordered the profession of the Christian faith under the threat of death. Analogous records were found in Gregory IX's bull *Excomunicamus et anathematisamus* from 1231.

[171] Deryng, A. "*Wolność sumienia i wyznania jako problem konstytucyjny"* in *Urzeczywistnianie wolności*, p. 181.

[172] See: Uruszczak, W. "*Wprowadzenie*" in *Prawo wyznaniowe. Zbiór przepisów*, edited by W. Uruszczak and Z. Zarzycki, Kraków 2003, p. 19. Although the work referred to the Polish reality, there is no reason to believe that the situation in other European countries was different.

relations in the political sphere did not encourage the increase of freedom in granting individual religious freedoms. European communities were profoundly influenced by the Christian religion, which permeated the spiritual life of individuals and deeply impacted social, political, and cultural life. The unity of society was based on the fundamental factor of religion. It was imposed on the individual and sanctioned by ecclesiastical and secular legislation.[173] Sporadically submitted postulates to grant equal rights to followers of religions other than Christianity, or at least to recognise the lack of grounds for persecution of people solely due to religion (among others, Marsilius of Padua and Paweł Włodkowic), did not find approval among the rulers at the time. Particular attention should be paid to the postulates voiced, among others, in the speeches at the Council of Constance (1414–1418) by Paweł Włodkowic, the rector of the Kraków Academy, who supported the right to religious tolerance, and questioned the legitimacy and legality of religious wars and forced Christianisation.[174] It should be mentioned, however, that schisms and heresies were still not accepted by him, and the only proper religion was the Catholic faith.[175]

The cooperation resulting from the similarity of objectives of the secular rulers and the Church began to erode as the power of the ecclesiastical authority grew, while the secular authorities were weakened. This competition led to a period of struggle for leadership over the then known world. The shifts in the relative position of the secular power and the Church were a dynamic process, and there were multiple instances when one of the sides first gained and then lost the upper hand.[176]

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[173] Pietrzak, M. *Prawo wyznaniowe*, p. 25.

[174] See: *Pisma wybrane Pawła Włodkowica*, translated and edited by L. Ehrlich, Warszawa 1968; as well as the article by P. Pomianowski, *"Argumentacja Pawła Włodkowica przeciwko Krzyżakom podczas soboru w Konstancji"*, http://www.mishellanea.mish.uw.edu.pl/wp-content/uploads/2010/03/Pumex-Włodkowic.pdf [12.07.2017].

[175] Budziłło, K. and Pruszyński, J. *Dla dobra Rzeczypospolitej. Antologia myśli polskiej*, Warszawa 1996, p. 48.

[176] The Catholic Church gained a special political position in the twelfth and thirteenth centuries, an external expression of which were the Crusades and the dominant role of the popes in relation to the emperors. The strong development of culture in the twelfth century was soon weakened by internal ecclesiastical and social difficulties, especially the so-called great popular heresies. Combating this phenomenon was one of the reasons for the establishment of the Inquisition. The papacy in particular was weakened in the fourteenth century, which was clearly manifested in the so-called Avignon papacies and conciliarism. The crisis of the papacy, among other reasons, caused the weakening of the entire Catholic Church in the fifteenth century.

The renaissance, fostered in Rome under the patronage of the Renaissance popes, brought a weakening of religious life and a distortion of its forms. Reform of the Church – consisting of, among others elements, the suppression of conciliar views, the restoration of discipline and morality among clergy, the suppression of heresy (requirement of approval of an ecclesiastical authority for publications), the restoration of authority over particular churches to the Pope (including by the annulment of the Council of Pisa, the abolition of the pragmatic sanction of Bourges) – which was discussed at the Fifth Council of the Lateran held in the years 1512–1517 but was not sufficiently implemented, unexpectedly took an anti-papal direction. In its widest current, starting with the speech of Martin Luther in 1517, it evolved into the Reformation, ending the medieval unity of Christianity in the West.[177]

Christian Europe in the modern era of the sixteenth and seventeenth centuries experienced new philosophical ideas and religious-political events, such as the Reformation. It should be noted, however, that the political and religious ideology of the Reformation was not permeated by the idea of religious tolerance. Both Martin Luther and John Calvin exhibited an intolerant stance towards other faiths.[178] Mutual intolerance led to a series of bloody conflicts, mainly affecting the German Empire, France, and England.[179] These conflicts began at the beginning of the fifteenth century – here one should mention the Hussite wars fought in the years 1419–1434. Further conflicts took place in the countries of the German Reich, notably: the von Sickingen uprising (The Knight's Revolt) in the Palatinate, which lasted from 1522 to 1523; the "Peasant's war" in 1525; the Schmalkaldic wars (1546–1547 and 1552–1555, ending with the Peace of Augsburg); and the Thirty Years War fought during 1618–1648.

In France, the religious wars of 1562–1598 and the Camisard Uprising in 1685 were associated with a rivalry that was strictly for political influence, between the Catholic party, affiliated with the House of Guise, and the Protestant camp under the leadership of the Condé family. Conflicts related to the rivalry of supporters of Catholicism and Protestants also extended to the Netherlands (fighting took place intermittently in the years

[177] Banaszak, M. *Historia Kościoła katolickiego, T. 2*, p. 1.
[178] Ibid, p. 26.
[179] Ibid, p. 27– 35.

1566–1609, concluding with the Peace of Utrecht). England (1640–1648) and Scotland (1559–1560) also became scenes of religious wars.

One important effect of the Reformation was the decline in the institutional importance of the Catholic Church. Emphasising the importance of individual faith based on interpretation of the Bible and personal experience, it created favourable grounds for the development of the concept of individual religious freedom.[180] The era of armed conflicts on religious grounds brought about several events of significant importance from the point of view of the recognition of the concept of religious freedom. These include acts ending armed religious conflicts, such as the Peace of Augsburg in Germany and the Edict of Nantes in France, which contain some of the first modern traces of the acceptance of the right to freedom of confession.[181] When mentioning acts that were pivotal for the issue of freedom of confession, one should also include the Polish law known as the Henrician Articles of 1573,[182] and the decisions of the Warsaw Confederation of 1573.[183] By respecting the provisions of the stated acts,

[180] Pietrzak, M. *Prawo wyznaniowe*, p. 26.

[181] On 25 September 1555, an international agreement known as the Peace of Augsburg was concluded between the rulers of the German Reich. Among other things, it authorised monarchs to choose the religion to be professed in a given country. At the same time, the religion that was chosen by the ruler extended to subjects who were *de facto* forced to accept it or to emigrate. The peace contained a *lex tolerendi* clause, according to which the ruler could, but did not have to, tolerate non-believers. – see: Banaszak, M. *Historia Kościoła katolickiego, T. 2*, p. 36. On the meaning of the Peace of Augsburg, see: Schwierskott-Matheson, E. *Wolność sumienia i wyznania*, p. 61. The Edict of Nantes, issued on 13 April 1598, recognised Catholicism as the ruling religion of the state, but Calvinist Protestants were granted wide-ranging religious and political freedom. The Edict of Nantes guaranteed freedom of conscience and freedom of worship to the Huguenots. However, the celebration of religious services was limited to the existing places of worship, allowing for only one additional place in each district except Paris. Religious disputes were to be settled by special courts composed of both Calvinists and Catholics. The Huguenots were granted the legal capacity to hold all offices in the state – see: ibid, pp. 62–63; as well as Banaszak, M. *Historia Kościoła katolickiego, T. 3*, p. 91. Another instance of an attempt to peacefully establish relations between the branches of Christianity emerging as a result of the Reformation was the Union of Utrecht, concluded in 1579 – ibid, p. 63.

[182] The "Henrician Articles", considered to be the first Polish constitution, were adopted in 1573. Direct guarantees of respect for religious freedom were contained in Article II of that act: "And since in this noble Crown of the Polish and Lithuanian, Ruthenian, Livonian and other nations there is a great deal of difference, and in order to avoid sedition and uproar stemming from this reason, and the rupture or discord in religion, some citizens of the Crown have made a special confederation, that in this respect with regards to religion they are to be preserved in peace, which we promise to keep in peace forever." – *Volumina legum*, vol. 2, Petersburg 1859, p. 150.

[183] See: Tazbir, J. *Państwo bez stosów*, Warszawa 2009, p. 88 et seq; and Salmonowicz, S. "*Geneza i treść uchwał Konfederacji warszawskiej*", Odrodzenie i Reformacja w Polsce, vol. 19, 1974, pp. 7–30, available digitally: http://rcin.org.pl/dlibra/doccontent?id=41454 [11.04.2015].

the Polish-Lithuanian Commonwealth – unlike the countries of Western Europe – avoided the religious wars ravaging the western part of the continent in the seventeenth century.[184]

The beginning of the seventeenth century introduced new models of relations between the state and the Church in Europe. The development of secular philosophy led to the ideological successes of the Enlightenment. These changes were the result of the widening community of supporters of tolerance and religious freedom. Issues related to religion were increasingly perceived as a matter of the exclusive realm of the individual, denying the state the right to interfere in that sphere. The proponents of tolerance and religious freedom include B. Spinoza, author of the Theologico-Political Treatise (Tractatus Theologico-Politicus, 1670), P. Bayle, author of Philosophical Commentary on These Words of the Gospel (Commentaire philosophique sur ces paroles de Jésus-Christ, 1686), and J. Locke, author of A Letter Concerning Toleration (1689).[185]

Concepts supporting certain forms of recognition of the right to freedom in the sphere of beliefs found practical reflection in the colonies established on the American continent. It is telling that their founders were often victims of religious persecution on the European continent.[186]

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[184] Krukowski, J. *Polskie prawo wyznaniowe*, Warszawa 2007, p. 36.

[185] Particular attention should be paid to the views of J. Locke, author of *A Letter Concerning Toleration,* who pointed out that matters of state and religion should remain separate. The state should not interfere in the decisions of citizens on religious matters. Locke argued for the right to choose religion because neither divine power nor the nation entitles the state authorities to exercise power over the conscience of the citizens. Furthermore, religious considerations should not weigh on the extent to which citizens are entitled to exercise their rights. A prohibition of any coercion in the scope of participation in activities related to the exercise of worship should also be introduced – Schwierskott-Matheson, E. *Wolność sumienia i wyznania*, pp. 80–83. For the source text of *A Letter Concerning Toleration*, see: http://pistis.pl/biblioteka/John%20Locke%281632–1704%29%2%20 List%200%20Tolerancji.pdf [11.12.2014].

[186] As a result of European political transformations taking place at the time that immigrants of English and Scottish origin left their homeland due to religious repression. Throughout the seventeenth century, emigration to America was the only way for them to obtain political rights and freedoms that were not respected in their native countries. The first Puritan colonists founded the Plymouth Colony in 1620. Winthrop's Congregationalists founded the Massachusetts Colony in 1630, and Thomas Hooker founded Connecticut in 1635. In 1632, Lord Cecil Baltimore brought English Catholics to his colony of Maryland. In 1681, William Penn founded Pennsylvania because he wanted to free Quakers from persecution. A year later, he founded Delaware, and in the years 1673–1682, he contributed to the development of New Jersey. In 1732, James Oglethorpe founded Georgia with the idea of creating an asylum for Protestants persecuted in Catholic countries – see: Małajny, R. M. *Mur separacji – państwo a kościół w Stanach Zjednoczonych*, Katowice 1992, pp. 16–17.

Legislation passed in the Anglican colony of Rhode Island included a guarantee of religious freedom.[187] Interestingly enough, the origins of the Rhode Island colony were primarily related to the religious intolerance of its founder Roger Williams, who, as a result of his efforts to tighten the criteria for admission of believers to the Church of Boston, was sentenced to exile in 1635, and then established Rhode Island while in exile.[188] In general, however, Roger Williams is seen as a promoter of religious freedom.[189] However, attention should be paid to the apt remarks made concerning the priority in the introduction of solutions related to freedom of conscience and confession in the American colonies, which were expressed, among others, by P. Michalik.[190] Another landmark act was the *Great Law of Pennsylvania,*[191] passed in 1682. It guaranteed religious freedom of all Christian denominations. Subsequently, the New Jersey Constitution of 1776[192] guaranteed the right to exercise religion freely and banned restrictions on the right to exercise religious rituals. Similar solutions and guarantees were incorporated into the constitutions of subsequent states (Maryland and Massachusetts in 1776, Vermont in 1777, Georgia in 1780). In 1786, Virginia

[187] This was based on the Charter of Rhode Island and Providence Plantation – 15 July 1663, see: http://avalon.law.yale.edu/17th_century/ri04.asp [13.12.2015]. The Charter of Rhode Island established religious freedom for all faiths and guaranteed the separation of state affairs from religious matters. It also stated that every man should be free, and that no one should be disturbed or punished on account of religious views, unless they violate the peace of the kingdom. The charter of rights and freedoms guaranteed equal access to military and civilian offices for all. See also: Krukowski, J. *Kościół i państwo*, p. 44.

[188] Rutman, D. B. "*Nowa Anglia*" in *Historia Stanów Zjednoczonych Ameryki, T. 1*, edited by A. Bartnicki and D. T. Critchlowa, Warszawa 1995, p. 115, quoted after: Daszyńska, J. "*Prawa i wolności w amerykańskiej rzeczywistości przełomu XVIII i XIX wieku"*, Mazowieckie Studia Humanistyczne, 12, no 1–2, 2008, o. 52.

[189] See: Daniel, K. "*Kilka uwag o wolności religijnej i jej ograniczeniach*" in *Amerykomania. Księga jubileuszowa ofiarowana profesorowi Andrzejowi Mani, T. 2*, edited by W. Biernacki and A. Walaszek, Kraków 2012, p. 175; as well as: Dabney, V. *Liberalism in the South*, New York 1970, p. 25. Additionally, see: Pietrzak, M. *Prawo wyznaniowe*, pp. 25–27, 78; and the monograph: Zieliński, J. T. *Roger Williams – twórca nowoczesnych stosunków państwo Kościół*, Warszawa 1997.

[190] Michalik, P. *Stosunki polityczno-wyznaniowe w XVII-wiecznym Marylandzie na tle kształtowania się ustroju tej kolonii*, Warszawa 2012; idem. "*Prawne gwarancje realizacji zasady rozdziału kościoła od państwa w XVII-wiecznym Marylandzie"*, Zeszyty Prawnicze, 11, no. 3, 2011.

[191] Constitutional act of Pennsylvania adopted in Chester on 7 December 1682, http://www.portal. state.pa.us/portal/server.pt/community/documents_from_1681_1776,_colonial_days/20421/the_great_law/998171 [13.12.2014].

[192] Constitution of New Jersey, adopted on 2 July 1776, http://avalon.law.yale.edu/18th_century/nj15.asp [13.12.2014].

adopted the Statute of Religious Freedom.[193] The Ohio Constitution of 1803 prohibited the practice of conditioning appointment to certain positions on passing "tests of faith".[194]

Subsequent examples of the increasing penetration of the idea of tolerance and freedom of conscience into acts of state law were the Constitution of the United States of America[195] of 1787, along with the First Amendment of 1791, which was important from the point of view of religious freedom. In the doctrine of constitutional law, it is believed that this was the first guarantee of religious freedom in modern constitutional law.[196] The United States was the first country to legally sanction separation of the Church from the state,[197] but it should be noted that the Constitution of the United States did not abolish restrictions on religious freedom introduced by the constitutions of individual states. Incorporation and amendments to state legislation were only provided by the 14th Amendment of 1868.[198]

In Europe, the earliest instances of the incorporation of the idea of freedom of conscience and confession into the legal order were the 1789 Declaration of the Rights of Man and of the Citizen, the subsequent Constitutions of 1791 and 1793, and the 1795 Decree on the Separation of Church and State. These acts were the result of a synthesis of the achievements of progressive political and religious thought of the seventeenth and eighteenth centuries.[199] Meanwhile, the Declaration of the Rights of Man and of the Citizen[200] introduced categories of rights considered natural, sacred, and inalienable.[201]

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193 *Act for Establishing Religious Freedom*, 16 January 1786, http://virginiamemory.com/docs/ReligiousFree.pdf [11.12.2014].

194 Schwierskott-Matheson, E. *Wolność sumienia i wyznania*, pp. 98–100.

195 http://libr.sejm.gov.pl/tek01/txt/konst/usa.html [11.12.2014]

196 Krukowski, J. *Kościół i państwo*, p. 44.

197 Wagner, W. J. "*Prawa ludzkie w Stanach Zjednoczonych*" in *Ochrona praw człowieka w świecie*, edited by L. Wiśniewski, Bydgoszcz – Poznań 2000, p. 307.

198 Pietrzak, M. *Prawo wyznaniowe*, p. 31.

199 Ibid.

200 http://libr.sejm.gov.pl/tek01/txt/konst/francja-18.html [12.12.2014]

201 Article X of the Declaration states: "No one shall be disturbed due to their beliefs, including their religious beliefs, provided that their expression does not disturb the public order established by law." As indicated in the literature, the provision of the above article did not mean the recognition of full freedom for all faiths in the current legislation, but only tolerance for minority denominations. Subsequent changes in the legislation allowed Protestants and Jews to hold public office, but there was no renouncement of the treatment of the Catholic religion as the official state religion – see: Pietrzak, M. *Prawo wyznaniowe*, p. 31.

The French Revolution accelerated the development of liberal thought in Europe. The motto of liberal ideology was the recognition of freedom as a natural human right. The recognition of the sphere of individual freedom also resulted in the desire to recognise freedom of conscience and confession as a natural right. In light of liberal ideology, issues related to the religious sphere were to become only a private matter of individuals, with the prohibition of state interference, which would be limited solely to the task of ensuring public order. In order to safeguard this freedom, it was postulated that the right to freedom of conscience and confession should be written into law, that it should be recognised as a constitutional right, and that legal instruments should be provided for the protection of the exercise of these rights.[202]

The nineteenth century saw the emergence of the ideology of scientific socialism. Karl Marx and Friedrich Engels critically assessed the influence of religion on individuals and societies and propagated an ideology of atheism. According to the supporters of such an ideology, the liberation of man from religion is part of a broad process of full human liberation. Starting from criticism of the liberal ideology – one which allows the individual to choose religion, but leaves the consciousness of man dependent on religious beliefs – they assumed that the correct understanding of the concept of freedom of conscience and confession also includes the freedom to accept and proclaim atheistic views.[203] Marx considered religion to be a factor of backwardness in the progress of the working class. He argued that religion was "the opium of the people".[204]

As the literature indicates, the idea of freedom of conscience slowly gained ground on its way to universal acceptance. It was only at the turn of the nineteenth and twentieth centuries that the principles of freedom of conscience and confession in the individual and collective dimension became almost universally accepted in our part of the world.[205]

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[202] Ibid, p. 32.

[203] Ibid, p. 32– 33.

[204] "Religious misery is at the same time an expression of real misery and a protest against real misery. Religion is the sigh of an oppressed creature, the heart of a heartless world, the soul of soulless relations. Religion is the opium of the people. True happiness of the people requires the abolition of religion as the imaginary happiness of the people." – Marks, K. "*Przyczynek do krytyki heglowskiej filozofii prawa. Wstęp*" in: Marks, K. and Engels, F. *Wybrane pisma filozoficzne 1844–1846*, Warszawa 1949.

[205] Pietrzak, M. *Prawo wyznaniowe*, p. 33.

The victory of the Bolshevik Revolution in 1917 enabled the implementation of the ideology of scientific socialism, leading to the creation of a specific model characterised by an especially hostile separation of church and state.[206] In practice, it consisted in eliminating all forms of religious coercion, and limiting and even abolishing religious associations. Various modifications of this ideology were implemented with varying intensity by the authorities of the socialist bloc states established after World War II, including the Polish People's Republic.

Due to the experience gained from the aforementioned conflict, human rights and freedoms became values binding in political systems around the world. We saw the emergence of clear boundaries for authorities in relations with the Church, and of criteria for assessing the governance of the state.[207] Europe along with the United States created new and unique systems of cooperation in the field of confessional toleration and respect for freedom of conscience and confession. A historic breakthrough for the world – one of great importance for the legal order in the field of human and civil rights and freedoms – came with the adoption by the United Nations General Assembly of the Universal Declaration of Human Rights[208] in 1948, which also included a declaration of respect for freedom, including freedom of conscience and confession. Other acts of international law concerning the sphere of freedom of conscience and confession include: the International Covenant on Civil and Political Rights[209] of 16 December 1966; the International Covenant on Economic, Social, and Cultural Rights[210] of 19 December 1966; the Final Act of the Conference on Security and Cooperation[211] of 1 August 1975; the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief of the General Assembly of the United Nations[212] of 21 November 1981; the European Convention for the Protection of Human Rights and

[206] Cf. Krukowski, J. *Polskie prawo wyznaniowe*, p. 32.

[207] On the genesis and categorisation of human rights in the theoretical and philosophical sense, see, among others: Stępień, K. *Filozoficzne źródła sporu o rozumienie praw dziecka*, Lublin 2016.

[208] http://libr.sejm.goc.pl/tek01/txt/onz/1948.html [13.12.2014]

[209] Journal of Laws of 1977, no. 38, item 167, http://isap.sejm.gov.pl/Download?id=WDU19770380167&type+1 [13.12.2014].

[210] http://libr.sejm.goc.pl/tek01/txt/onz/1966a.htm [13.12.2014]

[211] Final Act of the Conference on Security and Cooperation in Europe, Helsinki, 1 August 1975, http://stosunki-miedzynarodowe.pl/traktaty/akt-koncowy-KBWE.pdf [13.12.2014].

[212] http://libr.sejm.gov.pl/tek01/txt/onz/1981.html [13.12.2014]

Fundamental Freedoms[213] of 4 November 1950; the Charter for a New Europe[214] of 21 November 1990; the Convention on the Rights of the Child[215] of 20 November 1989; as well as the acts of supranational law establishing the European Communities and the European Union.

Identification of the current understanding of the term "freedom of conscience and confession" requires an analysis of a number of basic acts of international law. As mentioned previously, the Universal Declaration of Human Rights was adopted on 10 December 1948. According to Article 18 of the Convention, every person has the right to freedom of thought, conscience, and religion; this right includes the freedom to change one's religion or belief, and the freedom – either alone, or in community with others, and in public or private – to manifest one's religion or belief in teaching, practice, worship, and observance. The regulation cited above has been incorporated and extended in Article 18 of the International Covenant on Civil and Political Rights, which provides that everyone has the right to freedom of thought, conscience, and confession. This right shall include the freedom to have or to adopt a religion or belief of one's choice, and the freedom – either individually or in community with others, and in public or private – to manifest one's religion or belief in worship, observance, practice, and teaching. The pact prohibits the use of coercion that would constitute an attack on the freedom to hold or accept a religion or belief at the individual's own choice. At the same time, the Covenant introduces the possibility of restricting the right to freedom of conscience or religion only in cases provided for by the legislation of the state concerned and solely for the purpose of protecting public safety, public order, health or public morality, or the fundamental rights and freedoms of others. Furthermore, the Covenant obliged states parties to respect the freedom of parents or legal guardians to provide their children with religious and moral education in accordance with their own convictions.

Article 9 of the European Convention on Human Rights and Fundamental Freedoms of 4 November 1950[216] states that: "Everyone has the right to freedom of thought, conscience and religion; this right

[213] Journal of Laws of 1993, no. 61, item 284.
[214] *"Paryska Karta Nowej Europy (Charter of Paris for a New Europe)",* Biuletyn Informacyjny – Kancelaria Sejmu. Biuro Stosunków Międzyparlamentarnych, vol. 7, 1991.
[215] Journal of Laws of 1991, no. 120, item 526.
[216] Journal of Laws of 1993, no. 61, item 284.

includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance. [These freedoms] shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others." Another legal act clarifying the scope of freedom of conscience and confession was the Treaty of Amsterdam of 2 October 1997.[217] In accordance with Article 22 of the stated document, discrimination on the grounds of religion or lack thereof is prohibited.

The Treaty of Amsterdam has been extended to include a number of declarations. The most important one from the point of view of defining issues related to freedom of confession was Declaration No. 11, the so-called ecclesiastical clause.[218] The Declaration defines the relationship of the European Union with churches and religious associations, stating: "The European Union respects and does not prejudice the status under national law of churches and religious associations or communities in the Member States. The European Union equally respects the status of philosophical and non-confessional organisations."

Among the act of the European Union, we should also mention the Charter of Fundamental Rights of the European Union, adopted on 7 December 2000.[219] The Charter is a declaration of fundamental values recognised by the peoples and Member States of the EU. It is worth noting the declaration included in the preamble to the Charter: "Conscious of its spiritual and moral heritage, the Union is founded on the indivisible, universal values of human dignity, freedom, equality and solidarity; it is based on the principles of democracy and the rule of law." The EU thus reaffirmed that the dignity of the human person and their freedom constitute the community's foundation. It must therefore be assumed that freedom also applies to the sphere of world view. Confirmation of these priorities can be found in the content of the various provisions of the Charter.

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[217] Official Journal of the European Communities, 2002, C 325.

[218] See: Przyborowska-Klimczak, A. *"Klauzula o Kościołach w Traktacie Amsterdamskim z 1997 roku"*, Prawo – Administracja – Kościół, no. 2–3, 2000, pp. 43–56.

[219] Official Journal of the European Union C 303/2 of 14.12.2007.

The very first article states that: "Human dignity is inviolable. It must be respected and protected."

In turn, the tenth article[220] explicitly expresses the principle of respect for the freedom of the individual in the sphere of world view and beliefs. Importantly, the Charter applies a broader understanding of the stated freedom, as it indicates that: "Everyone has the right to freedom of thought, conscience and religion." It should be mentioned that the wording contained in the preamble to the Charter and the provisions referring to the guarantee of freedom of religion aroused some criticism from the Catholic Church. In the context of the Preamble, critics noted the lack of reference to the religious heritage of Europe.[221]

Attention should also be paid to the content of the Treaty of Lisbon, which confirms the importance that the European Community attaches to the protection of freedom of thought, conscience, and confession, and to the prevention of discrimination.[222] The treaty confirmed the attitude of the EU towards churches and religious associations and organisations gathering supporters of various philosophical and moral movements.[223] It should be appreciated, however, that this provision was incorporated into the Treaty and not removed from its main text, as was the case in the Amsterdam Treaty.

Yet another document of crucial importance in the protection of freedom of confession and freedom of conscience is the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence, opened for signature in Istanbul on 11 May 2011. This

[220] Article 10. 1. Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change religion or belief and freedom, either alone or in community with others and in public or in private, to manifest religion or belief, in worship, teaching, practice and observance. 2. The right to conscientious objection is recognised, in accordance with the national laws governing the exercise of this right.

[221] As the literature indicates, the lack of consideration of this postulate was due to France's concerns about the compatibility of such a provision with the principle of state secularity guaranteed in the French constitution – see: Krukowski, J. "*Unia Europejska a Kościół katolicki. Zarys problematyki"*, Roczniki Nauk Prawnych, vol. 13, no. 1, 2003, p. 216.

[222] Article 10. In defining and implementing its policies and activities, the Union shall aim to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.

[223] Article 17. 1. The Union respects and does not prejudice the status under national law of churches and religious associations or communities in the Member States. 2. The Union equally respects the status under national law of philosophical and non-confessional organisations. 3. Recognising their identity and their specific contribution, the Union shall maintain an open, transparent and regular dialogue with these churches and organisations.

act aims to strengthen the protection of women, including minors, against various forms of violence motivated, inter alia, by cultural or religious reasons. Detailed considerations on the provisions of the Convention are included in Chapter Six.

Of the legal acts of significant importance for the subject matter of this dissertation, one should mention, among others, the Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin,[224] and the guidelines contained in the Recommendation of the European Parliament and of the Council of 20 December 2006 on the protection of minors and human dignity and on the right of reply in relation to the competitiveness of the European audiovisual and on-line information services industry.[225] The preamble to the first of these acts sets out the most important values recognised by the European Community, stressing the importance of fundamental human rights and freedoms,[226] with particular emphasis on protection against discrimination.[227] The Directive focuses on identifying and minimising the effects of discriminatory actions, in particular those on racial or ethnic grounds. The Directive distinguishes between direct[228] and indirect[229] discrimination. The Directive defines the areas

[224] Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, Official Journal L 180, 19/07/2000, p. 22.

[225] Official Journal of the European Union, L, 27 December 2006; Official Journal of the European Union, L.06.378.72.

[226] "The European Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States, and should respect fundamental rights as guaranteed by the European Convention for the protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States, as general principles of Community Law."

[227] "The right to equality before the law and protection against discrimination for all persons constitutes a universal right recognised by the Universal Declaration of Human Rights, the United Nations Convention on the Elimination of all forms of Discrimination Against Women, the International Convention on the Elimination of all forms of Racial Discrimination and the United Nations Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights and by the European Convention for the Protection of Human Rights and Fundamental Freedoms, to which all Member States are signatories."

[228] "Direct discrimination shall be taken to occur where one person is treated less favourably than another is, has been or would be treated in a comparable situation on grounds of racial or ethnic origin."

[229] "Indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put persons of a racial or ethnic origin at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary."

in which discriminatory actions may occur.[230] Given that certain issues inherently linked to ethnic origin, such as religious customs, can be a catalyst for discriminatory actions, it should be recognised that the Directive can be a tool for protecting freedom of confession or belief.

The second act aims to protect the dignity and well-being of children[231] by preventing access to inappropriate programmes or services intended for adults.[232] As indicated in the preamble to the act, the aim is to balance the rights to disseminate and access information and materials on the one hand, and the protection against the dissemination of and access to content that may have a negative impact on the psyche and development of minors.[233] Attention should be paid to the recommendation to avoid any discrimination on grounds of religion.[234]

On 24 June 2013, the Council of the European Union adopted a document setting out the principles for the promotion and protection of freedom of religion and belief.[235] These guidelines fully confirm the Union's position to date on the protection of freedom of thought, belief, and religion.

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230 "(a) conditions for access to employment, to self-employment and to occupation, including selection criteria and recruitment conditions, whatever the branch of activity and at all levels of the professional hierarchy, including promotion; (b) access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience; (c) employment and working conditions, including dismissals and pay; (d) membership of and involvement in an organisation of workers or employers, or any organisation whose members carry on a particular profession, including the benefits provided for by such organisations; (e) social protection, including social security and healthcare; (f) social advantages; (g) education; (h) access to and supply of goods and services which are available to the public, including housing."

231 "The Charter of Fundamental Rights of the European Union (3) ('the Charter') declares in Article 1 the inviolability of human dignity, providing that it must be respected and protected. Article 24 of the Charter provides that children have the right to such protection and care as is necessary for their well-being and that in all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration."

232 "Legislative measures need to be enacted at Union level on the protection of the physical, mental and moral development of minors in relation to the content of all audiovisual and information services and the protection of minors from access to inappropriate adult programmes or services."

233 "The Community [is] to ensure full and adequate protection for citizens' interests in this field on the one hand, by guaranteeing the free delivery and free provision of information services and, on the other hand, by ensuring that their content is legal, respects the principle of human dignity and does not impair the overall development of minors."

234 "(3a) encouraging the audiovisual and on-line information services industry, without infringing freedom of expression or of the press, to avoid all discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation, in all audiovisual and on-line information services, and to combat such discrimination."

235 EU Guidelines on the promotion and protection of freedom of religion or belief, Foreign Affairs Council meeting, Luxembourg, 24 June 2013, https://eeas.europa.eu/sites/eeas/files/137585.pdf [13.12.2014].

An important role in the process of clarifying the scope of the concept of freedom of conscience and confession is played by judicial practice. The numerous rulings of national constitutional courts and the European Court of Human Rights as well as the very extensive case law of American courts interpreting the provisions of the U.S. Constitution – necessitated in a way by the exceptionally general regulation of that Constitution – clearly contribute to the improvement and clarification of legal regulations concerning the sphere of freedom of conscience and confession. In this respect we should mention the view expressed by the European Court of Human Rights, which stressed the importance of the issue of freedom of conscience and confession. The European Court of Human Rights has repeatedly stressed the importance of freedom of conscience as a precious good for atheists, agnostics, sceptics, and the religiously indifferent. The Court pointed out that freedom of conscience has not only a positive aspect allowing believers to believe, but also a negative aspect allowing non-believers to disbelieve, agnostics to doubt, etc.[236]

As has been mentioned earlier, the freedom to profess and practice religion is a fundamental human right. This freedom has a material and procedural aspect. The material aspect is expressed by indicating a catalogue of rights related to freedom of opinion, such as freedom of thought, confession, religion, and conscience (this is the current division in the case of concepts assuming a distinction between freedom of confession and freedom of religion). The procedural aspect is expressed by creating instruments designed to effectively enforce these rights in the event of their violation. While the legislative achievements of individual states and international organisations largely satisfy the material aspect, considerable doubts arise when trying to assess whether this also applies to the procedural aspect. Significant importance is ascribed to the circumstance noticed by the doctrine, i.e. that there is a peculiar imbalance between the material and procedural elements in the acts of international law, as reflected by the content of the acts being limited to the indication of norms of a material nature.

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[236] Banaszak, B. and Leśniak, N. "*Pozycja religii w obowiązującej Konstytucji RP*" in *Urzeczywistnianie wolności*, p. 151.

It is also noted that there are no sufficiently extensive standards shaping the tools guaranteeing the protections contained in the said acts.[237]

The right to freedom of conscience and confession is undoubtedly one of the fundamental human rights. Despite the basically undisputed position and importance of freedom of conscience and confession, it is not an unlimited right, it has limits that determine the scope of free action of the individual. The necessity of establishing certain limits within which the exercise of freedom may take place is implied by the fact that the individual (as a subject of individual freedom) and religious associations (as entities that are the beneficiaries of collective freedom) operate in a society consisting of other individuals and religious communities who also enjoy identical rights.[238] It is also worth noting the fact – one which is rightly brought up in the literature – that freedom of conscience and confession is not an isolated right. Other rights of freedom are associated with it, ones without which the exercise of the discussed right loses its meaning. Such rights include: the right to express one's own views, the right to free speech, freedom of the press, the right to associate, and the right to peaceful assembly. In the event that these rights are restricted in any way, the freedom of conscience and confession cannot be fully realised, and as a result, the possibility of exercising it is lost.[239] The above is undoubtedly manifested through the previously indicated use of the term "freedom of thought, conscience and confession" in the content of international acts. It should be assumed that the legal solutions regarding the definition of the conceptual scope of freedom of conscience and confession are satisfactory. However, the establishment of procedural and institutional solutions has not yet taken place to an extent enabling the effective enforcement of this freedom and the prevention of all forms of violations thereof.

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[237] For more on this topic, see: Gołębiowska, A. *"Reforma instytucji wspólnotowych a prawo do wolności religijnej w Traktacie Nicejskim"*, Prawo Europejskie w Praktyce, no. 10, 2010, p. 39; and the remarks contained in: Sokołowski, T. *Law in the face of religious persecution and discrimination*, Poznań 2011, p. 79. On the reasons for the lack of such norms, see consideration in: Warchałowski, K. *Ochrona wolności religijnej w porządku międzynarodowym do czasu uchwalenia Powszechnej Deklaracji Praw Człowieka* (10 XII 1948), in *Ecclesia et Status. Księga jubileuszowa z okazji 40-lecia pracy naukowej Profesora Józefa Krukowskiego*, edited by A. Dębiński, K. Orzeszyna, and M. Sitarz, Lublin 2004, p. 923 et seq; and on the ways in which the practice tries to supplement the lack of the above, see: Sokołowski, T. *System prawny wobec prześladowania religijnego dzieci*, 73, vol. 2, 2011, p. 145 et seq, pp. 139–158.

[238] Pietrzak, M. *Prawo wyznaniowe*, pp. 38–39.

[239] Ibid, p. 23.

5. Freedom of conscience and religion in Christian philosophy

As indicated above, Christianity, by virtue of its monotheistic character, proclaimed the thesis of the exclusive truthfulness of its faith. This trait led to an initially intolerant attitude towards people professing a religion other than Christianity. In the first centuries of Christianity, despite episodic but bloody persecutions during the reign of Emperor Nero, the Church developed peacefully.[240]

During this period, alongside a current of hostility towards religions identified as pagan by the state authorities (Tatian, Tertullian), a new trend appeared in Christian philosophy, which was aimed at the partial recognition of the rights of followers of other religions to freely practice their worship. However, as the importance of the Church increased, the command to promote the Christian faith using methods of coercion, as derived from the apostles' writings, became more dominant.[241]

The activity of Church leaders was expressed by their combating any deviations within the Catholic religion and combating religious minorities (both followers of pagan religions and Jews). Both followers of other religions and people striving for reform of the Church itself were fought against. The same was true of emerging social or scientific ideas that were detrimental to the traditional views of the Church's teaching.

It should be borne in mind that the possibility of exercising the rights resulting from freedom of conscience and confession is connected with the issue of the possibility of freely obtaining information concerning the dogmas, principles, and truths of a given religion. The acceptance of freedom of confession or belief should, by definition, allow for making a worldview choice, which can only be made freely when alternatives are available. Spreading information or views contrary to

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[240] See: Eliade, *Historia wierzeń i idei religijnych*, t. 2, p. 239.

[241] Luke 14:23: "Go out into the highways and hedges, and compel them to come in, that my house may be filled." – The Evangelist's phrase *compelle intrare* was later repeated by St Augustine. For many years, this formula was interpreted as consent and even as an order to pursue violence against non-believers. After gaining a privileged position in the state (i.e. initially in the Roman Empire, and then in the countries of medieval Europe), this formula was often applied ruthlessly, appearing, for example, in the bloody fight against schismatics and heretics or in the creation of institutions for the protection of the faith.

the dogmas supported by the Church made it necessary to ensure the purity of the faith.[242]

The struggle to maintain dogmatic purity was based both on legislative activity and on the creation of specialised bodies whose task was to supervise the ideas being disseminated. This task was accomplished through the establishment of the Supreme Sacred Congregation of the Roman and Universal Inquisition (*Sacrum Officium;* formally established in 1542, it actually started its activity around 1588)[243] and the Sacred Congregation of the Index (*Congregatio Iudicis*; founded in 1751).[244] The increase in the number of publications considered to contain content contrary to

[242] The origins of the control and disclosure of potential deviations from the accepted interpretation of the rules of faith date back to the period of transition from the Middle Ages to the beginning of the Renaissance and were directly related to the successes of the Reformation trends. The term preventive censorship appeared at that time. The first informal activities pertaining to the verification of theses contained in writings with the canon of faith appear already in St Augustine's work (see: *Libri quatuor contra duas epistolas Pelagianorum* presented for the approval of Pope Boniface I, available in digital format at http://www.documentacatholicaomnia.eu/04z/z_0354–0430_Augustinus_Contra_Duas_Epistolas_Pelagianorum_MLT.pdf.html [20.03.2015]. Subsequent activities related to the control of the content of works took place in the thirteenth century within monastic communities and universities. Such activities included the norms contained in the Constitutions of Narbonne of the Franciscan Order or in regulations passed at various universities starting with the University of Paris – see: Misztal, H. "*Cenzura uprzednia w ustawodawstwie Kościoła zachodniego do Soboru Trydenckiego"*, Roczniki Teologiczno-Kanoniczne, 20(1974), vol. 5, pp. 101–114. The institution of preventive censorship was established by the *Inter multiplices* constitution of Innocent VIII of 17 November 1487. See: Pokorna-Ignatowicz, K. *Kościół w świecie mediów. Historia, dokumenty, dylematy*, Kraków 2002, p. 16. As indicated in the literature, on the one hand, no writings containing theses contrary to the Catholic faith could appear under the penalty of excommunication and fines. On the other hand, in the event of disclosure of the publication of texts containing such content, it was necessary to find and punish both the persons responsible for printing such works and for their possession – see: Piechota, M. "*Ody do młodości kłopoty z cenzurą"*, Gazeta Uniwersytecka, no. 9, June 2001; Nieć, M. *Komunikowanie polityczne w społeczeństwach przedmasowych*, Warszawa 2011, p. 238. The constitution *Inter multiplices* was confirmed by the decree of Pope Alexander VI in 1501, and then by the bull *Inter sollicitudines* of 4 May 1515, which sanctioned the destruction of publications containing contents incompatible with the teaching of the Church, and increased the respective penalties – see: Pawluk, T. *Prawo kanoniczne według Kodeksu Jana Pawła II*, t. 2: *Lud Boży jego nauczanie i uświęcanie*, Olsztyn 2010, p. 347. Printing works containing views contrary to the faith was punishable by excommunication, destruction of the entire circulation, fines, and deprivation of the right to print books for a period of one year. The justification for the introduction of preventive censorship in relation to all types of publications was the need to ensure that the valuable invention of printing was not used for the purpose of proclaiming theses that undermine recognised dogmas – see: Misztal, H. *Cenzura uprzednia pism i druków w Kościele Zachodnim. Studium historyczno-prawne*, Lublin – Sandomierz 2001, p. 35: "We have extended our care over the matter of printing books... so that what was invented for the glory of God, for the multiplication of faith, and for the dissemination of good art, does not contradict its purpose, bringing harm to the salvation of Christians."

[243] Paul III, apostolic constitution Licet ab initio, 21 July 1542.

[244] Misztal, H. *Cenzura uprzednia pism i druków*, p. 45.

the teaching of the Church, and moreover the increase in their availability resulting from the popularisation of print, became the catalyst for the publication of official indexes of forbidden books.[245] In 1559 a universal index of prohibited books (*Index Librorum Prohibitorum* or *Index Expurgatorius*) was published for the first time. It contained titles of works and the names of authors who spread teachings incompatible with the teaching of the Church. It should be mentioned that the books that were ultimately included in the index did not always raise immediate reservations from the Catholic Church. An example of one such work is the lecture by the Polish clergyman and astronomer Nicolaus Copernicus entitled *De revolutionibus*. This book, after unauthorised changes likely made by the publisher, was published under the title *De revolutionibus orbium coelestium*. Initially, the work, which was dedicated to Pope Paul III, generated positive (in contrast to the position taken by the leaders of the Reformation movement) interest among the Church hierarchy. Due to the great influence that it had on certain contemporary scholars, who in the meantime had begun to be accused of heretical views, the work also started to be perceived as a threat to the prevailing religious worldview. As a result, it was added to the index (*Index librorum prohibitorum*), from which it was withdrawn in 1757.[246] One thing worth noting is the purpose of its preparation, indicated in the introduction to the collection. It mentions concern for the legitimacy of the faithful, who – as a result of the dissemination of printing – are exposed to the temptation of reaching for works containing theses contrary to the official teaching of the Church.[247]

[245] The most important published index of prohibited books is the index of Pope Paul IV published in 1559, followed by the bull of Pius IV *Dominici gregis* of 24 March 1564 containing the index developed during the Council of Trent. Another version of the index was announced by Alexander VII with the bull *Speculatores* of 1664. Subsequent versions of the index were announced by Pope Benedict XIV in the constitution *Sollicita ac provida* in 1753, and the breve *Quae ad catholicae* in 1757. A codification of index regulations was also made by Pope Leo XIII with the constitution *Officiorum ac munerum* of 1897. A new index of prohibited books was announced based on this constitution. During the Council of Trent, the *Decretum de editione et usu sacrorum librorum* were adopted in 1546 – see: http://digitale.bibliothek.uni-halle.de/vd17/content/pageview/9130825 – and in 1564 the work *De libris prohibitis regulae Decem* was published – see: Misztal, H. *Cenzura uprzednia pism i druków*, p. 2.

[246] See: https://encyklopedia.pwn.pl/haslo/De-revolutionibus-orbium-coelestium-3891123.html [07.06.2016].

[247] Excerpt from the foreword to the Index of Prohibited Books, online version: https://books.google.pl/books?id=Qjo8AAAAcAAJ&pg=PT28&lpg=PT28&dq=index+librorum+prohibitorum&source=bl&ots=cdNz09fuKZ&sig=qsS9f1DHxQk8N8hjuPaSUVFTMw&hl=en&sa=X&ved=0ahUKEwj63IPR6b3LAhVjOJoKHSqJBL44ChDoAQg-

Another ecclesiastical document regulating the institution of censorship was the Constitution *Sollicita ac provida* of 23 July 1753.[248]

A negative position on allowing full freedom of preaching theses devoted to the dogmas of the faith was expressed, among others, by Pope Gregory XVI in the encyclical *Mirari vos*[249] issued in 1832. In this work

4MAQ#v=onepage&q=index%20librorum%20prohibitorum&f=false [23.10.2015] "For centuries, the Holy Church has been the victim of persecution, slowly multiplying the ranks of heroes who sealed the Christian faith with their own blood; but today, hell supports an even more terrible weapon against the Church, treacherous, trivial and harmful: the sinister printing machine. There has never been a greater threat to the integrity of the Church and morality in the past, so the Holy Church will never cease to maintain this awareness among Christians [...] The Church was established by God as an infallible guide for the faithful and for this reason, endowed with the necessary authority, it cannot do otherwise; it has the duty, and consequently the sacred right, to prevent, however disguised, the errors and scandal of the flock of Jesus Christ [...] It must also not be claimed that the ban on harmful books is a violation of freedom, a campaign against the light of truth, and that the 'List' is a crime against erudition and science [...] Atheistic and immoral books are often written in an endearing style, they deal with topics that stimulate carnal desires and conceit of the spirit, and they are always intended, by their ornaments and catchiness, to be a seed of corruption in the minds and hearts of readers; therefore, the Church, as a caring mother, guards the faithful by appropriate prohibitions, so that they do not put their lips to a cup filled with poison. It is not out of fear of the light that the Church forbids the reading of certain books, but out of immense zeal, inflamed by God. It does not tolerate the loss of the souls of the faithful, teaching that a man who fell in his original righteousness succumbs to a strong tendency to evil, and therefore finds himself in need of care and protection [...]."

[248] The text of the constitution is available at https://www.documentacatholicaomnia.eu/04z/z_1753–07–09_SS_Benedictus_XIV_Sollicita_ac_Provida_LT.doc.html [07.02.2015]. The document mentions the principles that Aquinas followed during the discourse: "[...] It is true that he fights against the different opinions of philosophers and theologians if the truth impels him to reject them. However, everything that deserved praise in their works, this great Doctor miraculously brings out. No opponent is underestimated, mocked, or misrepresented, but everyone is treated with respect and gentleness. If there was something very sharp, ambiguous, or vague in their statements, he explained it with kindness and understanding, softening it, and tidying it up. If, on the other hand, the matter of religion and faith required that their position be rejected and criticised, he did so in such moderation that he deserved the same praise for the way in which he differed from them as for the way in which he professed Catholic truth."

[249] ASS, 4(1868) pp. 336–345, http://www.vatican.va/archive/ass/documents/ASS-04–1868-ocr.pdf [20.08.2016]. "This is also the aim of the most pernicious, cursed, and repulsive freedom of the press, aimed at disseminating all writings among the common people, which some demand and support with such insistence. We are afraid, Reverend Brothers, when looking around us at these products of science, or rather ghosts of errors that spread throughout the world in countless writings, brochures, tomes, books, often slim in volume but full of malice, from which the curse spilling over the whole earth makes us weep. Unfortunately, there are so many shameless people who insist that this sudden flood of errors can be effectively stopped by some letter issued in defence of truth and religion in the midst of such a great surge of iniquity. However, it is not acceptable, and it is against all law, to consciously do evil and multiply it in the hope that something good will result from it. Who would allow the poison to be openly disseminated and sold, purchased, imported, and enjoyed, because there is some medicine which sometimes enables those who use it to avoid destruction?"

he pointed to the dangers arising from the possibility of disseminating unverified statements regarding the principles of the faith. The principles of church censorship were codified and reformed by Pope Leo XIII in the constitution *Officiorum ac munerum* of 25 January 1897.[250] It was a universal regulation and was incorporated almost entirely into the Pio-Benedictine Code of Canon Law (1917).[251]

Currently, the legal basis for the functioning of the institution of ex ante censorship is the Code of Canon Law of John Paul II (1983). The code incorporates the findings contained in the documents developed during the Second Vatican Council (whose deliberations lasted from 1962 to 1965), in particular the 1975 decree *De Ecclesiae pastorum vigilantia circa libros issued by the Congregation for the Doctrine of the Faith*.[252] The provisions of the Code of Canon Law (1983) were also confirmed in the *Instruction on Certain Aspects of the Use of Social Media for the Proclamation of the Doctrine of the Faith* of 1992.[253]

The history of the development of Christian doctrine in the first centuries of Christianity is in fact a history of permanent disputes between the followers of orthodox teachings and heterodox views. The discussion of the theses proclaimed by apostates from the Canon – i.e. "orthodoxy"[254] – became a catalyst for the shaping and clarification of the Church doctrine.

The first tensions and misunderstandings in Christian communities regarding the interpretation of the principles of faith took place already in the Apostolic Age. The reason for this were errors in the interpretation of the principles of faith, which troubled the Church. During the first three centuries, errors resulted from difficulties in interpreting the truths of faith, the practice of church life, and the influence of other religions.

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[250] Apostolic constitution *Officiorum ac munerum*, http://www.vatican.va/archive/ass/documents/ASS-30–1897–98-ocr.pdf [8.04.2015].

[251] For more on the regulation contained in the Code of Canon Law (1917), see: Misztal, H. *Cenzura uprzednia pism i druków*, pp. 72–114.

[252] http://www.vatican.va/archive/aas/documents/AAS-67–1975-ocr.pdf [20.08.2016]; also see: Misztal, H. *"Kościelna cenzura wydawnictw w świetle dekretu 'De Ecclesiae pastorum vigilantia circa libros'",* Roczniki Teologiczno-Kanoniczne, 23(1976), vol. 5, pp. 87–95.

[253] http://www.opoka.org.pl/biblioteka/W/WR/kongregacje/kdwiary/zbior/t_2_28.html [7.02.2015].

[254] Understood as a primordial science, true, free from distortions and errors, given once and for all, which could be interpreted, but without violating its essential content (development of dogmas). By this term, i.e. ορθοδοζια – derived from ορθοδοζιω¯ (to have the right opinion, the right view of something), and also from ορθοδ (right, reliable, truthful) – one understood the opposite of error and at the same time the synthesis of the true faith.

The separation of sects of Christianity differing in their interpretation of the principles of faith led to the emergence of heresies and schisms.[255]

The events presented in the previous considerations, which led to Christianity gaining the status of the dominant religion, made it possible to implement the concept of the one true faith.[256]

The period of the early Middle Ages, due to the collapse of secular power structures, allowed the Church – an organisation with a uniform leadership and an efficient structure, and which also had vast resources – to achieve primacy in terms of secular power. This situation changed due to processes of degeneration of the church organisation. In the thirteenth and fourteenth centuries, the authority of the Church

[255] The phenomenon of heresy was already known in the Greek and Judaic traditions. The term "heresy" in pagan antiquity had many meanings referring to various manifestations of everyday life and meant: choice, election; liking, inclination, predilection; intention, passion, study; philosophical system, philosophical school; religious sect; proposal, project; party; commission; voluntary sacrifice – see: Abramowiczówna, Z. *Słownik grecko-polski, t. 1*, Warszawa 1958, p. 55. The concept of heresy was already known in ancient Greece and referred to various philosophical schools. Heresy was diversity of thought and intellectual creativity. It was only Christian apologetics that changed the meaning of the concept of heresy, which has had a negative meaning since the times of the early Church. The books of the New Testament already warn against heresy as a departure from the Gospel of Jesus Christ (e.g. Titus 3:1; 1 Corinthians 11:19; 1 Timothy 1:3; 6:3). The Roman Catholic Church teaches that heresy is "the persistent denial, after baptism, of some truth to be believed with divine and Catholic faith, or the persistent doubting of it" – Canon 751 of the Code of Canon Law (1983). In the Bible, the use of this term means science, a separate direction, or a sect breaking unity. In the New Testament, it most often means a party, e.g. Pharisees or Sadducees, or a rift, dispute, or pernicious doctrine disseminated by false teachers – see: Rabiej, S. "*Herezja: I. Dzieje problematyki: W Biblii"*, in *Encyklopedia katolicka*, vol. 6, edited by J. Walkusz [et al.], Lublin 1993, col. 751. Such an understanding of the concept is indicated, for example, by the content of the Apostles' letters: "But there are false prophets among the people, just as there will be false teachers among you who will introduce pernicious heresies among you." (2 Peter 2:1, http:/// biblia.deon.pl/rozdzial.php?id=1086 [3.02.2015]); "Above all, I hear – and in part I believe – that there are disputes among you when you come together as a Church. No doubt there must be differences among you to show which of you have God's approval." (1 Corinthians 11:18–19, http://biblia.deon. pl/chapter.php?id=296 [3.02.2015]). A definition of heresy and heretics was presented by St Augustine: "Well, in the Church of Christ, all who have unhealthy or erroneous views, who stubbornly oppose after being admonished to return to sound and correct opinions, and who do not want to abandon teachings that bring damage and loss, but persist in defending them – they become heretics." – Augustine of Hippo, *De civitate Dei* XVIII, 51, 1.

[256] The period of strengthening and later the reign of the Church in the field of freedom of conscience and confession constituted the realisation of the thought expressed by St Paul in his letter to the Galatians: "But there is no other gospel: there are only some people who sow confusion among you and who would like to pervert the gospel of Christ. But even if we or an angel from heaven preached to you a gospel different from the one we preached to you – let him be accursed! We have said this before, and now I say: If anyone preaches to you a gospel different from that which you have received, let him be accursed!" (Gal 1:7–9), http://biblia.deon.pl/rozdzial.php?id=1013 [4.02.2015].

declined. This was due to, on the one hand, the political games in which the papacy became entangled, the Investiture Controversy, the "Avignon captivity" of the popes, and the emergence of antipopes; and, on the other hand, objective factors: the "Black Death" epidemic that caused the emergence of, among others, movements blaming the plague on the relations prevailing in the Church; as well as the emergence of movements striving for reform of the Church, such as spiritualists, supporters of William Ockham[257] and Peter Auriol, or notions based on the teachings of John Wycliffe.[258]

In the fourteenth and fifteenth centuries, the search for the renewal of faith was the reason for the emergence of many religious movements that were fought against as heresies. The Beguines and Beghards movements,[259] the Modern Devotion (*devotionio moderna*) movement created by Gerard Groote, the Brethren of the Common Life (*Fratres Vitae Communis*) movement, and the movement of the mystics should be mentioned here. Strong heretical movements also developed in southern France and northern Italy. In these regions, a branch of Manichaeism, collectively referred to as the Albigenses (the term Albigensian was used collectively to refer to Cathars, Petrobrusians, Henricans, Arnoldists, and Waldensians),

[257] William Ockham (ca. 1285–1349), a Franciscan, taught at Oxford but was accused in Avignon (1323) of dangerous, if not outright heretical teachings. Summoned to the papal court, where he was long interrogated because of the disagreement of the members of the commission in their assessment of his teaching, he fled Avignon during the period of hostility of John XXII towards Franciscan spirituals. His philosophical and theological views were never condemned (quoted after: Banaszak, *Historia Kościoła katolickiego*, vol. 1, p. 151).

[258] John Wycliffe (ca. 1330–1384) was associated with the University of Oxford. In 1377 the Bishop of London considered 19 statements from the work *De civili dominio* to be dangerous. At the Synod of London (1382), 24 theorems of his teaching were condemned, and with the help of royal authority, his supporters in Oxford were forced to remain silent or expelled. Wycliffe was forced to leave the university but was not excommunicated during his lifetime. At the provincial synod in 1397, 18 statements from his work *Trialogus* were condemned. The German theologian Jan Hübner added 21 erroneous theses of Wycliffe to the 24 condemned in 1382. The Archbishop of Canterbury, during a visit to the University of Oxford in 1411, drew up a list of 267 of Wycliffe's erroneous sentences and sent it to Rome. In 1413 Antipope John XXIII announced a bull in which the writings of Wycliffe, *Dialogus* and *Trialogus,* were condemned. A further warning was added that whoever preaches his erroneous teaching must stand before the Roman tribunal. The teachings of Wycliffe, along with those of Hus, were dealt with by the Council of Constance. King Henry IV of England, introducing a statute on the burning of heretics, ordered the remains of Wycliffe to be extracted from his grave and burned together with his works (ibid., p. 152).

[259] Without theological preparation, the communities of Beguines and Beghards were susceptible to the influence of popular heresies and evangelical radicalism. Due to fear of propagation of errors, the Beghards were covered by the decision of the 1277 Council of Trier forbidding uneducated people to preach. The movement was condemned by a bull in 1356.

gained popularity.[260] The situation was further aggravated by a split in the Western Church, which is referred to as the Great Western Schism (1378–1417),[261] and the emergence in the fifteenth century of a movement based on the teachings of John Huss.

At the end of the fifteenth century, reformist tendencies towards the Church matured in many countries. They resulted in the speeches of Martin Luther, Ulrich Zwingli, and John Calvin, as well as the creation of the Anglican church by Henry VIII. All of them sought, more or less, a profound reform of the Church, which was not met with a positive reaction on the part of the Church hierarchy. The *Exsurge Domino*[262] bull of 15 June 1520 condemned the teachings, and the *Decet Romanum Pontificem*[263] bull of 3 January 1521 outright excommunicated Luther. Zwingli died in the midst of the religious battles that broke out between the cantons of Switzerland. Furthermore, Anabaptists and their factions taking the form of Bohemian Brethren, Mennonites, and Spiritualists also stood up against the doctrine of the Roman Catholic Church. Moreover, the Church of England emerged.[264]

Religious fights also took place in France, where the supporters of Calvin's teachings and Catholics clashed.[265] The same was true in the Neth-

[260] The literature on the Cathar heresy is very broad. Here we can mention: Pegg, M.G. *A Most Holy War. The Albigensan Crusade and the Battle for Christendom*, Cambridge 2008; Barber, M. *The Cathars. Dualist Heretics in Languedoc in the High Middle Ages*, Harlow 2000; O' Shea, S. *The Perfect Heresy: The Life and Death of the Medieval Cathars*, London 2000. Particularly noteworthy among Polish works is the comprehensive (and in part contradicting classical theories regarding the genesis of Catharism) monograph by P. Czarnecki, *Geneza i doktrynalny charakter kataryzmu francuskiego XII–XIV w (Genesis and doctrinal nature of French Catharism of the 12th-14th centuries)*, Kraków 2017.

[261] Banaszak, M. *Historia Kościoła katolickiego*, vol. 2, p. 157 et seq.

[262] http://www.papalencyclicals.net/Leo10/l10exdom.htm [14.05.2015]

[263] http://bookofconcord.org/decet-romanum.php [20.03.2015]

[264] The English schism, declared by the parliament on 3 November 1534, granted the king the title and the only rights on Earth of the Supreme Head of the Church in England and assigned him the authority to watch over the purity of the doctrine. Rejection of the act of supremacy or its questioning was seen as treason. The basic principles of the faith were collected in the so-called Six Articles Act (see: http://anglicanhistory.org/reformation/henry/sixarticles.html [10.07.2015]).

[265] The war between Huguenots and Catholics, caused by the Night of St Bartholomew on 23/24 August 1572, ended with the edict of Nantes on 13 April 1598, which guaranteed the Huguenots freedom of conscience and freedom of worship. However, services were limited to places of worship. Religious disputes were to be settled by special courts composed of both Calvinists and Catholics. The Huguenots were granted the legal capacity to hold all offices in the state, and as a guarantee of freedom they were granted for eight years the possession of one hundred strongholds, whose crews were maintained by the king and whose commanders were Calvinists.

erlands, which was subordinated to Spain, as well as in the territory of Bohemia, Moravia, and the states forming the German Reich.[266]

The response of the Roman Church to the spreading Reformation movements came in the form of the resolutions of the Council of Trent, the deliberations of which lasted from 1545 to 1563.[267] It should be mentioned that despite the fact that the aim of the Council was to reform the institutions negatively perceived by the faithful, acts confirming the medieval doctrine of full papal power over rulers and nations ("Caesaropapism"), punishments for abandoning the Catholic faith, and prohibitions on appointing heretics to offices were still issued.[268] As mentioned previously, the institutional response to the emergence of centrifugal movements in the Church involved the creation of an index of forbidden books and the strengthening of the Inquisition.

The state of open conflict[269] between the followers of individual branches of the Christian religion lasted until the Enlightenment. The culmination of the period came with the Great French Revolution, which brought about a revolution in all areas of political, social, and religious life. The *Declaration of the Rights of Man and of the Citizen*, adopted on 26 August 1789, is of fundamental importance to the field of human rights, including rights in the religious sphere.[270]

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[266] Banaszak, M. *Historia Kościoła katolickiego*, vol. 3, pp. 47–48 and 97–101.

[267] Ibid., p. 58–66.

[268] Paul IV, papal bull *Cum ex Apostolatus officio*, 15 February 1559, http://www.ultramontes.pl/cum_ex_apostolatus_pl.htm [13.04.2015].

[269] In Western Europe, the legal stabilisation of confessions by the Peace of Westphalia did not mean the cessation of conflicts between Evangelicals and Catholics or the lack of tension within the Evangelical Churches themselves. The absolute rulers of this period considered the religion prevailing in their country to be an important factor integrating their subjects. Therefore, they tried to make their official church even more closely linked to the state, and they were reluctant to tolerate those who left it. As part of these activities, steps were taken in France to eliminate the Huguenot issue. The king's action against the Huguenots began with the edict of Fontainebleau of 22 October 1685 (see: http://huguenotsweb.free.fr/english/edict_1685.htm [14.09.2015]). In England, after the expulsion of the Catholic Stuarts, drastic religious regulations were in force, directed mainly against Catholics. The Toleration Act issued by King William III (see: http://www.jacobite.ca/documents/1689toleration.htm [18.09.2015]) granted religious freedom to everyone except Catholics, atheists, and anti-Trinitarians. The situation of the Catholics was undoubtedly influenced by fears related to their potential fidelity to the expelled Stuarts. The *Test Act* passed in 1672 (see http://www.british-history.ac.uk/statutes-realm/vol5/pp782–785 [18.09.2015]) demanded loyalty to the monarch, manifested by receiving communion in the Anglican Church. Only people who showed their loyalty had the right to take up civil or military offices – see: Banaszak, M. *Historia Kościoła katolickiego*, vol. 3, p. 158.

[270] Available at: http://libr.sejm.gov.pl/tek01/txt/konst/francja-18.html [19.09.2015]. In particular, Article 10 provided: "No one may be disturbed because of their beliefs, including religious

Tensions rose when secular authorities intervened in matters of faith, granting freedom of religion to non-Catholics, rejecting the idea of recognising Catholicism as the state religion, and pushing for state legislation regulating the Church's functioning.[271] Initially, the events related to the French Revolution did not provoke the authorities of the Catholic Church to take action. It is mentioned that this was due to a conviction that the changes in France were impermanent and that the old order would soon be restored.[272]

The pope's reaction was only triggered by the introduction of the Civil Constitution of the clergy (*La loi sur la Constitution civile du clergé* – act adopted on 12 July 1790) and the beginning of the appointment of bishops in accordance with its provisions. In response to the adoption of the Declaration of Human Rights and the laws regulating the situation of the Church, on 10 March 1791 Pope Pius VI, in the breve (i.e. papal brief) *Quod aliquantum,*[273] condemned the civil constitution, declaring it invalid and non-binding. He said that the nationalisation of the Church is a condemned heresy, as laymen cannot decide on dogmas and ecclesiastical structure. In addition, he referred to the issue of the freedom of religious belief, which was established in the Declaration, assessing it as an error.[274] The pope repeated his negative assessment of the changes in the breve *Caritas, quae docente Paulo,*[275] in which he indicated

ones, as long as their manifestation does not disturb the public order established by law."

[271] Act of 12 July 1790, Civil Constitution of the Clergy (French: *La loi sur la constitution civile du clergé*).

[272] Banaszak, M. *Historia Kościoła katolickiego*, vol. 3, pp. 207–208.

[273] The content of the encyclical is available at: https://documentacatholicaomnia.eu/04z/z_1791–03–10_SS_Pius_VI_Quod_Aliquantum_IT.doc.html [20.09.2015].

[274] Wielomski, A. *Kościół w cieniu gilotyny. Katolicyzm francuski wobec Rewolucji (1789–1815)*, Warszawa 2009, p. 348: "The necessary effect of the constitution adopted by the assembly is the annihilation of the Catholic religion and, with it, of the obedience due to kings. For this purpose, this absolute freedom has been established as a human right in society, which not only ensures a lack of interference in one's religious views, but also grants the freedom to think, speak, write, and even print with impunity in religious matters everything that the most unrestrained imagination can suggest. A scandalous law, which nevertheless seemed to the assembly to be the result of the natural equality and freedom of all people. But what can be more senseless than to establish that equality between men and that unfettered freedom which seems to inhibit the operation of reason, the most precious gift of nature given to man, and the only thing that distinguishes him from animals. The recognition that everyone is free to judge the truths of the faith and accept or reject them without guidance from the Church leads to opposition and rebellion against God. The choices made by emancipated reason led to error, which is often tantamount to tolerance for heresy or atheism."

[275] "*Charitas. Encyklika Papieża Piusa VI o Przysiędze Obywatelskiej we Francji* (1791)", Pro Fide, Rege et Lege, 2010, no. 1, p. 93: "Sacrilegious and schismatic. It overthrows the primacy

that the norms of the French Constitution contain provisions hostile to the Church and Catholic tradition.

The negative position of the Church regarding the granting of freedom of conscience and confession was consistently maintained by the Church even after the fall of the revolution and Napoleon's empire. During the Bourbon Restoration period, Pope Pius VII responded critically to the provisions of the Constitutional Charter of Louis XVIII, issued on 4 July 1814, which recognised Catholicism as the state religion (Article 6 stated: "The Catholic, Apostolic and Roman religion is, however, the state religion"[276]) while accepting the principle of freedom of confession (Article 5 stated that "everyone professes their religion with equal freedom and receives the same protection for their worship").[277] The Church's position on the idea of freedom of conscience and confession remained unchanged despite the changes in the social situation in the world. The conservatism of the Church was manifested, among others, by the theses contained in the encyclical of Gregory XVI of 15 August 1832, *Mirari vos.*[278] In this encyclical, which reflects the Church's conservatism, critical assessments were expressed not only in regard to possible attempts at change within the Church,[279] but also

of the Church, stands in opposition to past and present practices, and was developed and published only for the complete destruction of the Catholic religion."

[276] Wording of the articles of the Charter based on *Powszechna historia państwa i prawa, wybór tekstów źródłowych*, prepared by B. Lesiński and J. Walachowicz, Poznań 1975, p. 179.

[277] Pius VII, Apostolic Letter *Post tam diuturnitas:* "The twenty-second article of the Constitution is a new source of severe pain inflicted on our heart, which, we admit, causes us the greatest anguish, despondency, and torment. Not only is freedom of religion and conscience permitted to use the words of the article itself, but it also promises to support and protect this freedom, and the servants of what are referred to as cults. There is no need for long reflections when we turn to a bishop like you to make you aware of the mortal wound inflicted on the Catholic religion in France by this article. By the very fact of establishing the freedom of all cults indiscriminately, truth is confused with error, and the holy and immaculate Bride of Christ, the Church, outside of which there is no salvation, is equated with heretical sects and even with Jewish perfidy. Moreover, by promising favour and support to heretical sects and their servants, not only their persons but also their errors are tolerated and approved. This is clearly a tragic and always condemnable heresy, which St Augustine expressed in these words: 'It states that all heretics are on the right path and speak the truth, which is an absurdity so monstrous that I cannot believe that any sect actually professes it.'"

[278] http://www.kns.gower.pl/grzegorz_xvi/mirari.htm [21.09.201]

[279] "And this will be best accomplished when, in accordance with the duty of your office and taking into account yourself and the doctrine, you will constantly remember this: 'that the universal Church abhors every novelty' and that, according to the warning of St Agathon the Pope, 'what has been resolved once should neither be diminished nor changed nor supplemented, but everything in words and interpretation should be kept intact'. In this way, we will retain the strength of unity that is supported in this capital of St Peter as a foundation, and from where the laws of communion flow to all particular Churches, 'there will also be defence for

regarding attempts to undermine the dogmas of faith,[280] the recognition that other religions can also ensure salvation,[281] or the need to ensure freedom of conscience.[282]

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all, security, a storm-free port, and an inexhaustible treasury of all good'. Therefore, in order to tame the insolence of those who either intend to nullify the laws of this Holy See or try to break its connection with other particular Churches, the only means through which they can flourish and endure, proclaim the faith and true respect for it to all of them, crying out with St Cyprian: 'It is wrong for anyone to believe that he is in the Church while he has left the Chair of Peter on which the Church is founded' and 'if, according to the formulation of the Fathers of the Council of Trent, it is clear that the Church was instructed by Jesus Christ and his apostles and so far the Holy Spirit teaches it all truth', it is absurd and very harmful for them to demand in it some rebirth and reform allegedly needed for its own salvation or growth, as if the Church could succumb to obscurity, error, or similar deficiencies. This is what it seems to the innovators who intend to lay the foundations for his new purely human institution and, consequently, to do what St Cyprian abhors, that is: 'They turned the Church, God's work, into human work'. Let those who have such intentions ponder the fact that, according to the testimony of St Leo, only the one Roman Pontiff was entrusted with the abolition of canonical laws, only he and not a private person has the right to rule on the laws of his predecessors, in order to, as St Gelasius writes: 'Consider the provisions of the canons, and evaluate the orders of the predecessors as to what is necessary at a given time for the renewal of the Church, so that what requires removal is corrected after appropriate consideration.'" Ibid.

[280] "It would be a wicked thing, and quite contrary to the respect with which the laws of the Church should be treated, if the provisions of the same Church concerning the observance of rites, or moral norms, or ecclesiastical laws, and the conduct of the ministers of the altar should be disregarded in the opinion of some insane liberty and treated as one pleases, regarded as incompatible with certain principles of natural law, or regarded as imperfect or inadequate, and subject to secular authority." Ibid.

[281] "Now let us move on to another cause of many misfortunes that, together with our grief, affect the Church, namely, indifferentism, that is, the perverse opinion of the wicked, deceptively spread everywhere, that in every religion one can obtain eternal salvation of the soul if one lives honestly and ordinarily. In such an obvious matter, you are able to easily save the people entrusted to you from this most pernicious mistake. For when the Apostle warns that 'there is one God, one Faith, one Baptism' (Eph 4: 5), let all those who expect false access to blessed eternity from any religion tremble with fear, and let them sincerely consider, according to the testimony of the Savior, that 'they are against Christ, because they are not with Christ, and that they scatter miserably, because they do not gather with him' (Lk 11:23), and that therefore 'they will certainly perish forever if they fail to profess the Catholic faith and do not maintain it completely and without violation'. Let them listen to St Jerome who, when the Church divided due to schism into three parties, says that he is adamant in his decision if someone wanted to attract him to his side, bravely confessing: 'He who joins the Chair of Peter is with me.' It would be vain for anyone to flatter himself that he too is reborn in the water of holy baptism, as this objection was correctly answered by St Augustine: 'The branch from the vineyard retains its shape when cut off, but what good does its shape do if it does not derive its life from the root?'" Ibid.

[282] "From the musty source of indifferentism, there also flows this ridiculous and erroneous opinion, or rather delusion, that everyone should be given and ensured freedom of conscience. This contagious error is directly brought about by the intemperate and unrestrained freedom of opinion, which is spreading everywhere to the detriment of clerical and secular power, thanks to some shameless people who dare to proclaim that religion benefits from this. But could there be 'a more unhappy death for the soul than the freedom to wander?', said St Augustine. When all the brakes which have kept men in the way of truth have been released, their corrupt nature, inclined to evil, will blindly follow its impulse. Let us say it then honestly:

This thesis stating the fallacy of the belief of the need to ensure freedom of conscience was upheld in the content of the encyclical *Quanta cura* of 8 December 1864, which was promulgated by Pope Pius IX, and in the *Syllabus of Errors,*[283] *which was announced on the same day*. They confirmed and largely repeated the catalogue of errors indicated in the speech of Pius IX on 9 June 1862, entitled *Maxima Quidem*.[284]

The recognition of the infallibility of the pope in matters of faith also served to prevent discussions on the interpretation of the principles of faith within the Church.[285] The Church's attitude towards new trends in social life still did not change significantly.

the 'well of the abyss' is opened (Rev 9:3). From there, according to the revelation of St John, came the smoke that darkened the sun, and the locust that ravaged the earth. Hence comes the disorder of minds, hence the increasing corruption of the youth, hence the people's contempt for the most sacred laws and spiritual things, hence in a word: the pestilence in a state more harmful than all others, because it is known from experience based on all the ancient achievements that states flourishing in power, fame, and wealth collapsed only because of this one misfortune, immoderate freedom of opinion, freedom of expression, and the desire for ever new changes." Ibid.

283 Available at: http://www.opoka.org.pl/biblioteka/W/WP/pius_ix/inne/syllabus_08121864.html [21.09.2015]. The Syllabus explicitly points out as erroneous the view that: "Every man has the freedom to choose and profess a religion which, by the light of reason, he will recognise as true." Furthermore, it was mentioned that it is wrong to believe that "the optimal arrangement of civil society requires that general education schools (accessible to children from all strata) and in general public institutions devoted to the more advanced upbringing and education of young people should be excluded from the influence, supervision, or interference of the Church; they are to be completely subordinated to secular and political power, to the wishes of rulers and to the opinions prevailing in a given age," and that "Catholics can approve of a system of education of young people separated from the Catholic faith and the influence of the Church, which would have as its object, or at least as its principal object, only natural science and knowledge of practical social life". In the content of the Syllabus, the Pope also expressed a critical position on the postulates pertaining to ensuring freedom of conscience and confession, indicating that it is a mistake to believe that: "in our era, it is no longer useful for the Catholic religion to have the status of the only state religion, to the exclusion of all other faiths"; "it is praiseworthy, therefore, that in some countries considered to be Catholic, laws allow newcomers to hold their services there in public"; and "it is false that the legal freedom of confession and the full right of everyone to manifest all their opinions and beliefs openly and publicly, lead to easier succumbing by people to moral and spiritual corruption and favour the principle of indifferentism".

284 Pius IX, Allocution *Maxima quidem*, 9 VI 1864, https://documentacatholicaomnia.eu/04z/z_1862-06-09_SS_Pius_VIIII_Maxima_Quidem_IT.doc.html [22.09.2015].

285 Constitution *Pastor Aeternus*, 18 July 1870. See: Łydka, W. "*Pierwsza konstytucja dogmatyczna o kościele 'Pastor Aeternus' Soboru Watykańskiego I"*, Studia Theologica Varsaviensia, 10(1971), no. 2 – "With the consent of the holy Council, we teach and define, as a dogma revealed by God, that the Bishop of Rome, when he speaks *ex cathedra* – i.e. when, exercising the office of pastor and teacher of all the faithful, he determines with his supreme apostolic authority the teaching binding on the whole Church in matters of faith and morals – thanks to God's protection promised to him in the person of St Peter the Apostle, he possesses the infallibility which

The critical views of the Church authorities towards ideologies proclaiming the postulates of abandoning the primacy of one proper faith were manifested in the content of subsequent encyclicals of Pope Leo XIII.

The pope expressed his positions and views negating the newly emerging philosophical and ideological currents, among other places, in the encyclical *Immortale Dei*, published on 1 November 1885.[286]

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the Divine Saviour wished to equip his Church in defining the doctrine of faith and morals. Therefore, such definitions are immutable in themselves, and not by the consent of the Church. And if anyone, God forbid, dares to oppose this definition of ours, let him be excluded from the community of the faithful."

[286] http://www.vatican.va/archive/ass/documents/ASS-18-1885-ocr.pdf [23.09.2015]. The content of the encyclical *Immortale Dei* includes, among others, the following statements: "Therefore, as it is not lawful for any man to give up his duty to God, as it is the highest duty of every man, it is his heart and conduct to observe religion, not such as he pleases, but that which God has commanded and which undoubtedly features as the only true among other religions.... And which is the true religion, it is not difficult to know for a man that follows sound and impartial judgment. Multiple and glaring proofs, such as fulfilled prophecies, countless miracles, the rapid spread of faith even among enemies and the greatest obstacles, the testimony of the blood of martyrdom, and the like prove that the only true religion is the religion that Jesus Christ himself established, and which he entrusted to his Church to guard and spread. [...] In all matters, therefore, it is appropriate to leave the judgment to everyone, and everyone is allowed to follow the religion they want, or none, if they do not like any. From which, as consequences, emerge the independence of conscience that knows no law, the most arbitrary opinions about it, whether to worship or not to worship God, and unlimited arbitrariness of thinking and uttering thoughts. Effects of the 'new law' on the Church: impairment of the Church, Church disconnected from the state, violation of concordats. On the basis of such principles of the state, which today are the most popular, one can see how the Church is being pushed into a disadvantaged position. Wherever these doctrines correspond to deeds, Catholicism is sometimes equated with opposing sects or even treated worse than them in the state; there is no respect for ecclesiastical laws, the Church, which by the command and mission of Jesus Christ should teach all peoples, is denied all participation in public teaching.

"The rulers of states decide on their own about matters within the scope of both authorities, and to this extent they presumptuously disregard the most sacred laws of the Church. Thus, the marriage of Christians is brought under their jurisdiction and they even rule on the relationship itself, about the unity and durability of marriage; they dispose of the property of the clergy, denying the Church the right to property. In a word, they treat the Church in such a way that, having deprived it of the rights and character of a perfect society, they compare it with other associations within the state, and whatever rights and freedoms in action the Church still has, they consider a reflection of grace and a concession of state sovereignty. And if where the laws of the state grant the Church its rights and if some agreement between these two authorities has been publicly concluded, they immediately cry out that the Church must be separated from the state.

"In regard to religion, however, to think that the most opposite forms of religion are the same, is as much as not to recognise any religion either in belief or in practice. And if the name is different from atheism, the thing itself is not different. For he who is convinced that God exists, without contradictions and absurdities, cannot suppose that the existing cults, in the most important things so different and so contradictory among themselves, are equally credible, equally good, equally pleasing to God. [...] This freedom of thought and freedom of the press, too, is not a real blessing to be enjoyed by human society, but a source and a cause

A similar negative assessment of the postulates concerning the need to guarantee freedom of belief and the acceptance of views denying the existence of supernatural beings was expressed by Leo XIII in the encyclical *Libertas*, published on 20 June 1888.[287]

Until the documents of the Second Vatican Council (1962–65), the Church in its teaching rejected freedom of conscience, which was understood as the legal freedom to profess and to flaunt the practice

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of a multitude of evils. [...] Freedom, as a quality perfecting man, must be in the realm of truth and goodness, and the essence of truth and goodness does not change according to the whim of man, but remains always the same and so stays the same the essence of the matter. If reason accedes to falsehood, if the will clings to evil, then this is not a refinement of both these powers, but the loss of natural virtue and dislocation. What is opposed to truth and virtue is not to be revealed and put before the eyes of men, and still less is it to be promoted by the law. Only a virtuous life is the way to heaven, where we all go: And so, the state deviates from the principles and precepts of natural law, when it gives freedom to opinions and actions of the wicked so that it is possible with impunity to dissuade minds from truth and hearts from virtue. In fact, although the Church considers it impermissible to put different denominations on an equal footing with true religion, it does not yet condemn the conduct of the heads of state who, for the sake of the great good or to prevent evil, tolerate in practice the existence of these creeds within the state. And here, too, the Church carefully warns that no one should be forced into the Catholic faith against their will, because as St Augustine wisely recalls, 'man can believe only at their own volition'."

[287] http://www.vatican.va/archive/ass/documents/ASS-20-1887-ocr.pdf [22.09.2015]. In the encyclical *Libertas*, it is stated: "Undoubtedly, all supporters of liberalism disagree with such opinions, already terrifying with their savagery, which openly oppose the truth and, as we have seen, are the causes of the greatest misery. Even many of them, enslaved by the influences of truth, are not afraid to confess, and even voluntarily claim that freedom, daring to trample on truth and unrestrained justice, becomes wicked and expresses itself quite arbitrarily: therefore, it must be guided and governed by common sense, which in turn means that it should be subject to the natural law and the eternal law of God. But having also said that it is necessary to stop here, they deny that a free man would have to be subject to the laws that God would want to impose on him in a different way, including the ways of natural reason. In other words, they are not even in agreement with each other. For if it is necessary, as they themselves agree to, and what no law can oppose, if it is necessary to obey the will of God the lawgiver, because the entirety of man is in the power of God and seeks God, it follows from this that no one can prescribe the limits or conditions of his legislative power without standing up against their duty to be obedient. Moreover, if human reason were to appropriate so much that it would want to decide for itself which rights God has, and which duties man has, then respect for the laws of God would be more apparent than real, and man's judgment would weigh more than God's authority and providence. It is necessary, therefore, that we take the norm of life constantly and religiously, both from the eternal law and from all the individual laws which the infinitely wise, infinitely powerful God has given by the means he chose, and which we may know by qualities that are obvious and leave no doubt. And this is all the more so because such laws, having the same origin and the same author as the eternal law, are in full agreement with reason and are a refinement of natural law: they also include within them the teaching of God Himself, who, lest our reason and will fall into error, guides both with His inclination and guidance. Let that which can neither be, nor ought to be separated remain United, and let God receive in everything, as natural reason itself commands, docile and obedient ministries."

of non-Catholic worship. In fact, relative tolerance was enjoyed by Jews and schismatics, who, unlike the heretics and pagans who were openly fought against, did not exhibit doctrinal but merely organisational errors, due to rejecting unity with the Church.[288]

A breakthrough in the Church's position came in the Declaration on Religious Freedom of 7 December 1965, entitled *Dignitatis Humanae,*[289] which was prepared during the deliberations of the Second Vatican Council.[290] In it the Church admitted that human individuals should enjoy religious freedom, pointing to the indispensability of freedom of religion – of the lack of coercion to act against a person's conscience.

It should be noted that popes also demonstrated interest in the subject of human rights in documents not directly related to the Council. Here must be mentioned the encyclical of John XXIII of 11 April 1963, entitled *Pacem in Terris;*[291] the message of Paul VI to the United Nations, issued on the twentieth anniversary of the Declaration of Human Rights, calling on all nations to respect and develop the human rights that are based on this declaration; or the message to the Secretary-General of the United Nations on the twenty-fifth anniversary of the establishment of this organisation, in which Paul VI stated: "Proclaimed more than twenty years ago by your Assembly, the Charter of Human Rights remains in our view one of its greatest claims to fame. To ask that all, without distinction of race, age, sex or religion should be able to enjoy human dignity and the conditions necessary for its exercise – is not this to express strongly

[288] Baszkiewicz, J. *Myśl polityczna wieków średnich*, Warszawa 1970, pp. 209–210.

[289] The Declaration on Religious Freedom stated for the first time that: "The human person has the right to religious freedom. And this kind of freedom consists in the fact that all men should be free from coercion on the part of either individual men, social groups, or any human power, so that in religious matters no one may be compelled to act against his conscience, nor be prevented from acting according to his conscience, private and public, individual or in association with others, as far as is reasonable. Moreover, it declares that the right to religious freedom is indeed rooted in the very dignity of the human person, a dignity which we know through the revealed word of God and by reason itself. This right of the human person to religious freedom must be recognised in the legal system of society in such a way as to constitute a civil right." The full text of the Declaration is published at: http://www.vatican.va/archive/aas/documents/AAS-58-1966-ocr.pdf [23.09.2015].

[290] See: Banaszak, M. *Historia Kościoła katolickiego*, vol. 4, p. 186 et seq.

[291] It contains, among others, the following statement: "All human coexistence, if we want it to be well organised and to prosper, must be based on the fundamental principle that every human being is a person, that is, a being endowed with reason and free will, and consequently has rights and duties flowing directly and simultaneously from its own nature. And because they are universal and inviolable, they cannot be renounced in any way."

and clearly the unanimous aspiration of men's hearts and the universal witness of their consciences?"[292]

The attitude of emphasising the seriousness of human rights, including the right to freedom of conscience and confession, was also presented by subsequent popes.

John Paul II, on the occasion of the thirtieth anniversary of the Universal Declaration, mentioned that he wanted to speak in particular of one right, "which undoubtedly occupies a central position: the right to freedom of thought, freedom of conscience, and religious freedom".[293]

Religious freedom is therefore the basis of other freedoms in the sense that, on the one hand, it is in itself the most personal dimension of freedom as such, and thus, "to the extent that it touches upon the most intimate sphere of the spirit, it sustains the raison d'être of other freedoms, which is deeply anchored in each person".[294] In a speech in New York on 3 October 1979, entitled *Freedom must be based on Truth*, John Paul II stated explicitly: "I also spoke about religious freedom, because it concerns the relationship of a person to God and is related in a special way to other human rights. It is closely related to the right to freedom of conscience. If conscience is not secure in society, then all rights are threatened."[295]

The importance of respecting freedom of conscience and the coexistence of different religions was also emphasised by John Paul II,[296] who repeat-

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[292] Paul VI, "*Orędzie do Sekretarza Generalnego ONZ U'Thanta*", in: idem, *Nauczanie społeczne. Przemówienia i inne dokumenty*, Warszawa 1972, p. 144.

[293] John Paul II, "*O prawach człowieka. Orędzie do Sekretarza Generalnego ONZ K. Waldheima z okazji 30-lecia ONZ*", in: idem, *Nauczanie społeczne*, vol. 2, Warszawa 1982, pp. 50–54.

[294] Idem, "*Chcesz służyć sprawie pokoju. Orędzie na 14. Światowy Dzień Pokoju*", http://papiez.wiara.pl/doc/378708.Chcesz-sluzyc-sprawie-pokoju-szanuj-wolnosc-1981 [23.09.2015].

[295] Idem, "*Wolność musi być oparta na prawdzie*", in: idem, *Nauczanie społeczne*, vol. 2, p. 335.

[296] "Religious freedom at the heart of human rights: Religion expresses man's deepest aspirations, defines his worldview, shapes his relationships with others: Indeed, it provides an answer to the question of the true meaning of existence on an individual and social basis. Religious freedom is therefore at the heart of human rights. This right is so inviolable that it even demands the recognition of a man's free decision to change his religion, if his conscience demands it. Every man is obliged, in every circumstance, to follow the voice of his own conscience and cannot be forced to act against it. That is why no one must be compelled to adopt a particular religion by force, whatever the circumstances or motives.

"The Universal Declaration of Human Rights recognises that the right to religious freedom includes the right to manifest personal beliefs, whether individually or with others, in public or in private. Despite this, there still exist today places where the right to gather for worship is either not recognised or is limited to the members of one religion alone. This grave violation of one of the fundamental rights of the person is a source of enormous suffering for believers. When a state grants special status to one religion, this must not be to the detriment

edly stressed the need to accept the views of followers of other religions.[297] Topics related to the issue of freedom of conscience and confession were present in the thought of John Paul II throughout his entire pontificate. [298]

6. Freedom of conscience of a minor and parental authority

Considerations of the essence of freedom of conscience and confession should be supplemented with mention of an important issue pertaining to the problem of competition between the freedom of a minor and the rights of parents to control their upbringing, which is realised through the exercise of parental authority. The position of the child and the child's relationship with its parents depend on social and cultural factors. Various models of relations prevail, for example, in cultures that prioritise

of the others. Yet it is common knowledge that there are nations in which individuals, families, and entire groups are still being discriminated against and marginalised because of their religious beliefs.

"Nor should we pass over in silence another problem indirectly linked to religious freedom. It sometimes happens that increasing tensions develop between communities or peoples of different religious convictions and cultures, which, because of the strong passions involved, turn into violent conflict. Recourse to violence in the name of religious belief is a perversion of the very teachings of the major religions. I reaffirm here what many religious figures have repeated so often: the use of violence can never claim a religious justification, nor can it foster the growth of true religious feeling." – https://w2.vatican.va/content/john-paul-ii/pl/messages/peace/documents/hf_jp-ii_mes_14121998_xxxii-world-day-for-peace.html [24.09.2015].

[297] "Dialogue between cultures, a privileged means for building the civilisation of love, is based upon the recognition that there are values which are common to all cultures because they are rooted in human nature. These values express humanity's most authentic and distinctive features. Leaving aside ideological prejudices and selfish interests, it is necessary to foster people's awareness of these shared values in order to nurture that intrinsically universal cultural 'soil,' which makes for fruitful and constructive dialogue. The different religions, too, can and ought to contribute decisively to this process. My many encounters with representatives of other religions — I recall especially the meeting in Assisi in 1986, and in Saint Peter's Square in 1999 — have made me more confident that mutual openness between the followers of the various religions can greatly serve the cause of peace and the common good of the human family." – https://w2.vatican.va/content/John-paul-ii/pl/messages/peace/documents/hf_jpii_mes_20001208_xxxiv-world-day-for-peace.html [1.10.2015].

[298] In addition to those already stated, we should mention the messages of John Paul II on the occasion of subsequent World Days of Peace: "*Wolność religijna warunkiem pokojowego współżycia. Orędzie na 21. Światowy Dzień Pokoju*", 1 January 1988, http://papiez.wiara.pl/doc/378715.Wolnosc-religijna-warunkiem-pokojowego-wspolzycia1988 [1.10.2015]; "*Poszanowanie sumienia każdego człowieka warunkiem pokoju. Orędzie na 24. Światowy Dzień Pokoju*", 1 January 1991, http://papiez.wiara.pl/doc/378718.Poszanowanie-sumienia-kazdego-czlowieka-warunkiem-pokoju-1991 [2.10.2015]; and "*Poszanowanie praw człowieka warunkiem prawdziwego pokoju. Orędzie na 32. Światowy Dzień Pokoju*", 1 January 1999, http://papiez.wiara.pl/doc/378726.Poszanowanie-praw-czlowieka-warunkiem-prawdziwego-pokoju-1999 [2.10.2015].

the good of the family as a collective, which differ from the various models prevailing in communities that prioritise individualism.[299] Parental authority is intended to enable parents to guide and raise their child.

As a subjective right, parental responsibility, by its very nature, exhibits special characteristics. Its main feature is that it has the attribute of being the responsibility of parents, while at the same time the primary purpose of that attribute is to function as protection towards the child. The forms that parental authority assumes are the result of the long-term evolution of relations between family members, influences of the environment, traditions, cultural patterns, and, finally, the extent of the legislator's interference.

In literature devoted to pedagogy and child rearing, the shape of these relations is referred to as the parenting style.[300] The following styles are distinguished: autocratic, democratic, permissive, and uninvolved.

The autocratic style is based on the authority of the parents – initially, this was the power of the father of the family, but over time it extended to both parents. This is a traditional model in which the rights of the child do not exist at all or are extremely limited by the extent of the parent's authority. Such a parenting style occurs in its more severe form (the authoritarian model) or in a milder variant (the authoritative model).[301] The authoritarian model can be identified with directive educational methods.

In the democratic model, mutual rights and obligations are more balanced. Of course, the decisive role and position of the parents is maintained. However, children have a considerable degree of autonomy, and consulting children with regards to decisions that concern them is an organising principle.[302]

The permissive model consists in providing the child with complete freedom, regardless of their age. Parents get involved in the child's affairs when the child asks for it. In general, there is no parental educational influence in this model. In an extremely liberal form, this model can be identified with non-directive education.

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[299] For more, see: Kwak, A., Mościskier, A. *Rzeczywistość praw dziecka w rodzinie*, Warszawa 2002.

[300] See: Frączek, Z., Lulek, B. *Wybrane problemy pedagogiki rodziny*, Rzeszów 2010; Łobocki, M. *Teoria wychowania w zarysie*, Kraków 2003; Przetacznik-Gierowska, M., Włodarski, Z. *Psychologia wychowawcza*, Warszawa 1998.

[301] See: Fontana, D. *Psychologia dla nauczycieli*, Poznań 1995, pp. 24–26.

[302] Lulek, B., Frączek, Z. *Wybrane problemy pedagogiki*, pp. 64–65.

The uninvolved parenting model is characterised by the parents acting in a variable, inconsistent way and reacting to emerging problems in a random manner.[303]

"For many centuries, the paternal authority has retained its patriarchal character, which was expressed, in particular, in the right to discipline and reprimand one's children within the household, which excludes to some extent public jurisdiction, and in the right to marry off one's son or a daughter regardless of their will."[304] The broad authority of the father in various forms was still visible in the regulations of Western European countries in the nineteenth and twentieth centuries. In France, the direction of education, the choice of school, and the shaping of the child's worldview, according to the Napoleonic Code (1804), were largely determined by their father. In Italy, the father was able to define the rules for the child's upbringing and the management of their property even after their death (i.e. by including in their will expectations as to the direction of the child's conduct). In the law of Switzerland or Germany, in turn, the father had the ability to make decisions about the child, but only after taking into account the opinion of their mother.[305]

In Poland, parental authority was granted to both parents by the Civil Code of the Kingdom of Poland introduced in 1825 (with the father, however, still being granted an upper hand in the event of differing opinions). Parents were allowed to discipline their children, but without detriment to their health, and sanctions for the abuse of parental authority were introduced.[306]

The Family and Guardianship Code of 1964 does not include a legal definition of "parental authority".

Meanwhile, the legal doctrine attempts to create a descriptive definition, mentioning: that the concept of parental authority covers "the totality of obligations incumbent on parents and their rights vis-à-vis the child for the proper exercise of custody over their person and property";[307]

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[303] See: Przetacznikowa, M., Makiełło-Jarża, G. *Psychologia wychowawcza, społeczna i kliniczna*, Warszawa 1987; Spionek, H. *Zaburzenia rozwoju uczniów a niepowodzenia szkolne*, Warszawa 1973.

[304] Sójka-Zielińska, K. *Historia prawa*, Warszawa 2009, p. 96.

[305] Sauk, J. *Granice obowiązków i praw rodziców wobec dzieci i społeczeństwa. Studium prawno-porównawcze*, Toruń 1967, pp. 28–31.

[306] Sójka-Zielińska, K. *Historia prawa*, p. 245.

[307] Ciepła, H. et al, *Kodeks Rodzinny i opiekuńczy z komentarzem*, Warszawa 2001, p. 551.

"parental responsibility as the totality of rights and obligations incumbent on parents by law, and covering in particular the care of the child in the area of their person and property, and their education and preparation for work for the good of society";[308] "a set of rights [...] and duties incumbent upon them by virtue of the Family and Guardianship Code, and concerning in particular the care of the child in respect to their person and property, and their upbringing";[309] "all rights granted to parents by law in relation to the person and property of the child in order to properly fulfil all obligations imposed by the law primarily in the interest of the child and the broadly understood social interest";[310] "a complex of interrelated rights and obligations of parents in relation to the person and property of the child";[311] that "parental responsibility is the totality of the duties and rights of parents (to which both parents are equally entitled) towards the (minor) child, aimed at ensuring proper care and safeguarding of their interests";[312] that "parental responsibility includes: custody of the child, management of the child's property, representation of the child";[313] and that "parental responsibility, as is apparent from the whole of the provisions of the Family and Guardianship Code, and in particular Article 95, Article 96, and Article 98 of § 1 of the Family and Guardianship Code, constitutes the totality of duties and rights in relation to the child intended to ensure their proper care and the safeguarding of their interests".[314]

In the above definitions, the term "custody" is used. When generalising the views presented in the doctrine, it must be recognised that it covers the duty and right to educate and to guide the child.[315] It is impossible not to note, however, that the legislator consistently uses the term "custody"

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[308] Walaszek, B. *Zarys prawa rodzinnego i opiekuńczego*, Warszawa 1971, p. 169.
[309] Szer, S. *Prawo rodzinne w zarysie*, Warszawa 1966, p. 263.
[310] Łapiński, A. *Ograniczenia władzy rodzicielskiej w polskim prawie rodzinnym*, Warszawa 1975, p. 23.
[311] Winiarz, J., Gajda, J. *Prawo rodzinne*, Warszawa 2001, p. 206.
[312] *Kodeks rodzinny i opiekuńczy. Komentarz*, edited by K. Pietrzykowski, Warszawa 2003, p. 801.
[313] *Kodeks rodzinny i opiekuńczy. Komentarz*, edited by J. Wierciński, Warszawa 2014, p. 699.
[314] *Władza rodzicielska i kontakty z dzieckiem*, edited by J. Ignaczewski, Warszawa 2015, p. 6.
[315] This is the case in, among others, *Kodeks rodzinny i opiekuńczy*, edited by J. Wierciński, p. 699; *Kodeks rodzinny i opiekuńczy*, edited by K. Pietrzykowski, p. 870; Gromek, K. *Kodeks rodzinny i opiekuńczy. Komentarz*, Warszawa 2013, p. 550; Sokołowski, T. *Prawo rodzinne. Zarys wykładu*, Poznań 2013, p. 149–151; as well as the Resolution of the Supreme Court of 21 October 2005, III CZP 75/05, OSN 2006, no. 9, item 142.

alongside the term "education", so the activities described by these terms should be treated as separate categories of behaviour.[316]

According to the doctrine, guiding means: "leading the child in their development, directing the child towards the right behaviour, making decisions about the child and for them until they are capable of making decisions themselves". The following elements of guidance are generally mentioned: "determination of the child's permanent residence and temporary residence (e.g. on holidays), regulation of the child's lifestyle (setting the time of study, work, play, as well as type of play, etc.), supervision of the child's lifestyle, control of the influence of third parties, selection of attended youth organisations, etc."[317]

Attention should be drawn to Article 77, paragraph 2 of the Constitution, which uses a different term: "parental care". It seems that this term can be understood as being synonymous with "parental authority".

It is also necessary to mention the proposals for a possible change of the term "parental authority" to another term more relevant with respect to the activities it covers. The Parliamentary Assembly of the Council of Europe, in Recommendation No. 874 (1979) on the European Charter of the Rights of the Child, considered the legal position of the child and determined that the institution of "parental authority" should be replaced by the institution of "parental responsibility".[318] In Recommendation R(84)4 on parental responsibility, the term "parental responsibility" is defined as follows: "Parental responsibilities are a collection of duties and powers which aim at ensuring the moral and material welfare of the child, in particular by taking care of the person of the child, by maintaining personal relationships with him and by providing for his education, his maintenance, his legal representation and the administration of his property."[319]

The fundamental principles of the exercise of parental authority, in their modern sense, should include giving priority to the best interest of the child as well as the need to respect the child's subjectivity and to

316 See: Szer, S. *Prawo rodzinne*, pp. 267–276; as well as the Resolution of the Supreme Court of 12 May 1969, OSNCP 1969, vol. 12, item 213.

317 Winiarz, J., Gajda, J. *Prawo rodzinne*, p. 210.

318 See: Article II C of the Recommendation, Jaros, *Prawa dziecka. Dokumenty Rady Europy*, p. 844.

319 Rec. R (84)4 of 28 February 1984, https://rm.coe.int/16804de2e4 [12.03.2017].

take account of their age and maturity in making decisions that concern them.

The content of parental authority consists of custody of the child (understood as a set of responsibilities and powers of parents, which includes constant care for the child's person, including the upbringing and management of the child, and care for their physical and spiritual development along with preparation for life in society[320]) as well as management of the child's property and representation. The regulations do not specify methods of raising children, accepting the autonomy of the family in this respect. However, they contain general directives that set out the directions and limits of educational activities. These include, for example, a directive on prioritising the best interest of the child, a directive on the need for the child to be heard before a decision is taken on matters concerning them, and a directive on taking into account the degree of development and maturity of the child.

It should be mentioned that the fundamental and important significance of the principle of protecting the best interest of the child goes beyond the order of national law. The primary international act containing an obligation to take into account the best interest of the child is the Convention on the Rights of the Child, which has been in force in Poland since 7 July 1991. The case law of the Supreme Court emphasises the importance of Article 3 of the Convention as a general directive when dealing with conflicts between parents over custody of children.[321]

The exercise of parental authority must give priority to ensuring the "best interest of the child". It should be mentioned that there is no legal definition of this term. From the doctrine it can be deduced that this term covers: "a set of values, both spiritual and material, which are necessary for the proper physical development of the child, its spiritual development both in the intellectual and moral aspect, proper preparation

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320 Ignatowicz, J., Nazar, M. *Prawo rodzinne*, Warszawa 2010, p. 284.

321 See, among others: the judgment of 8 June 2000, V CKN 1237/00, not published; the decision of 16 January 1998, II CKN 855/97, OSNC 1998, no. 9, item 142; and of 7 July 2000, III CKN 796/00, Biuletyn SN 2000, no. 10, p. 13. As the Supreme Court pointed out in the justification for the judgment of 8 June 2000, Article 3 of the Convention – requiring all actions concerning children taken, among others, by courts to be guided by the interest of the child as an overriding value – formulates an absolute legal obligation and refers to each individual decision on the application of the law by the court, both in the sphere of application of the rules of procedure and in the interpretation of substantive law, constituting a substantive justification for decisions concerning children.

for work for the good of society";[322] "a complex of intangible and material values necessary to ensure the proper physical and spiritual development of the child and to properly prepare them for work in accordance with their talents, wherein these values are determined by many different factors, the structure of which depends on the content of the applicable legal norm and the specific, currently existing situation of the child, assuming the convergence of the good of the child, understood in this way, with the social interest".[323] The clarification and interpretation of the concept of "the good of the child" made in the jurisprudence indicates that: "The concept of the good of the child, on the one hand, covers the entire sphere of the most important personal matters, such as physical and spiritual development, appropriate education and upbringing, and preparation for adult life, and, on the other hand, it has a clear material dimension. It consists in the need to provide the child with the means to live and achieve goals of a personal nature, and, in the event that they have their own property, it also consists in the care for their property interest."[324] As mentioned in another judgement: "The properly understood good of the child and its social interest, in accordance with Article 54 of the Family Code (95 of the Family and Guardianship Code), are the main reasons for entrusting parental authority over the children to one of the parties; they require of the party not only that they care about providing the child with clothes and food, but at least to an equal extent to care about their physical and mental health, consisting in the proper formation of their character and preparation for social life. This requirement is not satisfied by instilling in a child a feeling of dislike or hatred towards one's own father [mother, respectively]."[325]

The case law also emphasised the prioritised role of the child's interest or good, indicating that "parents can take into account and exercise their expectations and rights resulting from parental authority only in such a way and to such an extent that does not conflict with the child's best

322 Kołodziejski, S. "*Dobro wspólnych nieletnich dzieci jako przesłanka odmowy orzeczenia rozwodu*", Palestra, 9(1965), no. 9, p. 30.

323 Stojanowska, W. "*Dobro dziecka jako instrument wykładni norm konwencji o prawach dziecka oraz prawa polskiego i dyrektywa jego stosowania*" in *Konwencja o Prawach Dziecka. Analiza i wykładnia*, p. 98.

324 Order of the Supreme Court of 11 February 1997, II CKN 90/96 (Legalis, No 333272).

325 Judgment of the Supreme Court of 2 December 1957, file ref. no. 1 CR 1045/56, OSN 1959/3/76.

interest".[326] It should be noted that it is not permissible to completely omit the parent's interest, even at the expense of jeopardising the child's interest.[327]

The Convention on the Rights of the Child guarantees the child the freedom to decide on matters of their religion, and it only grants parents the right to direct the child in the exercise of their freedom (not to arbitrarily impose their own religious convictions on the child). A lack of understanding of this issue can be a basis for conflicts between parents and their adolescent children, who already want to decide for themselves as to their beliefs in worldview and religious matters.[328] Meanwhile, "the court, when deciding on parental authority, should be guided primarily by the best interest of the child and its social interest, not the interest of one or both parents".[329]

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Summing up the above arguments, it is possible to present the historical and legal evolution of the definition of freedom of conscience and confession. It should be recognised that this is a subjective right guaranteeing the individual (every human person) the right to choose, change, or renounce a specific religion and to practice any chosen religion in the manner adopted in the canons of that religion. This right guarantees the possibility of forming religious associations, teaching, and propagating religious content in an unfettered way, and the right to refuse to act in a manner contrary to the dictates of the individual's conscience.

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[326] Order of the Supreme Court of 12 December 2000, file ref. no. V CKN 1751/00 (Legalis, no. 299530).

[327] "The assumption of family law, which consists in pursuing the good of a minor child in every case, does not completely eliminate the interest of parents as one of the conditions for settling matters relating to the relationship between parents and children. If the protection of the child's well-being is compatible with the interests of the parents, the court cannot disregard the interests of the parents, even with the assumption that the decision will have some temporary negative effects on the child." (Judgement of the Supreme Court of 17 December 1965, file ref. no. I CR 309/65, OSNCP 1966/7-8/132). Wherein "[...] the interests of the parents must be removed from the foreground only when they are in no way compatible with the legitimate interests of the child" (resolution of the full composition of the Civil Chamber of the Supreme Court of 9 June 1976, file. Ref. no. III CZP 46/75, OSNCP 1976/9/184).

[328] Wiśniewski, L. "*Geneza Konwencji o Prawach Dziecka i stosunek jej norm do innych aktów prawa międzynarodowego"* in *Konwencja o Prawach Dziecka. Analiza i wykładnia*, p. 15.

[329] Judgment of the Supreme Court of 25 August 1981, file ref. no. III CRN 155/81.

The exercise by an individual of the freedom resulting from the right in question cannot constitute a reason for different, discriminatory treatment of such an entity. The exercise of the right to freedom of conscience and confession is guaranteed through the institutions of the justice system.

At the same time, for reasons of public interest, it is permissible to limit the absolute freedom to exercise these rights, but only within the limits set by the relevant legislation.

This definition of the conceptual boundaries of the term "freedom of conscience and confession" is the result of the evolution of both legal thought and considerations of religious nature, and then also of the Church doctrine. In the primeval period of the existence of state organisms, religion served as a unifying factor for a given community. Due to the need for survival of the state organism – most often identified with the ruler – it was undesirable to allow for the right to contest the actions of the authorities, which results from the very essence of freedom of conscience and confession. During the formation of the Church's structures, permission to question the truths of faith could also lead to the disintegration and even annihilation of the Church, hence it is understandable that there was opposition to the right of individuals to the freedom to choose a religion, or for individuals to question the actions of state or religious authorities due to dictates of conscience.

The foregoing considerations explain the fierceness with which any deviations from the official religion were fought back, which meant that there was no sense of need to ensure individuals the right to freedom in this respect.

It should be noted that analogous reasons guided the new sects of Christianity that arose as a result of the Reformation, which at first were not characterised by tolerance towards other faiths.

A turning point in the history of freedom of conscience and confession came with the achievements and the social as well as political effects of the developments unfolding it the second half of the eighteenth century, that is, the Age of Enlightenment. At that time, there was a departure from the concept of unity of state and religious power and an increase in the importance of the rights of individuals that resulted from the disappearance of the feudal system.

The evolution of views on the issue of freedom of conscience and confession is the reason that, at present, no one questions the legitimacy and necessity of ensuring, in a democratic state, the right of an individual to self-determination in the field of religion and worldview.

Regarding the freedom of conscience and freedom of confession as relates to minors, it should be noted that in the aforementioned concepts, which constitute the basis for the current understanding of the essence of conscience and freedom of worldview, this element has not received much attention. The view that freedom of conscience and confession is a right belonging to minors made its way into people's awareness slowly.

This was clearly a consequence of the fact that, in the early period of Western civilisation, the concept of the rights of minors as such was unknown. This applies, in particular, to rights in the area of worldview. In fact, until modern times and apart from short-lived episodes, the right of individuals to freely choose their worldview was not accepted. The recognition of such rights was hindered by considerations concerning the position of the Catholic religion as an element supporting secular authority. This element influenced the religious freedom of every person, and in the case of minors, their situation was also modified by traditional paternal authority.

Among the views presented in philosophy, the concepts that assume the possibility of forming one's conscience deserve attention. Accepting the foregoing, it is understandable that special attention should be paid to the formation of the conscience of minors. Therefore, education and upbringing are an area in which the freedom of conscience of minors is particularly important.

CHAPTER TWO

Minors in the Historical and Legal Perspective

The aim of this work is to attempt to present the evolution of the perception of the issue of freedom of conscience and confession of minors in the law in force in Polish lands during the specified chronological range, as well as the instruments used to implement the guarantee of this freedom.

A presentation of the foregoing issues requires, in its introduction, a presentation of the subject of the discussed freedom, that is, the minor. As will be shown, the attitude of the community, and thus the legal system, towards minors has evolved throughout history. Initially, the child did not enjoy any special considerations from either the adult community members or the laws in force. Only the progressive process of humanisation of the law and the increasing scale of interference of statutory (i.e. positive) law in the rules governing family life led to a change in the attitude towards children. In its final form, this process has led to the recognition that the rights of children are equivalent to the rights of adults, but it can be concluded that this state has only existed for several decades.

The perception of the child and childhood has been the subject of research by scholars in many fields. The research and reflections concerned the very process of transformation of a non-adult into a full-fledged member of the community in both biological and psychological terms, as well as the manner in which the adult community should relate to children,

taking into account their specificity. The inquiries also concerned whether and to what extent it is permissible and expedient for the state authority to interfere in the matter of parental upbringing of children. During the period of development of interest in human rights, it was also necessary to extend the research to the issue of the extent to which these rights apply directly to minors.

1. Children in light of the humanities

A discussion of the current status of the minor in light of secular and Canon law should begin with a presentation of the evolution of views on the child and childhood.[1] This is necessary in view of the fact that the legal status of minors is a consequence of society's perception of minors. To this end, it is necessary to present at least an outline of the philosophical and historical foundations based on which the current legal solutions in this area have been developed. The current solutions are rooted in the European philosophical and legal system; hence the following analysis is based on the achievements of philosophers and law researchers from that cultural sphere.

Childhood is the subject of interest of various scientific disciplines such as pedagogy, psychology, or sociology. It took many years before children started to be treated with special attention and dignity. In the times when children were "unnoticed", they did not appear in philosophy or social consciousness because it was believed that such information did not present significant research problems for the field of science. Interest in the child was already noticed in Plato's *Utopia*. It was then noticed that children are individuals who build the basis of each community.[2]

The psychological perspective on childhood is associated with the development of child psychology. In the mid-nineteenth century, the concept

[1] For the purposes of this dissertation, the term "minors" will be understood as children up to the age of 18 years, with reservation concerning the possibility of reaching the age of majority by women aged 16 years. In view of the common and generally consistent treatment by individual legal systems of human beings who, by reason of age or mental development, are unable to fully or only in a limited way express their will and exercise the rights assigned to natural persons on their own, it is appropriate to recognise that the alternative use of the terms "minor" and "child" in the content of the work is fully justified.

[2] Matyjas, B. *Dzieciństwo w kryzysie. Etiologia zjawiska*, Warszawa 2008, p. 13.

of childhood (kindsein) as a biological and developmental category first appeared. It was mainly associated with the stages of a child's development, with the age of the child and the developmental specifics attributed to this age. Childhood simply meant the time and stage of development, growth, adolescence, role learning, training for adulthood. The efforts undertaken were focused on the search for regularities in the child's development and characteristic features typical for the individual stages of a child's development.[3]

Observations concerning the child have long been formed by the opposing positions of two important ideologists and thinkers, namely, J.J. Rousseau and J. Lock. The former is considered to be the creator of new ideas about the family, which are based on the maternal bond and love (the so-called "romantic" vision of childhood). Rousseau assumed that a child was born with untainted virtues. The process of education is supposed to protect them from the destructive influences of the world, that is, to eliminate such factors that could damage the child's naturalness, spontaneity, as well as strength and purity.

Lock took a different position, claiming that the child comes into the world in a kind of "blank slate" – *a tabula rasa*, which is to be filled in the process of education and upbringing. Education was therefore assigned an important role, and the responsibility for the development of the child lay with the parents and teachers, as well as with the state.[4]

In 1900 Swedish educator E. Key introduced her own concept of education in the book *The Century of the Child*. In this work, the author calls for a strengthening of the family, because only a healthy family is the basis for a dignified upbringing of children. Key wrote: "Through our posterity, which we ourselves create, we can in a certain measure, as free beings, determine the future destiny of the human race. [...] the twentieth century will be the century of the child. This will come about in two ways. Adults will first come to an understanding of the child's character and then the simplicity of the child's character will be kept by adults. So the old social order will be able to renew itself."[5]

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[3] Smolińska-Theiss, B. "*Dzieciństwo*" in *Encyklopedia pedagogiczna XXI wieku*, vol. 1, edited by T. Pilch, Warszawa 2003, p. 868.

[4] Postman, N. *W stronę XVIII stulecia. Jak przeszłość może doskonalić naszą przyszłość*, Warszawa 2001, pp. 131–132.

[5] Key, E. *Stulecie dziecka*, Warszawa 2005, p. 75.

The "rediscovery of the child" was also found in the works of French historian and one of the most prominent French medievalists of the twentieth century, P. Aries. In this case as well, we see the re-evaluation of the child and childhood on the level of pedagogical activities. His work *The History of Childhood* gave rise to a new view on childhood, inspiring other researchers to explore this issue.[6] Aries focused on the social determinants of childhood as well as on the attitude of adults towards children over the centuries. As the researcher noted, in the Middle Ages a young person was considered a child until they could manage without the help of adults. The differences between children and adults were not clearly emphasised, nor was there a separate idea of childhood.[7] In medieval society, children were mainly perceived as smaller or larger miniatures of adults, rather than separate individuals forming a specific social group. Due to the fact that children occupied a low position in the social hierarchy, there was no concept of childhood.[8]

One of the Polish "discoverers" of the child was Janusz Korczak, who appealed for the "child's right to respect", claiming: "There is no child, there are people."[9] Respect for the child is the recognition of its humanity by an adult, which is a condition for shaping good educational relationships. This means a humanistic approach to the child, which stems from the fact that they are a person – that, like any adult, they are free and intelligent, capable of self-realisation, creative activity, self-awareness, and transcendence.[10] To respect a child is to treat them subjectively, granting them the right to be independent, active, to make decisions and take responsibility for them, as well as to manage and direct their own development. The most important thing in the subjective approach to the child is to strengthen their self-esteem, that is, their respect for their personal dignity.[11]

In analyses concerning the child and childhood, it is impossible to omit the psychological sciences (especially developmental psychology), which undeniably complement them. A child's functioning depends on

[6] Kowalik-Olubińska, M. *"Interdyscyplinarny paradygmat Childhood Studies w perspektywnie konstrukcjonizmu"*, Problemy Wczesnej Edukacji, 51(2020), no. 4, p. 129.
[7] Aries, P. *Historia dzieciństwa. Dziecko i rodzina w dawnych czasach*, Gdańsk 1995, p. 37 and 44.
[8] Ornacka, K. *Od socjologii do pracy socjalnej. Społeczny fenomen dzieciństwa*, Kraków 2013, p. 36.
[9] Jasionek, S. *Prawa człowieka*, Kraków 2005, pp. 17–18.
[10] Łobocki, M. *Praca wychowawcza z dziećmi i młodzieżą*, Lublin 1998, p. 16.
[11] Ibid.

the biological and psychological foundation of the child's social personality. This personality consists of memory, intelligence, interests, temperament, and feelings.[12]

In sociology, an important concept that serves the analysis of the child and childhood is the process of socialisation of the individual, taking into account the early period of human life – childhood. This process is limited to the child's early experiences in acquiring elementary forms of socially desirable behaviour.[13]

The approach to the child has changed and evolved over time. Each era presented childhood in a different way, and the attitude towards the child always depended on the social and cultural context. With the passage of time, new conditions emerged, shaping the place of the child in society. These changes continue to this day. The interest in children's topics gave rise to the need to get to know the child, which is the subject of research carried out at various levels of reflection. Much important information about the child was provided by psychological and pedagogical research.[14]

When analysing the perception of the child, it should be stated that, in general, the child was perceived as an entity subject to appropriate formation, and that the reflections on the child and childhood were mainly conducted in this respect. It should be noted that the perception of the child and views on the educational process are also particularly important for the issue of freedom of conscience because the greatest threat to their freedom of worldview exists precisely in the process of shaping the child's personality.

To conclude the discussion about the child, it is worth quoting the words of St John Paul II, which should be a source of reflection and a call for action for adults: "The child is always a new revelation of life given to Man by the Creator. It is a new confirmation of the image and likeness of God that Man has become from the beginning. The child is also a great constant test of our fidelity to ourselves, our fidelity to humanity."[15]

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[12] Ornacka, K. *Od socjologii*, p. 65.
[13] Ibid.
[14] Piecuch, E. "*Dzieciństwo jako wartość*", Wychowanie w Rodzinie, 3(2011), p. 156.
[15] Dybciak, K. *Elementarz Jana Pawła II dla wierzącego, wątpiącego i szukającego*, Kraków 2001, p. 42.

2. The evolution of children's rights

The history of children's rights is not too long, because the belief that children need special care and protection was formed in people's awareness only at the turn of the eighteenth and nineteenth centuries. In the Middle Ages and in the several subsequent eras, it was believed that a child, being only "raw material" for a human being, required strict treatment and absolute discipline, because only in this way they could grow into a full-fledged human individual.

It was not until 365 that the father's right to life and death was abolished in Rome by Emperor Valentinian I. This meant the prohibition of both the death penalty and the abandonment of a child, which was deemed a crime. This date can be considered a breakthrough in the history of legal protection of the child, who, as an individual, became the subject of the most important human right – the right to life.[16]

The activity of the international movement for the protection of children's rights began in 1874 with the story of an eight-year-old girl, Mary Ellen Wilson from Baltimore, who was regularly beaten by her mother. She received help from members of the local branch of the American Society for the Prevention of Cruelty to Animals (ASPCA). Soon after, more than 200 different local associations were formed in the United States to protect children from violence. The youngest citizen was recognised as a full-fledged albeit immature person, as a human being with rights.[17]

Public interest in the matter, brought about by the existence of an animal rights association in the absence of a similar organisation devoted to children's rights, led to the establishment of the Society for the Prevention of Cruelty to Children on 15 December 1874 in New York.[18] E. Gerry, who was involved in the creation of this association, formulated the purpose of the organisation as follows: "Rescuing children from cruelty and demoralisation resulting from neglect, abandonment, and improper treatment; using all legal means to protect the child and its welfare; securing immediate punishment and conviction of persons violating these rights, in particular those from whom children are entitled to care, protection,

[16] www.przemoc.com.pl/artykul6 [19.10.2021]
[17] Czyż, E. *Prawa dziecka*, Warszawa 2002, p. 9.
[18] www.nyspcc.org/nyspcc/history/the_response/ [19.10.2021]

or control."[19] The activities of the association led, among other things, to the adoption of legal acts imposing on caregivers the obligation to provide children with the means for subsistence and medical care, as well as regulations concerning child employment. It is also worth mentioning the acts prohibiting the sale of alcohol to minors, ordering that children be separate from adults while in police custody, and banning the sale of weapons to minors, as well as the regulations concerning child pornography.[20]

By the end of the nineteenth century, additional organisations for children were established at the initiative of the association founded by Gerry. Importantly, social awareness of the responsibility for the youngest members of society was also growing. Among the initiatives taken to protect the child in that same period, worth mentioning is the resolution of the New York State Medical Society, which established the rights of a newborn child to protection and assistance.[21]

In Europe, regulations pertaining to the rights of the child can be found in the timeless document known as the Napoleonic Code of 1804. The most important achievement of the French legislator was to locate family relations solely within the framework of statutory law, to the exclusion of religious tradition or tradition sanctioned by custom.[22] The situation of children as well as their rights were governed by the provisions on the conclusion and termination of marriage; the requirement to maintain civil status records; issues of paternity, kinship, and adoption; as well as parental authority and custody over children. Particularly noteworthy is the fact that the code introduced the so-called legitimisation of extramarital children who were born as a result of adultery or incest (referred to as natural children). This group of people had been subjected to various manifestations of unequal treatment for centuries due to the position taken by the Church in this matter. The latter rejected the possibility of equating the rights of extramarital children with those born within "legal" relationships, only recognising the union of sacramental marriage and its offspring. Discrimination of this kind was justified by the need to prevent marriage from being equated with "cohabitation and concubinage". Moreover, equal treatment of children regardless of their origin

[19] http://www.nyspcc.org/nyspcc/history/the_response/ [19.10.2021]
[20] Ibid.
[21] Czyż, E. *Prawa dziecka*, p. 9.
[22] Balcerek, M. *Międzynarodowa ochrona dziecka*, Warszawa 1988, p. 52.

was considered harmful to the community. This position consequently deprived illegitimate children of the right to membership in the guilds, limiting their employment and livelihood opportunities in adult life, often condemning this group to begging, vagrancy, and even crime. Despite the formal recognition of natural children, the Napoleonic Code limited the possibilities of establishing the paternity of such a child, indicating in Article 340 that searching for paternity is prohibited.[23] The only way for a natural child to obtain rights under the provisions of this act was the subsequent marriage of their parents. Despite some signs of progress in the sphere of children's rights, the code continued to uphold the principle of complete subordination of the child to the authority of the parents, and above all to the authority of the father.[24]

The first attempts to regulate the broader scope of children's rights were made in England in the second half of the nineteenth century. The first worldwide law aimed at protecting children was the English *Children Act* (or *Children's Charter*) of 1889. Section 44 of this act states that persons 16 years of age are sufficiently mature to have guardianship rights over those younger than them.[25]

The first codification of children's rights (The Children Act 1908) was issued in the United Kingdom in 1908. It increased the importance of maternal protection and introduced equality in the rights of married and extramarital children, thereby making it known as the children's *habeas corpus.*[26]

The General Assembly of the League of Nations adopted the Declaration of the Rights of the Child, known as the Geneva Declaration, in 1924. This was the first act that treated the issue of children's rights in such a multifaceted way, which is confirmed by its preamble stating that: "Men and women of all nationalities recognise that humanity owes the child the best it has to give, and declare that they are burdened, regardless of race, nationality and religion, with specific duties."[27] The quoted document is very short and contains only five principles that speak of the equal

[23] Ptak, M. J., Kinstler, M. *Powszechna historia państwa i prawa. Wybór tekstów źródłowych*, Wrocław 1999, p. 91.
[24] Ibid., p. 89.
[25] Clark, W. H. *Children Act*, 1908, London 1909.
[26] Balcerek, M. *Międzynarodowa ochrona dziecka*, Warszawa 1988, p. 66.
[27] Idem, *Prawa dziecka*, Warszawa 1986, pp. 108–110.

treatment of children regardless of their race, religion, nationality, and the provision of development, care, and assistance to children, mainly in a situation of danger.[28]

Intensive development of human rights and children's rights took place after the Second World War. In 1948 the UN General Assembly adopted the Universal Declaration of Human Rights, which states: "Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection."[29]

In 1950 the Council of Europe adopted the European Convention for the Protection of Human Rights and Fundamental Freedoms, which is a more important international mechanism for the protection of children's rights in Europe than the Convention on the Rights of the Child.[30]

In 1959 the United Nations proclaimed the Declaration of the Rights of the Child, which was an extension of the Geneva Declaration of 1924. The document explained that the child deserves special protection and care because they are unable to take care of their own interests due to physical and mental immaturity. The declaration consisted of ten principles that comprehensively addressed the issue of child protection in various spheres of life. Children with physical, mental, or social[31] handicaps were entitled to special protection.

After another thirty years, the United Nations General Assembly adopted, on 20 November 1989, the most important document in history devoted entirely to children, the Convention on the Rights of the Child. This document constitutes the axiological and normative basis for any activities aimed at improving the welfare of children at the global and regional as well as national and local levels. The agreement sets universal legal standards for the protection of children from neglect, exploitation, and ill-treatment, while providing children with guarantees of fundamental human rights. It comprehensively establishes the legal and social status of the child on the basis of existing international regulations, as well as

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[28] Ibid., p. 108–110.

[29] Krawczak-Chmielecka, A. "*O rozwoju praw dziecka w Polsce i na świecie*", Dziecko Krzywdzone. Teoria. Badania. Praktyka, 16(2017), no. 2, p. 14.

[30] Ibid.

[31] Ostruszka, A. M. *Przemiany zachodzące w przeżywaniu dzieciństwa w wybranych okresach czasu minionego stulecia w świetle badań własnych*, Kraków 2012, p. 19.

new educational concepts and ideas concerning the treatment of children and young people. The Convention on the Rights of the Child is the first international document to contain such a broad catalogue of children's rights.[32]

In addition to documents of a global scope, regional acts have also gained significant importance in the protection of children's rights. In 1995 the Council of Europe published a document called the European Strategy for Children, which sets out the scope of legal protection to be applied in the member states. This document calls for the adoption of a new perspective on the child, i.e. the recognition that the child, as a human individual with its own rights and responsibilities, wants and is able to actively participate in the life of the family as well as in social life.[33]

The next stage in the development of the legal system for the protection of children by the international community is the European Convention on the Exercise of Children's Rights of 1996. The purpose of this act is to clarify the principle, as set forth in Article 12 of the Convention on the Rights of the Child, that the child has the right, to the extent that they are capable, to express their own views, particularly in matters concerning themselves.[34]

When analysing the state of the legislative efforts dedicated to guaranteeing children's rights, we should acknowledge the opinion of T. Smyczyński, according to whom "the child as a human being with special needs was only noticed in the twentieth century and was only subjected to international protection after the Second World War".[35]

3. A child's religiosity

In examining issues pertaining to the freedom of conscience and confession of minors, it is necessary to assess whether there is a need to pay attention to this issue. Freedom can be fully and consciously exercised only by those who can appreciate it. Therefore, considering the specific

[32] https://www.unicef.org/child-rights-convention/convention-text [22.10.2023].
[33] http://assembly.coe.int/Documents/AdoptedText/ta96/EREC1286.HTM [20.10.2021].
[34] Czyż, E. *Prawa dziecka*, p. 16.
[35] *Konwencja o Prawach Dziecka. Analiza i wykładnia*, edited by T. Smyczyński, Poznań 1999, p. 7.

characteristics associated with their mental development, is a child an entity capable of taking any reasonable position on the subject of confession? Are minors capable of having religious feelings, of experiencing religious elation? And if the answer is yes, is this capability susceptible to being shaped by self-development or external influences?

In order to answer this question, it is necessary to provide an outline of the concept and results of the research devoted to the ways in which minors experience religious feelings.

Religion is a collection of assertions, prohibitions, and rules that govern the relationship between God and man.[36]

Religiosity is the personal, individual, and at the same time positive attitude of a person towards religion.[37] Human religiosity is defined as a personal, conscious, voluntary, and positive relationship with God.[38] Therefore, in order to be able to say that a person is capable of being religious, they must have the ability to shape and express their attitude towards religion.

Due to the subject matter of this work, the issues of intellectual development of children during the process of growing up and their way of thinking will not be discussed here more broadly.[39] The focus should be on moral development – of course, in a manner closely related to the psychological development and process of socialisation of the child.

As indicated above, religiosity is an emotionally charged, personal relationship of a human being with God.[40]

The bonds between man and God are shaped throughout one's entire life. They arise in the period of early childhood, and one of their manifestations is the image of the Creator developed by the child – that is, the cognitive-affective representations of God created in the child's mind; the internal operational models of God possessed by the individual.[41]

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[36] See: Golan, Z. *"Pojęcie religijności"* in *Podstawowe zagadnienia psychologii religii*, edited by S. Głaz, Kraków 2006, p. 71.

[37] Walesa, C. *"Psychologiczna analiza rozwoju religijności człowieka ze szczególnym uwzględnieniem jego ontogenezy"* in *Psychologia religii*, edited by Z. Chlewiński, Lublin 1982, p. 144.

[38] Ibid., p. 150.

[39] The literature dealing with these issues is broad, analysing the matter from the point of view of biology, psychology, and pedagogy.

[40] Walesa, C. *"Psychologiczna analiza rozwoju religijności człowieka"*, p. 150.

[41] Joung, E. S. *"Attachment and women's faith development"*, Journal of Beliefs & Values, 27(2006), no. 2, pp. 145–155 (http://www.tandfonline.com/doi/full/10.1080/13617670600849788). See the literature indicated there.

The intellectual processes that accompany the evolution of children's perception of God have been the subject of many studies.[42]

During their preschool years, the child learns the rules of conduct and how to act in accordance with them. The authority of adults and the compulsion that derives from it makes children act as the adults demand, and because they want it (moral heteronomy).[43] As indicated in the literature, based on research and observations, it is reasonable to make two observations. Firstly, that preschool children are attracted to religion. Secondly, that certain features such as the ease of creating and accepting symbolic meanings; interest in the causative and purposeful cause of the surrounding world (why?); a liking for everything unusual and miraculous (they love fairy tales); and the search for self-confirmation and one's position in the family enable children to have deeper religious experiences and to undergo sacramental initiation.[44] Czesław Walesa pointed out that, from the psychological point of view, religiosity as a personal and positive relationship to God is realised through the following: (1) religious awareness, (2) religious feelings, (3) religious decisions, (4) bonds with the community of believers, (5) religious practices, (6) religious morality, (7) religious experience, and (8) forms of confession.

The religiosity of a preschool child is defined as the period of so-called magical religiosity, from approximately three to six years of age.

The period from four until seven years of age is defined as that of magical religiosity, with a distinction between fantasy religiosity (4–5 years of age) and realistic religiosity (6–7 years of age).[45]

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[42] Dickie, J. R., Eshleman, A.K., Merasco, D. M., Shepard, A., Vander Wilt, M., and Johnson, M. "*Parent-Child Relationships and Children's Images of God*", Journal for the Scientific Study of Religion, 36(1997), no. 1, pp. 25–43; Granqvist, P., Ljungdahl, C., and Dickie, J. R. "*God is nowhere, God is now here: Attachment activation, security of attachment and God's perceived closeness among 5–7 year old children from religious and non-religious homes*", Attachment & Human Development, 9(2007), no. 1, pp. 55–71; Kirkpatrick, L. A. "*A Longitudinal Study of Changes in Religious Belief and Behavior as a Function of Individual Differences in Adult Attachment Style*, Journal for the Scientific Study of Religion, 36(1997), no. 2, pp. 207–217; Walesa, C. "*Psychologiczna analiza rozwoju religijności człowieka*", pp. 143–180.

[43] Rydz, E. "*Psychologiczne podstawy kształtowania się religijności dzieci w wieku przedszkolnym*", Przegląd Homiletyczny, 7(2003), p. 220.

[44] Ibid., p. 221.

[45] See: Pomianowski, R., Walesa, C. "*Dziecko. Rozwój religijny*" in *Encyklopedia katolicka*, vol. 4, edited by R. Łukaszyk [et al.], Lublin 1983, col. 531; and Walesa, C. "*Psychologiczna analiza rozwoju religijności człowieka*", p. 150.

A six – or seven-year-old child already demonstrates the characteristics of a naive realist, and their religiosity is expressed in an increased number of arbitrary, individual behaviours that involve them more comprehensively. In the child appears a spontaneous desire to perform religious acts.[46]

In fact, all forms of religious activity of a young child have a social context and are conditioned by the mechanisms of human coexistence with adults. The child occupies a certain position within the family: they have their place not only in the material or physical sense, but also a certain place from a psychological point of view. It is an object on which feelings are focused, and on which care activities are concentrated. Feeling this, the child becomes aware of their rights and privileges. The activities of adults (parents), including their religious life, along with expressions of affection, are received and reciprocated by the child. This process favours the formation of religiosity in children from religious families.[47]

The period from 7 or 8 years to 12 years of age is known as the period of authoritarian-legal religiosity, in which the cognitive (7–9) and practical (10–12) phases of realism are distinguished.[48] A child of about seven to nine years of age, thanks to its ability to act logically, creates the first vision of the world that is close to an objective one. One characteristic feature of this phase is heteronomous morality, in which authority prevails over love, and the external forms of behaviour depend on the authority and example of significant persons.[49]

Between the ages of about 12 and 16 or 17, autonomous religiosity develops. The adolescent develops their own religious views (worldview), and their practices become increasingly conscious and voluntary.[50]

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The subject of the child and childhood has a significant position in modern society and culture but has only recently appeared in research. There is no clear answer to the question "what is a child?". The approaches to defining the meaning of childhood are based on concepts prevailing

[46] Cf. ibidem.
[47] Rydz, E. "*Psychologiczne podstawy kształtowania się religijności dzieci",* p. 223.
[48] See: Pomianowski, R., Walesa, C. "*Dziecko"*, col. 531.
[49] Cf. ibidem.
[50] Walesa, C. "*Psychologiczna analiza rozwoju religijności człowieka"*, p. 151 et seq.

in different historical periods as well as different cultures. The way adults perceive children is constantly changing, and is associated with political, economic, and religious factors that prevail at a given time and historical period. The view of the child as an entity possessing certain inalienable rights is a fairly new approach, as the movement for children's rights dates back only to the late nineteenth century. Every child has rights arising from the personal dignity and uniqueness of children as human beings.

Research has dealt with the evolution of the perception of religious phenomena by children at various stages of intellectual development. Both positive and negative perceptions were presented. Without focusing on an analysis of the adopted research methods and tools, it is worth mentioning here the achieved research results. Studies have shown that among preschool age children, positive feelings prevail in the expression of religious feelings.[51] Research has also confirmed that, with age, children's ability to self-analyse and reflect on experiences increases. Attention should also be paid to the following apt observation: "Parents are not always aware of the extraordinary spiritual openness of their children. Spiritual and religious reality is something natural and spontaneous for a child. The child willingly accepts even the most difficult truths of faith as obvious. There is only one condition: they must first witness the same openness to spiritual matters on the part of their parents."[52]

[51] Tatala, M., Mańkowska, M. "*Uczucia religijne dzieci w wieku przedszkolnym w świetle ich własnych wypowiedzi oraz w percepcji ich matek*", Roczniki Psychologiczne, 8(2005), no. 1, p. 100.

[52] Augustyn, J. *Jak kochać dzieci? 12 zasad rodzicielskiej miłości*, Częstochowa 2002, p. 39.

CHAPTER THREE

Minors in Light of Legal Regulations

The perception of the child has changed over the centuries. The development and strengthening of state organisations (in the field of secular law) and the ultimate victory of the Catholic doctrine (in the field of religious law), as well as the increasing complication and complexity of social relations, resulted in the expansion of areas subject to statutory regulation. Statutory (positive) law entered into areas hitherto governed by custom or tradition, and increasingly interfered with the spheres formerly belonging to private law (such as family law). This process meant that issues relating to minors also became a matter of concern to the legislator.

The regulation of human rights issues in general was related to the process of moving away from the feudal model of social relations, the development of urban self-governance, and new philosophical and religious trends emerging at the dawn of the Renaissance period. The regulation of the legal position of children initially concerned property issues within the family (mainly inheritance law), and subsequently issues related to the possibility of minors (underage people) being subject to criminal liability. The process of strengthening the concept of human rights began during the Enlightenment. Initially, it concerned adults, and in the case of children, beneficial changes mainly concerned the limitation of paternal sovereignty and, at least in the case of some national legislation, the improvement of the legal situation of illegitimate children. The process of accepting and

regulating the rights of the child was undoubtedly delayed in relation to human rights in general. In the case of children's rights, the acceleration of normative regulation of their freedom only occurred in the period after World War II, and comprehensive regulation only happened in 1989 with the adoption of the Convention on the Rights of the Child.

1. The child in international law

Already in the period following World War I, broader interest in the issue of children's rights began to emerge. However, it should be mentioned that international cooperation in this field dates back to the turn of the nineteenth and twentieth centuries. It is worth recalling the other issues addressed by the International Congress for the Care of Abandoned and Homeless Children, organised in Paris in 1883, and by the Berlin International Congress of Criminologists, organised in Berlin in 1890, concerning the limits of child development in allowing for the assignment of criminal liability. Similar issues were discussed at the International Congress on Juvenile Courts, organised in Paris in 1911. The First International Congress on Child Protection began its deliberations in 1913 in Brussels.[1]

The culmination of the international community's efforts to determine the extent of the rights of the child and the persons entitled to those rights came in the interwar period with the Geneva Declaration of 1923, which was adopted by the Assembly of the League of Nations in 1924.[2]

The most intensive development of international legislation on the rights of the child occurred after World War II. The establishment of the United Nations led, among other things, to the promulgation of the Charter of the Rights of the Child in 1948; the Universal Declaration of Human Rights in 1948; and the subsequent covenants on human rights of 1966 – namely, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights; the Second Declaration of the Rights of the Child in 1959;[3] and the International Convention on the Rights of the Child in 1989. In addition, it is impossible to

[1] Kantowicz, E. *Ochrona praw dziecka w kontekście działalności UNICEF*, Warszawa 1998, p. 20.
[2] The text of the Declaration is available at: http://biurose.sejm.gov.pl/teksty/i-684.htm [12.10.2015].
[3] Available at: https://digitallibrary.un.org/record/195831?ln=en [22.10.2023].

omit the successively developed regional legislation created on the basis of the structures and legislative mechanisms of the European Union.

In the legislation and literature of most of the world's countries, a distinction exists between the terms "children" and "youth". Under this division, "a child is understood to mean a young person until the completion of primary school, and the term youth is used for secondary school students".[4]

In the acts of international law, in addition to the term "child", there are other definitions of persons at this stage of development. The International Covenant on Civil and Political Rights of 1966 uses the term "juvenile".[5] The International Covenant on Civil and Political Rights refers to the concept of "minors".[6] The term "minor" is used by the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War of 1949.[7] The International Covenant on Social, Economic and Cultural Rights of 1966 distinguishes between "children" and "youth".[8] The Fourth Geneva Convention utilises analogous terminology.[9]

Article 6(5) of the International Covenant on Civil and Political Rights refers to "a person under the age of eighteen". Article 132 of the Fourth Geneva Convention uses the terms "children", "infants", and "young children". In the provisions of international humanitarian law, we find many references to the so-called childhood age, which sets out the upper age limits for special protection and privileged treatment. The Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War and the Additional Protocols relating to the Protection of Victims of International Armed Conflicts of 1977 used the terms "*newborn babies*" and "*infants*" as well as references to children under the ages of 7, 12, 15, and 18.

Among other acts of international importance that include a definition of a child, one can mention the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing

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[4] See: Balcerek, M. *Prawa dziecka*, Warszawa 1986, p. 22.

[5] Journal of Laws of 1977, no. 38, item 167 – International Covenant on Civil and Political Rights opened for signature in New York on 19 December 1966, article 10(2)(b) and article 14(1) and (4).

[6] Ibid., article 24(1).

[7] Journal of Laws of 1956, no. 38, item 171, article 76.

[8] Journal of Laws of 1977, no. 38, item 169 – International Covenant on Economic, Social and Cultural Rights opened for signature in New York on 19 December 1966, article 10(3).

[9] Journal of Laws of 1956, no. 38, item 171, article 94.

the United Nations Convention against Transnational Organised Crime, which was adopted by the General Assembly of the United Nations on 15 November 2000.[10] Article 3 of that protocol, similar to the Convention on the Rights of the Child, uses the term "child" to mean any person who has not reached the age of 18.

It should be mentioned that the foregoing acts unanimously accept reaching the age of 18 as the criterion for the end of "childhood".

In the case of acts of international law, a definition of a minor child is included, among others, by the Convention on the Rights of the Child, adopted by the General Assembly of the United Nations on 20 November 1989, which provides in Article 1: "For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier." It should be noted, however, that determining the upper age limit of the child is an equally important issue.

The definition of the term "child" in the Convention uses the criterion of age to set the upper limit of childhood. This limit is 18 years of age. Upon turning 18, a human being ceases to be a child. The Convention does not distinguish intermediate periods between childhood and adulthood, such as infancy, adolescence, etc.

According to Article 1 of the Convention, the limit of childhood is 18 years, "unless under the law applicable to the child, majority is attained earlier". The above solution allows the signatories of the Convention the discretion to also recognise as an adult (thus no longer a child) a person who has not yet reached the age of 18 but has met the conditions set forth in domestic legislation. Differences in the treatment of children and their role in the family and in society are evident depending on the individual society and culture, which in turn affects the definition of the limits of childhood. In many countries, it ends sooner than reaching the age of 18. This is influenced by factors such as attaining a certain age or the ability to perform certain activities or functions, as well as high mortality among infants and children, a low average age in the given state, a need for children to perform duties that will help in the survival of the family, or the age of eligibility for marriage being set at a lower level. It should also be mentioned that adulthood is not only a matter

[10] Journal of Laws of 2005, no. 18, item 160.

of law, but also of existing social, cultural, and religious norms. Definition of the age of 18 as the limit of childhood was associated with some controversy. Some countries rejected this threshold as being too low and ending the period of childhood too quickly.[11]

As a result of this issue, it was assumed in the works on the Convention that party states would be left the right to fully and precisely determine the moment which can be considered as the end of childhood and, consequently, the moment which should be considered as the beginning of a human being.[12]

Setting the upper limit of childhood at 18 years of age in the Convention on the Rights of the Child is consistent with the arrangements found in the national legislation of the majority of the states that are party to the Convention. The Convention permits exceptions to the principle of beginning adulthood at the age of 18, allowing for situations in which the age of majority is reached at an earlier point, in accordance with the law applicable to the child. Such a solution undoubtedly has its advantages, i.e. expressing the establishment of an international age limit while simultaneously respecting the cultural and religious differences reflected in national regulations. The principle of respect for the traditions and cultural values of individual societies is expressed in the preamble to the Convention on the Rights of the Child, which states the necessity of "taking due account of the importance of the traditions and cultural values of each people for the protection and harmonious development of the child".

In the European Convention on the Exercise of Children's Rights, drawn up in Strasbourg on 25 January 1996,[13] Article 1 states that it applies to children under the age of 18.

The limit of childhood was established in a similar manner in the Convention on Contact concerning children, adopted in Strasbourg on

[11] Among the countries that did not accept the limits of childhood set out in the Convention, we can mention the Principality of Liechtenstein, which stipulated that all persons up to 20 years of age are children. Indonesia, on the other hand, adopted the age of 21 as the moment of reaching the age of majority. Cuba made the reservation that the age of 18 does not give people full legal capacity. In Austria, the age of majority is 19 years, and in Switzerland it is 20 years of age. See more: Schulz, A. N. "*Zastrzeżenia, deklaracje i sprzeciwy do Konwencji o prawach dziecka"* in *Konwencja o prawach dziecka. Analiza i wykładnia*, edited by T. Smyczyński, Poznań 1999, p. 113.

[12] See: Smyczyński, T. "*Pojęcie dziecka i jego podmiotowości"* in *Konwencja o prawach dziecka. Analiza i wykładnia*, p. 40.

[13] Journal of Laws of 2000, no. 107, item 1128.

15 May 2003.[14] In accordance with Article 2 (c), the term "child" means a person who has not reached the age of 18 or the age up to which a contact order may be issued or enforced in the party state. Analogous age limits to the period of "childhood" are set by the Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children, concluded on 19 October 1996.[15] According to Article 2 of the Convention, these provisions apply to children from the moment of their birth until they reach the age of 18 years.

Other limits to the notion of a "child" are contained, for example, in the European Convention on the Recognition and Enforcement of Decisions concerning Custody of Children and on the Restoration of Custody of Children,[16] signed in Luxembourg on 20 May 1980. According to Article 1(a), "the term 'child' means a person of any nationality, so long as he is under 16 years of age and has not the right to decide on his own place of residence under the law of his habitual residence, the law of his nationality or the internal law of the State addressed".

Other acts of international law pertaining to matters relating to minors – for example, the Convention concerning the powers of authorities and the law applicable in respect of the protection of infants,[17] signed at the Hague on 5 October 1961 – refer, for the purposes of determining the content of the term "minor", to the domestic law of the states party to the given convention.

It should be noted here that many other legally binding instruments, in this same respect, define the term "child" for their own purposes. For example, the African Charter of the Rights and Welfare of the Child

[14] The text of the Convention is available on the website of the Council of Europe https://rm.coe.int/convention-on-contact-concerning-children/1680a40f71 [22.10.2023]. The Convention was ratified by the Republic of Poland pursuant to the Act of 23 April 2009 on the ratification of the Convention on Contact concerning Children, done in Strasbourg on 15 May 2003 (Journal of Laws of 2009, no. 68, item 576). The issue of the binding force of the Convention raises some doubts. For more information on the controversies surrounding the implementation of the Convention into the Polish legal order, see: Bodnar, A., Kopczyński, M. "*Konwencja w sprawie kontaktów z dziećmi z 2003 roku – ratyfikacyjne błędne koło*", Analizy i Rekomendacje, 2015, no 9. The above article is available at http://www.hfhr.pl/wp-content/uploads/2015/05/hfpc_analizy-i-rekomendacje_92015.pdf [10.12.2016].

[15] Journal of Laws of 2010, no. 172, item 1158.

[16] Journal of Laws of 1996, no. 31, item 134.

[17] Journal of Laws of 1995, no. 106, item 519.

of 11 July 1990[18] in Article 2 considers every human being under the age of 18 to be a child.

Similarly, Article 2 of the International Labour Organisation Convention No. 182 of 1999[19] states: "For the purposes of this Convention, the term child shall apply to all persons under the age of 18." Meanwhile, in the 1980 Convention on the Civil Aspects of International Child Abduction[20] (Article 4) and in the 1980 European Convention on the Recognition and Enforcement of Decisions concerning the Custody of Children and on the Restoration of Custody of Children[21] (Article 1a), the upper age limit of children to whom those conventions apply was set at 16 years of age.

The upper limit of childhood is defined in a different manner in the provisions of international humanitarian law. Of the four Geneva Conventions of August 12, 1949 and the two additional protocols to these conventions, none provide an explanation of the term "child". However, they do use an upper age limit – specifically, 15 years of age – while justifying the need for special protection of children against their involvement in armed conflict.[22]

Different boundaries of childhood can be found, for example, in the Oxford Dictionary, which defines a child as a human being of either sex who is not able to act independently in their own affairs or who has not yet reached sexual maturity. This means that the upper age limit of childhood is 13 years of age, after which the period of adolescence follows.[23]

International legislation has highlighted the problem of determining the minimum age of a child that allows for recognition of its legal capacity.

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[18] Available at: http://pages.au.int/acerwc/documents/african-charter-rights-and-welfare-child-acrwc [15.10.2015].

[19] Journal of Laws of 2004, no. 139, item 1474 – Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, adopted in Geneva on 17 June 1999.

[20] Journal of Laws of 1995, no. 108, item 528 – Convention on the Civil Aspects of International Child Abduction, signed at the Hague on 25 October 1980.

[21] Journal of Laws of 1996, no. 31, item 134 – The European Convention on the Recognition and Enforcement of Decisions concerning Custody of Children and on the Restoration of Custody of Children, signed at Luxembourg on 20 May 1980.

[22] At this point, it is worth noting that 15 years is the age limit of childhood, which is also indicated in other international documents – for example, in the resolution of the General Assembly of the United Nations of 1965 on the Minimum Age for Marriage (UN Doc. GA Res. A/Res/2018 (XX), 1.11.1965). However, according to the considerations of the authors of the Commentary to the Additional Protocols, a person over 15 years of age can also be considered a child due to their physical and mental immaturity (UN Doc. GA Res. A/Res/2018 (XX), 1.11.1965.).

[23] See: *Oxford English Dictionary*, vol. 2, Oxford 1970, p. 341.

The Convention on the Rights of the Child contains a legal definition, but there is a conspicuous lack of a minimum age limit (i.e. a definition of when the child begins to be considered as such). This is the result of a compromise between those parties that recognise the child as a subject of the law from the moment of conception and those who have rejected such a solution. As a result of this issue, it was assumed in the works on the Convention that party states would be left the right to freely and independently determine the precise moment in which childhood begins and, consequently, the moment which can be considered as the beginning of human life.[24] Interestingly, attention should be paid to the content of the preamble to the Convention, which, despite the lack of clear support for one of the concepts already mentioned, nevertheless indicates the need to protect the child both before and after birth.[25] The Convention stipulates, however, that the date of recognition of the child's rights may not be later than the moment of separation of the foetus from the mother's body. While analysing the objections raised regarding the Convention, it should be noted that only in the case of Argentina is there a statement concerning recognition of the child from the moment of conception.[26]

Pursuant to the provisions of the European Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine, adopted on 4 April 1997 in Oviedo, the purpose of the Convention is to protect the dignity and identity of the human being and to guarantee everyone, without discrimination, respect for their integrity and other fundamental freedoms in the area of biology and medicine.[27] At the same time, it was assumed that the interest and good of the human person outweigh the exclusive interest of society and science.[28] The Convention on Human Rights and Biomedicine does not explicitly state who is a human being and to what extent the scope of application of the regulations contained in these conventions applies to unborn children. These terms are left to be defined by the domestic law

[24] I. Bobrowska, *Rzecznictwo praw dziecka w Polsce*, Konin 2008, p. 79.
[25] The inconsistency of this concept is also reflected in the Declaration of the Rights of the Child of 20 November 1959, which pointed to the need for legal protection for the unborn.
[26] Schulz, A. N. *"Zastrzeżenia, deklaracje, sprzeciwy do Konwencji o prawach dziecka"*, p. 113.
[27] Available at: https://rm.coe.int/168007cf98 [22.10.2023]. See Article 1.
[28] Available at: https://rm.coe.int/168007cf98 [22.10.2023]. See Article 2.

of the states that are party to the Convention. The lack of a precise determination as to whether the protection also covers the unborn may cause problems in the interpretation and application of the Convention. For this reason, there were demands for clarification of this issue. An international act directly regulating the above issue is the American Convention on Human Rights, signed in San José on 22 November 1969, according to which the right of every person to respect for their life should be legally protected "in general, from the moment of conception".[29]

The recognition of legal personality and the granting of international protection to children from the moment of conception are also indirectly mentioned by the provisions of the Geneva Conventions of 1949, which require the parties to an armed conflict to avoid the pronunciation of death sentences against pregnant women,[30] and the provision of Article 6 (5) of the International Covenant on Civil and Political Rights of 1966, which prohibits the execution of death sentences against pregnant women.

Regarding Polish law, and in particular its interpretation by the Supreme Court, the connection between the commencement of childbirth and the acquisition of legal protection[31] should be mentioned. Referring the foregoing considerations *strictly* to the subject of this work, it should be emphasised that the freedom of conscience and confession is granted to the child only from a specific moment. This entitlement can only be considered in relation to persons who have already reached a certain level of development that guarantees a sufficient capacity for discernment.[32]

At this point it is sufficient to underscore the significance of the fact that the acts of international law currently in force, both *soft law* and *hard law*, were incorporated into the national legal order or in some

[29] The American Convention on Human Rights, adopted on 22 November 1969, https://treaties.un.org/doc/publication/unts/volume%201144/volume-1144-i-17955-english.pdf [22.10.2023].

[30] Journal of Laws of 1992, no. 41, item 175 – Additional Protocols to the Geneva Conventions of 12 August 1949, relating to the protection of victims of international armed conflicts (Protocol I) and relating to the protection of victims of non-international armed conflicts (Protocol II), drawn up in Geneva on 8 June 1977; Article 76 (3) of the I Additional Protocol of 1977, Article 6 (4) of the II Additional Protocol of 1977 (Journal of Laws of 1977, no. 38, item 167). International Covenant on Civil and Political Rights opened for signature in New York on 19 December 1966, Article 6(5).

[31] Resolution of the Supreme Court of 26 October 2006, file reference no. I KZP 18/06 (OSNKW 2006, vol. 11, item 97).

[32] Bielecki, M. *"Ewolucja wolności religijnej dziecka w Polsce w latach 1989–2009"* in *Prawo wyznaniowe w Polsce (1989–2009). Analizy – dyskusje – postulaty*, edited by D. Walencik, Katowice – Bielsko-Biała 2009, p. 94.

way inspired national legislation. Detailed considerations will be made in the subsequent section of this work devoted to the freedom of conscience and confession of minors based on the Polish legal system.

2. Minors in Polish law

2.1. Minors within the meaning of Polish civil and family law

In the Polish legal nomenclature, there are various terms used in relation to children. It is assumed that a minor is an underage person, i.e. one under 18 years of age. A juvenile is a person under the age of 18 who shows signs of demoralisation, or a person aged 13 to 17 who has committed a criminal act. The term juvenile also refers to persons aged 15 to 18 who may be subject to employment, or to persons aged 17 to 20 who commit an offense for which they are criminally liable.[33]

In the case of Polish law, it should be mentioned that in the original period of Polish statehood, common laws were in force,[34] and that later on after the strengthening of Christianity, the importance of the norms of Canon law increased. The extent of paternal power in the early Middle Ages resembled the power of the Roman *pater familias*. As the literature indicates, the family constituted a union of all persons under one authority, which had a complete and unlimited right both in property and personal terms.[35]

The medieval family was patriarchal in nature, but its size varied depending on the social strata it occupied.[36] Due to the wide range of paternal authority, the position of the mother was limited and mainly restricted to the duty of raising children.[37] The children, on the other hand, did not

[33] Kołakowska-Przełomiec, H. *"Prawo polskie a Konwencja o Prawach Dziecka"* in *Prawa dziecka*, edited by E. Czyż, Warszawa 2002, p. 52.

[34] Matuszewski, J. *Najstarszy zwód prawa polskiego*, Łódź 1995, pp. 5–8.

[35] Bobrzyński, M. *Historya prawa niemieckiego w zarysie wraz z historyą tego prawa w Polsce*, Kraków 1876, p. 27. For more information on the components of paternal power testifying to his primacy in the family, such as, for example, the right to discipline and reprimand one's children, see: Dziadzio, A. *Powszechna historia prawa*, Warszawa 2008, p. 288; and Uruszczak, W. *Historia państwa i prawa polskiego*, t. 1: *(966–1795)*, Warszawa 2010, p. 303 et seq.

[36] Bogucka, M. *Gorsza płeć. Kobieta w dziejach Europy od antyku po wiek XXI*, Warszawa 2005, p. 82.

[37] *Prawo cywilne familijne: pokrewieństwo i powinowactwo, uznanie, uprawnienie i wywód rodu, przysposobienie, opieka, ubezwłasnowolnienie*, oprac. na podstawie wykładów uniwersyteckich K. Lutostańskiego, p. 104, digitised edition available at: http://ebuw.uw.edu.pl/dlibra/docmetadata?id=7506&from=pubindex&dirids=94&lp=1633 [13.04.2014].

have any rights – they were completely subordinate to their father and completely dependent on him.[38] Over time, the scope of absolute patriarchal power was reduced in favour of the mother-wife and, relatively late, in favour of the children as well.

In the case of boys, the limit of their childhood was traditionally recognised as the age of seven, when the ritual of the so-called first haircut (Polish: postrzyżyny) occurred. At that point, the child transitioned from being cared for by the mother to being supervised and brought up by the father. The age of maturity was determined individually. Paternal authority generally expired when the child reached maturity – in the case of boys, this was associated with achieving the ability to fight or economic independence;[39] in the case of girls, the expiry of subordination to paternal authority was associated with her marriage or entry into a monastery.

The absolute nature of paternal power in the old Polish law was mitigated by subsequent acts limiting the most extreme elements of power. One of the first manifestations of this were the provisions of the Statute of Wiślica of 1347,[40] which prohibited the sale and abuse of a child. Meanwhile, the killing of a child, even an illegitimate one, was punishable. In the territory of the Grand Duchy of Lithuania, a relaxation of paternal power was introduced by the provisions of the Statute of Lithuania adopted on 29 September 1529, by virtue of which the father's "right to life and death" was abolished.[41]

In the Lesser Poland and Greater Poland collections of the Statutes of Casimir the Great, the age limit for legal capacity was originally set at 12 years of age, regardless of the sex of the child. Later, this age was gradually raised. The initially accepted principle of determining maturity for legal capacity in each case individually was replaced with a determination of "functional years". In the Polish Crown, it was 15 years for boys

[38] Manikowska, H., Tazbirowa, J. *Historia. Średniowiecze*, Warszawa 1995, p. 42.

[39] Henke, I. *"Ewolucja prawnej pozycji dziecka w kontekście historycznego rozwoju rodziny"* in *Prawo blisko człowieka. z dziejów prawa rodzinnego i spadkowego*, edited by M. Mikuła, Kraków 2008, p. 131.

[40] *Statut wiślicki w polskim przekładzie*: r. 1460 / [author S. de Oppatow; preface by Zygmunt Celichowski], published by Biblioteka Kórnicka, 1876.

[41] The Statute of 1529 was modified by successive sets of laws of the Second Statute of 11 March 1566, and the Third Statute adopted during the Coronation Sejm in January 1588. An event important from the point of view of freedom of confession was the incorporation into Lithuanian law of all the provisions of the Warsaw Confederation of 1573.

and 12 years for girls.[42] Slightly different boundaries were adopted in municipal law, in which the limit of the functional years was set at 14 years for boys and at 13 years for girls. Municipal law also adopted so-called "years of prudence", which guaranteed full rights. Typically, the age limit for prudence was set at 21 years for both sexes.

Provincial law was subject to evolution, as a result of which in the second half of the eighteenth century, through judicial practice, the limits of the functional years were raised to 18 years for boys and 14 years for girls. The functional years ended after reaching the age of 24, which provided full legal capacity.[43]

Janusz Tazbir presented an assessment of the humanitarianism of medieval Polish law in the field of family relations. He mentions the absolutism of paternal authority, violence against women and children, and corporal punishment in school: "It is evident that the lower the social circle to which the family belonged, the greater the extent of the husband's power and his ruthlessness in its exercise."[44]

During the period of the partitions of Poland, the legislation in force in Polish lands was a derivative of the laws of the partitioning states and possibly, in the case of certain territories during certain periods, of legislation modelled on or constituting an incorporation of French legislation in the form of the Civil Code.

In the Prussian partition of Poland, the issue of determining the limits of the age of minority was regulated in the field of civil law, including the Prussian national law of 1794, and later the German Civil Code of 1896 (BGB). According to the latter, a child obtained full legal capacity upon reaching the age of 21 (§ 2 BGB), or after reaching the age of 18 and meeting certain conditions pertaining to obtaining the consent of the parents, the consent of the guardianship court, and the legitimate interest of the minor (§ 3–5 BGB). Until reaching adulthood, children remained under parental authority and owed their parents obedience.

In the case of the Russian partition of Poland, according to the "Collection of Laws" of 1835, the age of majority was 21.

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[42] Bardach, J. *Historia państwa i prawa Polski*, vol. 1, Warszawa 1964, p. 496.

[43] Bardach, J., Leśnodorski, B., and Pietrzak, M. *Historia ustroju i prawa polskiego*, Warszawa 1996, p. 251.

[44] Tazbir, J. "*Stosunek do dzieci w okresie staropolskim*" in *Bici biją*, edited by J. Bińczycka, Warszawa 2010, p. 21.

During the partitions, legal regulations remained essentially conservative. As Stanisław Płaza noted, in terms of extending the rights of children (and also of women) within the family, even such a modern act as the Napoleonic Code of 1804 "saw strong patriarchal paternal power as guaranteeing the permanence of the legal family as the foundation of the entire social system".[45] The only act going further than the universal standard was the Civil Code of the Kingdom of Poland, which was in force in the territory of the Congress Kingdom starting from 1825. The changes relaxing the previous norms consisted in granting parental authority to both parents, although in the absence of unanimity the father had the decisive vote (Article 337 of the Civil Code of the Kingdom of Poland). The law also improved the situation of illegitimate children, replaced the father's exclusive right to use coercive measures by allowing for punishment by both parents, and introduced sanctions for the abuse of parental authority.[46] In the Russian partition of Poland, the binding law of the Russian Empire (Digest of Laws of the Russian Empire of 1835, volume 10) formally granted parental authority to both parents. According to its provisions, however, the husband also exercised authority over the wife, so the said rule remained a dead letter.[47] In the Galicia region in the Austrian Partition of Poland, which was under the Austrian Civil Code (ABGB), the father exercised almost absolute power, which was limited only in the event that he neglected his duty to feed and raise the child. There were two kinds of power in relation to children: parental and paternal. The mother's authority was handicapped in this respect. The woman was responsible for the care and education of the child until the age of eight; later, responsibility for these areas was taken over by the father. The BGB also recognised the secondary role of the mother – however, it should be noted that, unlike the ABGB, it extended the mother's rights towards the child in the event of the death of the child's father.[48]

After Poland regained independence in 1918, legal acts "inherited" from the partitions of Poland remained in force for a longer time. Throughout

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[45] Płaza, S. *Historia prawa w Polsce na tle porównawczym*, cz. 2: *Polska pod zaborami*, Kraków 2002, p. 65.

[46] Ibid.

[47] See: Sieja, M. "*Instytucja władzy rodzicielskiej nad dziećmi ślubnymi w okresie zaborów i w Polsce niepodległej*", Acta Universitatis Wratislaviensis. Prawo, 2004, no. 290, pp. 143–162.

[48] Ibid.

the entire existence of the Second Polish Republic, work aimed at unification and codification of the law was carried out. In the case of civil law, many diverse obstacles were encountered during the process of codifying the law, which was not completed until the outbreak of World War II. However, many norms regulating the conflicts between the laws of the individual partitions were introduced. After the end of World War II and the establishment of the Polish People's Republic, the status of the minor was defined in the provisions of the Civil Code of 1964. In contemporary Polish law, the definition of the term "child" is contained in the Act of 6 January 2000 on the Ombudsman for Children.[49] According to Article 2 (1) thereof, "every human being, from conception to adulthood, is a child". However, in the literature it is pointed out that this is an internal definition of a legal act, and there are no grounds to extend its application to the entire Polish legal system.

Under Polish law, the moment when a child reaches the age of majority has not been indicated in a uniform manner. The Act of 23 April 1964 – Civil Code stipulates in Article 10 § 1 that an adult is a person who has reached 18 years of age. Therefore, obtaining the legal status of an adult is associated with reaching the aforementioned age. However, Article 10 § 2 of the Civil Code provides for an exception to this rule, allowing for reaching the age of majority through marriage. A minor who has entered into marriage will not lose their majority if the marriage is annulled. The conditions under which a minor may enter into marriage are specified in Article 10 of the Act of 25 February 1964 – Family and Guardianship Code. It provides that, for important reasons, the guardianship court may allow a woman who has reached the age of 16 to marry, and it follows from the circumstances that the marriage will be compatible with the welfare of the newly created family. This principle always applies in the case of men, while in the case of women, it is also necessary to consider the case regulated in Article 10 § 2 of the Civil Code in connection with the provision of Article 10 of the Family and Guardianship Code. The provision of Article 10 of the Family and Guardianship Code provides for the possibility of marriage by a minor woman who has reached the age of 16. If there are important reasons and it is found that the marriage will be compatible with the welfare of the newly created

[49] Journal of Laws of 2000, no. 6, item 69, as amended.

family, the guardianship court may allow the minor to marry. In such a situation, pursuant to Article 10 § 2 of the Civil Code, the minor reaches the age of majority.

Pursuant to Article 10 § 1 of the Civil Code, "an adult is one who has attained the age of eighteen". Pursuant to § 2 of the aforementioned provision: "By entering into a marriage, a minor reaches the age of majority. The majority is not lost if the marriage is annulled."

Pursuant to Article 11 of the Civil Code: "Full legal capacity is acquired when the age of majority is reached."

According to Article 12 of the Civil Code: "Persons who are under the age of thirteen, and persons who are completely incapacitated do not have legal capacity."

According to Article 15 of the Civil Code: "Minors at least thirteen years of age as well as partially incapacitated persons have limited legal capacity." Analysis of the aforementioned provisions leads to the finding that a minor within the meaning of Polish law is a natural person who has not reached the age of 18.

According to the analysis of the indicated provisions, the period of being a minor is divided into two sub-periods based on the minor's capability of undertaking legal actions. A minor who has not reached the age of 13 is deprived of all legal capacity (subject to the provisions of Article 14 § 2 of the Civil Code). A minor who has reached the age of 13 and has not been completely incapacitated has limited legal capacity.

With regards to determining the minimum age limit allowing for the recognition of a given entity as a human being, it should be noted that, in the Polish legal system, only the Act of 6 January 2000 on the Ombudsman for Children precisely defines the minimum age limit for a child. Article 2(1) of that law states that a child is every human being from the moment of conception until the age of majority. Indirectly, however, the recognition of an unborn child as a subject of law can also be inferred based on some provisions of the Civil Code.[50]

The problem of indicating this limit was also visible in the case law. The terms "child" and "person" are essential for the protection of children in the area of Polish criminal law as well. One meaningful example

[50] For example, article 927 § 2, 972, 77 § 2, 142 of the civil code; see: Świto, L. "*Osobowość prawna nasciturusa w prawie kanonicznym i polskim*", Prawo Kanoniczne, 40(1997), no. 1–2, p. 244.

of the differentiation of these concepts is the resolution of the Criminal Chamber of the Supreme Court of 26 October 2006, file reference no. I KZP 18/06,[51] in which the Supreme Court ruled that the use of the terms "person" and "conceived child" in criminal law proves the distinctiveness of these entities. Without questioning that they belong to the category of human beings, the court ruled out the possibility of protection of a conceived child under criminal law in the same manner as that of a person. The court pointed out that a conceived child becomes a person under criminal law at the moment of commencement of its birth. Thus, the court differentiated the protection of human life based on the biological phase of development of the human being, and it recognised the commencement of childbirth as the moment of commencement of legal protection guaranteed to a person. One even more striking example of the dissonance between the scope of protection assigned to a child – understood as a human being and a person after its birth – are the provisions of the Act of 7 January 1993 on family planning, protection of the human foetus, and conditions for the admissibility of abortion,[52] which provide for the possibility of interrupting the life of a conceived child in the event of medical, eugenic, and criminal reasons. Poland's new abortion law of 27 January 2021 permits abortion only in two cases: when the pregnancy is the result of a prohibited act (rape, incest) or when the physician determines that the pregnancy threatens the life or health of the mother. A diagnosis of irreversible impairments, of severe, lethal defects in the foetus is no longer a justification for abortion in Poland.[53]

2.2. Minors within the meaning of Polish criminal law

In the terminology of Polish criminal law there is no concept of a minor, but there is the concept of a juvenile or youth offender. Due to the scope of this work, it is justified to present the development of views on the issue of the possibility of immature people being held liable for the commission of unlawful acts.

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[51] OSNKW 2006, vol. 11, item 97.

[52] Jabłońska, P. *"Penalizacja aborcji w prawie kanonicznym i prawie świeckim"*, Perspectiva, Legnickie Studia Teologiczno-Historyczne, 19(2020), no. 2(37), p. 26.

[53] Judgement of the Constitutional Tribunal of 22 October 2020, file ref. no. K 1/20 (Journal of Laws of 2021, item 175).

As regards the age limits of minors (including in the sense of juveniles and youth offenders), differences in the treatment of maturity within the meaning of civil law and criminal law should be noted. While in civil matters minors are entitled in principle to certain rights, mainly concerning inheritance law, from the moment of birth – and after reaching the age of about 12–14, the scope of these rights is further expanded – in the case of criminal law, the liability of the perpetrator was, initially, not differentiated based on their age. Hence, in the past there were numerous cases of sentencing minors to penalties identical to those imposed on adult perpetrators.[54]

The issue of determining the degree of maturity allowing young people to bear responsibility for unlawful acts was, from the earliest times, a subject regulated by customary laws and later by statutory or codified law. As mentioned in the literature on the subject, the beginning of the historical criminal liability of minors should be observed in the corrective role of parental and guardian authority.[55] The father of the family, who had unlimited parental authority (*ius vitae et necis*), had the right to freely punish members of his family, including, above all, minors.[56] The initially unlimited power of the father of the family weakened, yielding to a strengthening power structure, i.e. that of tribal authority, initially, followed by monarchical authority, and then finally the state authority.

In the rights of the oldest state organisations, there was a tendency to give more lenient treatment to perpetrators who, due to their young age, might not have fully understood the meaning of their actions.[57]

The literature on the subject attributes the leading role in the evolution of the principles of juvenile criminal liability to the achievements of Roman law.[58]

Initially, the legal system did not indicate any specific age limits for minors. An assessment of the degree of immaturity was carried out on a case-by-case basis. This assessment consisted in verifying the sexual development

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[54] See: Balcerek, M. *Prawa dziecka*, pp. 42–43.

[55] Cieślak, M. *"Od represji do opieki (rzut oka na ewolucję zasad odpowiedzialności nieletnich)",* Palestra, 17(1973), no. 1(181), p. 30.

[56] Gromek, K. *Komentarz do ustawy o postępowaniu w sprawach nieletnich*, Warszawa 2004, p. 12.

[57] Cieślak, M. *"Od represji do opieki"*, pp. 31–33.

[58] Ibidem, p. 32; Kuryłowicz, M. *"Odpowiedzialność „nieletnich" za czyny bezprawne w prawie rzymskim"* in *Postępowanie z nieletnimi. Orzekanie i wykonywanie środków wychowawczych i poprawczych*, edited by T. Bojarski, Lublin 1988, p. 9.

of the young perpetrator. A person incapable of procreating was considered a minor and thus benefited from reduced criminal liability.[59]

A change in the criteria of juvenile/minor was brought about by the Justinian codification, which generated many criteria for differentiating the capacity of a person for actions having consequences in terms of civil and criminal law. The codification introduced the division of people into four categories, assignment to one of which depended on having reached a certain age. The first group included children (*infantes*), i.e. persons under the age of seven who were incapable both of legal acts and of incurring any liability for unlawful acts. The second group consisted of girls at least 7 but under 12 years of age and boys at least 7 but under 14 years of age. These people, referred to as *impubertes*, had limited legal capacity. Another group, *minores*, consisted of people who were under 25 years of age and had full legal capacity but who, due to their insufficient level of life experience, were protected by receiving the possibility to evade the effects of objectively adverse legal acts. The last group consisted of people with complete legal capacity – adults 25 years of age or older (*puberes*). In the field of criminal liability, with respect to minors, the post-Justinian law distinguished three categories of such persons. The first were children, who were considered incapable of being held criminally liable for their actions. The second were people at least 7 but under 10 years of age, who were considered incapable of deliberately committing criminal acts (*proximus infanti*). The third group consisted of people at least 10 but under 14 years of age, referred to as young people capable of acting with discernment (*proximus puberati*).[60]

Because the barbarian peoples occupying the area of the former Roman Empire had an understanding of the concept of civil and criminal responsibility that differed from the one presented in Roman law, the Roman division of perpetrators of crimes into age categories was not accepted. However, the possibility of not holding the perpetrator liable for a wrongful act resulting from their lack of experience was recognised. In individual barbarian laws (*leges* barbarorum), the minor age limit was set at 12 years (in the laws of the Salian Franks and the Saxons),[61]

[59] Korcyl-Wolska, M. *Postępowanie w sprawach nieletnich*, Kraków 2004, p. 17.
[60] Gromek, K. *Komentarz do ustawy*, p. 13.
[61] Walczak-Żochowska, A. *Systemy postępowania z nieletnimi w państwach europejskich. Studium prawno-porównawcze*, Warszawa 1988, p. 9; Korcyl-Wolska, M. *Postępowanie w sprawach nieletnich*, p. 19.

while in the laws of the Burgundians, Visigoths, and Ripuarian Franks, legal capacity was attained by turning 13 or 15 years of age.[62]

The development of legal systems in the Middle Ages resulted in shifts in the age of legal capacity and the age at which liability for unlawful acts could be attributed. In the thirteenth century legal code entitled *Schwabenspiegel ("mirror of the Swabians")*, it was established that people under the age of 7 were not legally liable, while those aged 7–14 were only conditionally liable.[63] In France, the limit of non-liability was 10 years. While persons between 10 and 14 years of age were liable, the catalogue of penalties that were applied to them was limited.[64] In Scandinavian countries, the age of majority was 15.[65] The legislation of Anglo-Saxon countries applied the model in which responsibility depended on the personal conditions of the juvenile perpetrator.[66]

The early modern period was a time when solutions from Roman law were introduced to the legal systems of European countries. This process consisted in incorporating the solutions included in the Justinian codification into national legal systems.[67]

One of the most significant examples of a legal act created in the aforementioned period is the *Constitutio Criminalis Carolina (CCC),*[68] adopted in 1532 and implemented in the territory of the German Reich, and later absorbed by the legal systems of other European countries. According to the CCC, in the event that the perpetrator was a minor, the catalogue of penalties applied to such a person was limited. Depending on the type of unlawful acts, minority was limited to 12–14 years of age.[69]

In the law in force in Russia, the age of majority was originally seven.[70] Later, this age was shifted to 17, and then to 12[71] and 10 years.

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[62] Ibidem; Maciejewski, T. *Historia powszechna ustroju i prawa*, Warszawa 2000, p. 368.
[63] Ibid., p. 284.
[64] Rdzanek-Piwowar, G. *Nieletniość i jej granice*, Warszawa 1993, p. 14.
[65] Ibid., p. 14– 15.
[66] Frankowski, S. *Wina i kara w angielskim prawie karnym*, Warszawa 1976, p. 33 et seq.
[67] Maciejewski, T. *Historia powszechna*, p. 310.
[68] Available at:
[ht]tps://login.gmg.biz/earchivmanagement/projektdaten/earchiv/media/1532_Peinliche_Halsgerichtsordnung.pdf [20.11.2015].
[69] See: Walczak-Żochowska, A. *Systemy postępowania z nieletnimi*, p. 10; Korcyl-Wolska, M. *Postępowanie w sprawach nieletnich*, p. 20; Rdzanek-Piwowar, G. *Nieletniość i jej granice*, p. 15; and Gromek, K. *Komentarz do ustawy*, p. 15.
[70] Hube, R. *Historya prawa karnego ruskiego*, vol. 1, Warszawa 1870, p. 86.
[71] Ibid., p. 127.

The provisions provided for the possibility of imposing certain penalties depending on the degree of the perpetrator's mental development as well.

In Anglo-Saxon countries, the limit of criminal liability was seven years of age – persons below this limit could not be held criminally liable. Persons aged 7 to 14 were subject to a presumption of non-liability, which was a rebuttable presumption resulting in the possibility of treating such perpetrators as adults. Reaching the age of 14 meant full criminal liability in English law.[72]

When it comes to modern times, an important role in defining the limits of childhood should be attributed to the solutions contained in the *Constitutio Criminalis Theresiana* of 1768.[73] This codification provided for the possibility of a minor incurring liability based on reaching the age of 7, 14, or 16 and 20.[74]

In Polish law, the first codification providing for the principles of criminal liability of minors was the Armenian Statute of 1519.[75] It set the limits of non-liability at a relatively high level of 15 years.[76]

In the so-called Magdeburg law, which was widely applied in towns, the threshold for liability was the age of 7. This was supported by an assessment of the degree of intellectual development enabling the person to understand the meaning of their action.[77]

The solutions contained in the *Constitutio Criminalis Theresiana* were modified by the so-called Tuscan Code of 1786 (also known as the *Leopoldina*).[78] According to its provisions, the limit of non-liability was 12 years, and perpetrators between 12 and 18 years of age could be liable in the same manner as adults if this was supported by the degree of their development and capacity for discernment.[79] Similar rules were introduced in the Criminal Code of Joseph II (*Josephina*) issued in 1787.

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[72] See: Rdzanek-Piwowar, G. *Nieletniość i jej granice*, p. 16 et seq.

[73] Maciejewski, T. *Historia powszechna*, p. 557. The original text of the act is available at: http://www.koeblergerhard.de/Fontes/Constitutio%20Criminalis%20Theresiana1768_komplett.pdf [1.12.2015].

[74] Rdzanek-Piwowar, G. *Nieletniość i jej granice*, p. 16.

[75] Korcyl-Wolska, M. *Postępowanie w sprawach nieletnich*, p. 23.

[76] See: Hubert, S. L. "*Stanowisko nieletnich w Statucie Ormiańskim z roku 1519"* in *Pamiętnik trzydziestolecia pracy naukowej profesora Dąbkowskiego*, Lwów, 1932, pp. 75–92.

[77] See: Groicki, B. *Artykuły prawa magdeburskiego. Porządek sądów około karania na gardle. Ustawa płacej u sądów*, Warszawa 1954, p. 54.

[78] Maciejewski, T. *Historia powszechna*, p. 793.

[79] Walczak-Żochowska, A. *Systemy postępowania z nieletnimi*, p. 11.

In French legislation from the period of the French Revolution, the limit of criminal liability was 16 years, and in the laws adopted by the Jacobins it was reduced to 10 years.[80]

The first criminal code of the modern era, the French Penal Code of 1810 (*Code pénal de 1810),* limited the ability to incur criminal liability to 16 years of age (but it did not specify the limits of total non-liability). The solutions adopted in the *Code pénal were* recycled by many national legislators. Examples include the Bavarian Criminal Code of 1861, the Prussian Penal Law of 1851, the Belgian Criminal Code of 1837, those criminal codes derived from Spanish ones – such as the Bolivian Criminal Code of 1834; and the Colombian Criminal Codes of 1837, 1873, 1887, and 1890 – the Brazilian Criminal Code of 1890, and a number of others.

The German Criminal Code of 1871[81] excluded the criminal liability of children under 12 years of age, while in the case of perpetrators between 12 and 18 years of age it allowed the possibility of incurring a penalty – however, the personal conditions of the perpetrator had to be taken into account.[82] In other penal laws of this period, the limit of non-liability was set at 9 years (Spanish Code of 1871, Italian Code of 1889) or 10 years of age (Dutch Code of 1881, Hungarian Code of 1878, Norwegian Code of 1842, Russian Code of 1903). In the case of Russian criminal law, in accordance with the Criminal Code of the Kingdom of Poland of 1818, the Code of Major and Correctional Penalties of 1847, and the Criminal Codes of 1876 and 1903, the limit of criminal liability was 10 years of age – perpetrators under this age did not incur any penalties. In the case of perpetrators aged 10 to 13 years, responsibility for the exercise of punishment rested with the parents. For offenders aged 14 to 17 years, a reduction in the severity of the sentence was applied. In the case of criminal law, the process of unification of the legal system after the country had regained independence was completed with the implementation of the Ordinance of the President of the Republic of 11 July 1932 – Criminal Code. It adopted the principle that minors up to the age of 13 and up to the age of 17, acting without recognising the meaning of the act, were subject not to punishment but only to educational measures.

[80] Korcyl-Wolska, M. *Postępowanie w sprawach nieletnich*, p. 22.

[81] Available at: www.wbc.poznan.pl/dlibra/docmetadata?id=71376&from=publication [10.01.2016].

[82] Harasimiak, G. *Ewolucja zasad odpowiedzialności, traktowania i postępowania z nieletnimi*, Szczecin 2000, p. 48.

After the end of World War II and the establishment of the Polish People's Republic, the limits of the criminal liability of minors were initially determined by the Criminal Code of 1969 and then, after the political transformation, by the Criminal Code of 1997.

In criminal law, it should be assumed that the term "minor" refers to a person who has neither reached the age of 18 nor attained the age of majority by marriage (in accordance with Article 10 of the Civil Code).[83]

However, sections of the Criminal Code use the term "minor" to mean a person under the age of 17. Reaching the age of 17 (except in the cases regulated in the provision of Article 10 § 2 of the Criminal Code) therefore constitutes the threshold of criminal liability. Attention should be paid to the exception concerning perpetrators who were minors at the time of committing the act but committed acts after reaching the age of 15, which is included in the content of the substantive law provisions indicated in Article 10 § 2 of the Criminal Code. In the case of these minors, after determining that, among other things, the degree of their mental development supports such a course of action, the provisions of the Criminal Code are applied. The liability of a minor based on the provisions of the Criminal Code is therefore subsidiary – it is a departure from the general principle that penalties and criminal measures provided for adult perpetrators are not applied to minors. It should be noted that: "The liability of minors under the Criminal Code is the most acute response to a crime committed by the minor and concerns the most demoralised of minors. In other cases, the commission of a punishable act by a minor, as well as the display of demoralisation, may entail the application of educational measures, therapeutic and educational measures, or a corrective measure specified in the Act on proceedings in matters of minors."[84] Guided by the directive on the need to give preferential treatment to minor perpetrators (which results from the conviction that punishment has an educational impact on a person not yet fully formed mentally and emotionally),[85] the legis-

[83] See: *Kodeks postępowania karnego. Komentarz*, edited by J. Skorupka, Warszawa 2016, p. 410.

[84] Sawicki, J. "*Odpowiedzialność nieletnich według art. 10 § 2 i 3 kodeksu karnego*", Homines Hominibus, 2008, no. 1(4), p. 106.

[85] See art. 54 § 1 of the Criminal Code containing a directive on the imposition of a penalty, according to which when imposing a penalty on a minor or a juvenile, the court is primarily guided by the need to educate such an offender. According to § 2 of that provision, a perpetrator who is under 18 years of age at the time of the crime cannot be sentenced to life imprisonment. "The perpetrator is a person with an unformed personality, and it is still possible (at least potentially) to

lator modified the scope of criminal liability of minors (limiting the type of punishment that can be imposed and its severity) and also included in the provisions specific directives concerning the severity of penalties and options for applying extraordinary leniency that are more extensive than in the case of adult offenders.

3. Minors in light of the canon law of the Catholic Church

According to the no longer applicable Code of Canon Law of 1917, the exercise of rights depended on reaching an age threshold assigned by law. The adult (*maior*) was one who had reached the age of 21. Prior to that date, they were a minor. According to canons 88, 746, and 854, the period of childhood was divided into periods of: maturity (*pubes*), i.e. after turning 14 in the case of boys, and 12 in the case of girls; minor age (*impubes*), from the age of 7 until the achievement of maturity; and childhood, until reaching the age of 7. After the age of 7, the minor is believed to have the ability to use reason.

According to the currently applicable Code of Canon Law of 1983, an adult is a person who has reached the age of 18, and under this age they are a minor.[86]

While referring to education, the Code of Canon Law indicates several terms for defining the subject of education, including "child"[87] and "youth".[88] Regarding canon 97 § 2 of the 1983 Code of Canon Law, it should be concluded that the boundary between children and youth is seven years of age. In the case of children, the upper age limit is seven years; when it comes to youth, there is no such precise indication.

A minor under the age of seven is called a child and is considered not to have reason. After the age of seven, they are presumed to have the use of reason.[89]

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bring about its socially desirable formation as a result of educational influence. Therefore, it is necessary to give such an offender a chance to return to life in society." – Budyn-Kulik, M. *Kodeks karny. Praktyczny komentarz*, edited by M. Mozgawa, Kraków 2006, p. 136.

[86] Canon 97 § 1. A person who has reached eighteen years is of legal age; under this age, they are an underage minor.

[87] Canon 226 § 2, canon 793 § 1 and 2, canon 868 § 1, canon 1125 no. 3, canon 1154, 1366, 1689.

[88] Canon 528 § 1, canon 795.

[89] Canon 97 § 2. A minor before the age of seven is called a child and is considered not to have the use of reason. After the age of seven, it is presumed that they have the use of reason.

Legal subjectivity is the ability of a person to be the subject of rights and obligations. According to the teaching of the Catholic Church, every person has such subjectivity from the moment of conception – this is referred to as natural legal capacity.[90] Canon law, however, also provides for acquired legal capacity, which is obtained through baptism.[91] It should also be mentioned that Canon law does not differentiate the legal status of a conceived child based on method of conception (*in utero* or *in vitro*).[92]

Canon 97 provides a legal definition of the term "child" as understood by Canon law. Given the importance of the code in the system of Canon law, this definition is universally valid in the Church. The provision contained in canon 97 § 2 of the 1983 Code of Canon Law has the value of an unrebuttable legal presumption (*praesumptio iuris ac de jure*). The consequence of this is that the "child" does not have the ability to express their will in any matters. This condition expires when childhood ends, after which such persons are considered minors who have attained the use of reason. According to the 1983 Code of Canon Law, minors have a limited capacity to exercise the powers resulting from the Canon Law, and children do not have such powers at all.[93]

Attention should also be paid to the age limit of 14 years, as indicated in Canon 111 § 2 of the Code of Canon Law, the attainment of which allows the minor to choose their rite independently.

It should be mentioned that the minor is in principle obliged to obey those responsible for their educational process, including their religious education. According to Canon 98 § 1 and 2 of the 1983 Code of Canon Law, in exercising their own powers, minors are subject to the authority of their parents or guardians. It is only after reaching the age of majority that they are entitled to independently exercise the powers conferred by

[90] See: Lempa, F. *Kompetencje, uprawnienia i obowiązki w Kościele katolickim*, Białystok 2013, pp. 73–74. And also: The Congregation for the Doctrine of the Faith, "Declaration *Quaestio de abortu* of 18 November 1974" in *Posoborowe prawodawstwo kościelne*, vol. 1, edited by E. Sztafrowski, Warszawa 1969, pp. 181–231.

[91] Article 96, Code of Canon Law 83.

[92] This position is identical to the position expressed under secular law – see the Judgement of the Constitutional Tribunal of 28.05.1997, file ref. no. K26/96.

[93] Canon 98 § 1. An adult shall be entitled to full exercise of their powers. § 2. In the exercise of their powers, the minor shall be subject to the authority of their parents or guardians, except in cases where the minor is excluded from their authority by divine or canonical law; as regards the appointment of guardians and their authority, the provisions of civil law are to be observed, unless canon law provides otherwise or the diocesan bishop has in certain cases, for a just cause, decided that this should be remedied by the appointment of another guardian.

Canon law. Exceptions to this rule may only arise in circumstances in which the minor (but not the child) is, under divine law or Canon law, removed from the authority of the parents or guardians.[94]

In terms of criminal liability it should be mentioned that, as set out in the Code, the age limit allowing for the assignment of criminal liability to a young person is 16 years.[95] However, a minor who has already reached the age of 16 may be treated more leniently when it comes to the catalogue of penalties[96] imposed.

In the case of the norms of the Code of Canons of the Eastern Churches (CCEC) of 1990,[97] it is noteworthy that 7 years of age is the threshold for being subject to the canonical laws,[98] while 14 years is the age until which the opinion of the minor's parents is decisive.[99] The CCEC deals with the question of legal age and legal capacity within the meaning of canon law in a manner analogous to that of the 1983 Code of Canon Law. The limit of legal age and full legal capacity is 18 years of age.[100] Minors shall, in principle, be subject to the authority of their parents or guardians.[101] Parents or guardians are the entities acting on behalf

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[94] See: Kroczek, P. *"Rodzicielstwo w aspekcie prawnym – analiza porównawcza prawa kanonicznego i prawa polskiego"* in *Odpowiedzialne rodzicielstwo wobec wyzwań XXI wieku*, edited by M. Duda, Kraków 2010, pp. 54–56.

[95] Canon 1323 – No penalty shall be imposed on anyone who, at the time of transgressing a law or an order: 1) has not yet reached the age of sixteen.

[96] Canon 1324 § 1. The offender is not free from punishment, but the penalty provided for by law or order should be mitigated or replaced by penance if the offense has been committed: […] 4) by a minor who has reached the age of sixteen.

[97] *Codex Canonum Ecclesiarum Orientalium* auctoritate Ioannis Pauli pp. II promulgatus 18.oct. 1990 a.

[98] Canon 1490 of the CCEC – the people subject to purely ecclesiastical laws are those baptised in the Catholic Church or admitted to it, but who have sufficient use of reason, and unless the law expressly provides otherwise, have reached the age of seven.

[99] Canon 900 § 1. of the CCEC – One who has not reached the age of 14 cannot be admitted if their parents resist it.

[100] Canon 909 § 1. of the CCEC – A person who has reached the age of eighteen is of legal age; under this age they are an underage minor. § 2. A minor, before the age of seven, is called a child and is considered not to have the use of reason. After the age of seven, it is presumed that they have the use of reason. § 3. Whoever has no permanent use of reason is considered non-liable and is likened to a child; in connection with Canon 910 § 1. of the CCEC – An adult shall be entitled to full exercise of their powers.

[101] Canon 910 § 2. of the CCEC – In the exercise of their powers, a minor shall be subject to the authority of their parents or guardians, except in those matters in which the minor is excluded from their authority, by divine or canonical law; as regards the appointment of guardians, the provisions of civil law are to be observed unless the common or particular law of the Church *sui iuris* stipulates otherwise, and the guardians, by virtue of the law of the eparchial bishop, if necessary, are established by him.

of minors in court proceedings[102] (with the caveat that this rule does not apply in cases where there is a conflict between the interests of the minor and those of the parents or guardians). One important reservation is the rule establishing a lower age limit for the ability to act in proceedings concerning clerical matters, which was set at 14 years.[103] In exceptional cases, the Code allows minors under the age of 14 to be witnesses.[104]

In the area of canon criminal law, the CCEC contains solutions analogous to those adopted in the 1983 Code of Canon Law. Criminal liability is linked to culpability for the act, which means the lack of liability of persons under the age of 14 as well as limitations as to the catalogue of penalties imposed on persons who committed an act after reaching the age of 14 but before reaching the age of majority.[105]

Among the norms that determine individual crimes, attention should be given to the penalisation of parents or guardians subjecting children to upbringing in a non-Catholic faith.[106]

The Catechism of the Catholic Church of 1992 indicates the important role of parents in the process of the Christian upbringing of children.[107] It should be noted that the *Catechism* specifies the period during which the child is to obey their parents. However, it does not make any mention of the age of the child, instead referring to the child's cohabitation with the parents. Attention should be given, however, to the final part

[102] Canon 1136 § 1. of the CCEC – Minors and those who are deprived of the use of reason may appear in court only through their parents, guardians, or curators.

[103] Canon 1136 § 3. of the CCEC – However, in spiritual matters or other matters linked to spiritual matters, minors, provided that they have attained the use of reason, may speak and answer without the permission of their parents or guardians, in person, if they have reached the age of fourteen; otherwise, through a guardian appointed by the judge.

[104] Canon 1231 § 1. of the CCEC – Minors under fourteen years of age and mentally handicapped are not allowed to testify; however, they may be heard by decree of the judge in which such a need is justified.

[105] Canon 1413 §1 of the CCEC – No penalty shall be imposed on anyone who has not reached the age of fourteen. § 2. Anyone who has committed a crime between the ages of fourteen and eighteen may be punished only by penalties which do not deprive of any good, unless the eparchial bishop or judge in special cases determines a different outcome is better for their correction.

[106] Canon 1439 of the CCEC – Parents or their substitutes who allow their children to be baptised or educated in a non-Catholic religion should be punished with an appropriate penalty.

[107] Catechism of the Catholic Church, no. 902 – Parents participate in the mission of sanctification in a special way, "leading married life in a Christian spirit and undertaking the Christian upbringing of their children."

of the indicated norm, which gives primacy to the conscience of the child when they judge the order of their parents or guardians as morally wrong.[108]

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As is apparent from the foregoing considerations, determining the definition and status of the entity referred to as a minor in the light of the norms of secular law and canon law was a long process. In the early stages of civilisation, the questions of determining how long a person remains a child and what their rights are during that period were the subject of customary regulation. The position of the child was primarily defined as being fully subordinate to the authority of the father of the family, with minimal interference of the state authority in the sphere of family relations. This state of affairs lasted until modern times. It is necessary to point out that the distinctiveness and necessity of separate treatment of the period of life of people known as childhood, and that of children as such, had only been noticed in modern codifications. It should be stated that it was the development of international legislation after World War II that led to the full recognition of the legal subjectivity of children.

The currently applicable legislation generally agrees[109] that the period of minority lasts until the age of 18. This age-based criterion was adopted due to the widespread belief that reaching such an age milestone is equivalent to achieving a level of intellectual development and social competences that enable a person to effectively undertake legal actions and make declarations of will with appropriate discernment.

A more controversial issue is the determination of the moment when a human being can be said to be human – that is, determination of the moment in which the state of being a minor emerges. This is

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[108] So long as the child lives with their parents, they should obey every request of their parents that serves their good or the good of the family. "Children, obey your parents in everything, for this pleases the Lord" (Colossians 3:20). Children are also to obey the reasonable decrees of their teachers and of all those to whom their parents have entrusted them. But if a child is convinced in their conscience that it is morally wrong to obey a given command, they should not obey it.

Growing up, children will continue to respect their parents. They will anticipate their desires, willingly ask for their advice, and accept their legitimate admonitions. Obedience to parents expires once the children become independent. What remains, however, is the respect which is owed to them forever. For it has its source in the fear of God, one of the gifts of the Holy Spirit.

[109] Subject to the derogations previously indicated.

important considering the recognition that such a being is the subject of rights and is granted legal protection. This issue is generally regulated by Polish law.

The issue of attaining the ability to incur liability for one's actions is regulated by the criminal legislation, which specifies a different age criterion. Issues related to the attainment of the age or degree of maturity allowing for liability resulting from the commission of criminal acts are regulated in different ways by the penal laws of different countries. The limits of criminal liability are defined in a much more diverse manner than in the case of civil or family law. For example, English law states that the age limit for criminal liability is 10 years old,[110] while in Scotland it is 8 years old;[111] in France it is 13 years old; in Italy, Spain, and Germany it is 14 years old; in Denmark it is 15 years old; and in Belgium it is 18 years old.[112] There is a significant number of terms used to describe perpetrators of criminal offenses who have not reached the age of at least 18 years. In Polish law the term nieletni ("underage") is used, as is the term młodociany ("juveniles") in some situations. In English legal language, the terms *minor*, *child*, *juvenile*, *juvenile adult*, and *underage appear*. One should keep in mind, however, that criminal legislation (in this case, I refer to the Polish legal system – author's note) does not in principle use the term "minor". Hence these considerations are only made as a side note.

In the case of the canon law of the Catholic Church, references to the tradition of Roman law are clearly visible. This is particularly evident in its distinction of children (i.e. people under the age of 7) as a separate category.

[110] Section 50 of the Children and Young Persons Act 1933.
[111] Section 41 of the Criminal Procedure (Scotland) Act 1995.
[112] For more on the limits of criminal liability of minors, including a listing of the legal bases, see: https://www.crin.org/en/home/ages/europe [20.02.2016].

CHAPTER FOUR

Freedom of Conscience and Confession of Minors in Poland from 1918 to 1939

The issue of the form and scope of freedom of conscience and confession should be considered in a broader context. This is because it is not only the limits and instruments *strictly* related to determining the content of these freedoms but also the form and practice of the application of other legal and administrative instruments that ultimately determine the real possibilities of exercising freedoms. It should be noted that the actual scope of the freedom of conscience and confession consists not only of the provisions of legal acts of the highest order, which by their nature are general and require clarification by means of implementing acts, but also consists, above all else, of the said implementing acts and the practice of applying the law. A political declaration proclaiming the existence and recognition of freedom of conscience and confession may become hollow if appropriate legal institutions are not established in order to ensure compliance with these principles. In addition, the actual scope of the freedom is shaped by institutions seemingly having little to do with the narrowly understood observance of the freedom of confession. To limit such a freedom in practice, it is enough to utilise provisions regulating, for example, the educational system, its financing,

the selection of educational staff, or administrative provisions regarding assemblies, freedom of expression, etc.

Considering the subject of this work, it should be noted that, in the evolution of the freedom of conscience and confession in relation to minors, the interwar period should be defined as a period characterised by the primacy of parental authority and a *de facto* limited scope of this freedom that resulted primarily from the educational policy implemented by the state. The scope of individual freedom of conscience and confession of a minor was limited not only by the scope of the same freedom enjoyed by adults, but also by the scope of the collective freedom of conscience. The collective freedom of conscience, its limits imposed by law, influenced and continues to influence the manner in which individual freedom is exercised, both by adults and by minors. The constitutional provision on the recognition by the state of individual freedom in this area may be limited by the actual possibilities of exercising this freedom, which is shaped by the scope of the freedom of religious associations, the actual policy of the authorities, and its implementation by the administrative bodies.

In the case of minors, one of the most important signs of the actual scope of the freedom and its implementation is a set of legal solutions shaping the possibility of free exercise of this freedom in education.[1] The scope of the actual exercise of individual freedom of conscience and confession, therefore, amounts to the sum of the limits of the collective freedom of conscience, the extent of freedom of expression, and the actual possibilities to exercise and guarantee the protection of these rights.

It should be noted that during the interwar period, international instruments for the protection of human rights, including freedom of conscience and confession, were still in their infancy. The instruments envisaged by acts of international law, taking the form of supervision by the League of Nations or jurisdiction of the Permanent Court of Justice at the Hague,[2] did not, in fact, constitute strong guarantees.

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[1] In previous considerations, it was pointed out that minors (children) were generally perceived as the subject of the educational process, the task of upbringing was to form the personality of the child, hence such a significant level of attention being directed to the issues of upbringing. Moreover, it should be borne in mind that the period of personality formation is the period in which freedom in the sphere of worldview can be threatened most easily and to the greatest extent.

[2] The Permanent Court of International Justice was established by Article XIV of the Covenant of the League of Nations, concluded on 28 June 1919 in Paris (see: Journal of Laws of 1920, no.

1. Constitutional scope of the freedom of conscience and confession of minors

In addition to many radical changes in the social, economic, and political sphere, the end of World War I also contributed to the realisation of the concept of the rebirth of the Polish state. A combination of favourable political events caused the partitioning states to lose their standing, either because of losing the war or as a result of revolutionary internal changes. The regaining of independent statehood posed enormous challenges for the Polish authorities and society. The process of creating uniform state institutions as well as reconstructing the social and economic ties broken during the period of partitions required significant intellectual and economic effort. Due to the scale of the tasks required to implement the reconstruction of the socio-economic structure of the state, one may be tempted to risk drawing the conclusion that it was a precedent-setting endeavour.

The authorities of the reborn state faced, among other things, the need to define the place and scope of the rights and freedoms enjoyed by citizens. An important challenge arising from this issue was to determine priorities and find an answer to the question of whether it was more important for the existence of the state – one which was surrounded by generally hostile neighbours – to focus on granting priority to the rights of citizens or to the interests of the state.

Therefore, the interest in establishing a catalogue of civil rights as well as the form that this took on were influenced by the fact of the recent regaining of independence and the need to strengthen state institutions after the period of partitions. These factors explain the emergence in the political discourse of arguments about the primacy of citizens' duties towards the state over their freedoms.[3]

35, item 200): "The Council shall formulate and submit to the Members of the League for adoption plans for the establishment of a Permanent Court of International Justice. The Court shall be competent to hear and determine any dispute of an international character which the parties thereto submit to it. The Court may also give an advisory opinion upon any dispute or question referred to it by the Council or by the Assembly." The Court operated from 1922 to 1946, the last session was held in February 1940. See: Journal of Laws of 1923, no. 106, item 839, Statute of the Permanent Court of International Justice, provided for in Article 14 of the Covenant of the League of Nations.

[3] An analysis of the above issue is presented, among others, by P. Fiktus: "*Spory o kształt praw obywatelskich i praw mniejszości narodowych w czasie prac sejmu ustawodawczego (1919–1921)",* Studia Erasmiana Wratislaviensia, 4(2010), pp. 77–98.

Defining the scope of civil liberties required, among other things, regulating issues concerning freedom of conscience and confession. Due to the complex nature of religious relations in the Second Polish Republic and the mutual influence of religious and internal policy issues, especially regarding ethnic minorities, it is necessary to outline the course of discussions that accompanied the development of solutions that directly shaped the sphere of, among others, the freedom of conscience and confession.

Due to the ethnic and religious structure of its society, the Polish state – reborn after 123 years of partitions – was confronted with the issue of regulating relations with religious associations. In uniting the regions subject to the legislation of the three different partitioning states, Poland initially took over their legislation, which was permeated by a system of links between the state and religious associations. The legislation in force in the territories under the jurisdiction of the new Polish government constituted a patchwork of different legal systems. The heterogeneity of the existing legal regulations hindered and paralyzed the actions of the authorities. The scale of the challenge faced was further intensified by the ethnic and religious structure of the population living within the borders of the newly reborn Polish state.[4]

According to the results of the census of 9 December 1931,[5] citizens of the Roman Catholic denomination constituted 65% of the population, followed by the Orthodox denomination (12%), the Greek Catholic denomination (10%), the Mosaic denomination (9%), the Evangelical denomination (3%), as well as other Christian denominations, non-Christian groups, and religiously undefined groups (less than 1% each).

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[4] In the Second Republic of Poland, ethnic minorities constituted about 35.4% of the total population, although estimates in the literature vary: Janusz Żarnowski indicates a minority share of 34%; Henryk Chałupczak and Tomasz Browarek estimate the number of minorities at 11.2 million, constituting 35.1% of the population – this included about 5 million Ukrainians, 3.1 million Jews, 1.9 million Belarusians, 830 thousand Germans, 180 thousand Lithuanians, 100 thousand Russians, 40 thousand Czechs, 30 thousand Roma, 7 thousand Slovaks, 5.5 thousand Armenians, 5 thousand Tatars, and 1 thousand Karaites. See: Żarnowski, J. *Społeczeństwo Drugiej Rzeczpospolitej*, Warszawa 1973; idem, *Społeczeństwo Polski międzywojennej*, Warszawa 1969; idem, *Polska 1918–1939. Praca – technika – społeczeństwo*, Warszawa 1990; idem, *Społeczeństwo i kultura II Rzeczypospolitej*, Warszawa 1982; Tomaszewski, J. *Rzeczypospolita wielu narodów,* Warszawa 1985; idem, *Ojczyzna nie tylko Polaków. Mniejszości narodowe w latach 1918–1939*, Warszawa 1985; idem, *Mniejszości narodowe w Polsce w XX wieku*, Warszawa 1991; Hołuszko, H. *Mniejszości narodowe i etniczne w Polsce*, Warszawa 1992; Chałupczak, H., Browarek, T. *Mniejszości narodowe w Polsce 1918–1995*, Lublin 2000, p. 22.

[5] Available at: http://pbc.biaman.pl/dlibra/doccontent?id=2108 [10.06.2016].

The problem of determining the attitude of the state towards religious minorities was of particular importance in interwar Poland. The reasons for this state of affairs included the close correlation between national and religious divisions, the reluctant or even hostile attitude of the authorities of some religious associations to the fact of subordination to the Polish authorities, or even a hostile attitude to the very fact of the Polish state's existence. An important role in this respect was certainly played by the fact that the authorities of some religious associations had their headquarters in locations outside Poland, and their subordinate units resisted attempts to abolish organisational links with the existing superior authorities, treating the fact of subordination to the Polish authorities as merely temporary.[6]

The issue of choosing the proper way of regulating state relations with religious associations was the subject of a wide and lively discussion. At this point it is worth mentioning the works that took place while Polish lands were still under the authority of the partitioning states. One example of a position that arose in the course of these actions was the position of some bishops, expressed in the message of 2 November 1918,[7] advocating for a model of statehood based on the primacy of religion. The justification for the desirability of such a choice involved arguments stemming from the belief that the state must be based on some system of moral values, and that because the system of Christian values was for the most part the one accepted by the society in Poland, it would be natural to base the systemic solutions of the state on the foundations derived from the Catholic religion.[8]

The choice of a concept in which a religious state was to be established was criticised by left-wing circles. They presented a different position, according to which the system of the future Polish state should be based on the separation of church and state. The separation of state and religious associations was also supported by representatives of evangelical churches and non-recognised religious associations.[9] Discrepancies as to the nature

[6] One example is the Union Church in Poznań, whose hierarchy consistently advocated the maintenance of subordination to the authorities of that Church headquartered in Berlin – see: Krasowski, K. *Związki wyznaniowe w II Rzeczypospolitej. Studium historyczno-prawne*, Warszawa – Poznań 1988, p. 235 et seq.

[7] Message of the Episcopate of 2 November 1918 – more on this topic: Osuchowski, J. *Prawo wyznaniowe w Rzeczypospolitej Polskiej 1918–1939 (węzłowe zagadnienia)*, Warszawa 1967, p. 62 et seq.

[8] See: Szelążek, A. "*Koordynacja jako podstawa stosunku Państwa i Kościoła*", Przegląd Powszechny, 38(1921), pp. 1–7.

[9] See: Osuchowski, J. "*Zagadnienie rozdziału Kościoła od państwa w Polsce w latach 1918–1939*", Studia z Dziejów Kościoła Katolickiego, 3(1963), no. 1–5, pp. 81 et seq.

and importance of questions pertaining to the scope of the possible impact of religious issues on the shape of the internal relations of the future state were understandable given the historical context. On the one hand, the merits of the Church, which gained considerable authority as the sole institution resisting the efforts of the partitioning authorities to assimilate Poles, were indisputable. On the other hand, the Polish state, as a young organism established on the ruins of former empires and by merging portions of the territories previously subordinated to these states, was fearful of irredentist movements – including those conceived on religious foundations. Such fears were certainly also strengthened by recollections of the ways in which religious issues were exploited by neighbouring states in the period preceding the partition of the Polish-Lithuanian Commonwealth.

1.1. Based on the March Constitution of 1921

The basic legal act that forms the foundation of the state political system is the constitution. During the interwar period, three constitutions[10] were in force in Poland: the Small Constitution of 20 February 1919;[11] the March Constitution of 17 March 1921,[12] which was significantly amended by the so-called August Amendment of 2 August 1926;[13] and the April Constitution of 23 April 1935.[14]

In order to better describe the positions presented during the course of discussions on the future regulation of religious issues, it is necessary to mention the drafts of projects to regulate the model of relations between the state and religious associations, which were presented in the period preceding the deliberations of the Legislative Sejm. The first

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[10] In the literature we also encounter the view that constitutional functions were also fulfilled by the Constitutional Act of the Silesian Voivodeship of 15 July 1920 (Journal of Laws of the Republic of Poland of 1920, no. 73, item 497), which contained the Organic Statute of the Silesian Voivodeship. This view is expressed, among others, by A. Sylwestrzak: "*Prawo własności w konstytucjonalizmie polskim*", Czasopismo Prawno-Historyczne, 56(2004), vol. 2, p. 338.

[11] Journal of Laws of the Polish State of 1919, no. 19, item 226. The term "Small Constitution" refers to the resolution on "entrusting Józef Piłsudski with the further exercise of the office of the Head of State." It established a temporary state system during the transitional period. Materially, therefore, it had the features of a constitution, but from a formal and legal point of view it was only a "resolution". See: Krukowski, S. "*Sejm Ustawodawczy 1919–1922. Uwagi o składzie i działalności*", Czasopismo Prawno-Historyczne, 38(1986), vol. 1, p. 100.

[12] Journal of Laws of the Republic of Poland of 1921, no. 44, item 267.

[13] The Act amending and supplementing the Constitution of the Republic of Poland of 17 March 1921 (Journal of Laws of the Republic of Poland of 1926, no. 78, item 442).

[14] Journal of Laws of the Republic of Poland of 1935, no. 30, item 227.

draft of the future constitution was a proposal submitted by the Sejm and the Constitutional Commission of the Provisional Council of State of the Kingdom of Poland, which was ultimately adopted on 28 July 1917.[15] Without going into a detailed analysis of the provisions of this draft, it should only be mentioned that the solutions adopted in this project granted primacy to the Roman Catholic religion, recognising it as the state religion. The project introduced, among others things, the requirement that the highest civil authorities be of the Catholic confession, and it also ensured a significant share in the composition of the legislative authorities for representatives of the Catholic Church's Episcopate.

From the point of view of the solutions adopted later, it should be noted that Article 113 of the March Constitution was a *de facto* repetition of Article 130 of the draft Constitution of 28 July 1917. In the sphere of freedom of conscience and confession, the Commission's draft provided for such a freedom, which was limited by the scope of solutions resulting from other laws and, in the case of minors, also by the scope of parental and guardian authority. Another project was the draft of a government commission established in January 1919 and referred to as the "Survey for the evaluation of draft constitutions".[16] This project was based on a draft drawn up by the Temporary Committee of the Council of State. However, it departed from the recognition of the Catholic religion as a privileged religion – without denying, nevertheless, its essential importance for the growth and consolidation of the nation.

At the same time, it should be noted that due to international obligations, the Polish legislative authorities were not fully autonomous in terms of the solutions adopted in the religious sphere. An important role was also played by Poland's obligations vis-à-vis the allied powers, contained in the contents of the so-called Little Treaty of Versailles (also referred to as the Polish Minority Treaty) of 28 June 1919, which constituted a source of law – in particular in the sphere of freedom of conscience and confession.[17]

As a side note, it should be mentioned that the obligations resulting from the treaty to ensure freedom of religion were seen as an external

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[15] *Projekty Konstytucji Rzeczypospolitej Polskiej*, Warszawa 1920, p. 113 et seq.
[16] Krukowski, S. *Geneza konstytucji z 17 III 1921*, Warszawa 1977, p. 22 et seq.
[17] Journal of Laws of 1920, no. 110, item 728.

dictate and a limitation of Poland's sovereignty. This treaty was treated by the Polish government as laws that were imposed on it and which interfered with the sovereignty of the state. As a result of such an assessment, at the fifteenth Assembly of the League of Nations in 1934, it demanded the replacement of these norms with national laws and declared that it would refrain from international cooperation in the implementation of the Versailles postulates.[18]

In addition to the foregoing treaty, there were bilateral agreements regulating the matter of ensuring respect for the rights and freedoms of minorities. The Paris Convention concluded between Poland and the Free City of Gdańsk on 9 November 1920 should be mentioned here.[19]

Other international agreements concerning the protection of the rights of religious minorities and ensuring freedom of confession included, among others, the Warsaw Agreement between Poland and the Free City of Gdańsk of 24 October 1921[20] and the Polish-German Treaty on Upper Silesia of 15 May 1922.[21] Arrangements concerning the guarantee

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[18] For more on this topic, see: Brzeziński, F. *Prawa mniejszości. Komentarz do Traktatu z dn. 28 czerwca 1919 r. pomiędzy Polską a Głównymi Mocarstwami*, Warszawa 1920; Kissinger, H. *Dyplomacja*, Warszawa 1996; Mauersberg, S. *Szkolnictwo powszechne dla mniejszości narodowych w Polsce w latach 1918–1939*, Wrocław – Warszawa – Kraków 1968.

[19] Journal of Laws of 1922, no. 13, item 117 – in particular Article 33, according to which "the Free City of Gdańsk undertakes to apply to racial, religious, and linguistic minorities provisions similar to those applied by Poland on Polish territory in implementation of Chapter I of the Treaty concluded in Versailles on 28 June 1919 between Poland and the Allied and Associated Powers, and in particular to ensure that in legislation and in the conduct of administration no bias is manifested to the detriment of Polish citizens and other persons of Polish origin or language, pursuant to Article 104 section 5 of the Treaty of Peace of Versailles with Germany".

[20] Agreement between Poland and the Free City of Gdańsk concluded in Warsaw on 24 October 1921 (Journal of Laws of 1922, no. 16, item 139).

[21] The Polish-German Treaty on Upper Silesia of 15 May 1922 (Journal of Laws of 1922, no. 44, item 371). Online attachment: http://www.traktaty.msz.gov.pl/fd.aspx?f=P0000017125.pdf [10.08.2015]. Religious matters were governed by Articles 84 through 96 of the Agreement. Under Article 85 of the Treaty, throughout the territory subject to the jurisdiction of the Treaty (the plebiscite area), the parties guaranteed the freedom of the population living there to practice their religion in public. The only limitations were considerations of public order and good manners. Subsequent regulations guaranteed the internal autonomy of individual religious associations, as well as their financial and organisational issues. Article 86 guaranteed the autonomy of churches, parishes, and Jewish communities in the management of internal affairs, including the freedom to choose the official language within the community. Article 87 guaranteed religious associations freedom in the appointment of persons exercising clerical functions, within the limits of applicable laws and international agreements. In accordance with Article 88, churches and communities were granted the right to freely communicate with other units of the given religious communities located outside the borders of the state. Article 89 guaranteed the recognition of holidays practiced previously within a given community. Pursuant

of freedom, including the freedom of confession, were also included in the Treaty of Riga of 18 March 1921.[22]

Moreover, due to the fact that the Silesian Voivodeship had autonomy within the Polish state, in accordance with the Constitutional Act of 15 July 1920, which included the Organic Statute for the Silesian Voivodeship, issues concerning the freedoms of minorities were ceded to the authorities of the voivodeship.[23]

The Constitution adopted on 17 March 1921 devoted several articles to the regulation of religious issues.

In accordance with Article 95 of the March Constitution, the Polish state guaranteed within its territory the full protection of life, liberty, and property regardless of origin, nationality, language, race, or religion. In relation to foreigners, this protection was conditional on the reciprocity of their country of origin and could be limited in cases where

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to Article 90, people exercising spiritual functions were guaranteed free exercise of their ministry regardless of their nationality and language. Articles 91 and 92 regulated the financial issues of organisational units of religious associations. In accordance with Article 93, all religious associations previously operating in the plebiscite area were to continue to be recognised.

[22] Journal of Laws of 1921, no. 49, item 300 – the Treaty of Peace between Poland and Russia and Ukraine signed in Riga on 18 March 1921. In particular, see Article 7, according to which: "1. Russia and Ukraine undertake that a person of Polish nationality in Russia, Ukraine, and Belarus shall, in conformity with the principles of the equality of peoples, enjoy full guarantees of free intellectual development, the use of their national language, and the exercise of their religion. Poland undertakes to recognise the same rights in the case of persons of Russian, Ukrainian, and Belarusian nationality in Poland. Persons of Polish nationality in Russia, Ukraine, and Belarus shall, so far as is in conformity with the domestic legislation of these countries, have the right to make full use of their own language, to organise and maintain their own system of education, to develop their intellectual activities, and to establish associations and societies for this purpose. Persons of Russian, Ukrainian, and Belarusian nationality in Poland shall enjoy the same rights so far as is in conformity with the domestic legislation of Poland.

"2. The two Contracting Parties mutually undertake not to interfere directly or indirectly in questions concerning the organisation and work of the church and of the religious associations within the territory of the other Party.

"3. The churches and religious associations in Russia, Ukraine, and Belarus of which Polish nationals are members shall, so far as is in conformity with the domestic legislation of these countries, have the right of independent self-administration in ecclesiastical matters. The aforementioned churches and religious associations shall, so far as is in conformity with domestic legislation, enjoy the right of employing and acquiring the moveable and real property necessary for the practice of their religion and for the support of the clergy and the upkeep of ecclesiastical institutions. In accordance with the same principle, they shall have the right of using the churches and institutions which are necessary for the practice of their religion. Russian, Ukrainian, and Belarusian nationals shall enjoy similar rights in Poland."

[23] Journal of Laws of 1920, no. 73, item 497. The scope of religious freedom was regulated by Article 4, point 7 of the Organic Statute of the Silesian Voivodeship, which indicated that religious issues, apart from those which were included within the scope of foreign policy (and thus regulated by a Concordat), were among the matters reserved to the Silesian Sejm.

the possibility of exercising a given freedom was statutorily dependent on the requirement to have Polish citizenship.[24]

The Constitution guaranteed freedom of religion in terms of both individual and collective freedoms. Among the norms concerning individual freedoms (i.e. assigned to everyone), the provisions of Articles 95, 96, 102, 110, 111, 112, 120, and, indirectly, 104 and 109 of the Constitution should be mentioned. The norms concerning collective guarantees (relating to the guarantees allowing believers to organise in religious associations and similar organisations) include Articles 113 through 116 of the Constitution.

In accordance with Article 104 of the Constitution, the right to freely express opinions and beliefs is guaranteed, which should be regarded as an indirect guarantee of freedom of conscience and confession.[25]

Article 110 of the Constitution ensured equal treatment of Polish citizens belonging to national, religious, or linguistic minorities with regard to the right to establish, supervise, and manage charitable, religious, and social institutions, schools, and other educational bodies created and financed with their own resources. In addition, the opportunity to use the national language and following religious laws in such institutions was guaranteed.[26]

A guarantee of freedom of conscience and confession was contained in Article 111 of the Constitution. According to its provisions, all citizens were guaranteed freedom of conscience and confession. Their rights could not be restricted in relation to other citizens because of their religion. The provision guaranteed all residents of the Republic of Poland the right to freely practice their religion. The scope of this freedom was limited by considerations of public order and morality.[27] It should be noted that the literal interpretation of this provision indicates that the freedom of conscience and confession was guaranteed to people designated as "citizens", while the right to practice one's own religion was awarded to all inhabitants of Poland. Therefore, the question arises as to whether lacking the attribute of Polish citizenship could have resulted in the possibility of limiting one's civil rights while maintaining their right to practice

[24] Journal of Laws of 1921, no. 44, item 267.
[25] Ibid.
[26] Ibid.
[27] Ibid.

religion. It seems that the legislator did not allow such a possibility, and that the provision of Article 111 is simply the result of imprecise wording. This provision ensured the equality of citizens regardless of their religion and guaranteed the possibility of practicing a religion to persons staying within the territory of the Republic of Poland who did not have Polish citizenship – in the light of the foregoing, they could not exercise the rights awarded to citizens anyway.

Article 112 of the Constitution defined the limits of freedom of confession, stating that it could not interfere with the laws in force, and that the confession adopted by a person could not result in evasion of their duties towards the state. Yet another limiting factor was the scope of parental and guardian authority.[28]

The wording of the foregoing provision pointed to restrictions on the scope of freedom stemming from the need to fulfil civic duties, which indicated a confirmation of the primacy of the state's interest over the freedom of the individual. Meanwhile, the primacy of parental and guardian authority noted in the provision, which had a direct effect on minors, was the result of taking into account the traditional understanding of the scope of parental authority over children. Another limitation of the scope of freedom of confession were the applicable provisions of the law. According to the wording of Article 112 of the Constitution, such restrictions could only be introduced by statute. In addition, the foregoing provision established a ban on the use of coercion with regard to participation in religious rites. However, this prohibition applied only to adults, as indicated by the reservation regarding the submission to parental or guardian authority. Persons subject to parental authority or under guardianship were therefore obliged to endure the restriction of freedom of confession imposed by those exercising this authority.

Article 113 of the Constitution regulated issues pertaining to the collective freedom of confession; it guaranteed the right to conduct activities aimed at worship, ensured autonomy in the internal affairs of the community, enabled the acquisition and possession of movable and immovable property, and guaranteed the right to conduct religious, charitable, and scientific activities.[29] These rights were exercised by religious associations

[28] Ibid.
[29] Ibid.

recognised by the state. The boundaries of the freedom of religious associations were defined by law. An analysis of the content of this provision indicates that it maintained the division of religious associations into ones that were legally recognised and ones that were not recognised. Legally recognised religious associations had internal autonomy consisting, among others, of the right to perform mass and public worship, to independently conduct their internal affairs, and to purchase and possess movable and immovable property. The freedom of activity of religious associations was implemented within the limits of the state interest because none of the associations could function in conflict with the state laws.

Article 114 of the Constitution guaranteed the Catholic Church a special place among other religious associations.[30] In accordance with this provision, the Catholic Church held a leading position among co-equal confessions. Detailed regulation of the principles of coexistence between the Catholic Church and the institutions of the state was postponed until the conclusion of the concordat. It should be noted that such a construction of a provision determining the legal position of the Church in the state did not, in principle, fully satisfy either party to the conflict regarding the nature of the state. Supporters of a confessional state expected a clear indication of the prevailing religion, while supporters of a non-confessional state feared the Church's aspiration to take the position of the ruling religion.[31]

Pursuant to Article 115, the Constitution granted other legally recognised religious associations the right to function based on autonomous constitutional acts provided that they were in accordance with state law, and separate laws were to regulate the detailed issues concerning the relationship of the state to these associations.[32]

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[30] "The Roman Catholic religion, which is the religion of the overwhelming majority of the nation, occupies the supreme position in the State among co-equal denominations. The Roman Catholic Church is governed by its own laws. The attitude of the State towards the Church will be determined on the basis of an agreement with the Holy See, which is subject to ratification by the Sejm."

[31] The position of the Roman Catholic religion, and thus the position of the Catholic Church, was emphasised by the provision of Article 114 of the Constitution, which granted the Catholic religion the leading position among co-equal confessions. Regarding views on the internal contradiction of the said provision, see: Krukowski, S. "*Konstytucja Rzeczypospolitej Polskiej z 1921 r.*" in *Konstytucje polskie. Studia monograficzne z dziejów polskiego konstytucjonalizmu*, vol. 2, edited by M. Kallas, Warszawa 1990, p. 102 et seq.

[32] "Churches of religious minorities and other legally recognised religious associations shall govern themselves by their own laws, which the State shall not refuse to recognise unless they contain provisions which are contrary to the law. The relation of the State to these Churches

The conditions for recognition of new religious associations were regulated by Article 116 of the Constitution, according to which recognition of such an association was conditional on the determination that its constitution, aims, and teaching were not incompatible with the existing public order and morality.

An important norm in the field of freedom of conscience and confession was the provision of Article 120 of the Constitution regulating the issue of teaching religion in general education schools.[33]

The Constitution introduced the obligatory study of religion by young people under the age of 18 who attended educational institutions financed in whole or in part by the state or local government budget.

This provision corresponded to Article 112 and Article 118, imposing a restriction on the negative freedom of confession of persons under the age of 18 and imposing an obligation to receive education. However, it should be noted that the analysis of Article 112, according to which minors were subject to parental authority in matters of religion, points to a conflict with Article 120, according to which religious education was compulsory in general education and public schools. In the event that the minor's parents or guardian did not wish to submit them to religious instruction, this *de facto* meant that the minor would not be able to attend a public school. In the absence of an alternative in the form of a school not subject to the provisions of Article 120 of the Constitution, this meant an actual violation of the freedom of confession – especially when taking into account the obligation of minors up to the age of 14 to be enrolled in school, which was imposed in the Constitution.

The regulation of the issue of freedom of conscience and confession contained in the provisions of the March Constitution was met with a diverse reception. The provisions of the Constitution, which were the result of compromises made because of the division in the Polish political scene, were burdened by many shortcomings. The provisions were in contradiction to one another, which meant that solutions regarding freedom of religion were

and denominations shall be determined through statutory law after consultation with their legal representatives."

[33] "In any educational institution whose program includes the education of young people under the age of 18 and which is maintained in whole or in part by the State or local government bodies, religious education is mandatory for all students. The management and supervision of religious education in schools belongs to the appropriate religious association, subject to the supreme right of supervision of the state school authorities."

not implemented in practice. Despite the freedom of religion guaranteed in Articles 111 and 112 and the prohibition against restricting civil rights for this reason, Article 54 imposed an obligation on the president elect to take an oath of a *strictly* confessional nature that related to the Roman Catholic religion. Likewise, Article 120, which imposed the obligation to teach religion, conflicted with Article 112, which deprived parents of the possibility to decide on the upbringing of their child. Similarly, the division into legally recognised and unrecognised religious associations and the consequences resulting from it – for example, in terms of the inability to perform public worship – should be regarded as contrary to the principle of freedom of religion. The issue of freedom of confession was also indirectly influenced by the provision of Article 114, which, despite the principle of equality of religions enshrined in Article 113, did not make the functioning of the Catholic Church dependent on verification of the compatibility of its internal law on which its functioning was based. Meanwhile, other religious associations were forced to submit to such verification and acceptance of their internal laws by the state authorities.[34]

The Constitution was met with varying opinions of the representatives of the Church, most of which were to a greater or lesser extent critical. Among the objections raised, noteworthy are the objections to the lack of a clear recognition of Poland as a Catholic state and the withdrawal of the constitutional requirement that only a Catholic could serve as president of the Republic of Poland. In addition, the rejection of the demands to guarantee the existence of religious schools in Poland through a constitutional provision was criticised.[35] With regard to the religious sphere,

[34] See discussion concerning the provisions of the draft submitted for the deliberations of the Constitutional Committee in the stenographic records from the sittings of the Legislative Sejm available at: https://bs.sejm.gov.pl/exlibris/aleph/a22_1/apache_media/HCVL92C8191MCUESJQ7M9IECX9714Q.pdf [20.08.2015]; https://bs.sejm.gov.pl/exlibris/aleph/a22_1/apache_media/98B2EL1FMJVDNC9GJ49S3JV6U34GKL.pdf – stenographic record from the Legislative Sejm sitting of 17.11.1920, p. 30 [20.08.2015]; https://bs.sejm.gov.pl/exlibris/aleph/a22_1/apache_media/TC7VK3LK5HXBY3N-H46215X93KP9XT6.pdf – stenographic record from the Legislative Sejm sitting of 17.11.1920, p. 30 [20.08.2015 r.]; https://bs.sejm.gov.pl/exlibris/aleph/a22_1/apache_media/TC7VK3LK5HXBY3N-H46215X93KP9XT6.pdf pp. 51–52 [20.08.2015]; https://bs.sejm.gov.pl/exlibris/aleph/a22_1/apache_media/1X3KVSVI6RQIMT-3VLGVB78FUH2TJEB.pdf – stenographic record from the Legislative Sejm sitting no. 191, p. 40 et seq. [20.08.2015]; https://bs.sejm.gov.pl/exlibris/aleph/a22_1/apache_media/413KPIRG-394BCU-GLXBB5KIJFA6883S.pdf [20.08.2015].

[35] See: Urban, J. *"Nasza konstytucja a program katolicki"*, Przegląd Powszechny, 38(1921), pp. 242–243.

the Constitution rendered Poland a parity state in which the Catholic religion was honourably distinguished as the most important one – this, however, distanced it from the ideal of a Catholic confessional state.

Freedom of conscience and confession was recognised neither by the Constitution itself nor by ordinary legislation in accordance with the assumption of a liberal doctrine. The Constitution itself limited its scope by introducing in Article 120 the obligation to teach religion in schools maintained entirely by the state or local government organisations for young people under the age of 18. By decision of the administrative authorities, the obligation to study religion was extended to children of non-confessional parents attending state schools as well. The lack of a clear introduction of the model of a religious school did not mean, as practice later showed, that the Polish general education school fully respected the principle of freedom of conscience and confession. The mere imposition of the compulsory study of religion, whether Catholic or one of the minority religions, meant that minors were *de facto* deprived of any ability to express their worldview. The detailed regulations that were adopted later introduced, among others, the requirement to include, in the content of the school certificate, information on one's confession and the grade obtained in the subject of religion during the given school year. This grade was a mandatory element of the certificate, regardless of whether the student took religious education in school or outside of it (which was allowed by special regulations, which will be discussed later). The lack of such a grade resulted in serious complications affecting one's continuing education. Further regulations also introduced mandatory examinations in religion at the end of individual stages of education. In this manner, minors from non-religious families faced significant restrictions related to legal requirements in the field of education. Enrolment in non-general education schools (i.e. those not covered by Article 120 of the Constitution), was an illusory antidote, taking into account the costs and location of such institutions.[36]

A separate element influencing the implementation of the right to freely express one's religious beliefs were causes stemming from the policy of the state authorities towards national and religious minorities. They

[36] Arguments of this kind were presented during the discussion on the draft Constitution. See: https://bs.sejm.gov.pl/exlibris/aleph/a22_1/apache_media/TC7VK3LK5HXBY3NH46215X-93KP9XT6.pdf pp. 58, 61–63 [22.08.2015].

were particularly visible in Polish-Ukrainian relations, as manifested by the "restoration to Polishness" actions that were carried out in the areas inhabited by the Ukrainian minority, as it were, on the occasion of the recovery of church estates.

The solutions adopted in the March Constitution in the field of freedom of conscience and confession were internally inconsistent. On the one hand, there was the formal principle of the guarantee of freedom of conscience and confession; on the other hand, the Constitution placed one of the religious associations in a privileged position.

When examining the limits of the freedom of conscience and confession of minors, several issues should be addressed.[37]

In the case of individually understood freedom of confession of minors, one should note the limitation to this freedom that took the form of an obligation to attend religious classes and then to participate in religious ceremonies. In the field of religious education, the provisions of the Constitution, which introduced compulsory religious instruction in general education schools, obviously contradicted the principle of freedom of conscience and confession. The principle of obligatory teaching of religion in schools was already included in the first acts of the authorities regulating the issue of the organisation of the educational system in the newly re-established Polish state. A solution analogous to the one adopted in the Provisional Regulations on Elementary Schools was introduced in the areas under the authority of the Regency Council.[38] In the areas of the former Russian partition, solutions identical to those previously mentioned were implemented on the basis of the Regulation of the Interim Commissioner General of the Eastern Territories of 11 October 1919.[39] In accordance with Article 3 of the foregoing regulation, the compulsory teaching of religion in schools was introduced.

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[37] For more on the discussions concerning the scope of freedom of confession confirmed by the Constitution, and in particular on issues pertaining to teaching religion in public schools and schools with public school rights, see: Krukowski, S. "*Konstytucja Rzeczypospolitej Polskiej z 1921 r.*", p. 111 et seq.

[38] See: Reiner, B. *Problematyka prawno-społeczna nauczania religii w szkołach w Polsce (1918–1939)*, Opole 1964, p. 54.

[39] Journal of Laws of the Civil Management of the Eastern Territories of 1919, no. 31, item 340; and Journal of Laws of the Ministry of Religious Affairs and Public Education of 31.12.1919, no. 12–13, item 1, digital version available at http://mbc.cyfrowema-zowsze.pl/dlibra/publication/18519?tab=1 [1.09.2015].

The March Constitution provided for the principle of freedom of confession and conscience under the provisions of Articles 111 and 112, but at the same time it sanctioned the principle of obligatory teaching of religion in state schools and schools run by local governments. The principle of freedom of conscience and confession meant that there was a guarantee of the principle of equal treatment of citizens regardless of their religion and beliefs, of the freedom to profess a particular religion both publicly and individually, of the freedom to belong to certain religious associations, of the positive and negative freedom to participate in religious worship, and of the freedom not to disclose one's religious beliefs.[40] At the same time, in accordance with Article 120 of the Constitution, the principle of compulsory religious instruction was introduced. As indicated earlier, this kind of solution expressed the belief of the creators of the Constitution regarding the particularly important role of religious values and their translation into the formation of the society's moral attitudes.[41]

The simultaneous declaration of respect for freedom of conscience and confession paired with the introduction of a constitutional mandate for teaching religion provided the basis for the formulation of objections concerning the internal contradiction of the constitutional solutions in the scope indicated. In the literature, this situation is described as a dissonance of the provisions of the March Constitution between its religious elements and an attempt at implementing secular solutions.[42] This dissonance was caused by the necessity of including in the Constitution solutions guaranteeing the protection of minority rights, which stemmed from the provisions of the Little Treaty of Versailles. In the literature of the interwar period, it was explicitly argued that the wording of Articles 110 and

[40] See: Pietrzak, M. *Prawo wyznaniowe*, Warszawa 2010, p. 107.

[41] On the importance of religion in social, national, and state life in the jurisprudence of the Supreme Court, see: Pietrzak, M. *Prawo wyznaniowe*, pp. 106–108. The Preamble to the Act reforming the educational system also expressed belief in the positive impact of the teaching of religion: "This Act introduces such principles of the educational system that are to facilitate the organisation of education and the training of the general public into conscious and creative citizens of the Republic of Poland, to ensure for these citizens the highest possible religious, moral, mental, and physical attainment and the best possible preparation for life, and to enable the most capable and courageous individuals from all walks of life to attain the highest levels of scientific and professional education." Journal of Laws of 1932, no. 38, item 389.

[42] See: Osuchowski, J. *Prawo wyznaniowe*, p. 95.

111 of the Constitution was imposed by the provisions of Articles 2 and 8 of the Treaty.[43] It was noted that the Constitution maintained a position of ensuring the broadest possible freedoms in the field of confession and for religious associations, while at the same time understanding the ideal goals of religion and retaining a friendly stance towards the Church that resulted from the position of Catholicism in Polish society.[44]

It was also argued that the guarantees of freedom of confession were not regarded as unlimited and absolute rights of the individual.[45] As concerned the implementation of certain tasks of the state administration, that it was possible and not contrary to the recognition of freedom of confession to introduce certain religious criteria was considered to have been established as fact. Similarly, the restriction of freedom was considered justified in view of the need to ensure public order, respect for the rights of others, and the performance of civic duties towards the state. A limitation of the scope of freedom of minors was the stipulation that no one can be forced to participate in religious ceremonies unless such a person is subject to parental or guardian authority. The literature mentions the doubts regarding the interpretation of Article 112 of the Constitution.[46] The provision does not specify the entity authorised to enforce the obligation to participate in religious ceremonies. This entity may be, in the event of a restrictive interpretation, parents or persons exercising guardianship, but can also be, in the case of an extensive interpretation, entities performing tasks within the scope of state administration. This was not explicitly specified in the wording of the provision, which limited itself to mentioning a passive subject that is forced to endure such coercion.

As indicated in the literature, Article 120 of the Constitution should not be interpreted as being contrary to Article 111, but as an exception to the general principle expressed in it and as a limitation of rights in the area of freedom of conscience and confession.[47] The scope of the ob-

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[43] Abraham, W. "*Konstytucja a stosunki wyznaniowe*" in *Nasza konstytucja. Cykl wykładów urządzonych staraniem Dyrekcji Szkoły Nauk Politycznych w Krakowie od 12–25 maja 1921 r.*, Kraków 1922, p. 115, 118 – digital version at: http://www.kpbc.ukw.edu.pl/dlibra/plain-content?id=77775 [20.09.2015].

[44] Ibid., p. 115.

[45] Ibid., p. 122.

[46] Ibid., p. 123.

[47] Mezglewski, A. *Polski model edukacji religijnej w szkołach publicznych. Aspekty prawne*, Lublin 2009, p. 14.

ligation to teach religion was modified by the provisions of the Polish Concordat of 1925. According to Article XIII of the aforementioned, this obligation covered all "general education schools" except universities.[48] Due to the discrepancies in defining the scope and types of schools covered by the norm of the Concordat and the earlier provisions of the Constitution, which stemmed from the ambiguity of the terms used in the text, two divergent positions emerge in the literature as to the impact of the foregoing provisions on the narrowing or widening of the group of schools covered by the new regulations. According to Henryk Świątkowski, the post-war minister of justice, the Concordat in reality, and contrary to the Constitution, extended the range of schools subject to the obligation of teaching religion to all public schools, regardless of whether they benefited from financing or co-financing by the state or local governments. However, according to the position of Warsaw-based professor Michał Pietrzak, the Concordat extended religious education to all public schools and thus also to private schools with public school rights. The opposite view was expressed, among others, by Artur Mezglewski, who pointed out that the provisions of the Concordat concerning "public schools" fell within the scope of Article 120 of the Constitution.[49]

There is no doubt that the provision of Article XIII of the Concordat modified the subjective scope of Article 120 of the Constitution. The Constitution provided for the compulsory education of persons under 18 years of age. In the provision contained in the Concordat, this limit was not maintained; it was therefore possible that students who were already 18 years of age attended a school covered by the obligation to teach religion. Therefore, it should be considered that, in the case of such persons, the Concordat went beyond the limit set out in the provisions of the Constitution and violated the freedom of confession because it *de facto* resulted in the need to attend religious classes necessary to pass the final exam. The implementing regulations indicated that a given school was to provide religious education in the event that at least 12 students of a given religion attended it. With fewer students, it was permissible to create inter-school groups. In the event that it was impossible to create an inter-school group

[48] As to the correctness of the translation of the term *les ecoles publiques* used in the authentic text of the Concordat, cf. ibid., p. 14.

[49] Cf. ibid., pp. 15–16 and the literature cited therein.

with at least 12 students, teaching could be conducted without remunerating the teacher.[50] It seems that such a regulation may also be considered a kind of limitation on one's possibility of receiving religious education concerning their confession, and thus a limitation on their freedom of confession. Such a situation, of course, could have occurred in extreme cases and seems to be purely theoretical. The number of hours of compulsory religious instruction in schools was determined by the circular notices of the Ministry of Religious Affairs and Public Education.[51]

In accordance with the provisions in force throughout the interwar period, school certificates included a grade for the subject of religion. In the event that it was not possible to provide religious teaching for a given denomination in a given locality, the school headmaster was obliged to require the parents or guardians of the child to present a certificate issued by the competent authorities of the religious association of the student's participation in religious education in the home-schooling system. The certificate was supposed to contain a grade for the subject of religion, which was later placed in the class register and on school report cards. In the absence of such a certificate, the student received a grade completion certificate with an annotation that religious classes for the given denomination were not provided at school. In such a case, the student had to obtain a certificate issued in accordance with the regulation of the Minister of Religious Affairs and Public Education.[52]

The obligation to attend religious classes may be abstract, i.e. students attended classes covering a specific religion in accordance with a submitted declaration, or it may be related to the student's religious affiliation. As mentioned in the literature, during the period of the Second Polish Republic, no regulations regulating this matter were issued. In the absence of legal regulation, a model based on the religion of the given student was developed through practical application.[53]

Another contentious issue was the subjective scope covered by the obligation to attend religious classes. According to the position presented

[50] Such a situation was provided for in § 2 of the Ordinance of 9 December 1926 on the teaching of the Catholic religion.

[51] Journal of Laws of the Ministry of Religious Affairs and Public Education of 1927, no. 2, item 32, on teaching of the Catholic religion; and Journal of Laws of the Ministry of Religious Affairs and Public Education of 1928, no. 12, item 196, concerning non-Catholic denominations.

[52] Journal of Laws of the Ministry of Religious Affairs and Public Education of 1928, no. 12, item 199.

[53] See: Mezglewski, A. *Polski model*, p. 19.

by some researchers, this obligation only concerned members of legally recognised religious associations,[54] while according to others, the obligation concerned students who belonged to any religious association.[55]

Another issue related to the possibility of exercising the freedom of confession of minors in the area of religious instruction was determining which of the religious associations had the authority to teach religion. While there is no doubt that legally recognised religious associations had such a right (having the status of a public-law corporation), in the case of religious associations that were not legally recognised (though tolerated under the laws of the partitioning powers), such doubts certainly arise. Such associations did not have the status of public-law corporations. The literature mentions a concept according to which such associations should be treated analogously with legally recognised religious associations, with the reservation that applications for introducing the teaching of their religions to schools had to be submitted by individual religious communities (in the former Russian partition) or associations (in the former Prussian partition).[56] In the case of confessions that are not legally recognised but tolerated under Articles 111 and 112 of the Constitution, they had no ability to demand the introduction of religious instruction in public schools due to their lack of a religious representation capable of legal action in the area of religious matters.[57]

The Act on interfaith relations of state citizens of 25 May 1868 (in the former Austrian partition) comprehensively regulated the issue of changing one's religion and the upbringing of one's children. It granted the right to religious self-determination to anyone over the age of 14, and its interpretation, which was soon adopted by the administration, allowed for becoming a non-denominational person in the public forum. Some of the provisions classified as non-religious people those who declared their membership in religious associations that were not legally recognised.[58]

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[54] See: Osuchowski, J. *Prawo wyznaniowe*, pp. 303–304.

[55] See: Sawicki, J. *Studia nad położeniem prawnym mniejszości religijnych w państwie polskim*, Warszawa 1937, pp. 89–90.

[56] See: Grelewski, S. *Wyznania protestanckie i sekty religijne w Polsce współczesnej*, Lublin – Sandomierz 1937, p. 139 et seq. The above item has been made available in digital format at http://cyfrowa. chbp.chelm.pl/dlibra/docmetadata?id=11200.

[57] Ibid., p. 140.

[58] Act of 25 May 1868 on the interfaith relations of citizens of the state (Journal of Laws of the State, no. 49).

The freedom to shape one's own worldview and that of their children was limited by the educational system. The Act of 25 May 1868 on the relation of the Church to schools[59] ensured the formal independence of school teaching from religious associations, and also indicated that schools and educational establishments created or maintained in whole or in part by the state, country, or municipalities shall be accessible to all citizens regardless of religion. Regardless of religious affiliation, any citizen could be employed in schools if they had the appropriate qualifications. Nevertheless, being a believer as well as a follower of the religion of most of the children was very important for one's career prospects.[60] In terms of worldview, education in Austria was not neutral despite the declarations expressed in the constitutional law concerning the rights of citizens, and also in § 2 of the act on the relation of the Church. The basic law of 14 May 1869 on folk schools directly indicated in § 1 that "the task of the school is to educate children in terms of religion and morality, to develop their minds, and to bring them to the knowledge they need, so that they can grow up into strong people and useful members of society".[61] Moreover, § 48 provided that the headmaster of a school could be only a person who had the qualifications to teach religion and who was of the same religion as the majority of the school's pupils. According to § 21, the obligation to attend school lasted in principle from the age of 6 until the age of 14. The student was allowed to leave school when they "knew the most necessary teachings prescribed for the folk school, such as religion, reading, writing, and counting".[62] With the help of teachers of the relevant faith, the school management was obliged to ensure that the students fulfilled their prescribed religious duties. Private schools as well had to provide religious instruction.

The judicial decisions of the Administrative Court in matters of faith of children can be divided into two periods. Initially, it took the view that every child had to formally belong to a legally recognised religion, as was apparent from § 139 of the Austrian Civil Code (ABGB), which indicated, among other things, that "parents are obliged, by teaching their children

[59] Act of 25 May 1868 on the relation of the Church to schools (Journal of Laws of the State, 1868, no. 48).
[60] Ibid.
[61] Act of 14 May 1869 laying down the rules of teaching in folk schools (Journal of Laws of the State, no. 62).
[62] Ibid.

religion and useful information, to lay the foundation for their future happiness".[63] Such judgements meant that the authorities could order parents to send their child to religious classes, while religious associations could make claims against the parents, e.g. demanding the baptism of the child. The later position of the Administrative Court was revised so that children could be non-religious albeit still subject to religious instruction. In the opinion of the Administrative Court, when parents refused to send their child to religious classes, administrative coercive measures could be applied against them. The position of the Supreme Court was quite peculiar: it stated that although children should attend religious classes, administrative bodies cannot use coercive measures against them.[64]

As noted in the literature – and this view should be fully supported – the biggest drawback of the pre-war legal regulations concerning freedom of conscience and confession was the complete omission of regulation of the legal situation of non-religious people.[65] As indicated earlier, the schools of the interwar period did not know the concept of non-confessional, non-religious, or non-denominational people. The only way to complete school without religious instruction was to attend schools not covered by Article 120 of the Constitution and Article XIII of the Concordat, i.e. private schools, which did not use state or local government financing. However, even in that situation, in order to take exams such as school-leaving examinations, the student still had to pass an exam on the subject of religion. The literature refers to the *case* of Estera Golde-Stróżecka, in which the Supreme Administrative Court in Warsaw, in the judgement of 17 May 1927, file ref. no. 3755/25, dismissed the complaint against the decision of the Minister of Religious Affairs and Public Education to refuse to issue a school-leaving certificate due to not attending religious classes and not sitting an exam in religious teachings.[66] The ruling of the Supreme Administrative Court in the foregoing case is also relevant because of the controversy that arose from the interpretation of Article 111 of the March Constitution

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[63] Dziadzio, A. "*Wolność wyznania i sumienia a przymus religijny w austriackiej monarchii konstytucyjnej (1867–1914)*", Czasopismo Prawno-Historyczne, 45(1993), no. 1–2, pp. 65–85.

[64] Ibid.

[65] See: Mezglewski, A. *Polski model*, pp. 21–22.

[66] Judgment of the Supreme Administrative Court of 17.5.1927, file ref. no. 3755/25, OSP 1927, vol. 8, item 292.

made by the Supreme Court[67] and the aforementioned Supreme Administrative Court. Although these controversies concerned the binding force of Article 111 of the Constitution, the conclusions that were reached had a direct impact on the scope of the freedom of conscience of minors.

The scope of rights in the exercise of freedom of conscience and confession by minors was also affected by the provision of Article 120 of the Constitution. This provision referred to people attending state

[67] See: Judgments of the Supreme Court of 6 April 1923, K. 434/23, and of 7 May 1923, K. 949/23, OSP (Jurisprudence of Polish Courts) 1923, nos. 521 and 522. Worth mentioning here are the considerations contained in the OSP: "The Supreme Administrative Court finds, on the basis of Article 120, that an educational establishment maintained in whole or in part by the state cannot issue a school-leaving certificate to a student unless they have passed a religious examination. This conclusion is wrong. For if it were correct, it would be necessary to admit that the Constitution, in Articles 111 and 120, contains mutually contradictory provisions; in one it recognises freedom of conscience – being non-denominational – and in the other it holds an absolutely confessional position. Interpretation, the faithful helper in the area of law, will show that this view is not justified. If Article 111 recognises the right to be non-denominational – as confirmed by the decision of the general assembly of the Supreme Court – as the freedom of conscience of every Polish citizen, then how can Article 120 require the Constitution to require non-denominational people to pursue education and to sit in for examination in the subject of religion? If religion were at least a uniform subject of education, if by this name one could understand the general principles of ethics, common to all and binding to all, the subject of religion, thus conceived and taught, would, under Article 120, be a general education subject, binding upon all pupils without exception, irrespective of their affiliation to a certain religion, or their non-religiousness. But this is not the case because every student learns the religion that they profess. And it is here that the second sentence of Article 120, which reserves the management and supervision of religious instruction in schools to the religious association to which the student belongs, helps us to clarify any doubts. Thus, the state, in fact, hands over its school-related attributes — management and supervision — with respect to religion to the proper religious association to which the student belongs. Thus, the study of religion is not a universal and general school subject, such as the study of the Polish language, mathematics, history, etc., but a subject quite different from the others, divided into as many separate parts as there are recognised religious associations and sects in the state. If, therefore, a student does not profess any religion and does not belong to any religious association recognised in the state, if they are non-confessional, then what religion should they learn and be examined from in order to obtain a school-leaving certificate? There is only one answer to this question: a non-denominational student, one not belonging to any religious association that directs and supervises the teaching of religion, cannot sit in for such an exam. However, he must not be refused a school-leaving certificate in light of the rule contained in Article 111, i.e. the principle of freedom of conscience. In this way, the logical interpretation of Articles 111 and 120 of the Constitution resolves this issue firmly, leaving no doubt whatsoever. Otherwise, the Constitution, following the modern but already well-established slogans, views, and principles of "human and civil rights", would contradict itself, because it would create a category of handicapped citizens despite the guaranteed freedom of conscience and despite the reservation that no citizen can be limited in their rights by reason of their religious convictions. It would deprive them of the right to freedom of conscience should they want, while remaining true to their convictions, to devote themselves to higher education and to achieve their goal. The Constitution absolutely does not have such an intention, and it must not be attributed to it. Therefore, the position presented in the judgement of the Supreme Administrative Court does not correspond to the provisions of applicable law or the theory of law; therefore, the judgement must be regarded as erroneous. OSP (Jurisprudence of Polish Courts) 1927, vol. 6, pp. 345–347 (footnote).

schools or schools using state or local government funds. By introducing such a standard, it *de facto* recognised that neither state nor local government schools knew the concept of "non-denominational" people. Based on the foregoing, it was indicated that for people who wanted to raise a child without religion, the only option was home-schooling or education at private schools.[68]

1.2. Based on the April Constitution of 1935

The April Constitution, which emphasised universal issues (i.e. mainly the duties of the citizen towards the state and society) instead of the primacy of individual freedoms present in the norms of the March Constitution, retained in force the norms devoted to the right of freedom of confession.[69] The issue that remains unresolved due to the short period in which that constitution remained in force is how these freedoms would have been respected in the context of the ideological foundations of a state system based on the emphasis of the duties of citizens rather than civil rights.

The solutions adopted in the articles of the March Constitution were largely incorporated into the April Constitution.[70]

In accordance with Article 81(2)[71] of the April Constitution, Articles 99, 109–118, and 120 of the March Constitution remained in force.

Article 5(2) of the April Constitution provided citizens with, among others, the freedom of conscience.[72] Article 7(2) stated that the criterion

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[68] Ibid.

[69] See: Gdulewicz, E., Gwiżdż, A., and Witkowski, Z. "*Konstytucja Rzeczypospolitej Polskiej z 1935 r.*" in *Konstytucje polskie*, p. 178 et seq.

[70] The Constitutional Act of 23 April 1935 (Journal of Laws of 1935, no. 30, item 227).

[71] Article 81 of the Constitution: "This constitutional law shall enter into force on the day of its publication. At the same time, the Act of 17 March 1921 (Journal of Laws of the Republic of Poland, no. 44, item 267), as amended by the Act of 2 August 1926 (Journal of Laws of the Republic of Poland, No. 78, item 442) is repealed, with the exception of Articles 99, 109–118, and 120. The Constitutional Act of 15 July 1920, containing the organic statute of the Silesian Voivodeship (Journal of Laws of the Republic of Poland, no. 73, item 497), as amended by the Acts of 8 March 1921 (Journal of Laws of the Republic of Poland, no. 26, item 146), of 30 July 1921 (Journal of Laws of the Republic of Poland, no. 69, item 449), of 18 October 1921 (Journal of Laws of the Republic of Poland, no. 85, item 608), and of 18 March 1925 (Journal of Laws of the Republic of Poland, no. 36, item 240) retains its force, except that Article 44 of the Act of 15 July 1920 (Journal of Laws of the Republic of Poland, no. 73, item 497) is given the following wording: "The amendment of this Constitutional Law requires a State Law", and that Article 2 of the Law of 8 March 1921 is repealed (Journal of Laws of the Republic of Poland, no. 26, item 146).

[72] Article 5 "1. The creativity of the individual is the foundation of collective life.

2. The state provides citizens the ability to develop their personal values and with freedom of conscience, speech, and association. The limit of these freedoms is the universal good."

of religion must not be a reason for limiting the citizen's ability to influence public affairs.

It should be noted, however, that the April Constitution generally downgraded the rank and importance of civil rights and freedoms, instead focusing primarily on duties towards the state.[73]

Taking into account the foregoing provisions and the surviving provisions of the March Constitution regarding the issue of freedom of religion, it should be considered that formally speaking, within the meaning of the constitutional provisions, the scope of freedom of confession did not change. It should be noted, however, that the April Constitution was created during the period in which the Concordat was already in effect, and its provisions should be interpreted through the prism of the solutions contained in this international agreement. The April Constitution continued to ensure individual and collective freedom of confession, continued to emphasise the special position of the Catholic Church, and continued to enforce the obligation to study religion in public schools financed or co-financed by the state or local governments. Therefore, the question of the compatibility of the provision of Article XIII of the Concordat with the Constitution remained relevant. Therefore, doubts about the constitutionality of the solutions adopted in the provisions of the educational law also remained relevant.

2. Freedom of conscience and confession in light of the Concordat of 10 February 1925

Issues pertaining to the regulation of relations between the Catholic Church and the authorities of the Polish state were the subject of works of the Episcopate even before the formal rebirth of the state. Already in 1917 the Polish Episcopate established a special commission, which was to prepare appropriate materials and concordat drafts.[74] The first

[73] Ajnenkiel, A. "*Ustrój i prawo Drugiej Rzeczypospolitej*" in *Polska odrodzona. Państwo, społeczeństwo, kultura*, edited by J. Tomicki, Warszawa 1982, p. 116. "We should also mention the provisions of the Constitution relating to civil rights and freedoms. There are no provisions in the Constitution governing many of these matters. The Constitution referred only to some of the provisions of the March Constitution, which were to remain in force. This was a conscious effort to ascribe lesser importance to these norms."

[74] Kumor, B. *Historia Kościoła*, t. 8: *Czasy współczesne 1914–1992*, Lublin 2001, p. 389.

attempts to determine the relationship of the Polish state to the Catholic Church in constitutional acts appeared in the draft constitution commissioned by the provisional Council of State in 1917.[75] Another act providing for the regulation of relations between the state and the Church by way of an agreement was the draft constitutional declaration adopted on 3 May 1919.[76]

Due to the wording of Article 114, the adoption by the Sejm of the Constitution of the Republic of Poland on 17 March 1921 created the obligation to regulate relations between the state and the Catholic Church by way of an agreement.[77]

The legal situation of the Catholic Church was finally settled by the Concordat signed in Rome on 10 February 1925.[78] As in the case of the works aimed at the adoption of the March Constitution, the signing of the Concordat was preceded by a heated discussion on the Polish political scene.[79] Prior to entering into force, the Concordat, as an international agreement, was ratified by the Act of 23 April 1925.[80] The Concordat regulated basic issues pertaining to the functioning of the Catholic Church in Poland, including: the scope of freedom of the Church's activities,[81]

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[75] Sawicki, J. *Studia nad położeniem prawnym*, pp. 31–32. The text of the draft states that "the relationship of the state to the Roman Catholic Church will be determined in an agreement with the Holy See".

[76] Ibid., p. 38. The regulation stipulates that: "The Church and faith, holding the deepest feelings and aspirations, enjoy the considerate care of the Republic of Poland. It guarantees to all citizens peace in faith and freedom of religious worship [...]. The attitude of the Republic to the Catholic Church will be determined in the laws on the basis of an agreement with the Holy See."

[77] Article 114 of the March Constitution stated, among other things: "The attitude of the State towards the Church will be determined on the basis of an agreement with the Holy See, which is subject to ratification by the Sejm."

[78] Journal of Laws of the Republic of Poland of 1925, no. 72, item 501.

[79] The government made arrangements for the wording of the Concordat using the method of "secret diplomacy", which was the reason for repeated motions made by the Sejm and the Senate demanding disclosure of the course of the negotiations, which were not met with a response on the part of the government. For more on the activities preceding the conclusion of the agreement, see, among others: Wilk, S. *Episkopat Kościoła katolickiego w latach 1918–1939*, Warszawa 1992, p. 100 et seq.; Grabski, S, "*Jak zawierałem konkordat ze Stolicą Apostolską"*, Tygodnik Powszechny, 25(1971), no. 22, p. 5; Kumor, B. *Historia Kościoła*, p. 389 et seq.; Jurkiewicz, J. *Watykan a Polska w okresie międzywojennym 1918–1939*, Warszawa 1960, p. 36; Rataj, M. *Pamiętniki 1918–1927*, prepared for printing by J. Dębski, Warszawa 1965, p. 250; and Szwarcenberg-Czerny, K. "*Jak to było z konkordatem polskim z 1925 r."*, Tygodnik Powszechny, 25(1971), p. 5.

[80] Journal of Laws of the Republic of Poland of 1925, no. 47, item 324.

[81] Article I of the Concordat: "The Catholic Church, without distinction of rites, shall enjoy full freedom in the Republic of Poland. The State shall ensure the free exercise of the Church's ecclesiastical authority and jurisdiction, as well as the free administration and management of its affairs and property, in accordance with the laws of God and Canon law."

the internal autonomy of the Church,[82] the scope of state aid in the exercise of the Church's rights,[83] the rights of clergy,[84] the territorial organisation of the Church, the possession of movable and immovable property, the rules for filling ecclesiastical posts, etc.[85]

In the area of freedom of conscience and confession, the Concordat pointed to an expanded scope of the obligation for religious instruction in schools.[86] According to Article XIII of the Concordat, compulsory religious education concerned all public schools with the exception of higher education institutions.

This provision contradicted the constitutional regulation which limited, in Article 120 of the Constitution, the scope of the obligation for religious instruction to schools subsidised by the state or local governments.

[82] Article II of the Concordat: "Bishops, clergy, and faithful will freely and directly interact with the Holy See. In the exercise of their functions, the bishops will freely and directly interact with their clergy and their faithful, and will proclaim their recommendations, ordinances, and pastoral letters.

[83] Article IV of the Concordat: "The civil authorities shall assist in the execution of ecclesiastical decrees and decisions: (a) in the case of the removal of a clergyman, the deprivation of an ecclesiastical benefice, after the promulgation of the canonical decree on the said removal or deprivation, and in the case of the prohibition of wearing a clerical dress, (b) in the case of collection of taxes or fees intended for ecclesiastical purposes provided for by state laws, and (c) in all other cases provided for by applicable law."

[84] Article V of the Concordat: "Clerics shall enjoy special legal protection in the exercise of their offices. They shall, on equal footing with civil servants, enjoy the right to exemption from judicial seizure of a part of their emoluments. Clerics who have been ordained, monks who have taken vows, and seminary students and novices who have entered seminaries or novitiates before the declaration of war will be exempt from military service except in a mass mobilisation of the population. In the latter case, ordained priests will exercise their priestly office in the army in a way that ensures that the good of the parish will not be affected, and other members of the clergy will be called to the sanitary service. Clerics shall be exempt from civic duties incompatible with the priestly vocation, such as those of judges, members of tribunals, etc."

[85] See: Dębiński, J. "*O Konkordacie polskim z 1925 roku*", Saeculum Christianum, 14(2007), no. 1, pp. 171–189. The article presents the history of signing of the Concordat as well as its detailed provisions. Worth noting is the literature of the subject and the source documents cited in the article.

[86] Article XIII of the Concordat: "(1) Religious instruction is compulsory in all public schools, with the exception of higher education institutions. This teaching will be given to Catholic youth by teachers appointed by the school authorities, who will elect them only from among persons authorised by the Ordinaries to teach religion. The competent ecclesiastical authorities shall supervise the teaching of religion as to its content and the morality of its teachers. Should the Ordinary take away from the teacher the authority previously awarded to him, the latter will be thereby deprived of the right to teach religion. The same rules for the selection and dismissal of teachers will apply to professors, associate professors, and university assistants in the faculties of Catholic theology (ecclesiastical sciences) of state universities. (2) The Catholic Church will have seminaries appropriate according to Canon law, in all dioceses, in which it shall direct and appoint teachers. The diplomas awarded by the higher seminaries will be sufficient for the teaching of religion in all public schools, with the exception of universities."

Moreover, the ecclesiastical authorities were granted the right to supervise the content of the religious instruction and to verify the moral competence of teachers. The teaching of religion could only be carried out by persons who had received the approval of the relevant ecclesiastical authorities.

The solutions adopted in the content of the Concordat were met with strong criticism from left-wing parties. The press releases associated with these circles pointed out that the fears about the threat to schools turned out to be justified, because "the teaching of the Catholic religion in lower and secondary schools is entirely subjected to the ecclesiastical authorities".[87] As justification of their critical assessment of the solutions contained in the Concordat, they pointed to, among others, the fact that "in all general education schools, except colleges, the teaching of religion is compulsory" and will be provided by teachers selected "only from among persons authorised by the church", meanwhile, ecclesiastical authorities will "supervise the teaching of religion in terms of the content and morality of the teachers".[88] It was noted, based on comparison of the Concordat with the Constitution, that the Concordat led to an increase in clerical influence in schools. The Constitution provided for compulsory teaching of religion only in schools wholly or partly maintained by the state or local governments, while according to the provisions of the Concordat, compulsory education of religion was to be introduced in all schools. Similarly, the Constitution referred to the direction and supervision of ecclesiastical authorities over the teaching of religion – however, with the superior right of supervision reserved for the state authorities. Meanwhile, the Concordat excluded the state from this supervision and at the same time granted to the Church the supervision of the morality of teachers of religion.[89]

Interestingly, the Concordat regulations concerning the teaching of religion were also met with criticism on the part of some right-wing circles. They pointed to the insufficiently radical character of the regulations, stating that the aim should be to introduce religious schools rejecting teachings contrary to that of the Church. Among other things, the critics pointed out that it was unacceptable to combine, as part of the implementation of school programs, the Church's teaching with the simultaneous

[87] See: Robotnik, 1925, no. 49.
[88] See: Robotnik, 1925, no. 51.
[89] See: Robotnik, 1925, nos. 53 and 55.

transmission of information from the sphere of "secular sciences," which is contrary to Church teaching.[90] The postulates concerning the introduction of a truly religious school raised concerns about "the breakup of Polish schools and the creation of schools of religious fanaticism" as well as concerns about the quality of instruction that would result from the assumption of compatibility of the transferred knowledge with the teaching of the Church.[91] Concerns were also raised about the possibility that the application of the Concordat provisions concerning the exercise of moral supervision over teachers of religion could result in the imposition of a specific worldview on them. This especially concerned small towns where one teacher taught both religion and other subjects – in such cases, being deprived of the ability to pursue the canonical mission, i.e. the denial of religious instruction, resulted in *de facto* removal from one's post.[92]

3. The scope and guarantees of the freedom of conscience and confession of minors in light of educational regulations

3.1. Education law until 1932

As demonstrated earlier, questions concerning the location of religious teaching and the nature of the educational system were among the most interesting topics for the Catholic Church even before Poland regained its independence.

The first Polish school document *Przepisy, tymczasowe o szkołach elementarnych w Królestwie Polskim (Provisional regulations on elementary schools in the Kingdom of Poland)*, passed by the Provisional Council of the State, was published on 10 August 1917.[93] Article 26 of the aforementioned

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[90] See: Stenographic records of the sitting of the Sejm of 24–27 March 1925.

[91] Speech by MP Czapinski during the 187th sitting of the Sejm on 24 March 1925, https:// bs.sejm.gov.pl/exlibris/aleph/a22_1/apache_media/9XBB953A5C43T12KX7Y6LTN99GMBHH.pdf [20.09.2015]; similarly, the stenographic record of the 188th sitting of the Sejm, speech of MP Piotrowski https://bs.sejm. gov.pl/exlibris/aleph/a22_1/apache_media/YLV7HSXMA1BT1F-HPD6N1AS97DA96XH.pdf [20.09.2015].

[92] Ibid.

[93] Official Journal of the Department of Religious Affairs and Public Education of the Provisional Council of State of the Kingdom of Poland, 1917, no. 1, item 1 – online: http://mbc.cyfrowemazowsze.pl/dlibra/plain-content?id=14915 [7.08.2015].

act required the educational authorities to consult with the relevant religious authorities regarding candidates for the post of teacher of religion. Articles 49–51, in turn, provided for the composition of the school supervision, which, ex officio (the act uses the term "by appointment") consisted of a representative of the Roman Catholic Church – and in the case that a certain percentage of the population residing in the given commune was of a different faith, a representative of that faith as well. According to Article 67, teachers of religion were also part of the school care. In accordance with Article 96, religious instruction was supervised by the district inspector and representatives of the confessions appointed by the Director of the Department of Religious Affairs and Public Education in consultation with the relevant clerical authorities. The content of the legal act, therefore, did not decide on the religious character of schools, which was a borrowed solution known from the laws of the partitioning states.

A law on the accommodation of the school needs of minorities was passed on 12 September 1917.[94] According to section 2, public schools in the Kingdom of Poland were to be equally accessible to minorities regardless of their nationality and religion. Meanwhile, in accordance with section 5, the class curricula were also to take into account the confessions in which the pupils were brought up. In the case of elementary schools with a language of instruction other than Polish, school care was also to be created taking into account the religion of the school children. The act, in accordance with section 9, allowed for the creation of private elementary, secondary, and vocational schools by associations bringing together people belonging to national and religious minorities. At the same time, the law prohibited the introduction of any prohibition on the right of children of members of such associations to attend these schools.

The draft constitution of the Provisional Council of State[95] contained solutions that determined the religious character of the educational system. According to Article 136 of the draft, religious instruction in primary and secondary schools was to be compulsory, while according to Article 137, teachers in primary schools should be of the same religion as the majority of the pupils. The solutions included in the draft introduced the obligatory study of religion but did not impose an official religion, thus

[94] Ibid.
[95] *Projekty Konstytucji*, p. 116.

sanctioning the multi-faith nature of the educational system. The principle of an educational system of an interfaith nature with compulsory religious instruction was more clearly upheld by the Regency Council. During the Council's rule, the Ministry of Religious Affairs and Public Education issued only a few regulations sanctioning compulsory religious examinations for graduates of secondary schools of all types.[96]

The adoption of the Constitution of 17 March 1921 determined the shape of the Polish school system and the scope of the freedom of confession of minors.

Article 120 of the Constitution provided the basis for regulating the place of religion in the educational system. For the purpose of fulfilling the requirement of religious instruction in public schools, school curricula documents were developed. In 1920 a curriculum of religious instruction for general education schools was released,[97] and in 1921 a curriculum was released for general secondary schools and teacher seminars.[98]

In accordance with the regulation of the Ministry of Religious Affairs and Public Education of 29 November 1922, teachers at general education schools subject to the obligation of religious instruction were obliged to exercise supervision over young people taking part in common religious practices.[99]

The issue of religious instruction in schools was regulated more broadly than in the Constitution by the provisions of the Concordat concluded between the Republic of Poland and the Holy See on 10 February 1925.

Article XIII of the Concordat stated that religious instruction is compulsory in all public schools. This obligation did not apply to higher education institutions. The teaching was to be performed by teachers appointed by the school authorities from among candidates authorised by the ordinaries. The curriculum of religious instruction was *de facto* placed under the supervision of the ecclesiastical authorities, as was the supervision over the exercise

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[96] Reiner, *Problematyka prawno-społeczna nauczania religii*, p. 54.

[97] *Program nauki w szkołach powszechnych siedmioklasowych. Religia rzymskokatolicka*, Warszawa 1920, http://pbc.up.krakow.pl/dlibra/plain-content?id=5135 [15.08.2015].

[98] *Program gimnazjum państwowego. Religia rzymskokatolicka (Dla gimnazjum niższego i wyższego)*, Lwów – Warszawa 1921; *Program nauki w państwowych seminariach nauczycielskich (Religia rzymsko-katolicka)*, Warszawa 1921.

[99] Regulation of the Ministry of Religious Affairs and Public Education of 22 November 1922, Official Journal of the Ministry of Religious Affairs and Public Education of 1922, no. 31, item 401, http://mbc.cyfrowemazowsze.pl/dlibra/publication/18452?tab=1 [30.08.2015].

of teaching in terms of the conformity of the content and the precepts of morality. The provisions of the Concordat thus extended the scope of influence of ecclesiastical institutions on the sphere of education both in terms of curriculum and personnel, i.e. in terms of the people tasked with teaching religion. Implementing acts extended the competence of the Church authorities, allowing, among other things, the participation of representatives of diocesan bishops in school-leaving examinations at teacher seminars.[100]

After the change of Poland's government following the May Coup in 1926, the position of the Church did not weaken despite some expectations of a harsher state policy towards Church circles because of the reluctance of some members of the clergy (associated with the National Democratic Movement) towards representatives of the Sanation camp. In the field of education, there was a continuation of the trend of evolution of education towards the model of faith schools, which was favourable for the Church.

The clearest manifestation of this trend was the issuance on 9 December 1926 of the Regulation of the Ministry of Religious Affairs and Public Education on the teaching of the Roman Catholic religion.[101] This act was commonly referred to as the "Bartel Circular" and served, alongside the provisions of the Constitution and the Concordat, as the third pillar of the Church's position in the field of education.

The regulation laid out the organisation of religious instruction in individual types of schools, the duties of teaching staff in the implementation of the curriculum of religious instruction, and above all else introduced mandatory religious practices in the form of prayer before and after classes, Sunday services, Advent and Lenten church retreats, and mandatory confession as part of school classes.

Pursuant to section 1 of the Regulation, which indicated as its foundation Article 120 of the Constitution and Article XIII of the Concordat, the obligation to participate in religious practices covered students at all general education schools and private schools equated in rights to public schools, with the exception of universities.

Pursuant to section 2 of the Regulation, in the event that the number of school children professing a given religion exceeded 12, the school

[100] Regulation of the Ministry of Religious Affairs and Public Education of 30 May 1926 (Official Journal of the Ministry of Religious Affairs and Public Education of 1926, no. 10, item 114).

[101] Journal of Laws of 1927, no. 1, item 9.

authorities were obliged to ensure the personal staffing of the post of teacher of that religion. Pursuant to section 3 of the Regulation, the teaching of the Catholic religion was to take place based on a curriculum and textbooks that had received the approval of the Ministry of Religious Affairs and Public Education as well as ecclesiastical approval, and that had been recommended by the competent diocesan bishop.

The provision contained in section 5 granted diocesan bishops the right to delegate inspectors to supervise the teaching of religion.

Section 7 of the Regulation indicated that: "Religious practices of Catholic schoolchildren belong to the entirety of religious education and upbringing. Schoolchildren are obliged to take part in them." Arrangements as to the scope of practices in which young people were obliged to participate belonged to the clerical authority acting in consultation with the Ministry of Religious Affairs and Public Education. According to the Regulation, it was obligatory for young people to participate in services on Sundays, on holidays, and at the beginning and end of the school year; to participate in annual three-day retreats; to go to confession and receive communion three times a year; and to engage in joint prayer before and after school classes. Supervision over the exercise of obligatory religious practices by young people was imposed not only on representatives of the Church, but above all on the leadership of schools and on teachers in general.

Moreover, in accordance with Article 8 of the Regulation, prefects were granted the right to participate in any conferences concerning the education of young people. Practical application pointed to the interpretation of the provisions of the Regulation by the church authorities in their favour, with the aim of extending the competence of supervision to the whole of school life. This was in line with the demand for the Church to have the right to evaluate and accept, as a competent institution, the moral aspects of all human activities, including the teaching and education of young people. This postulate was derived from the content of the Church's teaching, including the content of the 1929 encyclical of Pius XI on the Christian education of young people (*Divini illius Magistri*).[102]

The rules introduced by the foregoing regulation were clarified in the circular of the Ministry of Religious Affairs and Public Education

[102] Pius XI, Encyclical *Divini illius magistri*, 31 December 1929, Poznań 1931.

of 7 January 1927[103] addressed to the school district supervision boards. The circular emphasised that according to Article 120 of the Constitution, religious education is mandatory in "any scientific establishment the program of which includes the education of young people under the age of 18, and which is maintained in whole or in part by the state or local government bodies". Religious education entered the scope of compulsory subjects, which is why it was noted that it is the duty of the school authorities to ensure that religious education is duly taken into account in relation to school children belonging to religious denominations recognised in Poland. To ensure the aforementioned, it was indicated that in any public general education school where the number of school children of a given religion was at least 12, it was necessary to provide two hours of religious education per week. Due to organisational issues, it was permissible to gather children from several classes or schools in a given town to conduct the classes in a single location. The obligation to include grades for the subject of religion in school documents and on school certificates was of significant importance.

The attitude of the state authorities towards the issue of freedom of religion and freedom of conscience within the framework of the educational system as well as the trends prevailing among the representatives of the ruling camp are also evidenced by the content of the statement by Stanisław Czerwiński, Minister of Religious Affairs and Public Education, who expressed the view that: "The Constitution states that in establishments where young people under the age of 18 are educated, religious education is compulsory. Based on this legal principle, my pedagogical conscience forces me to conclude that in other lessons at school, and in general in the school's influence on young people, there should be nothing that would contradict these principles, so that we do not educate young people in spiritual anarchy."[104]

3.2. Education law after 1932

A reform of the general educational system in the Second Polish Republic took place during the heyday of the Sanation governments, following the adoption of the Act on the Educational System of 11 March

[103] Journal of Laws of the Ministry of Religious Affairs and Public Education of 1927, no. 2, item 32.
[104] Available at: https://bs.sejm.gov.pl/exlibris/aleph/a18_1/apache_media/IKKR1KR1YAI3E-SNFTSKBN58GN7EG1N.pdf [2.08.2015].

1932, commonly referred to as the Jędrzejewicz reform, which entered into force on 1 July 1932.[105]

The Act indicates in its introduction that the purpose of the educational reform was to facilitate the organisation of the upbringing and education of the general public into "citizens of the Republic of Poland who are aware of their duties and are creative, and to ensure for these citizens the highest levels of religious, moral, mental and physical achievement [...]".

The Act introduced the division of schools into state, public, and private based on the criterion of the source of funds for the maintenance of the institution. The law introduced the seven-year general education school, which was compulsory, as the foundation of the system. According to Article 15 of the Act, students were obliged to attend school or further supplementary education until the age of 18. The next level of education constituted general secondary schools – four-year junior high schools (Polish: gimnazjum) and two-year high schools (Polish: liceum). As an alternative, the law provided for the establishment of vocational schools. The Act on the Educational System did not contain regulations concerning the religious character of education. Existing religious schools, such as cheders or evangelical schools, could only be classified based on the criteria contained in Article 1 of the Act, i.e. based on their state, public, or private nature. The identification of a school as religious was therefore legally irrelevant.

The second legal act concerning the organisation of the educational system was the Act of 11 March 1932 on private schools and scientific and educational establishments.[106] The Act specified the requirements necessary for the establishment of a private school. Article 2 provided that such a school may be established by a Polish citizen (and in exceptional cases, a person who is not a Polish citizen) after they document provision of the appropriate housing conditions and demonstrate the possession of sufficient financial resources, and after they submit a certificate from the competent state authorities confirming their impeccable moral behaviour and behaviour towards the state. The Ministry of Religious Affairs and Public Education was established as the body responsible for verifying such applications. A school could be closed for the reasons indicated in Article 4, which provides, among other things, for the possibility of closing a school

[105] Journal of Laws of the Republic of Poland of 1932, no. 38, item 389.
[106] Journal of Laws of 1932, no. 33, item 343.

if it teaches or educates young people in a spirit disloyal to the state or if it fails to counteract harmful influences on young people.

The idea guiding the authors of the reform was to implement the concept of state education of youth through civic and patriotic education, which was to be achieved through religious, moral, mental, and physical development and the best possible preparation for life.[107] Putting the religious formation of young people in the first place was the basis for curricula issued in subsequent years in individual types of schools. In this manner, the state in some way crossed the boundaries of authority previously assigned to the Church. This manifested itself in the long-standing disputes and discussions caused by attempts in 1933 to introduce curricula in general education schools and secondary schools as well as a curriculum of the Roman Catholic religion that had been developed without consultation of the Church authorities.[108] These conflicts only ended with the adoption in 1935 and in 1938 of new curricula developed after consulting with the church.[109] In the case of other religious associations, general regulations on the issues of religious instruction were included in the following acts and decrees establishing these associations, whereas in matters not regulated there, the generally applicable regulations were applied.

4. Freedom of conscience and confession in light of individual religious laws

4.1. Jewish religious communities (1927)

In interwar period Poland, Jews formed the largest non-Christian religious association, consisting of over 800 religious communities. Its legal

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[107] On the subject of educational ideology of the Sanation government, see, among others: Jakubiak, M. A. *"Ideologia wychowania sanacji"*, Saeculum Christianum, 10(2003), no. 1, pp. 253–266.

[108] *Program nauki w publicznych szkołach powszechnych trzeciego stopnia. Religia rzymskokatolicka (projekt)*, Lwów 1933 and *Program nauki w gimnazjach państwowych. Religia rzymskokatolicka (projekt)*, Lwów 1933.

[109] *Program nauki religii rzymskokatolickiej w publicznych szkołach powszechnych trzeciego stopnia z polskim językiem nauczania*, Warszawa – Lwów 1935; *Program nauki religii rzymskokatolickiej w gimnazjach państwowych ogólnokształcących z polskim językiem nauczania*, Warszawa – Lwów 1935; *Program nauki w państwowym liceum ogólnokształcącym z polskim językiem nauczania. Religia rzymskokatolicka*, Lwów 1938; *Program nauki w liceach zawodowych. Religia rzymskokatolicka*, Lwów 1938; *Program nauki w gimnazjach zawodowych. Religia rzymskokatolicka*, Lwów 1938; *Program nauki religii rzymskokatolickiej w szkołach dokształcających zawodowych*, Lwów 1938.

status was regulated even before the adoption of the March Constitution. The Jewish Religious Association was the only one of the religions recognised throughout the country in the interwar period. It gained its recognition not through a legal act, but through the process of incorporation of the norms of the partitioning states into the legal system of the Second Polish Republic.

The history of regulations concerning the organisation and functioning of Jewish religious communities dates back to 1 November 1916. At that time, the authorities of the Warsaw Governorate, which was occupied by the Prussian army, issued a regulation regarding the organisation of the Jewish Religious Association.[110] Article 1 of this regulation stipulated that all Jews residing in the General Governorate of Warsaw form a public-legal religious association. Membership in this religious association was therefore compulsory, independent of nationality. The only criterion was religion. The regulation specified the organisation, authorities, and tasks of Jewish religious communities. In accordance with Article 3(c), the tasks of the communes included supervision over the religious education of young people. In accordance with Article 49, the functioning of the communes was subject to supervision by the Ministry of Religious Affairs and Public Education.

After Poland regained its independence, the legal basis for the functioning of Jewish religious communities was the Decree of the Head of State of 7 February 1919 on changes in the organisation of Jewish religious communities.[111] This decree upheld the provisions of the decree of 1 November 1916.

Pursuant to the Regulation of the Council of Ministers of 28 October 1925,[112] the scope of the decree was extended to the voivodeships of Wołyń, Polesie, and Nowogródek; the counties of Grodno and Wołkowysk; the Białowieża, Suchopol, and Masiewo communes of Bielsk county in Białystok voivodeship; and the administrative district of Wilno. Another regulation was issued by the President of the Republic of Poland

[110] Journal of Regulations for the General Governorate of Warsaw, no. 53, item 184, online: http://mbc.cyfrowemazowsze.pl/dlibra/plain-content?id=15645 [30.07.2015].

[111] Journal of Laws of 1919, no. 14, item 175.

[112] Regulation of the Council of Ministers of 28 October 1925 on the establishment of Jewish religious communities in the voivodeships of Wołyń, Polesie, and Nowogródek, the counties of Grodno and Wołkowysk, the Białowieża, Suchopol, and Masiewo communes of Bielsk county in Białystok voivodeship, and the administrative district of Wilno (Journal of Laws of 1925, no. 114, item 807).

on 9 March 1927 and referred to the Białystok, Bielsk, and Sokółka counties of Białystok Voivodeship.[113]

The Decree of the President of the Republic of Poland of 14 October 1927 on the organisation of Jewish religious communities in the territory of the Republic of Poland, with the exception of the voivodeship of Silesia,[114] extended the validity of the decree of 1919 and the decree of 1916 to the voivodeships of Kraków, Lwów, Stanisławów, Tarnopol, Poznań, and Pomerania. The regulation specified issues concerning the legal status of the religious association,[115] its internal organisation, the tasks of the individual units forming the union,[116] the rules for the selection of the authorities of religious communities and the association, the electoral law,[117] the rules for the association's representation in relation to the state authorities,[118] the conditions for persons to perform the functions of clergy,[119] and the rules for the supervision of the association by state bodies.[120] The regulation also governed issues pertaining to education and religious teaching. These issues will be discussed later in the part of the chapter devoted to the regulations concerning educational law. The voivodeship of Silesia remained outside the scope of the regulations concerning the structure of the newly established Jewish Religious Association. According to the provisions of the Organic Statute of the Silesian Voivodeship, religious legislation was reserved for the Silesian Sejm. The legislation of the former partitioning powers remained in force in this

[113] Regulation of the President of the Republic of Poland of 9 March 1927 on the establishment of Jewish religious communities in the Białystok, Bielsk, and Sokółka counties of Białystok Voivodeship (Journal of Laws of 1927, no. 23, item 175).

[114] Journal of Laws of 1928, no. 52, item 500.

[115] Article 1. "Jews, inhabitants of the Republic of Poland, with the exception of Silesian Voivodeship, form a religious, public-legal association. The association is made up of communities. It is headed by the Religious Council of Jewish Communities. The Religious Association and individual communities have corporate rights and the right to have a seal."

[116] In accordance with Article 3, the community's task was to ensure that the religious needs of the members of the community were met. In this regard, the community organised and maintained a rabbinate, and it established and maintained synagogues, houses of prayer, ritual baths, and cemeteries. In addition, as part of its duties, the community provided religious education for young people, supplied kosher food and managed the community's assets, established foundations for the community, and provided the establishments and facilities run by the community.

[117] Cf. Section II of the Regulation.

[118] Cf. Section IV of the Regulation.

[119] Cf. Section VI of the Regulation.

[120] Cf. Section VIII of the Regulation.

territory, including: the Prussian Act[121] of 23 July 1847 and the Austrian Act[122] of 21 March 1890 (applicable in the region of Cieszyn Silesia).

In the light of these regulations, Jewish religious communities were self-contained public-law corporations functioning independently of one another, without superior religious authorities, and operating under separate statutes approved by administrative bodies.[123] In the case of the Prussian act, local Jewish communities were deprived of the right to cooperate within a broader religious association. Each of the communities formed a separate organisational unit designated by the administrative authorities. According to section 37 of the Act, Jewish communities constituted a private law corporation without public-law powers. According to Prussian law, the authorities of the community included the "supreme authority" (*Vorstand*) and the representation of the community, which were subject to the supervision of the relevant state administrative authority. The Act provided for the detailed scope of powers of the community authorities to be determined by the regulations contained in the statute of the given community, which in turn was subject to approval by the supervisory authority. Similar solutions were in force in Cieszyn Silesia, which was covered by the Austrian Act of 21 March 1890. As in the Prussian Act, Jewish communities functioned as private law corporations, deprived of the ability to form a broader religious association. The act law left the issues of internal organisation of the communities to the community statutes, which were approved by state administration bodies.

The legal status and scope of the freedom to practice religion in the case of religious minorities were also regulated by other legal acts. Guarantees of freedom of religion were provided by the provisions of the so-called Little Treaty of Versailles, i.e. the treaty between Poland and the major Allied and Associated Powers, signed at Versailles on 28 June 1919. The treaty imposed various obligations on Poland regarding minority rights. They concerned citizenship, freedom of religious practice, the equality of Polish citizens – all of them, regardless of race, language, or religion – before

[121] Prussian royal decree of 23 July 1847 on Jewish relations. Document in digital format at: http://sammlungen.ub.uni-frankfurt.de/freimann/content/pageview/780344 [10.09.2015].

[122] Journal of Laws of Austria, no. 57, Act of 21 March 1890 on the Arrangement of External Legal Relations of the Israelite Religious Community.

[123] See: Krasowski, K. *Związki wyznaniowe*, pp. 189–190.

the law, and the free use of any language. The treaty also gave Polish citizens belonging to ethnic, linguistic, or religious minorities the right to set up their own schools and educational institutions and the right to ensure that children of Polish citizens are taught in their native (non-Polish) language in public primary schools. In relation to the Jewish minority, the treaty guaranteed respect for the Sabbath, and therefore the limitation of their legal capacity was excluded as a consequence for not appearing in court or not performing legal acts on the Sabbath day (Article 11 of the treaty).

The aforementioned international agreement gave rise to the corresponding Act of 31 March 1931 on the expiry of the legal force of exceptional provisions related to the origin, nationality, language, race, or religion of citizens of the Republic of Poland.[124]

In the case of the Jewish minority, in accordance with Article 3 of the Regulation of the President of the Republic of Poland of 14 October 1927 on the organisation of Jewish religious communities in the territory of the Republic of Poland, with the exception of the voivodeship of Silesia, one of the tasks of religious communities was to provide religious education for young people. The acts regulating issues pertaining to freedom of confession in the field of education include the circular of the Minister of Religious Affairs and Public Education of 5 January 1927 to the School District Supervision Boards on teaching religion in elementary schools;[125] the circular of the Minister of Religious Affairs and Public Education of 17 September 1928 to School Supervision Boards and the supervisor of the Krzemieniec Lyceum;[126] the regulation of the Minister of Religious Affairs and Public Education of 22 February 1923 on education in elementary schools attended by young people of the Jewish faith;[127] and the circular of the Ministry of Religious Affairs and Public Education to School

[124] Journal of Laws of 1931, no. 31, item 214.

[125] Journal of Laws of the Ministry of Religious Affairs and Public Education of 1927, no. 2, item 32, digital version available at: http:// mbc.cyfrowemazowsze.pl/dlibra/publication/17495?tab=1 [2.08.2015].

[126] Journal of Laws of the Ministry of Religious Affairs and Public Education of 1928, no. 12, item 196, digital version available at: http:// mbc.cyfrowemazowsze.pl/dlibra/publication/18318?tab=1 [2.08.2015].

[127] Journal of Laws of the Ministry of Religious Affairs and Public Education of 1923, no. 4, item 27, digital version available at: http:// mbc.cyfrowemazowsze.pl/dlibra/publication/18555?tab=1 [2.08.2015].

District Supervision Boards on not forcing young people of the Jewish faith to engage in written work on Saturdays.[128]

Due to the lack of a separate legal act regulating the principles of teaching the Jewish religion, the provisions of the Regulation of 1926 were applied accordingly in the case of general education schools. Therefore, youth of the Jewish confession were obliged to attend classes of their religion at schools in which the number of students of this confession was at least 12. Jewish religious classes with two hours of instruction per week were to be provided to them either at a local school or, in favourable conditions, at the nearest neighbouring school. In the event that there was a small number of Jewish students, it was envisaged that children from nearby schools would be combined to study religion jointly at one school. Meanwhile, in case of a significant number of such students, groups of no more than 40 students were to be created, and two hours of religious instruction per week were to be allocated for each group. In particular, parents (legal guardians) of students of the Jewish religion who, due to the lack of conditions, did not receive religious education at school were obliged to provide school managers with certificates from the competent clerical authorities confirming that the children received religious education at home and specifying the results of such education. Based on such declarations, grades for the subject of religion were entered in the school registers and class completion certificates.

4.2. Eastern Old Believers' Church with no clerical hierarchy (1928)

The Old Believers emerged as a result of a split in the Russian Orthodox Church after the Great Moscow Synod of 1666. The reforms of Patriarch Nikon adopted at the council in 1666, which consisted in an attempt to remove from the liturgical books errors resulting from erroneous translation, copying, and interpretation of dogma records, were met with the resistance of parts of the hierarchy – this resulted in a split in the Orthodox Church and the establishment of the Old Believers' Church. The legal status of the latter Church was regulated by the Regulation of the President of 22 March 1928[129] and the Regulation of 29 August 1928

[128] Journal of Laws of the Ministry of Religious Affairs and Public Education of 1925, no. 20, item 218, digital version available at: http:// mbc.cyfrowemazowsze.pl/dlibra/publication/18577?tab=1 [2.08.2015].

[129] Journal of Laws of 1928, no. 38, item 363.

recognising the statute of the Eastern Old Believers' Church.[130] The provisions of the Regulation of 22 March 1928, as in the case of other religious associations, regulated the issues of autonomy and internal organisation,[131] the rules of election, the requirements imposed on clergy and the scope of their powers,[132] as well as property and tax issues concerning the Church.[133] The Regulation also governed issues related to education and religious teaching. In the case of the Old Believers' Church, in accordance with Article 17 of the Regulation of 22 March 1928, religious education was to be provided to young people of this religion in public schools, by teachers appointed from among the persons indicated by the Supreme Council of the Old Believers' Church. Teachers could be either members of the clergy or laypersons authorised by the Supreme Council. The regulation allowed for the teaching of religion in the liturgical language and

[130] Monitor Polski (Official Gazette of the Republic of Poland) of 1928, no. 210, item 482.

[131] Pursuant to Article 1 of the Regulation, the Old Believers' Church enjoyed full autonomy on the territory of the entire Polish state in terms of its internal organisation, acting on the basis of its canon law and statute. The regulation clearly emphasised the independence of the Church from any authority not provided for in the text of the regulation or in the text of the Church's statute. According to Article 2 of the Regulation, the Church had legal personality and the freedom to manage its movable and immovable property. Article 3 of the Regulation provided that supreme authority over the Church was exercised by the National Council, whose competences included, among others, matters concerning faith and morality, internal management of the Church, election of the president and members of the Supreme Council of the Old Believers' Church, election of members of the Clerical Court and Audit Commission, and establishment of budgetary rules of the Church. Subsequent articles of the Regulation governed the organisation of individual organs of the Church – the Supreme Council of the Old Believers' Church, the Presidium of the Council, and the Clerical Court. Members of the Supreme Council had to: hold Polish citizenship; be over 21 years of age; have full legal capacity; obtain approval of their election by the Minister of Religious Affairs and Public Education; and take an oath to perform their duties in accordance with the Holy Scriptures, the Canons of the Church, the provisions of the Superior Clerical Authority of the Church in Poland, and in accordance with Polish law and with loyalty to the Republic of Poland. Pursuant to Articles 8 and 9 of the Regulation, the structure of the Church consisted of religious communities with legal personality, whose task was to meet the religious, religious-educational, and moral needs of their followers. Pursuant to Article 10 of the Regulation, the bodies of the communities were the General Assembly of the members of the community and the Community Council elected by the Assembly.

[132] In accordance with Article 11 of the Regulation, the election of clergy was the competence of the Assembly. This election was then approved by the voivode, and in the event of a conflict the dispute was to be settled by the Minister of Religious Affairs and Public Education at the request of the Supreme Council of the Church. Before taking office, the priest took an oath to the local mayor (starosta). In accordance with Article 14 of the Regulation, the clergy of the Old Believers' Church had powers similar to those conferred by the Concordat in relation to the clergy of the Catholic Church. In accordance with Article 16 of the Regulation, clergy and faithful could hold local conventions to discuss matters of the community after prior notification to the competent voivode.

[133] In accordance with Article 23 of the Regulation, the property of the Church intended directly for the purposes of worship was exempt from taxation.

the student's native language. Detailed issues regarding the organisation of teaching, requirements, etc. were based on the acts of generally applicable law, i.e. the regulation of 1926; the circular of the Minister of Religious Affairs and Public Education of 5 January 1927 to the School District Supervision Boards on teaching religion in elementary schools; the circular of the Minister of Religious Affairs and Public Education of 17 September 1928 to School Supervision Boards and the supervisor of the Krzemieniec Lyceum; and the subsequent acts regulating the education system.

4.3. Muslim Religious Union in the Republic of Poland (1936)

The legal status of the Muslim Religious Union in Poland was regulated by the Act of 21 April 1936 on the relation of the state to the Muslim Religious Union in the Republic of Poland.[134] This law, like other legal acts regulating the status of religious associations in Poland, determined the principle of independence and autonomy of the Muslim Religious Union,[135] its organisational structure,[136] elections and the requirements imposed on clerics,[137] the rules and organisation of elections of the Union authorities, the supervision of its activities by the state authorities,[138]

[134] Journal of Laws of 1936, no. 30, item 241, the Act of 21 April 1936 on the relationship of the State to the Muslim Religious Union in the Republic of Poland.

[135] According to Article 1 of the Act, the followers of Islam in the territory of the Republic of Poland, remaining in religious and moral connection with Muslim religious associations operating abroad, formed the Muslim Religious Union in the Republic of Poland, which was independent of any foreign clerical or secular authorities. Pursuant to Article 2 of the Act, the Association enjoyed full internal autonomy, limited by the requirement of compliance of its activities with the applicable law and statutes.

[136] Pursuant to Article 3 of the Act, supreme authority and supervision over the performance of duties by the clergy was exercised by the Muslim mufti with the help of the Supreme Muslim College. The mufti represented the Muslim Religious Union before the state authorities, other religious associations, and in relations with foreign Muslim religious unions.

[137] Pursuant to Article 4 of the Act, the mufti was elected by the All-Polish Muslim Election Congress from among the candidates indicated by the Supreme Muslim College. Candidates were subject to verification by the Minister of Religious Affairs and Public Education. In accordance with the above provision, candidates for the post of mufti should: have Polish citizenship; have a command of the Polish language in speaking and writing; be at least 40 years old; be a graduate of higher studies in theology or Eastern languages; and exhibit impeccable civic integrity. In special cases, the conditions concerning citizenship, knowledge of the language, and age could be waived by a decision of the Ministry of Religious Affairs and Public Education. The selected candidate was subject to approval by the president. Before taking office, the candidate swore an oath to respect the laws of the Koran and the laws of the Republic of Poland, to respect the state authorities, and to ensure the proper attitude of the subordinate clergy by observing state law and remaining faithful to the state.

[138] Pursuant to Article 10 of the Act, the mufti's auxiliary body was the Supreme Muslim College, elected by the All-Polish Muslim Congress and approved by the Ministry of Religious Affairs

the possibility and rules for the creation of religious communities,[139] and the powers of Muslim clergy.[140] The regulation also governed issues related to the establishment and conduct of religious teaching. It should be mentioned that the statutory regulation was further detailed in the Statute of the Muslim Religious Union in the Republic of Poland.[141]

4.4. Karaite Religious Union in the Republic of Poland (1936)

The legal status of the Karaite Religious Union in the Republic of Poland was regulated by the Act of 21 April 1936 on the relation of the state to the Karaite Religious Union in the Republic of Poland.[142]

Before the adoption of the aforementioned act, the legal status of Karaite communities was regulated, respectively, in the territories of the Russian partition by the Act on the Management of Karaite Clerical Affairs,[143] and in the area of the Austrian partition by a separate statute from 1890 (statute granted by the Austrian authorities pursuant to § 28 of the Act of 21 March 1890 on the arrangement of external legal relations of the Israelite religious society).[144] It should be mentioned that in the light of the Austrian law, the Karaites were considered a branch or sect within the framework of the Jewish religion and were subject to the Act of 21 March 1890.

and Public Education. Before taking office, the members of the College swore an oath to the voivode. Pursuant to Article 12 of the Act, the All-Polish Muslim Congress consisted of delegates of Muslim communities and members of the Supreme Council. The Congress was held at least once every five years and was convened by the Supreme College in consultation with the mufti and with the knowledge of the Ministry of Religious Affairs and Public Education. As part of their supervision over the activities of the Union, the Minister of Religious Affairs and Public Education had the right to delegate representatives with voting rights to the Congress. In addition, copies of the minutes of the meetings of the Congress were sent to the Ministry of Religious Affairs and Public Education.

139 Pursuant to Article 17 of the Act, in order to meet the religious needs of followers of Islam, Muslim religious communities could be established throughout the country. The creation and abolition of these communities as well as changes in their boundaries and seats were carried out on the order of the Supreme Muslim College and required the prior consent of the Minister of Religious Affairs and Public Education. The community was headed by an imam, who was elected by the assembly of community members and approved by the voivode. The chosen imam swore an oath to the voivode. In accordance with Article 20 of the Act, in the event of finding certain activities harmful to the state, the voivode had the right to apply to the mufti to issue orders preventing such activities or removing the given imam from office. Any disputes in this respect were settled by the Minister of Religious Affairs and Public Education.

140 In accordance with Article 24 of the Act, Muslim clerics had powers and privileges analogous to those of other legally recognised faiths.

141 Journal of Laws of 1936, no. 72, item 517 – attachment.

142 Journal of Laws of 24 April 1936, no. 30, item 241.

143 *Swod zakonow Cesarstwa rosyjskiego*, vol. 11, part 1, articles 1261–1298.

144 Sawicki, J. *Studia nad położeniem prawnym*, pp. 198–199.

As in the case of the solutions adopted for the religious associations previously discussed, the Act defined the principle of independence and autonomy of the Union[145] and regulated matters pertaining to the organisation of the clerical hierarchy and elements of supervision by the state authorities,[146] the territorial structure of the Union and the manner of selecting the authorities of religious communes,[147] and the requirements and powers of clergy.[148] Pursuant to Article 26 of the Act of 21 April 1936 on the relationship of the state to the Karaite Religious Union in the Republic of Poland, in educational institutions maintained in whole or in part by state or local government bodies and whose program included the education of young people under the age of 18, religious education for young people of the Karaite faith was mandatory under state regulations.

[145] According to Article 1 of the Act, "the Karaite Religious Union in the Republic of Poland, having its own constitution and its own internal administration, shall be self-contained and independent of any foreign clerical or secular authorities". In accordance with Article 2 of the Act: "The Karaite Religious Union in the Republic of Poland enjoys in its internal life the full freedom to govern, within the limits of the applicable laws, the provisions of its Statute (the Internal Act), recognised by the State by way of a Regulation of the Council of Ministers. The Statute of the Karaite Religious Union in the Republic of Poland, together with this Act, constitutes the legal basis for the organisation of this Union."

[146] According to Article 3 of the Act, supreme authority over the Karaite Religious Union was exercised by the Karaite hachan, who represented the union before the authorities and other religious associations. The designation of the hachan was made by election during the Congress of delegates of Karaite communities and in the presence of the Minister of Religious Affairs and Public Education. Candidates for the post of hachan were subject to verification by the Minister of Religious Affairs and Public Education. Pursuant to Article 9 of the Act, the selected candidate was approved by the president. The candidate took an oath, among others, regarding the compliance of the Union's activities with Polish law and obliging him to refrain from actions contrary to the interest of the Polish state. According to Article 11 of the Act, the usual advisory body of the hachan was the Karaite Clerical Board, while in special situations the hachan could convene, after notifying the voivode, the Grand Karaite Clerical Board.

[147] According to Article 12 of the Act: "In order to meet the religious needs of Karaites, the Hachan may establish Karaite religious communities throughout the State and create within them establishments for religious purposes. The creation and abolition of these communities as well as changes in their boundaries and seats and the creation of establishments for religious purposes require the prior consent of the Minister of Religious Affairs and Public Education." The territorial structure of the Union consisted of religious communities operating under the leadership of hazzans, elected by members of the communities and approved by voivodes. Any disputes in this respect were settled by the Minister of Religious Affairs and Public Education. Pursuant to Article 15 of the Act, the voivode had the right to ask the hachan to take action aimed at stopping activities of the clergy that were contrary to the interests of the state. Any disputes in this respect were to be settled by the Minister of Religious Affairs and Public Education.

[148] Article 16 of the Act specified the requirements for candidates for clergy positions within the Union. These conditions included the possession of Polish citizenship and knowledge of the Polish language in speech and writing. The clergy exercised the same rights as those of other legally recognised religious associations.

The lecturers were teachers appointed by the school authorities from among those persons qualified, as established by state regulations, and authorised by the hachan to teach religion. As in the case of other religious associations, the issues of organisation and the number of hours of religious instruction were regulated by generally applicable regulations. The Act was supplemented by the statute of the Karaite Religious Union in the Republic of Poland.[149]

4.5. Evangelical Church of the Augsburg Confession in the Republic of Poland (1936)

The legal status of the Church was regulated by the Decree of the President of the Republic of Poland of 25 November 1936 on the relationship of the state to the Evangelical Church of the Augsburg Confession in the Republic of Poland[150] and the Regulation of the Council of Ministers of 17 December 1936 on the recognition of the Fundamental Internal Law of the Evangelical Church of the Augsburg Confession in the Republic of Poland.[151]

Until the adoption of the aforementioned legal acts, the situation of the Evangelical Church of the Augsburg Confession was regulated by the provisions of the Act of 20 February 1849 for the Evangelical Church of the Augsburg Confession in the Kingdom of Poland.[152] Under the Act of 27 April 1922,[153] some of the provisions of the foregoing act were amended.

In accordance with the provisions of the Decree of 25 November 1936, the Evangelical Church of the Augsburg Confession was characterised by a consistory system.

As in the case of the abovementioned religious associations, the provisions of the Decree ensured the freedom of the Evangelical Church of the Augsburg Confession in the areas of profession of faith and performance of worship.[154] The Evangelical Church of the Augsburg Confession was an autonomous association, independent of any foreign clerical

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[149] Journal of Laws of 1936, no. 72, item 518 – attachment.
[150] Ibid., no. 88, item 613.
[151] Ibid., no. 94, item 659.
[152] Journal of Laws, vol. XLII of 1849, pp. 4–239.
[153] Journal of Laws of 1922, no. 32, item 257.
[154] Article 1 (1) of the Decree.

authority.[155] The Decree also regulated issues related to the structure of the Church,[156] its authorities,[157] legal personality,[158] property, and the requirements imposed on clergy.[159]

Pursuant to Article 8 of the Decree on the relation of the state to the Evangelical Church of the Augsburg Confession in the Republic of Poland, the education of youth in the Evangelical religion was compulsory until the age of 18. The teaching was to be given by persons authorised by the authorities of the Evangelical Church of the Augsburg Confession and who were qualified to teach. As in the case of the previously

[155] According to Article 2 of the decree, "the Evangelical Church of the Augsburg Confession in the Republic of Poland is a self-contained church, independent of any foreign authority".

[156] See, among others: Article 3 of the Decree, which states that "the Evangelical Church of the Augsburg Confession in the Republic of Poland consists of parishes [...]"; and Article 21 (1), which states that "in administrative terms, the Evangelical Church of the Augsburg Confession in the Republic of Poland is divided into dioceses, which are at the same time electoral districts for ecclesiastical senior authorities, while individual dioceses include parishes and branches, having their own elected parish authorities".

[157] Mainly Articles 17–19 of the Decree. Article 17 (1) states: "The Bishop of the Evangelical Church of the Augsburg Confession in the Republic of Poland exercises the spiritual leadership of that Church. He represents the Evangelical Church of the Augsburg Confession in the Republic of Poland before the state authorities and other denominations and is elected for life. The Bishop is also the President of the Synod and the President of the Consistory for life." Article 17 (2) states: "The election of the Bishop shall be made, in consultation with the Minister of Religious Affairs and Public Education, by the Electoral College [...]." Article 18 states: "The Synod of the Evangelical Church of the Augsburg Confession in the Republic of Poland [...] is the supreme authority appointed to enact internal ecclesiastical laws, as well as to decide on general matters of the Church." Article 19 states: "The supreme administrative authority and executive body of the Synod is the Consistory of the Evangelical Church of the Augsburg Confession in the Republic of Poland, composed of the President, the Vice-President, and six counsellors [...]."

[158] Article 10 of the Decree provided, inter alia, that the Evangelical Church of the Augsburg Confession in the Republic of Poland as a whole and its individual dioceses, parishes, and branches are legal persons and may, in accordance with applicable state laws, acquire, sell, and encumber property, as well as manage and dispose of it.

[159] See Articles 24–28, which stipulate the need for approval of the state authorities for clerical candidatures. Article 24 states: "Seniors are appointed by the bodies designated in the Fundamental Internal Law and in the manner specified therein from among candidates for whom the Consistory has previously ensured, through its President and the Minister of Religious Affairs and Public Education, that no political objections against them exist." Article 25 (1) states: "The Consistory shall notify the competent voivode of the election of parish priests, deacons, and adjuncts in order to ensure that there are no political objections against them." Article 26 (2) states *in fine:* "[...] The consistory shall ascertain with the competent voivode before the expiry of three months, counting from the date of appointment of an administrator, whether there are any political objections to further leaving them in this post." In addition, see Articles 30–31 of the Decree. Article 30 states: "Candidates for clergy take an oath of allegiance to the Republic of Poland at ordination, regardless of the ecclesiastical oath […]." Article 31 states: "Clergy of the Evangelical Church of the Augsburg Confession in the Republic of Poland enjoy all the special rights that state legislation provides to clergy of legally recognised confessions."

discussed religious associations, issues concerning the organisation or number of hours of religious instruction were regulated by acts of universally applicable law.

4.6. Polish Autocephalous Orthodox Church (1938)

The issue of the state's relation to the Orthodox Church was one of the most difficult problems of both religious and ethnic politics due to the large population of the Ukrainian minority, its historical background, the national liberation aspirations observed in Poland's Eastern Borderlands (Polish: Kresy), the links of the Orthodox Church hierarchy with the authorities of Tsarist Russia, and the hostile position of the Catholic Church hierarchy towards the Orthodox Church. The Polish authorities believed that representatives of the Orthodox Church would adopt an unfavourable position towards Poland,[160] considering it to be a short-lived entity. Moreover, the ongoing disputes between Ukrainian and Belarusian factions over leadership within the Orthodox Church itself as well as fears related to the strengthening of the Greek-Catholic rite and the nationalist movement associated with it, which was active in the eastern part of Lesser Poland, prompted a desire to solve this problem politically.[161] The solution to this problem was the separation of the Orthodox Church functioning within the territory of Poland from the influence of the Russian

[160] The above assessment is expressed, for example, in the report of the voivode of Lublin from April 1923, in which it was stated: "The aim of Orthodoxy in Poland is the future Russia and the unification of the Orthodox people in Poland into one great Russian Orthodox Church" (Archiwum Akt Nowych [The Archives of Modern Records], Ministry of Religious Affairs and Public Education, 349, p. 30 et seq.). Similarly, in the circular of the Lublin Voivode of 1921 it was stated: "We do not enjoy the attachment of many Orthodox clergymen to our republic and the current political and legal system of our state. Therefore, in the interest of the security of this state, we will, unfortunately, often have to interfere in seemingly religious matters under the guise of which political actions will be hidden" (Archiwum Akt Nowych [The Archives of Modern Records], Ministry of Religious Affairs and Public Education, 1029, Circular no. 498 of 15 June 1921).

[161] The will to exert political influence on relations within the Orthodox Church is shown, among others, by the position of the Ministry of Religious Affairs and Public Education, according to which: "Poland received Orthodoxy of a distinctly non-Polish character, both in terms of nationality and state-allegiance. Therefore, it was necessary to cut the ties linking local Orthodoxy with Orthodoxy abroad (autocephaly); to bind this creed systemically with the Polish capital of Warsaw (seat of the metropolitan bishop, theological studies); to put seminaries under state management; to reduce the number of parishes, clergy, and property, which was increased by the Russian government for the purposes of Russification; to stop the inflow of clergy from abroad; and above all, to weaken the political significance of Orthodoxy in Poland." – Archiwum Akt Nowych (The Archives of Modern Records), Ministry of Religious Affairs and Public Education, 1379, p. 140 et seq.

Orthodox Church. Although the efforts in this direction faced many obstacles,[162] they achieved success (due, among other reasons, to the situation of the Orthodox Church in the USSR) in the form of the Act of autocephaly of 17 September 1925.[163] Despite this, the regulation of the legal status of the Orthodox Church in Poland still encountered many obstacles stemming from, among others, the confusing legal status of the Orthodox Church in Russian law.

Ultimately, the issue of recognising Orthodoxy as a legally recognised religious association within the meaning of the provisions of the Constitution was solved by the Decree of the President of the Republic of Poland of 18 November 1938 on the relationship of the state to the Polish Autocephalous Orthodox Church[164] and the Regulation of the Council of Ministers of 10 December 1938 on the recognition of the Internal Statute of the Polish Autocephalous Orthodox Church.[165]

Before the adoption of these acts, the legal status of the Orthodox Church was governed by the provisions of the partitioning states, which were unified by a legal act issued by the Ministry of Religious Affairs and Public Education under the title "Temporary provisions on the relationship of the government to the Orthodox Church in Poland".[166] The De-

[162] See: Krasowski, K. *Związki wyznaniowe*, p. 114 et seq.

[163] *Thomos* of the Ecumenical Patriarch of Constantinople of 13 November 1924. See: Borowski, M. "*Kościół prawosławny w Polsce*", in: Cybichowski, Z. *Encyklopedia podręczna prawa publicznego (konstytucyjnego, administracyjnego i międzynarodowego)*, vol. 1, Warszawa (1926), p. 344.

[164] Journal of Laws of the Republic of Poland of 1938, no. 88, item 597.

[165] Journal of Laws of the Republic of Poland of 1938, no. 103, item 679.

[166] Journal of Laws of the Ministry of Religious Affairs and Public Education of 1922, no. 7, item 59. This act governed the functioning of the Orthodox Church in Poland, regulating, among others, organisational issues concerning requirements vis-à-vis the clergy and issues of freedom of confession. Pursuant to point 1 of the aforementioned act, in accordance with Article 115 of the Constitution, the government recognised the Council, in the composition in which it took place in January 1922, as the body authorised to represent the Orthodox Church. Pursuant to point 2 of the Act, the government authorised the exercise of canonical jurisdiction within the boundaries of the Warsaw-Chełm Diocese by the exarch of the Orthodox Church in Poland and confirmed the powers of said exarch to appoint, remove, and transfer bishops in agreement with the government. The bishops were obliged to swear an oath to the Minister of Religious Affairs and Public Education. In point 3, the act specified the obligations of bishops in the realm of appointment, transfer, and removal of administrators of Orthodox parishes. According to point 11, the only candidates who had the right to take up priestly service were those pursuing theological studies in seminaries recognised by the government, or those meeting the requirements to take up priestly positions after passing the exam before a commission appointed by the competent diocesan bishop and in the presence of a representative of the Minister of Religious Affairs and Public Education. In accordance with the requirements of the Act, the curriculum in seminaries was subject to approval by the Minister of Religious Affairs and

cree of the President of the Republic of Poland of 18 November 1938 on the relationship of the state to the Polish Autocephalous Orthodox Church included regulation of issues concerning the autonomy and independence of the Church,[167] its property,[168] recognition of the legal personality of the Church and its organisational units,[169] the structure and authorities of the religious association,[170] and the requirements and powers of clergy.[171] As in the case of the previously discussed legal acts regulating the situation of other recognised religious associations, the Decree regulated the issue of religious instruction.

It should be mentioned that, in the case of the Orthodox Church, the question concerning the position of both the religious union and its members was the subject of norms contained in acts of international law. According to the principles of the Treaty of Riga,[172] Russia and

Public Education. Pursuant to point 16 of the Act, the government guaranteed Orthodox believers the freedom to hold services and perform religious practices in accordance with Articles 111 and 113 of the Constitution. In accordance with paragraph 18 of the Act, the government declared that "it will ensure that religious instruction for students of the Orthodox faith is compulsory in public schools and that its teaching is held in the native language of the students".

167 Article 1 of the decree provided that this church be independent of any foreign clerical or secular authority. While maintaining its organisational distinctiveness, the church remained in communion with the universal Eastern Orthodox Church in dogmatic and canonical matters. The Church enjoyed full internal freedom, within the limits of compliance with state law.

168 See, among others, Articles 6 and 55 of the Decree.

169 According to Article 53 of the Decree, the metropolitan seats, bishoprics, monasteries, and parish temples had legal personality.

170 See Articles 10–41 of the Decree regulating the issues of structure, authorities and their election, and the requirement of approval by the state authorities of clergy at certain levels of the hierarchy. Article 9 of the Decree stated that the head of the church was the metropolitan, who was the chief administrator and representative of the church in internal and external relations. According to Article 10 of the Decree, the governing body for the affairs of the Church was the General Council, composed of bishops and representatives of the clergy and the faithful. The Council was convened by the metropolitan in agreement with the Minister of Religious Affairs and Public Education based on a proclamation of the President of the Republic of Poland. During the meeting of the Council, the right to speak was granted to representatives of the government, but without the possibility of participating in the voting. Subsequent articles of the Decree determined the structure of other Church bodies, their powers and manner of proceeding, and the structure of local units of the church – the diocese, the manner of filling clerical offices within the diocese, and the scope of competence of the state authorities in assessing and approving candidates for these positions.

171 Pursuant to Article 48 of the Decree, an obligation was introduced for ecclesiastical offices to only be exercised by persons holding Polish citizenship. Only in exceptional cases, at the request of the Synod, the Minister of Religious Affairs and Public Education could consent to a waiver of the citizenship requirement in the assignment of ecclesiastical posts. By virtue of Article 49 of the decree, Orthodox priests were granted the same powers as the clergy of other legally recognised denominations.

172 Cf. footnote 22.

Ukraine undertook that persons of Polish nationality in Russia, Ukraine, and Belarus would, in conformity with the principles of the equality of peoples, enjoy full guarantees of free intellectual development, the use of their national language, and the exercise of their religion. Poland, acting on the basis of the principle of reciprocity, undertook to provide persons of Russian, Ukrainian, and Belarusian nationality with the same range of privileges and rights in the sphere of freedom of conscience and confession.

Persons of Polish nationality in Russia, Ukraine, and Belarus were to be provided, so far as it was in conformity with the domestic legislation of those countries, with the right to make full use of their own language, to organise and maintain their own system of education, to develop their intellectual activities, and to establish associations and societies for this purpose.

In accordance with Article 5 of the Decree of the President of the Republic of Poland of 18 November 1938 on the relation of the state to the Polish Autocephalous Orthodox Church, "in educational institutions maintained in whole or in part by the State or local government and whose program includes the education of young people under 18 years of age, religious education is compulsory under state regulations for young people belonging to the Polish Autocephalous Orthodox Church". The study of religion was conducted by teachers appointed by the school authorities from among persons with the appropriate qualifications, as determined by state regulations and the canonical mission of the competent diocesan bishop. The religious and moral side of teaching was supervised by clerical authorities. As in the case of the previously discussed religious associations, issues concerning the organisation or number of hours of religious instruction were regulated by acts of universally applicable law.

4.7. Other legally recognised churches and religious associations

The Evangelical Union Churches, which were part of the Evangelical Church of the Old Prussian Union, were subordinate to the Supreme Church Council in Berlin.[173] Even though it was considered legally recognised, due to the difficulties posed by the authorities of this union, its statute was not approved in the manner prescribed by the Constitution.

[173] For more on the history of the establishment of the Evangelical Union Church and its relations with the Polish State, see: Krasowski, K. *Związki wyznaniowe*, p. 235 et seq.

Because of the political background of the dispute and the fear that the League of Nations would take an unfavourable stance,[174] the efforts to regulate the legal status of the Evangelical Union Church on the basis of Polish law were set aside and, as a consequence, the issue was not regulated before 1939.

Other churches that functioned based on the regulations of the partitioning states included the Evangelical Church of the Augsburg and Helvetic Confessions with a superintendent in Stanisławów, forming a part of the Austrian Evangelical Church; the Vilnius Evangelical-Reformed Church; and the Evangelical-Reformed Church with a consistory in Warsaw (recognised on the basis of previously existing Russian regulations).[175]

In practice, the confessions legally recognised based on the laws of the former partitioning states also included the Mennonites, the Polish National Orthodox Church, the Mariavite Church, and the Old Catholic Church.[176]

Due to the lack of other detailed provisions, in the case of churches and religious associations that were legally recognised (the Evangelical Union Churches; the Evangelical Church of the Augsburg and Helvetic Confessions with a superintendent in Stanisławów, which belonged to the Austrian Evangelical Church; the Vilnius Evangelical-Reformed Church; the Evangelical-Reformed Church with a consistory in Warsaw; the Mennonites; the Polish National Orthodox Church; the Mariavite Church; and the Old Catholic Church), general provisions were applied in the area of religious instruction, such as in the case of other minorities.

4.8. Other churches and religious associations not legally recognised

Article 113 of the March Constitution of 1921 distinguished the category of legally recognised religious associations. Legal doctrine also allows for distinguishing the category of religious associations that were not legally recognised. The actual existence of such organisations required the regulation of the status of such entities.

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[174] See the minutes of the interministerial conference of 9 September 1927 – Archiwum Akt Nowych (The Archives of Modern Records), Ministry of Religious Affairs and Public Education, 1248, p. 292 et seq.

[175] In the case of the Warsaw Union (Jednota Warszawska), the provisions of the Act of 1849; and in the case of the Vilnius Union, Articles 984 to 986 of the "Foreign Confessions Act".

[176] For more on the history and reasons for the lack of regulation under Polish law, see: Krasowski, K. *Związki wyznaniowe*, p. 277 et seq.

The regulations contained in the legislation of the partitioning states were inconsistent, which gave rise to significant problems. Only the religious associations functioning under Austrian law could easily be classified according to the categorisation adopted in the Constitution. Austrian law, in accordance with the norms of the Act of December 1867, distinguished legally recognised religious associations from associations not legally recognised, as was later repeated in the provisions of the Polish constitution and doctrine.

In the case of the Russian and Prussian partitions, there was greater difficulty because the local legislation did not distinguish such a category (i.e. not legally recognised) of religious associations. Religious associations were classified according to the categories of prevailing confession, privileged confession, officially recognised confession, tolerated confession, or prohibited confession. The scope of positive powers for unions not recognised by the state varied depending on the local legislation of the individual partitioning powers. They based their existence either on their legal provisions or on Articles 111 and 112 of the Constitution, which provided for the possibility of legal recognition but did not determine whether recognition was to take place by virtue of the Constitution itself or whether it required the adoption of acts defining the conditions and procedure for such recognition.

After the Concordat entered into force, Catholicism gained the position of a religion benefiting from special privileges and increased protection from the state. Under these circumstances, the efforts by numerous associations to obtain legal recognition directly based on the provisions of Article 116 of the Constitution were met with consistent opposition from the authorities.

The issue of classifying particular religious associations within the categories adopted in Polish legislation was a source of controversy both in the area of legal sciences [177] and in judicial practice. An example of the controversy surrounding the determination of the scope of powers

[177] See: Świątkowski, H. *Wyznania religijne w Polsce ze szczególnym uwzględnieniem ich stanu prawnego*, Warszawa 1937, p. 218; Sawicki, J. *Studia nad położeniem prawnym*, p. 159 et seq; Grelewski, S. *Wyznania protestanckie i sekty religijne*, p. 8; Langner, T. *Państwo a nierzymskokatolickie związki wyznaniowe w Polsce Ludowej*, Poznań 1967, p. 43; and Wysoczański, W. "*System zwierzchnictwa państwowego nad związkami wyznaniowymi w Polsce lat 1918–1939*", Rocznik Teologiczny ChAT, 11(1969), vol. 2, p. 71.

of members of particular religious associations not recognised by law were the divergent court rulings concerning the issue of being able to organise meetings characterised as religious services. In such rulings, there was in practice an internal conflict of constitutional norms (Articles 111 and 113), as well as conflicts with the provisions of other laws, such as the then-applicable Austrian Act on Assemblies of 15 November 1867.[178] Here we should mention the judgement of the Supreme Court of 1 July 1925,[179] which granted members of legally non-recognised religious associations the right to hold public services, and the judgements of the Supreme Administrative Court of 1 May 1928[180] and of 21 December 1926,[181] which presented a diametrically different position.

Non-recognised, tolerated religious associations can be divided into three groups. The first was formed by communities existing under the 1906 order (Russian: ukaz) of Russian Tsar Nicholas II. Their registration by the tsarist authorities was not considered, under Polish legislation, recognition as a legal entity within the meaning of Article 116 of the Constitution. In addition to a religious community recognised in this concessionary manner, there may have been similar assemblies of that same religion outside its territory and to which the Polish state authority refused to grant the corporate rights of a religious community. They could function only as separate, mutually independent communities of a given tolerated religion; the legal possibility of creating a religious union with a supreme religious authority with religious sovereignty was excluded. The creation of new communities of a concessionary nature required the discretionary approval of the authorities.

Ultimately, the decisive authority in these matters, at the request of the voivode or through supervision, was exercised by the Ministry of Religious Affairs and Public Education. At the time of registration, the community acquired legal personality, and members obtained the right to use the devices of civil status records (Articles 37–51 of the tsar's order). The stated rights, together with permission for religious activities (points 1 and 2 of the tsar's order), gave the registered communities the character

[178] Journal of Laws of Austria, no. 135.
[179] Judgement of the Supreme Court of 1 July 1925, file ref. no. Kr 307/23, OSP (Jurisprudence of Polish Courts), 1925, item 570.
[180] File ref. no. L. rej. 376/28.
[181] File ref. no. L. rej. 894/26.

of religious communities and enabled their use of certain legal and public facilities used for confession (point 13 of the order). The property needed for the implementation of the tasks of non-recognised communities, such as prayer houses, cemeteries, religious institutions, and other property matters, fell within the powers granted by the Ministry of Religious Affairs and Public Education in implementation of the provisions of Articles 111–112 of the Constitution.

The second group consisted of religious associations in the former Prussian partition, which existed legally under the Prussian Act on Associations. In the case of Prussian associations, since the tolerant provisions of Articles 111–112 provided a wider range of freedoms, these constitutional provisions were applied in the western voivodships.

The third group existed only under Articles 111–112 of the Constitution, which guaranteed to all residents of Poland the freedom of conscience and confession – the right to private and public services and cult ceremonies, which derived from the principles of faith of natural persons belonging to religious associations. In the former Austrian partition, non-recognised religions were completely deprived of corporate rights, which is why they could not form religious communities. The Austrian Constitution of 21 December 1867[182] (Article 16) allowed members of non-recognised denominations only to hold private (domestic) worship services. Therefore in Galicia, members of these denominations, in general, directly benefited from the tolerant provisions of Articles 111–112 of the March Constitution, which gave them much greater religious freedom.[183] On the part of the state, tolerating legally non-recognised associations consisted merely in allowing clusters of people with an organised internal religious life to exist.

From a legal point of view, however, they were neither religious communities nor associations, and therefore they did not have any corporate rights, such as: management of religious affairs by appointed religious bodies, appointment of central authorities as representatives in

[182] Basic Law of the State of 21 December 1867 on the General Rights of Nationals, Reichsgesetzblatt no. 142. The original document is available at: http://alex.onb.ac.at/cgicontent/alex?aid=rgb&datum=18670004&seite=00000394 [2.09.2015].

[183] See: Dziadzio, A. *Monarchia konstytucyjna w Austrii, 1867–1914*, Kraków 2001, p. 50 et seq. The author discusses the genesis and content of, among other things, the provisions of the Basic Law on the General Rights of Nationals; also concerns the issues of freedom of conscience and confession.

relations with other associations and state bodies, entering into unions with other legally recognised associations, or creation of corporations and the exercise of associated privileges. They also did not have a statutory procedure for acquiring and removing members. Religions tolerated directly under Articles 111–112 of the Constitution were deprived of protection of the law, because they were not legal entities but only loose religious associations of natural persons. The religious relations in such associations were regulated in administrative and legal terms only to enable the authorities to control and supervise the religious interests of individual believers and to ensure peace and security. In practice, there was a lack of interest in the rapid and effective normalisation and recognition of religious associations that were not legally recognised. One of the reasons for this was the position of the Catholic Church, which was reluctant regarding the creation of new religious associations.[184] For this reason, the attitude of the state towards at least some religious associations that were not legally recognised could be described as "neutral unkindness". In fact, this expression was officially used in the documents of the state authorities.[185]

[184] "The process of unification of religious law in the Second Polish Republic was hindered by the fact that, in the interwar period, there were no regulations issued which would have regulated, in accordance with the Constitution, the legal position of the churches and religious associations recognised by the former partitioning powers. The administrative practice and unfavourable attitude of the Catholic Church towards minority religious denominations contributed to this." – Kumaniecki, K. "*Administracja wyznaniowa*", in: *Polskie prawo administracyjne w zarysie*, Kraków [no publication date], pp. 205–244; Demiańczuk, J. "*Uznanie prawne wyznań w świetle konstytucji*", PiP, 1(1946), vol. 9–10, pp. 45–48; Demiańczuk-Jurkiewicz, J. "*Unifikacja polskiego prawa wyznaniowego*", PiP, 3(1948), vol. 5–6, pp. 25–34 – cited after: Sobczak, J. and Gołda-Sobczak, M. "*Problem rejestracji kościołów i związków wyznaniowych w polskim systemie prawnym*", Środkowoeuropejskie Studia Polityczne, 2012, no. 3, p. 60. "However, the draft regulation of the President of the Republic of Poland on the recognition of new or hitherto legally unrecognised denominations, developed in 1927 by the Ministry of Religious Affairs together with the Ministry of Justice, did not enter into force in the face of the firm opposition of the Holy See and the apostolic Nuncio."

[185] According to the position of the Ministry of Religious Affairs and Public Education: "It is not in the interest of public order to multiply religious sects that will not be based on any authorities and established dogmas. This becomes a source of confusion and anarchy. Hence the right position of the government – neutral unkindness towards religious sects in Poland." – The Archives of Modern Records, Ministry of Religious Affairs and Public Education, 1379, p. 140 et seq. In the circular of the Ministry of Foreign Affairs of 2 January 1926, addressed to the diplomatic representations of the Republic of Poland, it is indicated that: "Baptists, the Church of God, and Bible Students discourage the population from joining the military service. The missionaries of the National Church from America bring unwanted ferment through their defiant attitude towards the Catholic clergy. A number of German Lutheran sects recruit young people to German missionary schools. The religious propaganda of these confessions

With regards to the religious education of young people professing one of the religions that were not legally recognised but merely tolerated (i.e. existing legally as religious communities or religious associations or associations of a religious nature) by the state, these religions were treated like legally recognised religious associations. The only exception that existed was in the submission of applications for the introduction of a religion into a general education school – such an application was required to be submitted by each tolerated religious community or other organisational form in which the religion functioned. Associations tolerated under Articles 111–112 of the March Constitution, not being legal entities, did not have any rights in the realm of religious instruction in schools.[186]

5. Guarantee of freedom of conscience and confession in civil law

In the lands of the former Prussian partition, civil law was regulated by the German Civil Code (BGB) of 1896, which entered into force on 1 January 1900.[187] According to section 2 of this act, the age of majority was reached upon turning 21. According to section 3, a minor who had reached the age of 18 could obtain the age of majority by a decision of the guardianship court. The issue of legal capacity was regulated by the provisions of Chapter Three of that code. According to section 104, minors under seven years of age, those incapacitated by mental illness, and persons in a state of morbid mental disorder did not have legal capacity. The result of the inability to perform legal acts was, in accordance with section 105 of the BGB, the invalidity of declarations of will made by such persons. The submission of a statement by a person in a state of temporary mental impairment had similar consequences.

According to section 106, a minor who had reached the age of seven was limited in their legal capacity. In order to be valid, their legal acts required the authorisation of a statutory deputy. The issue of freedom

is a cover for destructive social and political agitation." – The Archives of Modern Records, Ministry of Religious Affairs and Public Education, 352, c. 141.

[186] See: Grelewski, S. *Wyznania protestanckie i sekty religijne*, pp. 137–138.

[187] Available at: http://www.bibliotekacyfrowa.pl/dlibra/doccontent?id=34280&from=FBC [19.08.2015].

of religion was also referred to in the provisions of the Prussian National Law of 1794,[188] which provided for so-called religious maturity, which the minor obtained after reaching the age of 14. Pursuant to section 40 (volume 4, title 11) of the Common Prussian Law, every citizen capable, according to the provisions of the said act, of taking effective legal actions ("every national citizen who, according to law, is capable of having his own opinion [...]") had the right to choose the confession to which they wanted to belong. The provision of section 41 (volume 4, title 11) guaranteed the possibility of changing one's confession by making an explicit declaration of will. As previously indicated, in accordance with section 84 (volume 3, title 2), the right of free choice of confession was acquired by a minor after reaching the age of 14. Other legal acts prevailing in the lands of the former Prussian partition included the Act of 14 May 1873 on withdrawal from the church[189] and the Act of 18 July 1876 on withdrawal from Jewish religious communities,[190] both of which regulated the procedure for submitting a statement on withdrawal from a religious association.

The territories of the former Austrian Partition were governed by the General Book of Civil Laws of 1 June 1811 (Allgemeines Bürgerliches Gesetzbuch or ABGB), which entered into force in 1812. Pursuant to § 21 of the ABGB: "Those who, for reasons of minority age, mental defects, or for other reasons, are unable to take due care of their own interests remain under the special care of the law. These include: children who are below seven years of age; non-adults who are below fourteen years of age; minors who have not yet reached the age of twenty-four; as well as the insane, deranged, and infirm who are either completely deprived of the use of reason, or at least unable to predict the effects of their actions; notwithstanding those who, as recognised squanderers, are legally forbidden to manage their assets; and finally, the absent and the communities."

The ABGB also included regulation ensuring a prohibition against differentiating the rights of natural persons based on their religion: § 39 stated that "difference of religion does not affect private rights, except in cases where the laws expressly provide otherwise". An important regulation

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188 Part II of the General Prussian State Law, no. 2, sections 74 and 84.
189 Digest of Prussian laws, no. 14, item 8127.
190 Digest of Prussian laws, p. 353.

was also contained in § 139, according to which: "Parents are obliged to educate their children in a common way, that is, to take care of their life, health, and decent maintenance for them; to develop their physical and mental powers and, through the teaching of religion and useful new information, to establish the basis for their future happiness."

In turn, the provision of § 140 stated: "In what religion should a child whose parents are of different faiths be brought up, and at what age can a child switch to a religion different from the one in which they were brought up, is decided in the political regulations."

In the territories of the Austrian partition, the Act of 25 May 1868 on the regulation of interfaith civic relations was in force.[191] It specified that the choice of religion for children from interfaith marriages belonged to their parents. In relation to children at least 7 but not yet 14 years of age, it was not possible to change their religion; after reaching the age of 14, however, the minor had the right to change their religion by their own declaration of will.[192]

The former Kingdom of Poland was governed by the Napoleonic Code of 1804 as modified in 1825 by the Civil Code of the Kingdom of Poland,[193] which replaced the first part of the Civil Code of 1804. Under Title X, a minor was a person under the age of 21 (Article 346). Until then, they remained under parental control. The law provided for the possibility of acquiring legal capacity through marriage (Article 467) or through a statement before a court of the father or, in certain cases, the mother (Article 468).

In the territories of the Russian partition, the provisions of the Digest of Laws of the Russian Empire of 1840 were in force.[194] It set forth, in Article 213, periods of minority, ranging from up to 14 years, from 14 up to 17 years, and from 17 up to 21 years of age. During this period, the child remained under parental authority, and the mere fact of being underage caused restrictions in the field of property matters. In addition, in religious matters concerning the lands of the former Russian partition, one should mention the provisions introduced under the Tolerance Order

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[191] Journal of Laws of Austria, no. 49.

[192] See: Dziadzio, A. *"Orzecznictwo austriackiego Trybunału Administracyjnego w sprawach wyznaniowych (1876–1918)"*, Czasopismo Prawno-Historyczne, 40(1996), vol. 1–2, pp. 125–154.

[193] Available at: http://bc.wbp.lublin.pl/dlibra/docmetadata?id=7626&from=pubstats [19.08.2015].

[194] Available at: http://pbc.biaman.pl/dlibra/docmetadata?id=13221&from=&dirids=1&ver_id=&lp=1&QI=6328DA7ADB518A4EF07707D9AECA9CC3–3 [19.08.2015].

of 17 (30) April 1905. In addition to decriminalising apostasy from Orthodoxy, the aforementioned act also contained provisions on the effects of making such a declaration. According to point I of part 1 of the order, it was allowed to switch from Orthodoxy to another Christian denomination. Point I of part 2 of the order stated that an adult, after abandoning Orthodoxy, could join another Christian religion according to their choice. Pursuant to point I of part 3 of the order, a change of religion could not have negative consequences, either personal or civic, for a person switching to another religion. In the case of confession of minors, the order maintained the age limit of 14 years, up to which the minor was subject to the confession of their parents.

The work carried out throughout the interwar period in the Codification Commission of the Republic of Poland, established in 1919, which was aimed at bringing about the unification of civil law, did not lead to the adoption of uniform provisions regulating the relations of parents and children. The last draft developed by the Codification Commission was the draft of the Law on the Relations of Parents and Children, along with the provisions on the capacity to take legal action.[195] In the aforementioned draft, an attempt was made to regulate the mutual relations between parents or legal guardians and children or wards. As indicated in the preface to the draft, it was necessary in the course of this work to extend its provisions to also cover the issue of uniform regulation of the issue of determining the age of majority and legal capacity, despite the fact that they traditionally fell within the scope of regulation of the general part of civil law. It was determined that due to the close relationship of such regulations with matters of parental authority and the legal situation of the child during the age of minority, these issues should be the subject of the Commission's work. According to the adopted draft, it was envisaged that full legal capacity would be achieved by the age of 21.[196] The draft also provided for the possibility of adulthood of a minor who was over 18 years of age.[197] According to the draft, the child

[195] *Projekt prawa o stosunkach rodziców i dzieci wraz z przepisami o zdolności do działań prawnych* (Draft law on the relations between parents and children along with provisions on legal capacity), Komisja Kodyfikacyjna. Podkomisja Prawa o stosunkach pokrewieństwa i opieki (The Codification Commission. Subcommittee on Relationship and Care Law), 1938, vol. 2, http:// www.bibliotekacyfrowa.pl/dlibra/plain-content?id=40699 [1.10.2015].

[196] Ibid., Article 2 of the Draft.

[197] Ibid., Articles 10–12 of the Draft.

remained under parental authority until reaching the age of majority (due to reaching the age threshold or obtaining legal adulthood).[198] The child under parental authority was supposed to obey their parents, who in turn were obliged to manage the child's upbringing.[199]

The draft also regulated the issue of determining the child's religion. According to its provisions, a child born of parents of one religion should be brought up in this religion. In the case of parents of different faiths, they were to make a joint decision in choosing the religion in which the child would be raised. If it was not possible to reach such an agreement, the sons were to be brought up in accordance with the father's confession, and the daughters in accordance with the mother's confession.[200] The project provided that after the age of 18, the child could change their religion through their own decision. The draft also regulated the issue of religious upbringing of extramarital children. It was envisaged that such a child should be brought up in the confession of the parent exercising parental authority, and if no such authority was exercised, then they would be brought up in the mother's religion.[201]

When analysing the provisions of the draft, it is necessary to pay attention to several aspects. The solutions presented in the draft project were an expression of a conservative approach to the issue of freedom of conscience and confession of minors. Until the age of 18, the minor did not have any choice of confession – they were brought up in a confession consistent with that of one or both parents. The possibility of freely changing one's confession only after reaching the age of 18 was a step backwards in comparison to the law of the partitioning states previously discussed. Moreover, it should be mentioned that the wording of Article 46 of the draft did not allow for non-religious education at all. The provision states that the child "is to be" brought up in the faith of one or both parents, and that after the age of 18 they can "change" their religion. The issue of freedom of confession and religion was also addressed by the regulations of civil status acts. Classically understood freedom of confession also includes the right to remain silent in matters of religion. One of the forms of exercising this right is the right not to disclose one's religion.

198 Ibid., Article 42 of the Draft.
199 Ibid., Articles 43 and 44 of the Draft.
200 Ibid., Article 46 of the Draft.
201 Ibid., Article 88 of the Draft.

In the Kingdom of Poland, the issue of keeping civil status records was regulated by the provisions of the Civil Code of the Kingdom of Poland of 1825[202] and the "Marriage Law" of 1836.[203] Starting from 1912, indication of the person's religion became mandatory. In the former eastern voivodeships and in the Białystok region, which were under Russian rule, the registration of marital status was exclusively religious in nature and was performed by clergy of all faiths.

In Pomerania, Greater Poland, and Silesia regions, secular registration was in force, as governed by the provisions of the Act on Registration of Civil Status and Marriage[204] and the German Civil Code (BGB) of 1896. Civil registry offices performed registration regardless of the religion of the registered persons.

In Galicia and parts of Upper Silesia, the Austrian Civil Code of 1811 was in force, while in Orawa and Spisz, the Hungarian civil law of 1894 was applied. Moreover, registration of civil status was also carried out in churches. Persons declaring membership in religious denominations recognised by the state, both Christian and non-Christian, were subject to religious registration.

Regarding the civil and legal protection of personal rights (which also concerned freedom of confession), it should be noted that despite the existence of several civil codes on the territory of the Second Republic of Poland, none of them contained generally formulated provisions regarding the protection of personal rights.[205] One attempt to fill this gap was made through the provisions of the Code of obligations of 1933,[206] which based the protection of personal rights on the principle of protection against prohibited acts, and only in relation to an enumerative list of violated rights. The Code allowed for compensation for violation of personal rights, but their catalogue was narrowed by Articles 165 and 166 of the Code

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[202] Dziennik Praw Królestwa Polskiego (Journal of Laws of the Kingdom of Poland), vol. X, no. 41, digital version available at: http:// bc.wbp.lublin.pl/dlibra/docmetadata?id=7626&from=-pubstats [10.09.2015].

[203] The Marriage Law of 24 June 1836 (Journal of Laws, vol. XVIII). Available at: http://dlibra.umcs.lublin.pl/dlibra/docmetadata?id=13567&from=publication [10.09.2015].

[204] Journal of Laws of the German Reich, no. 4, p. 23. Reich Law of 6 February 1875 on Registration of Civil Status and Marriage, https://commons.wikimedia.org/wiki/File:Deutsches_Reichsgesetzblatt_1875_004_023.jpg [15.09.2015].

[205] Szpunar, A. *Ochrona dóbr osobistych*, Warszawa 1979, p. 78; and Grzybowski, S. *System prawa cywilnego*, vol. 1, Wrocław 1974, p. 45.

[206] Journal of Laws, no. 82, item 598.

of obligations to bodily damage causing a health disorder, deprivation of life, deprivation of liberty, and offence to honour. In addition, § 2 Article 165 of the Code of obligations added to this closed list the inducement of a woman or a minor or a mentally handicapped man – through rape, abuse or exploitation of a relationship of dependence, or exploitation of a critical position – to submit to an illicit act.[207]

In the Second Polish Republic, the unification of regulations in the field of civil law acts was not ultimately implemented. Thus, until 1939, the abovementioned standards were applied. Registration with the obligation to disclose one's confession should undoubtedly be considered as entering the sphere of freedom of conscience and confession.

It is also necessary to mention issues related to the scope of parental authority exercised over minors and the resulting implications for the realm of freedom of confession and conscience of minors. As indicated earlier, the lack of success in the codification of civil law meant that after the rebirth of the Polish state in 1918, all previous codes of the partitioning powers were still in force, thereby constituting, from that date, the law of individual portions of the country. Therefore, the existing legal order did not undergo any changes.[208] Thus, the Digest of Laws of the Russian Empire, applicable in the former Russian partition, regulated the issues of parental authority in an archaic manner. Parental authority was vested in both parents, but in view of the authority of the husband over the wife, the father's voice was decisive. The absolute nature of paternal authority was limited to a small extent by the introduction of criminal liability for the murder of a child (thus eliminating the right to life and death from the parent's competence) and by exempting the child from the obligation to comply with orders of parental authority aimed at forcing the child to commit unlawful acts (Articles 169 and 170 of the Digest of Laws). However, there was no limitation of parental authority due to improper exercise of parental authority by parents. However, the legislation envisaged a limitation of this authority as a result of the introduction of the institution of "takeover of parental authority" by the authorities of the public

[207] Grzybowski, S. *System prawa cywilnego*, p. 53. In the aforementioned scope, see: *Prawo wyznaniowe w Polsce (1989–2009). Analisy – dyskusje – postulaty*, edited by D. Walencik, Katowice – Bielsko-Biała 2009.

[208] Ignatowicz, J. and Nazar, M. *Prawo rodzinne*, Warszawa 2006, p. 27.

school attended by the child, in a situation where the parents' authority could not be exercised (Article 179 of the Digest of Laws). It is also noted that there was an institution of voluntary limitation of parental authority through the placement of a child in a correctional institution in the event that the application of domestic corrective measures failed (Article 165 of the Digest of Laws).

Despite certain signs of modernity, the Napoleonic Code in force in the Kingdom of Poland until 1825 maintained strong parental and *de facto* paternal authority. Although it established, in the content of section 372, the parental authority of both parents, in the next section it provided an exception to this rule in the form of independent exercise of this power by the father for the entire duration of the marriage. The mother could take over the exercise of parental authority only if the exercise of parental authority by the father was impossible or significantly impeded (and only for the duration of the impediment). This code did not provide for any case of limitation of parental authority resulting from external interference. Such a state existed until 1898, when the provisions were amended through the introduction of the institution of judicial restriction of parental supervision of a child in the event of improper exercise of authority (the premise was ill-treatment, forcing the child to beg, or abandonment of the child). The adoption in 1825 of the Civil Code of the Kingdom of Poland introduced some modifications to the model known from the Napoleonic Code. According to this act, parental authority was vested in both spouses (section 337 of the Civil Code of the Kingdom of Poland). However, during the marriage, in the event of a difference of opinion, the will of the child's father prevailed. In the event that the marriage ceased, parental authority could be granted to the mother by a court decision if this was in the child's interest. The Code provided for the institution of limitation or withdrawal of parental authority in the event of abuse to the detriment of the child's well-being. Interestingly, the Code introduced an obligation to notify the authorities of the abuse of parental authority by parents.

In the territories of the Austrian partition, the ABGB was in force until the end of 1947. According to the provisions of the code, parental authority was vested in both parents. However, the father was still the leading figure in the family (section 147 of the ABGB). The Code did not provide

for the possibility of a mother taking over the exercise of parental authority. In the event that the father could not exercise it, a guardian was appointed for the children. The ABGB defined (in section 139) the scope of duties included in parental authority, indicating that "parents are generally obliged to raise their legitimate children, that is: to care for their life and health, to provide them with decent maintenance, to develop their physical and mental capabilities, and, through the teaching of religion and useful new information, to establish the basis for their future happiness" (section 139 of the ABGB). The code provided for the possibility of limiting *de facto* paternal power by way of a judicial decision in the event that its exercise was marked by its abuse, failure by the father to perform his duties, or his indecent or shameful behaviour.

The BGB, which had been in force in the Prussian partition since 1 January 1900, also maintained the traditional principles and shape of parental authority. As in the case of the regulations previously discussed, the father of the family had a stronger position. The mother of the child could take over the exercise of full parental authority only if the father could not exercise it temporarily or permanently. Paternal authority could be limited by a court decision in situations in which the way it was exercised endangered the good of the child (Article 1666 of the BGB). In such a case, the court could decide to put the child under the care of another family or to place the child in a care facility.

The provisions of the laws that were established by the partitioning powers and which remained in force were undoubtedly offensive in their conservative character. In essence, they maintained the classic model of absolute parental authority (and *de facto* paternal authority) with small concessions for the protection of the rights of the child, taking the form of potential limitation or withdrawal of such authority in the event of its grossly improper exercise.[209] The unfinished process of codification of civil law, including family law, did not allow for the removal of these archaic regulations. However, it should be noted that the would-be regulations developed as part of the work of the Codification Committee were highly regarded as modern and progressive acts.[210]

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[209] Sieja, M. *"Instytucja władzy rodzicielskiej nad dziećmi ślubnymi w okresie zaborów i w Polsce niepodległej"*, Acta Universitatis Wratislaviensis. Prawo, 2004, no. 290, p. 148.

[210] Górnicki, L. *Prawo cywilne w pracach Komisji Kodyfikacyjnej Rzeczypospolitej Polskiej w latach 1919–1939*, Wrocław 2000, p. 257 et seq.

6. Guarantee of freedom of conscience and confession in criminal law

6.1. Legal status until 1932

The issues of legal and criminal protection of religions in the Second Polish Republic were regulated by the following codes: the Austrian code of 1852; the German code of 1871; and in the territory of the Kingdom of Poland, the Code of Major and Correctional Penalties of 1847, and from 1917, the Tsarist Code of 1903 (the so-called "Tagantsev code"). This was the case until 1932, when this area of law was codified in the Polish Criminal Code. Despite the differences between them, the position on the protection of religion was similar.

As for their application in the Second Polish Republic, they were basically used in order to maintain the "leading" position of the Roman Catholic Church, to defend its hierarchy, dogmas of faith, and even emblems. Religious associations that were not legally recognised were excluded from criminal protection both officially and practically. In the lands of the former Prussian partition, the Criminal Code of the German Reich of 15 May 1871 was in force.[211] According to section 55 of the Code, the lower limit of criminal liability was the age of 12, while in the case of people at least 12 but not yet 18 years of age, the possibility of incurring criminal liability resulted from an assessment of the degree of development of the perpetrator (section 56 and 57). Crimes against religion are listed in Chapter 11 of the Code, which includes sections 166–168.

In the lands of the former Austrian partition, the Criminal Code of 1852 was in force until 1932.[212] According to section 2d of the Code, a crime could be committed by someone at least 14 years old. Crimes against religion are included in Chapter XIII, which includes sections 122–124.

The Tagantsev Code of 1903,[213] in force in the territories of the former Russian partition, regulated the issue of crimes against religion in the content of its second part, "On violation of the laws protecting

[211] Available at: http://www.wbc.poznan.pl/dlibra/docmetadata?id=71376 [16.08.2015].
[212] Available at: http://dlibra.umcs.lublin.pl/dlibra/docmetadata?id=12801&from=publication [16.08.2015].
[213] Available at: http://www.bibliotekacyfrowa.pl/dlibra/docmetadata?id=50650&from=publication [19.08.2015].

religion", which includes Articles 73–97. The Code regulated the violation of freedom of religion in a very casuistic manner. Of great importance for the topic of the present work is Article 88, according to which "a parent or guardian who is obliged by law to raise in the principles of the Christian faith a minor under the age of fourteen who is their own child or a child under their guardianship, and who is guilty of performing rites of a non-Christian religion over them, will be punished by confinement in a correctional institution for a period of up to three years". The limits of criminal liability are set out in Article 40, according to which "minors who have not reached the age of 10 shall not be deemed to be guilty for the offences committed"; and in Article 41, according to which "minors from the age of 10 to the age of 17 years who could not understand the nature and meaning of what they did or could not guide their actions shall not be deemed to be guilty for the offences committed". One important event regarding responsibility for acts related to defection from the Orthodox religion was the issuance on 30 April 1905 of a tolerance order[214] abolishing punishment for apostasy from the Orthodox Church.

6.2. Legal status after 1932

The basic legal act of the interwar period regulating the protection of freedom of confession was the Criminal Code of 15 July 1932 (the so-called "Makarewicz Code"). "Crimes against religious feelings" are described in chapter XXVI of the Code.

The stated chapter contained three articles describing prohibited acts directed against freedom of confession: according to Article 172, "whoever publicly blasphemes God is punishable by up to 5 years"; according to Article 173, "whoever publicly insults or derides a legally recognised religion or religious association, its dogmas, beliefs, or rites, or who insults the object of its religious veneration or the place intended for the performance of its religious rites, shall be punishable by a prison sentence of up to 3 years"; and according to Article 174, "whoever maliciously interferes with the public collective performance of a religious act of a legally recognised religion or religious association shall be punishable by a prison sentence of up to 2 years".

In accordance with the assumptions of the Code's authors, the state was interested in religion as a positive social phenomenon fulfilling an

[214] Available at: http://bc.wbp.lublin.pl/dlibra/doccontent?id=3316&from=FBC [19.08.2015].

important public function and, being a public good, it was protected.[215] The emphasis on the protection of religion in general rather than the protection of the religious feelings of individuals (and thus, the superiority of the institutional aspect over the individual aspect) was certainly influenced by the formal affiliation of the vast majority of inhabitants of the Second Republic with institutionalised churches and religious associations, which contrasted with the marginal share of freethinkers, agnostics, and atheists.[216]

When analysing the aforementioned provisions, attention should be directed to the issue of protection of non-religious people. A literal interpretation reveals that only legally recognised religions were the subject of protection. Also, the case law of the Supreme Court in this respect drew a distinct line, unambiguously protecting legally recognised religions – examples of this are the two judgements already mentioned in the literature of the subject, i.e. from 23 February 1934 (file ref. no. 2 K. 42/34) and 5 July 1938 (file ref. no. 1 K. 1895/37).[217]

One issue important from the point of view of the subject of this work is the definition of the limits of criminal liability for crimes directed against the freedom of confession.

According to Article 69, the threshold for criminal liability of a minor was the age of 13. Prior to that age, a minor could not be held criminally liable, though educational measures could be applied to them. Similarly, a minor who was at least 13 but under the age of 17 at the time of committing a criminal offence was subject to criminal liability only if they could recognise the meaning of their act and direct their conduct (*contrary to* Article 69 section 1 (b)).

In the case of minors who committed an act after reaching the age of 13 but before reaching the age of 17 and who acted with discernment, the court could order a sentence of imprisonment in a juvenile detention institution (Article 70).

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[215] Migros, Z. "*Przestępstwa przeciwko uczuciom religijnym w polskim Kodeksie karnym z 1932 roku*", Wojskowy Przegląd Prawniczy, 37(1982), p. 197; and Pasek, A. "*Ochrona uczuć religijnych w polskim kodeksie karnym z 1932 r.*", in: *Prawo wyznaniowe. Przeszłość i teraźniejszość*, edited by J. Koredczuk, Wrocław 2008, p. 60 et seq.

[216] In 1931, 0.1% of the Polish population (45,700 people) did not identify or did not indicate their religion; *Mały rocznik statystyczny*, 1939, p. 26, quoted after: Brzoza, C. and Sowa, A. L. *Historia Polski 1918–1945*, Kraków 2006, p. 142.

[217] See: Migros, Z. "*Przestępstwa przeciwko uczuciom*", p. 199.

As for the frequency of committing the prohibited acts typified in the previously mentioned provisions of the Criminal Code, it seems that while such classifications were often used in relation to adult perpetrators – perhaps we could even be tempted to state that such classifications were assigned too hastily and without a deeper analysis of the facts – such situations in relation to minors were sporadic. According to analysis of criminal jurisprudence based on the Code of 1932, in one of the judicial districts, out of 46 cases concerning an act typified in Article 172 of the Criminal Code, there was only one case where the defendant was a minor.[218] Of course, the situation may have been slightly different in other judicial districts – demonstrating this would require an in-depth investigation, which would be hampered by the partial destruction or disappearance of the court files.

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During the interwar period, considerations of the notion of human rights, including the right to freedom of confession and conscience, were in the early stages of evolution.

In general, the need to ensure the rights of religious minorities to meet their religious needs was not questioned; however, the scope of these rights and the instruments guaranteeing the possibility of exercising them were not yet specified.

Apart from the imperfect instruments for the protection of freedom of conscience and confession, the practice of their application was a separate issue. Many times, issues related to granting the right to freedom of confession and conscience and the determination of its boundaries were closely related to issues of nationality. In countries where the national structure of society was diverse and ethnic unrest overlapped with religious divisions, this could lead to internal tensions.

In the case of the newly reborn Polish state, the society of which consisted of a significant percentage of ethnic and religious minorities,

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[218] See: Mikuła, M. "*Orzecznictwo Sądu Okręgowego w Krakowie w sprawach o bluźnierstwo (1 września 1932 r. – 1 września 1939 r.)*", Studia Iuridica Lublinensia, 25(2016), no. 3, pp. 691–708.

the internal situation was a particularly important factor affecting the issue of ensuring freedom of conscience and confession.

In the Second Polish Republic, ethnic diversity largely coincided with religious divisions. In addition, one important factor modifying the stance of the authorities in relation to members of minorities was the issue of the attitude of minorities to the very fact of the existence of the Polish state and the possible aspirations of these minorities to gain independence.

Another important factor in the internal policy of the Polish state was also the position and aspirations of the Catholic Church.

The foregoing circumstances had a significant impact on the religious policy of the state, which, in striving to eliminate the social, religious, cultural, and economic divisions caused by over a century of the component parts of the state organism functioning within completely different structures, i.e. the three partitioning states, had to be guided by the principle of ensuring internal peace. The attitude of the authorities towards minorities was complicated by the perception of at least some of these minorities being hostile to the existence of the Polish state. This was so in the case, among others, of the German minority and, most importantly, of the Ukrainian minority. The aspirations of the Ukrainians to create their own state, clearly visible in the areas where they lived, led to concerns about the internal cohesion of the Polish state. The reluctant attitude towards Ukrainian aspirations was fuelled by the activity of the Catholic Church, which was striving to regain influence in these territories. In the opinion of the authorities of both the Catholic Church and the state, the functioning of the Orthodox Church was a threat to the unity of these territories with the Polish state because it was believed that the authorities of that church treated the legal status created by the signing of the Treaty of Riga in 1921 as temporary.

Matters related to the establishment of the limits of freedom of conscience and confession were significantly impacted by the influence and actions of the Catholic Church, which justified its postulates and demands by referring to the eternal traditions of Catholicism in Poland, as well as to the Church's own contribution to the survival of Polishness during the partitions.

Given this state of affairs, the solutions adopted in Polish law in the realm of freedom of conscience and confession had to be the result of consensus. While not all the demands of the circles linked to the Church were introduced into the legal system, it should be recognised that the position of the Roman Catholic religion nonetheless was clearly privileged.

Due to the complicated legal situation, which was a remnant of the period of partitions, the details of the rights of individual religious minorities were influenced by the regulations of the partitioning states until 1939.

The solutions adopted in the March Constitution in the area of freedom of conscience and confession were internally inconsistent. On the one hand, there was the formal principle of guaranteeing freedom of conscience and confession, while on the other hand, the Constitution placed one of the religious associations in a privileged position.

When examining the limits of the freedom of conscience and confession of minors, several issues should be addressed.

In the case of individual freedom of confession of minors, it should be noted that this freedom was limited by means of obligating minors to attend religious classes and then to participate in religious ceremonies. In the field of religious education, the provisions of the Constitution were in clear contradiction with the principle of freedom of conscience and confession, introducing compulsory religious instruction in general education schools.

The principle of obligatory religious instruction in schools was already included in the first acts of the authorities regulating the issue of organisation of the educational system in the newly re-established Polish state. A solution analogous to the one adopted in the Provisional Regulations on Elementary Schools was introduced in the areas under the authority of the Regency Council.[219] In the areas of the former Russian partition, solutions identical to those indicated previously were implemented on the basis of the Regulation of the Interim Commissioner General of the Eastern Territories of 11 October 1919.[220] In accordance with Article 3 of the aforementioned regulation, compulsory teaching of religion in schools was introduced.

[219] See: Reiner, B. *Problematyka prawno-społeczna nauczania religii*, p. 54.

[220] Journal of Laws of the Civil Management of the Eastern Territories of 1919, no. 31, item 340; and Journal of Laws of the Ministry of Religious Affairs and Public Education of 31 December 1919, nos. 12–13, item 1, digital version available at: http://mbc.cyfrowemazowsze.pl/dlibra/publication/18519?tab=1 [1.09.2015].

The March Constitution provided for the principle of freedom of confession and conscience under the provisions of Articles 111 and 112, but at the same time sanctioned the principle of obligatory religious instruction in state schools and schools run by local governments. The principle of freedom of conscience and confession meant that there was a guarantee of the principle of equal treatment of citizens regardless of their religion and beliefs, of the freedom to profess a particular religion both publicly and individually, of the freedom to belong to certain religious associations, of the positive and negative freedom to participate in religious worship, and of the freedom not to disclose one's religious beliefs.[221]

At the same time, in accordance with Article 120 of the Constitution, the principle of compulsory religious instruction was introduced. As mentioned previously, this kind of solution expressed the belief of the creators of the Constitution about the particularly important role of religious values and their translation into the formation of the society's moral attitudes.[222]

The declaration of respect for freedom of conscience and confession along with the simultaneous introduction of a constitutional mandate for teaching religion provided the basis for formation of objections as to the internal contradiction of the constitutional solutions in the area mentioned. In the literature, this situation is described as a dissonance of the provisions of the March Constitution between its religious elements and an attempt at secular solutions.[223]

This dissonance was caused by the necessity, stemming from the provisions of the Little Treaty of Versailles, to include in the Constitution solutions guaranteeing the protection of minority rights. In the literature of the interwar period, it was explicitly argued that the wording of Articles

[221] See: Pietrzak, M. *Prawo wyznaniowe*, p. 107.

[222] On the importance of religion in social, national, and state life in the jurisprudence of the Supreme Court, see: Pietrzak, M. *Prawo wyznaniowe*, pp. 106–108. The preamble to the Act reforming the educational system also expressed belief in the positive impact of the teaching of religion: "This Act introduces such principles of the educational system that are to facilitate the organisation of education and training of the general public into conscious and creative citizens of the Republic of Poland, to ensure for these citizens the highest possible religious, moral, mental, and physical attainment, and the best possible preparation for life, and to enable the most capable and courageous individuals from all walks of life to attain the highest levels of scientific and professional education." (Journal of Laws of 1932, no. 38, item 389).

[223] See: Osuchowski, J. *Prawo wyznaniowe*, p. 95.

110 and 111 of the Constitution was imposed through the provisions of Articles 2 and 8 of the Treaty.[224] It was noted that the Constitution stood for ensuring the broadest possible freedoms in the field of confession and for religious associations, while at the same time understanding the ideal goals of religion and retaining a friendly stance towards the Catholic Church because of the position of Catholicism in Polish society.[225] It was also argued that the guarantees of freedom of confession were not regarded as unlimited and absolute.[226] It was considered justified that, in the event of the implementation of certain tasks of the state administration, it was possible and not contrary to the recognition of freedom of confession to introduce certain religious criteria. Similarly, the restriction of freedom was considered justified in view of the need to ensure public order, respect for the rights of others, and the performance of civic duties for the state. The limitation of the scope of freedom of minors was the indication that no one can be forced to participate in religious ceremonies, unless such a person is subject to parental or guardian authority.

The literature pointed to doubts regarding the interpretation of this provision.[227] The provision does not indicate the entity authorised to enforce the obligation of participation in religious ceremonies. This entity may be, in the case of a restrictive interpretation, parents or persons exercising guardianship, but also, in the case of a broader interpretation, these could be entities performing tasks within the remit of the state administration. This was not explicitly specified in the wording of the provision, which is limited to the indication of a passive subject that is forced to endure such coercion. As indicated in the literature, Article 120 of the Constitution should not be interpreted as contrary to Article 111, but rather as an exception to the general principle expressed in it and as a limitation of rights in the field of freedom of conscience and confession.[228] The scope of the obligation to teach religion was modified by the provisions of the Concordat. According to Article XIII of the foregoing, this obligation covered all "general education schools" except universities.[229] Due

[224] Abraham, W. *Konstytucja a stosunki wyznaniowe*, p. 115 and p. 118 et seq.
[225] Ibid., p. 115.
[226] Ibid., p. 122.
[227] Ibid., p. 123.
[228] Mezglewski, A. *Polski model*, p. 14.
[229] As to the correctness of the translation of the term *les ecoles publiques* used in the authentic text of the Concordat, see: ibid., p. 14.

to the discrepancies in defining the scope and types of schools covered by the norm of the Concordat of 1925, as well as the discrepancies in the earlier provisions of the Constitution of 1921, and the resulting ambiguity of the terms used in the text, two divergent positions were presented in the literature as to the impact of the aforementioned provisions on the narrowing or widening of the group of schools covered by the new regulations. Interpretations of this regulation were presented, among others, by Henryk Świątkowski and Michał Pietrzak. According to former, the Concordat was in fact contrary to the Constitution, extending the range of schools subject to the obligation of religious instruction to include all public schools, regardless of whether they benefited from financing or co-financing by the state or local governments.

Meanwhile according to the position of M. Pietrzak, the Concordat extended religious education to all public schools, and thus also to private schools with public school rights. The opposite view was expressed, among others, by A. Mezglewski, who noted that the provisions of the Concordat concerning "public schools" fell within the scope of Article 120 of the Constitution.[230] There is no doubt that the provision of Article XIII of the Concordat modified the subjective scope of Article 120 of the Constitution. The Constitution provided for the compulsory education of persons under 18 years of age. In the provision contained in the Concordat, this limit was not maintained, so it was possible that students who were already 18 years of age attended a school covered by the obligation to teach religion. Therefore, it should be considered that in the case of such persons, the Concordat went beyond the limit set out in the provisions of the Constitution and violated the freedom of confession because it *de facto* resulted in the need to attend religious classes required to pass the final exam. The implementing regulations indicated that a given school was to provide religious education in the event that at least 12 students of a given religion attended it. With fewer students, it was permissible to create inter-school groups. If it was impossible to create an inter-school group with at least 12 students, instruction could be conducted without remuneration for the teacher.[231] It seems that such a regulation may also be considered a limitation

[230] See: ibid., pp. 15–16 and the literature cited therein.

[231] Such a situation was provided for by section 2 of the Regulation of 9 December 1926 on the teaching of the Catholic religion.

of the possibility of receiving religious education concerning one's confession, and thus a limit to the freedom of confession. Such a situation, of course, could have occurred in extreme cases and seems to be purely theoretical. The number of hours of compulsory religious instruction in schools was determined by the circular notices of the Ministry of Religious Affairs and Public Education.[232]

In accordance with the provisions in force throughout the interwar period, school certificates included a grade for the subject of religion. If in a given locality it was not possible to provide religious teaching for a given denomination, the school headmaster was obliged to require the parents or guardians of the child to present a certificate, issued by the competent authorities of the religious association, of the student's participation in religious education in the home-schooling system. The certificate was supposed to contain a grade for the subject of religion, which was later entered in the class register and included on grade completion certificates or school report cards. In the absence of such a certificate, the student received a grade completion certificate with an annotation that religious classes for the given denomination were not provided at school. In such a case, the student had to obtain a certificate issued in accordance with the regulation of the Minister of Religious Affairs and Public Education.[233] The obligation to attend religious classes may be abstract, i.e. students attended classes covering a specific religion in accordance with the submitted declaration, or it may be related to the student's religious affiliation. As indicated in the literature, during the period of the Second Polish Republic, no regulations regulating this matter were issued. In the absence of legal regulation, a model based on the religion of the given student was developed in the course of practical application.[234]

The subjective scope covered by the obligation to attend religious classes was also a contentious issue. According to the position presented by some researchers, this obligation only concerned members of legally recognised religious associations,[235] while according to others, the obligation

[232] Journal of Laws of the Ministry of Religious Affairs and Public Education of 1927, no. 2, item 32 on the teaching of the Catholic religion; and Journal of Laws of the Ministry of Religious Affairs and Public Education of 1928, no. 12, item 196 concerning non-Catholic denominations.

[233] Journal of Laws of the Ministry of Religious Affairs and Public Education of 1928, no. 12, item 199.

[234] See: Mezglewski, A. *Polski model*, p. 19.

[235] Thusly: Osuchowski, J. *Prawo wyznaniowe*, pp. 303–304.

concerned students who belonged to any religious association.[236] Another issue related to the possibility of exercising the freedom of confession of minors in the area of religious instruction was the determination of which of the religious associations had the authority to teach religion. While there is no doubt that legally recognised religious associations had such a right (as they had the status of public-law corporations), in the case of religious associations that were not legally recognised but were tolerated under the laws of the partitioning powers, such doubts certainly arise. Such associations did not have the status of public-law corporations.

The literature mentions a concept according to which such associations should be treated analogously with legally recognised religious associations, with the reservation that applications for introducing the teaching of their religion to schools should be submitted by individual religious communities (in the former Russian partition) or associations (in the former Prussian partition).[237]

In the case of confessions that were not legally recognised but tolerated under Articles 111 and 112 of the Constitution, due to the lack of religious representation capable of legal action in the area of religious matters, they had no ability to demand the introduction of religious instruction in public schools.[238]

As mentioned in the literature, the biggest drawback of the pre-war legal regulations concerning freedom of conscience and confession was the complete omission of regulation of the legal situation of non-religious people.[239] As mentioned earlier, schools of the interwar period did not recognise the notion of non-confessional, non-religious, or non-denominational people. The only way to complete a school without religious instruction was to attend schools not covered by Article 120 of the Constitution and Article XIII of the Concordat, i.e. private schools that did not use state or local government funding. However, even in that situation, in order to take exams such as school-leaving examinations, the student still had to pass an exam on the subject of religion.

The literature refers to the case of Estera Golde-Stróżecka, which has already been mentioned. The scope of the right of minors to exercise

[236] See: Sawicki, J. *Studia nad położeniem prawnym*, pp. 89–90.
[237] See: Grelewski, S. *Wyznania protestanckie i sekty religijne*, p. 139 et seq.
[238] Ibid., p. 140.
[239] See: Mezglewski, A. *Polski model*, pp. 21–22.

freedom of conscience and confession was also affected by the provision of Article 120 of the Constitution. This provision referred to people attending state schools or schools using state or local government funds. By introducing such a standard, it *de facto* recognised that state and local government schools do not recognise the notion of "non-denominational" people. Based on the foregoing, it was indicated that for people who wanted to raise a child without a religion, the only options were home-schooling or education at private schools.[240] Subsequent legal acts in the form of the ratified Concordat, implementing regulations, and in particular the "Bartel Circular" increased the scope of religious indoctrination in general education schools by introducing the obligation of young people to participate in religious rites. By introducing such solutions, mainstream schools approached the model of religious schools with the leading role of the Roman Catholic faith. Of course, this requirement applied to general education schools funded in whole or in part by the state or local governments, which forced those who questioned the teaching of religion in schools to use private education. Given the mobility of society at that time and the cost of services provided by such establishments, this possibility was for the most part purely theoretical.

The requirement resulting from the implementing regulations to disclose one's religion in the content of school documents, as well as compulsory examinations in religion, should also be seen as violating the principle of freedom of confession.

The real possibilities of exercising individual freedom of confession were a consequence of the scope of collective freedom of confession. It should be mentioned that despite the guarantees of collective freedom enshrined in Article 113 of the Constitution, the actual administrative practice and policy of the authorities significantly limited this freedom, at least in relation to certain religious associations. The actions of the Polish authorities, supported by the Catholic Church and bearing the hallmarks of forced re-Catholisation, were directed mainly against the Ukrainian minority.[241]

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[240] Ibid.

[241] Cf. the repeated interpellations on the violation of the rights of the Ukrainian minority and the followers of Judaism. For more on the situation of the Polish-Ukrainian conflict, see: *"Cerkiew prawosławna na Chełmszczyźnie", Przemówienia i interpelacje posłów i senatorów ukraińskich w Sejmie i w Senacie*, Lwów 1938, http://www.kpbc.ukw.edu.pl/dlibra/plain-content?id=79130. This item refers, among other things, to the activity of closing down and demolishing real estate belonging to the Orthodox Church, harassment against the Orthodox population, etc. [29.08.2015].

As mentioned previously, freedom of conscience and confession was also limited in relation to religious associations that were not recognised and accepted by the state, as well as non-religious people who *de facto* did not have any rights aimed at protecting their confession.

In the realm of freedom of conscience and confession of minors, analysis of the legal status in force within the territory of the Polish state during the interwar period allows us to point out at least several significant violations of the principle of freedom of conscience and confession.

In addition, the consequences resulting from the lack of unification of the legal status in individual parts of the state should be mentioned. The regulations of the partitioning states, which were formally binding until 1945, were primarily in conflict with educational laws. On the one hand, the laws of the partitioning states provided for the freedom to decide on one's religion, mostly for people who were at least 14 years of age, yet on the other hand, the provisions of Polish law imposed on these people the obligation to participate in religious activities until reaching the age of 18.

Regulations inconsistent with the principle of freedom of confession also included the provisions concerning persons of the Jewish religion, which imposed on them an obligation to belong to a religious union.

Setting aside the contemporary standard of freedom of conscience and confession, one should recognise that the solutions existing in interwar Poland formally ensured respect for the freedom of conscience and confession of minors. Legal acts regulating the status of religious associations ensured the possibility of free practice of religion.

However, the scope of this freedom stemming from the provisions of the constitution was limited by provisions of a lower rank. This was particularly evident in the case of legislation regulating educational issues. The modifications introduced to the scope of freedom of confession – first, through the signing of the Concordat, which extended the group of entities subject to compulsory attendance of religious classes, and then through secondary legislation in the form of regulations of the Minister of Religious Affairs and Public Education, which imposed the obligation to participate in religious ceremonies – certainly did not meet the standard of freedom of confession.

There remained the problem of reconciling the broad guarantees of individual freedom with the restrictions on the institutional freedom

of religious associations other than those legally recognised. This was made visible, among other areas, in the realm of public worship. The scope of individual freedom was clearly broader than that of collective rights.

The obligation to receive religious education in schools was *de facto* a consequence of the child's belonging to a specific confession. The extent of the minor's freedom in this respect was therefore the result of the child's subordination to the parental authority of their parents.

It should be remembered that despite the significantly preferential position of the Catholic Church and the Roman Catholic religion guaranteed in the Constitution, the representatives of the Church maintained the view that these provisions actually constituted a defeat of the Church and of religion (among other reasons, due to the rejection of the postulate to introduce religious schools; it should be noted that this postulate was consistently submitted by the Episcopate on the occasion of subsequent work on amendments to the constitution as well).[242]

In the case of civil law, it should be mentioned that the codes established by the partitioning powers maintained the traditional model of parental authority. It is difficult to find any modern elements in them. The only concession in favour of protecting children's rights was the limitation – due to humanitarian considerations – of the omnipotence of the father of a family, which included the so-called "right of life and death". The possibility of limiting or withdrawing parental responsibility in the event of its grossly improper performance (both in terms of abuse and non-performance of duties) must be assessed positively.

The scope of the freedom of confession of minors was implied by strong parental authority, with modifications resulting from religious laws.

In the case of criminal liability of minors for crimes against religion, it should be noted that there is no basis for concluding that these were acts committed on a significant scale.

[242] See: Borecki, P. *Różdżką Duch Święty dziateczki bić radzi... Szkolne nauczanie religii w II Rzeczypospolitej*, www.racjonalista.pl [15.04.2017].

CHAPTER FIVE

The Scope and Guarantees of the Freedom of Conscience and Confession of Minors During the Period of the Polish People's Republic

The defeat of the German Third Reich by the anti-Nazi coalition in 1945 resulted in a change in the political situation of the countries of Eastern Europe. As a result of the arrangements made,[1] primarily those between the leaders of the United States and the Union of Soviet Socialist Republics (USSR), the countries located in Central and Eastern Europe became part of the Soviet sphere of influence, which constituted their *de facto* military conquest by the Soviet state.

The political and military supremacy of the USSR over the aforementioned territories, accentuated by the establishment of governments dependent on Moscow's support, resulted in the implementation of Soviet political and ideological models. In the countries of the so-called "people's

[1] The conferences in Tehran (1943), Yalta (1945), and Potsdam (1945) were also attended by the Prime Minister of the United Kingdom, but the final effects of the conferences can be considered a defeat and a manifestation of the marginalisation of that country's influence on the final shape of Europe after World War II.

democracy", this state of affairs existed, roughly speaking, from 1944/45 and ended in various countries after 1989/90.

The USSR drew its axiological foundations from Marxist-Leninist ideology. The attitude towards religion presented by the creators and continuators of Leninism was clearly negative.[2]

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[2] Lenin's attitude to religion is evidenced, for example, in: Lenin, V. I. "*O stosunku partii robotniczej do religii*", in: Lenin, V. I. *Dzieła wszystkie*, vol. 17, Warszawa 1986 – "Social democracy bases its entire worldview on scientific socialism, i.e. Marxism. The philosophical basis of Marxism, as Marx and Engels repeatedly declared, is dialectical materialism, which has fully taken over the historical traditions of eighteenth-century materialism in France and that of Feuerbach (from the first half of the nineteenth century) in Germany – a materialism which is absolutely atheistic and positively hostile to all religion. Let us recall that the entirety of Engels's Anti-Dühring, which Marx read in manuscript, is an indictment of the materialist and atheist Dühring for not being a consistent materialist and for leaving loopholes for religion and religious philosophy. Let us recall that in his essay on Ludwig Feuerbach, Engels reproaches Feuerbach for combating religion not in order to destroy it, but in order to renovate it, to invent a new, 'exalted' religion, and so forth. Religion is the opium of the people – this dictum by Marx is the cornerstone of the whole Marxist outlook on religion [...]. Marxism is materialism. As such, it is as relentlessly hostile to religion as was the materialism of the eighteenth-century Encyclopaedists or the materialism of Feuerbach. This is beyond doubt. But the dialectical materialism of Marx and Engels goes further than that of the Encyclopaedists and Feuerbach, for it applies the materialist philosophy to the domain of history, to the domain of the social sciences. We must combat religion. These are the fundaments of all materialism, and consequently of Marxism. But Marxism is not a materialism which has stopped at the fundaments. Marxism goes further. It says that we must know how to combat religion, and in order to do so we must explain the source of faith and religion among the masses in a materialist way. The combating of religion cannot be confined to abstract ideological preaching, and it must not be reduced to such preaching. It must be linked with the concrete practice of the class movement, which aims at eliminating the social roots of religion. Why does religion retain its hold on the backward sections of the town proletariat, on broad sections of the semi-proletariat, and on the mass of the peasantry? Because of the ignorance of the people, replies the bourgeois progressist, the radical, or the bourgeois materialist. And so: 'Down with religion and long live atheism; the dissemination of atheist views is our chief task!' The Marxist says that this is not true. That it is a superficial view, the view of narrow bourgeois uplifters. It does not explain the roots of religion profoundly enough; it explains them not in a materialist but in an idealist way. In modern capitalist countries, these roots are mainly social. The deepest root of religion today is the socially downtrodden condition of the working masses and their apparently complete helplessness in the face of the blind forces of capitalism, which every day and every hour inflicts upon ordinary working people the most horrible suffering and the most savage torment, a thousand times more severe than those inflicted by extraordinary events, such as wars, earthquakes, etc. 'Fear made the gods.' Fear of the blind force of capital – blind because it cannot be foreseen by the masses of the people – a force which at every step in the life of the proletarian and small proprietor threatens to inflict, and does inflict, 'sudden', 'unexpected', 'accidental' ruin, destruction, pauperism, prostitution, death from starvation. Such is the root of modern religion which the materialist must bear in mind first and foremost if he does not want to remain an infant-school materialist. No educational book can eradicate religion from the minds of masses who are crushed by capitalist hard labour, and who are at the mercy of the blind destructive forces of capitalism, until those masses themselves learn to fight this root of religion, fight the rule of capital in all its forms, in a united, organised, planned, and conscious way." See: Marks, K. "*Przyczynek do heglowskiej filozofii prawa. Wstęp*", in: Marks, K. and Engels, F. *Dzieła*, vol. 1, Warszawa 1976, p. 458.

For nearly half a century, the communist power apparatus in Poland sought to create a monocentric order in public life. The way to do this was by either abolishing or subjugating any competing political, social, or religious entities. The most serious opponent among the latter was the institutional Roman Catholic Church. Hence, the fundamental and essentially unchanged assumptions of the religious policy after 1944 included the desire of the state to subordinate the Church, while attempting to limit its religious and social functions to narrowly understood worship and religious services, as well as depriving it of the ability to conduct wider schooling, educational, and charitable activities.[3]

The most important assumptions of their religious policy were formulated and implemented in cooperation with the Soviet authorities and required their acceptance. Only the scope and manner of implementation of this policy depended on local conditions, e.g. the degree of religiousness of society and its attachment to the Church, and the position and strength of the structures of this institution.[4]

The Catholic Church, perceived as an institution inherently in competition with the authorities and hostile to the new regime, became the target of particularly intense activities.[5] The perception of the Catholic Church as the main opponent in the process of introducing socialist orders resulted from the homogeneous religious nature of Polish society, which resulted from both the genocide of the Jewish minority as well as the changes to the country's borders – the latter meant a drastic decrease in the number of adherents of the Orthodox and other religions within the structure of Polish society.

The communist authorities paid special attention to matters of education. Depriving young people of contact with both the Catholic faith

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[3] Pietrzak, M. *Prawo wyznaniowe*, Warszawa 2010, p. 199.

[4] See: Grajewski, A. "*Chronologia i historyczne uwarunkowania represji wobec duchowieństwa katolickiego w krajach Europy Środkowej*", in: *Represje wobec duchowieństwa Kościołów chrześcijańskich w okresie stalinowskim w krajach byłego bloku wschodniego*, edited by J. Myszor, A. Dziurok, Katowice 2004, p. 17 et seq.

[5] Cf. the plan to limit the influence of the Catholic Church, contained in: *Aparat bezpieczeństwa w latach 1944–1956. Kadra kierownicza*, vol. 1: *1944–1956*, edited by K. Szwagrzyk, Warszawa 2005, p. 126 et seq; and *Aparat bezpieczeństwa w latach 1944–1956. Taktyka, strategia, metody*, cz. 2: *Lata 1948–1949*, edited by A. Paczkowski, Warszawa 1996, p. 140. As part of the implementation of the plan, the Church was to be discredited – see: Szczęch, R. "*Skompromitować Kościół, otumanić społeczeństwo*", Biuletyn IPN, 2008, no. 10, pp. 38–44.

and social teaching was supposed to lead to the creation of a new model of society based on materialistic axiology.[6]

The society of the People's Republic of Poland, especially its children and youth, was subjected to a special process of subjective secularisation, which – unlike objective secularisation, which is a natural consequence of civilisational transformations – was a controlled action aimed at displacing religious influences from political and social life.[7]

Actions taken by the communist authorities beginning already in 1944 created the appearance of their positive attitude towards the Church.[8] However, ideological foundations did not allow for close cooperation between the authorities and the Church, resulting in a gradual limitation of the rights of the Church and the elimination of religion from social life.[9]

Religion was to be removed from schools in a manner that took into account the specific nature of Polish society. The authorities were not confident enough of their position to directly apply models adopted from the Soviet Union.[10]

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[6] This is illustrated by the statement of J. Berman: "At the same time, we've made efforts to create new elites of working-class and peasant origin who would replace the old ones in the future. Hence the unprecedented effort on our part to develop education, eliminate illiteracy, and disseminate culture as much as we could afford. Hence our attempts to give privilege to working-class and peasant youth if they wanted to study, especially at universities. [...] It was not, of course, about education or illiteracy – these were just the details – but about changing the idea of the country, about building a completely new Poland in a shape and structure completely unlike what it was in history. This was what we were fighting about." – see: Torańska, T. *Oni*, Warszawa 2004, p. 348.

[7] Swastek, J. "*Laicyzacja życia publicznego jako program oświaty i kultury w PRL*", Chrześcijanin w Świecie, 26(1994), no. 1(196), pp. 28–29.

[8] See: Dudek, A. and Gryz, R. *Komuniści i Kościół w Polsce (1945–1989)*, Kraków 2006, pp. 11–13.

[9] This included the termination of the Concordat, activities aimed at the secularisation of the legal system, and efforts to gain influence on the appointing of Church posts (decree on the appointing of church posts of 9 February 1953). See: Krukowski, J. "*Represyjność prawa polskiego w zastosowaniu do Kościoła katolickiego w latach 1944–1956*", in: *Aparat ucisku na Lubelszczyźnie w latach 1944–1956 wobec duchowieństwa katolickiego*, edited by Z. Zieliński, Lublin 2000, p. 25 et seq.

[10] "The basic guidelines for the secularisation of education after the arrest of Primate Stefan Wyszyński were outlined by Józef Cyrankiewicz during the national briefing of managers of departments for religious affairs in Warsaw (19 December 1953). He criticised, among other things, the desire to completely remove religion lessons from teaching institutions. According to him, 'unpredictable leaps in this field', especially in the countryside, caused unnecessary irritation and numerous complaints from the local population. According to the deputy prime minister, although the teaching of religion was harmful, no violent action should have been taken in this area. Instead, the policy of the authorities was to have teaching posts taken by 'positive priests' who were to teach in schools based on the positions of the communist doctrine. This was less harmful than the creation of secret teaching courses by the clergy. Cyrankiewicz presented the following guidelines concerning the problem of religion in schools: 1) not to

It is noted that in view of the lack of possibility of a rapid change in the prevailing ideological system and state authorities, the Catholic Church adopted a method of dealing with the communist authorities based on the principle of political realism. This principle was promoted and expressed by the Primate of the Millennium, Cardinal Stefan Wyszyński.[11]

Awareness of geopolitical realities meant that the Church's goal was to guarantee its own institutional independence, the independence of its personnel policy, freedom to proclaim its faith, access to the faithful, and the ability to keep them in the faith. All these goals were threatened by the religious policy of the communist authorities. The latter sought to break the unity of the Church, to influence the appointment of ecclesiastical positions, to deprive the Church of the sources of its livelihood and access to the media, to censor sermons, to block pastoral letters, to activate pseudo-Catholic groups and secular movements, and to indoctrinate society in the spirit of materialist philosophy, which in its very foundations contradicted the Christian worldview.

The described policy of the authorities towards the Church and religion continued to varying degrees until the end of the 1980s.

1. System of sources of law in the period of the Polish People's Republic

After the liberation of the territories of the future Polish state, significant political and social changes occurred because – as a result of the political conditions associated with the division of spheres of influence by

withdraw from politically achieved positions (e.g. from the systematic limitation of religious instruction in vocational schools); 2) to seek to remove religious instruction from schools only where this was allowed by the political awareness of parents and children, achieved as a result of the appropriate, long-term impact of political, educational, and social factors; 3) avoid violent actions in the countryside; and 4) prevent people who are hostile from the point of view of the authorities from teaching in school. At the same time, the deputy prime minister emphasised that there was no further perspective for teaching religion in schools." – Noszczak, B. *Polityka Państwa wobec Kościoła w okresie internowania prymasa Stefana Wyszyńskiego 1953–1956*, Warszawa 2008, p. 235.

[11] "The Church has always stood for reality and realism; it has talked to every state that wanted to talk to it. And so, it also talks with the communist state in Poland. This is not an approach adopted for a month or a year. This is a principle." – "*Relacja Prymasa S. Wyszyńskiego z jego rozmów z F. Mazurem o stosunkach Kościół – Państwo*, 31 I 1953", in: Raina, P. *Kościół w PRL. Kościół katolicki a państwo w świetle dokumentów 1945–1989*, t. 1: *lata 1945–1959*, Poznań 1994, p. 387.

the Allied powers, who were aimed at the defeat of the Nazi Third Reich – the reborn Polish state found itself within the sphere of influence of the USSR. The ideology imported from the Soviet socio-political model had to result in radical changes in the internal relations of all countries of the emerging Eastern Bloc.

In the initial period of existence of the reborn Polish state, the complicated political and social situation influenced the actions of the authorities, inhibiting to some extent the process of remodelling the state system and the prevailing social relations. Only after a period of strengthening its power structures and neutralising the opposition did the communists proceeded to introduce their target model of state structures.

In the period immediately following the end of World War II, the basic normative act was the March Constitution of 1921. The authorities did not recognise the April Constitution of 1935, determining that its adoption was inconsistent with the law in force at that time and that the act had no legal force.[12] The provisions of the Constitution of 1921 were modified by the so-called "Small Constitution" of 19 February 1947.[13]

The main sources of law during 1944–1952 were acts and legislative decrees. Acts were issued by the State National Council, and later (from 1947) by the Legislative Sejm. Legislative decrees, on the other hand, were issued first by the Polish Committee of National Liberation and later, after the liquidation of this entity at the end of 1944, by the government. In addition, Article 44 (2) and (3) of the March Constitution, which granted the executive authorities the power to issue implementing regulations, was considered binding. An additional element of the law in force at that time was Article 49 of the March Constitution, which assumed that ratification of the most important international agreements required the consent of Parliament expressed in the form of an act.

[12] See: "*Manifest PKWN*", in: *Źródła do dziejów Polski w XIX i XX wieku. Lata 1939–1945*, vol. 4, part 2, edited by A. Kosecki [et al.], Pułtusk 2000, pp. 315–316. According to the declaration, "the State National Council and the Polish Committee of National Liberation operate on the basis of the constitution of 17 March 1921, the only the legal constitution in force that was adopted in accordance with the law. The basic assumptions of the constitution of 17 March 1921 will apply until the convening of a Legislative Sejm elected in a general, direct, equal, secret, and proportional vote, which will adopt, as the expressor of the will of the nation, a new constitution".

[13] Constitutional Act on the system and scope of operation of the highest authorities of the Republic of Poland of 19 February 1947 (Journal of Laws of 1947, no. 18, item 71).

After analysing the provisions of the Constitution of the Polish People's Republic of 22 July 1952, it is possible to conclude that it did not contain any editorially distinguished part that would regulate the system of sources of law in whole or in part. Certain provisions regulating these matters were scattered throughout the act.

In the literature it is noted that, like most provisions of the Constitution, they were characterised by their considerable brevity and enigmatic nature, which was referred to in the doctrine as the "flexibility" of constitutional norms.[14] Among the norms scattered throughout the content of the act, we should mention first and foremost those that define the basic types of normative acts. These include norms governing the competences of: the Sejm to enact laws (Article 15(3)), the budget (Article 19(2)), and "national multi-annual economic plans" (Article 19(1)); of the State Council to issue legislative decrees (Article 25 point 1 (4)) and to ratify or renounce international agreements (Article 25 point 1 (7)); and finally, of the Council of Ministers, which "on the basis of laws, and for the purpose of their implementation, issues regulations, adopts resolutions, and supervises their implementation" (Article 32 point 8), including the regulations and ordinances of ministers (Article 33(2)), which could be repealed by the Council of Ministers (Article 33(3)).[15]

In the literature it is noted that the Constitution did not explicitly specify a hierarchy of the sources of law; certain conclusions in this respect can be drawn only indirectly from some of its provisions.[16] Such examples of this are the provisions indicating the basic nature of certain acts (resolutions of the Council of Ministers, ordinances of individual ministers, and regulations issued by both these types of bodies – Article 32 point 8 and Article 33(2)), as well as those setting forth a specific, difficult procedure for amending others (this applies to the Constitution – see Article 91). As another example of the provisions allowing for indirect determination of the hierarchy of legal norms one can also mention the provisions defining the mutual relations between individual

[14] Działocha, K. *System źródeł prawa w Konstytucji PRL po 20 latach jej obowiązywania*, PiP, 1972, no. 12, p. 21.

[15] Quoted after: Pichlak, M. *Zamknięty system źródeł prawa. Studium instytucjonalizacji dyskursu prawniczego*, Wrocław 2013, p. 103.

[16] Ibid.

authorities and the state administration (Article 15 (1)), which stated that "the highest body of state authority is the Sejm of the Polish People's Republic".[17] Some changes to the definition of the hierarchy of the sources of law were introduced by the amendment to the Constitution made in 1976. It consisted, among other things, in the introduction into the Constitution – thereby formalising the previously developed practice – of two categories of normative acts: resolutions of the Sejm, which determined the basic direction of the state's activity, and legal acts of the prime minister. It should be mentioned that despite the amendment, a closed system of sources of law was not introduced, though such a possibility was not excluded.

However, the literature emphasises[18] that the lack of a clear definition of a closed catalogue of acts constituting sources of law led to a marginalisation of the role of the Constitution within the legal order. Various forms of "duplicative" and "spontaneous" law-making – neither of which were directly based on the Constitution – are indicated here as the main manifestations of the "distortion" of the system of sources of law. In the literature it is emphasised that the institution of "duplicative law" was a characteristic feature of the legal system of the Polish People's Republic.[19] As previously noted, in several places the Constitution authorised individual state bodies to enact normative acts, but in practice, apart from the Constitution, numerous normative acts of unclear legal significance were issued, which were not directly provided for in the Constitution. It was assumed that both the sources of law and the entities authorised to issue them did not form a closed catalogue at the level of the Constitution.[20] Thus, it was deemed permissible to issue normative acts without a statutory authorisation – based directly

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[17] See: Zakrzewski, W. "*W sprawie „samoistnych uchwał Rządu"*", PiP, 1966, no. 5, pp. 652–654.

[18] See: Idem, *Zakres przedmiotowy i formy działalności prawotwórczej*, Warszawa 1979, pp. 76–77; Działocha, K. *System źródeł prawa*, p. 23; Idem, *"Zasady budowy systemu źródeł prawa w nowej konstytucji"*, in: *System źródeł prawa – stan obecny i wnioski*, edited by J. Mazur, Warszawa 1988, pp. 113–114; and Trzciński, J. *"Konstytucja jako akt prawotwórczy"*, in: *Konstytucyjny model tworzenia prawa w PRL*, edited by K. Działocha, Wrocław 1981, pp. 69–71.

[19] Jabłońska-Bońca, J. *Prawo powielaczowe. Studium z teorii państwa i prawa*, Gdańsk 1987; and Olszowy, H. *Rola tzw. prawa powielaczowego w określaniu prawnofinansowej pozycji obywatela*, SPE, 26(1981).

[20] Wronkowska, S. *"System źródeł prawa nowej Konstytucji RP"*, in: *Spotkania w Rzecznika*, Warszawa 2000, p. 79.

on the Constitution – for the purpose of carrying out the tasks of a given state authority. It can be stated that the period of the Polish People's Republic was characterised by an open catalogue of sources of law.

2. Freedom of conscience and confession of minors on the grounds of constitutional provisions

2.1. The so-called "Small Constitution" of 1947

Until the Constitution of the Polish People's Republic entered into force, the function of the country's basic law was fulfilled by the provisions of the Constitution of 1921 as modified by the so-called "Small Constitution" of 19 February 1947.

As mentioned in the literature, the Small Constitution was not an act with a full scope of regulation,[21] as it did not regulate issues pertaining to, among others, civil rights and freedoms.

The Small Constitution did not contain, among other things, guarantees of civil rights. The Church noticed this deficiency and prepared the "Catholic constitutional postulates". The Sejm also filled this gap, preceding the Episcopate by four days when it adopted its "Declaration on the implementation of civil rights and freedoms" on 22 February 1947. Meanwhile, the "Catholic constitutional postulates" were issued on 26 February 1947, and the Episcopal Secretary, Bishop Zygmunt Choromański, handed them to Prime Minister Józef Cyrankiewicz on 14 March 1947. These postulates not only drew attention to the shortcomings of the Small Constitution but were also a voice in the discussion on the future basic law.[22] The scope of the rights and freedoms of citizens was provisionally determined by an act of lower rank, i.e. the resolution of the Legislative Sejm of 22 February 1947.[23] As is aptly emphasised in the literature, this act was only a manifestation of the self-commitment

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[21] *Polskie prawo konstytucyjne*, edited by W. Skrzydło, Lublin 2008, p. 51.

[22] Anusz, Andrzej and Anusz, Anna. *Samotnie wśród wiernych. Kościół wobec przemian politycznych w Polsce (1944– 1994)*, Warszawa 1994, p. 24.

[23] Declaration of the Legislative Sejm of 22 February 1947 on the implementation of civil rights and freedoms, digital version available at: https://bs.sejm.gov.pl/exlibris/ aleph/a22_1/ apache_media/NDJTNCSH1HR65MF75CLHXRG6BCR8NA.pdf [17.10.2015].

of the Legislative Sejm, which undertook to regulate this issue in the form of generally applicable legal acts.[24]

In accordance with the declaration, the Legislative Sejm undertook to ensure in the course of its legislative work the statutory regulation of various issues, such as: respect for the principle of equality before the law regardless of nationality, religion, race, origin, gender, position, education; freedom of conscience and confession.[25]

However, it should be noted that the aforementioned act, being that it was a resolution, was not a real guarantee of the issues raised in it. As a resolution, it could not constitute a basis for the effective pursuit of the protection of violated freedoms or a basis for asserting the rights guaranteed therein.

According to Article 3 of the Small Constitution of 1947, the main task of the Legislative Sejm was to prepare a draft of a new constitution corresponding in its assumptions to the ideological concepts of the new state authorities.

2.2. Constitution of the Polish People's Republic of 22 July 1952

A draft constitution was announced on 27 January 1952 and was subjected to thorough discussion. As is argued in the literature, its aim was not so much the pursuit of the best legal solutions as it was a wide-ranging propaganda action. For this reason, despite extensive consultations, the adopted text deviated only slightly from the assumptions of the draft version.[26]

The draft constitution was ultimately approved and adopted on 22 July 1952 and entered into force on that date.

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[24] *Polskie prawo konstytucyjne*, p. 51.

[25] The declaration confirmed respect for civil liberties, political rights, and social rights. In addition to the aforementioned freedoms, the resolution proclaimed that any future legislative works would ensure: personal inviolability; freedom of scientific research and the freedom to promote their results, freedom of artistic creation; freedom of the press and speech as well as that of associations, meetings, public assemblies, and manifestations; the right to elect and be elected to state authorities; the inviolability of homes; the secrecy of correspondence and other means of communication; the right to lodge complaints, petitions, and applications with competent state authorities; the right to work and rest; the right to social security in the event of one's inability to earn money; the right to education; care for the family, the mother, and the child; and the protection of health and the ability to work. At the same time, it included a declaration of securing, by means of ordinary laws, the possibility of abuse of rights and freedom in a fight against the political system of the Republic of Poland.

[26] Cf. *Polskie prawo konstytucyjne*, p. 55.

The adopted Constitution of the Polish People's Republic was an expression of the then prevailing socialist ideology imposed by the USSR on virtually all countries within its sphere of influence. The solutions adopted in the Constitution imitated the Soviet models expressed in the Constitution of the Union of Soviet Socialist Republics of 5 December 1936,[27] assuming, among others, the principle of rule of the people, the principle[28] of alliance of workers and peasants, and the leading role of the [Communist] party.[29]

Due to the subject matter of this work, the constitutional solutions' underlying assumptions regarding the scope of civil liberties will be presented below, with a focus on issues related to freedom of confession.

The principles of the religious policy set out in the Constitution reflect the views of the authorities on the role and place of religion in the life of the community and its constituent individuals, as well as their views on the tasks, scope of activity, duties, and powers of religious associations.

As mentioned previously, the creators of the Constitution of the Polish People's Republic modelled their solutions on the assumptions implemented in the religious policy in force in the USSR. As far as the relationship between the state and religions was concerned, the Stalinist constitution of 1936 granted "[...] the freedom to perform religious cults and the freedom of anti-religious propaganda",[30] as well as the separation of church from state and schools. Due to local conditions resulting from the much greater influence of Catholicism and the Catholic Church on society, it was not possible to directly implement Soviet solutions in Poland. As indicated in Soviet materials: "[...] The NKVD is operating for the first time in a country that is overwhelmingly Catholic. Therefore, [...] the methods applied in Poland should be slower and more delicate."[31] The adoption of a different – at least initially – approach to the implementation of ideological assumptions aimed at marginalising the role

[27] Available at: http://constitution.garant.ru/history/ussr-rsfsr/1936/red_1936 /3958676/ [17.01.2016].

[28] Article 1 (2) of the Constitution stated that "power belongs to the working people of the cities and villages".

[29] Only after the amendment made in 1976 was the principle of the leading role of the party directly expressed in the content of the provisions of the Constitution. However, it was possible to derive it from the wording of other articles of the original text.

[30] Świątkowski, H. *Państwo i wyznania w ZSRR*, Warszawa 1949, p. 17.

[31] Błażyński, Z. *Mówi Józef Światło. Za kulisami bezpieki i partii 1940–1955*, Warszawa 2003, p. 178.

of the Catholic Church in society was expressed, among other places, in the political and ideological assumptions of the Polish United Workers' Party. The policy of the state towards individual churches and religious associations was defined in December 1948. At the unification congress of the Polish Workers' Party (PPR) and the Polish Socialist Party (PPS) in Warsaw, Aleksander Zawadzki said in his speech that: "[...] The Polish United Workers' Party does not intend to interfere in the internal affairs of the Church. But this also means that the Polish United Workers' Party maintains the position of not allowing the interference of the Church in matters of state policy. Moreover, the Polish United Workers' Party demands from the clergy of all denominations an unconditionally loyal attitude to the people's state in its actions which bring full social liberation, prosperity, progress, and happiness to the vast majority of the nation. [...] We will fight, and we do fight in an uncompromising manner against all tendencies of reactionary activity of the clergy, regardless of the guise under which they are concealed."[32]

The Constitution, which implemented the foregoing assumptions, devoted several articles to the issue of freedom of conscience and confession. When analysing the provisions of the Constitution, one can point to a certain catalogue of rules regarding religious issues. We should mention in particular the principle of freedom of conscience and confession; the principle of free performance of tasks by religious associations; the principle of equal rights of citizens regardless of their religion or lack thereof; the principle of separation of church and state; and the principle of regulating the situation of religious associations through statutory law. The most important principle of the state's religious policy expressed in the Constitution was the principle of freedom of conscience and confession. In accordance with Article 69 of the Constitution[33] (before the amendment made in 1976), the state granted citizens of the Polish

[32] Urban, K. and Popiela, A. *Polityka wyznaniowa w Polsce Ludowej. Wybrane problemy i dokumenty*, Kraków 1982, p. 32 – originally published in Trybuna Ludu of 21–27 December 1948.

[33] Article 69 (1) stated that "citizens of the Polish People's Republic, irrespective of nationality, race, or religion, enjoy equal rights in all spheres of public, political, economic, social, and cultural life. Infringement of this principle by any direct or indirect granting of privileges or restriction of rights on account of nationality, race, or religion is punishable by law. Pursuant to paragraph 2 of the aforementioned provision, "the spread of hatred or contempt, the provocation of strife, or the humiliation of man on account of national, racial, or religious differences are forbidden".

People's Republic equal rights regardless of their nationality, race, and religion. The provision of that article also introduced, in the event of a violation of equality on one of the grounds mentioned, a declaration regarding the application of a criminal sanction. Similar criminal sanctions were to be applied in the case of those spreading hatred, causing social unrest, or humiliating other people on grounds related to their nationality, race, or religion.

Pursuant to Article 70 of the Constitution,[34] the Polish People's Republic guaranteed its citizens freedom of conscience and confession. This provision also declared the freedom of action of the Church and religious associations in the exercise of religious functions.[35]

Within the framework of individual freedom of conscience and confession, the provision prohibited the use of coercion either to force participation in religious ceremonies or to prevent such participation.

In accordance with the further content of the indicated provision, the Constitution confirmed the principle of separation of church and state. The rules for the coexistence of state institutions and those belonging to religious associations were to be set out in statutory law.

Important contents are contained in the final part of the said provision. It provided for the application of criminal sanctions in the case of misusing freedom of conscience and confession for purposes that were detrimental to the interests of the Polish People's Republic. Due to the lack of a precise definition of the "interest of the Polish People's Republic" and what actions could be deemed detrimental to it, this provision constituted a significant threat to persons or organisations that were seen as undesirable by the state authorities, while enabling these authorities to

[34] Article 70 of the Constitution stated: "The Polish People's Republic guarantees freedom of conscience and religion to citizens. The Church and other religious bodies may freely exercise their religious functions. It is forbidden to prevent citizens from taking part in religious activities or rites. It is also forbidden to coerce anyone into participating in religious activities or rites." Pursuant to paragraph 2 of the aforementioned provision: "The Church is separated from the State. The principles of the relationship between the Church and State are, together with the legal and patrimonial position of religious bodies, determined by law." However, according to paragraph 3 of the aforementioned provision, "the misuse of the freedom of conscience and religion for purposes prejudicial to the interests of the Polish People's Republic is punishable".

[35] "The Polish People's Republic provides citizens with freedom of conscience and religion. The Church and other religious bodies may freely exercise their religious functions. [...] The principles of the relationship of the state to the Church and the legal situation of religious associations are defined by law." – Article 70 after amendment of Article 82; Journal of Laws, no. 7, item 31 of 21 February 1976.

directly influence the statutory objectives or the functioning of religious associations.

It should be mentioned that the Constitution was based on the traditional understanding wherein the subject of the regulated freedoms was the citizen. Meanwhile, in international acts of the same period, we already see the modern concepts – which are now fully accepted – wherein the subject of freedom is the human being.[36]

The Constitution did not specify the age limit necessary for the effective exercise of full rights relating to freedom of conscience and confession. Therefore, it should be assumed, based on analysis of all the legislation, that the full possibilities of exercising freedom arose at the time of reaching adulthood.

After the amendment of the Constitution in 1976, the document retained the principle of equal rights of citizens regardless of their gender, birth, education, profession, nationality, race, religion, origin, and social position. The declaration on equality was reflected in the content of the provisions of Articles 67[37] and 81[38] of the Constitution. The amended version also retained the declaration regarding the application of criminal sanctions in the event of violation of this principle of equality in a direct or indirect way by favouring or restricting rights on grounds such as religious ones, and in the case of using national, religious, or racial issues in order to spread hatred, provoke social unrest, or humiliate other people.

[36] Cf. Article 18 of the Universal Declaration of Human Rights of 10 December 1948, which states: "Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance."

[37] Article 67(1) of the Constitution of the Polish People's Republic, as amended in 1976, provided that "the Polish People's Republic, by consolidating and multiplying the achievements of the working people, strengthens and extends the rights and freedoms of citizens". In accordance with paragraph 2 of the aforementioned provision, "citizens of the Polish People's Republic have equal rights regardless of gender, birth, education, profession, nationality, race, religion, origin, and social situation".

[38] Article 81(1), in the wording given after the amendment of the Constitution in 1976, stated that: "Citizens of the Polish People's Republic, irrespective of nationality, race, or religion, enjoy equal rights in all spheres of public, political, economic, social, and cultural life. Infringement of this principle by any direct or indirect granting of privileges or restriction of rights on account of nationality, race, or religion is punishable by law." Pursuant to paragraph 2 of the aforementioned provision, "the spreading of hatred or contempt, the provocation of strife, or the humiliation of man on account of national, racial, or religious differences are forbidden".

One significant change was the removal from the scope of matters governed by the Constitution of the provision concerning the threat of criminal sanction in the case of the use of freedom of conscience or confession for purposes detrimental to the interests of the Polish People's Republic.

The Constitution, as amended in 1976, retained the guarantee of freedom of conscience and confession, both individual and collective, repeating verbatim the solutions from the text adopted in its original wording.

Within the scope of individual freedom of conscience and confession, this principle was implemented by recognising the rights to maintain and change one's views or beliefs in matters of worldview; the right to stay silent in matters of one's worldview; the right to express one's beliefs, individually or collectively, including in public; the right to establishment and membership in religious organisations as well as the freedom to join and withdraw from such organisations; the right to participate in ceremonies and religious rites; the right to access sources of knowledge in matters related to religion and confession; the right to propagate the principles of faith; the right to receive religious services; the right to choose the nature of religious rites; and the right to shape the worldview of one's children or wards in matters related to religious education.

The scope of rights was limited by law. Until 1976, the Constitution of the Polish People's Republic contained a general clause providing sanctions for the use of freedom of conscience against the interests of the Polish People's Republic.

The protection of freedom of conscience and confession was provided for in Article 82 (1) of the Constitution.[39] Lower-order legislation provided more specific details of this protection. The principle of equal rights of citizens regardless of religion was expressed in Article 81(1) of the Constitution. The aforementioned provision contained a catalogue of orders and prohibitions addressed to state authorities. Under this provision, all state authorities were to treat all citizens equally, without making the manner of this treatment dependent on any factors related to religious issues.

[39] According to Article 82(1) of the Constitution: "The Polish People's Republic guarantees freedom of conscience and religion to citizens. The Church and other religious bodies may freely exercise their religious functions. It is forbidden to prevent citizens from taking part in religious activities or rites. It is also forbidden to coerce anyone into participating in religious activities or rites." See: Rybicki, M., Burda, A., Stembrowicz, J. "*Konstytucja Polskiej Rzeczypospolitej Ludowej z 1952 r.*", in: *Konstytucje polskie. Studia monograficzne z dziejów polskiego konstytucjonalismu*, vol. 2, edited by M. Kallas, Warszawa 1990, p. 359.

This principle led to further progress in the form of a prohibition on using knowledge of the religious preferences of a citizen, the fact of their participation or lack thereof in religious rites, or their manifestation of views on religious issues as a factor affecting the treatment of the given citizen.

The scope and actual possibility of exercising freedom of conscience and confession was also influenced by the scope of collective freedom of confession, which was shaped by constitutional norms pertaining to the functioning of religious associations. As such, it is reasonable to present the situation of religious associations, as shaped by the provisions of the Constitution. Article 70 of the Constitution (after the amendment of 1976, Article 82) set forth the principle of freedom of the church and of religious associations in the exercise of religious tasks. Religious associations enjoyed freedom of conscience and confession as social organisations appointed by followers to meet their religious needs. Their freedom to conduct religious activities was a guarantee of the individual rights that citizens obtained under the freedom of conscience and confession and which were logically connected with it. Religious associations were subject to the same restrictions, i.e. prohibitions on misusing freedom of confession for purposes detrimental to the interests of the Polish People's Republic.

The freedom of action of religious associations fell within the functions related to the implementation of religious assumptions. In accordance with the principle of separation of church and state, the exclusion of religious associations from the public activity of the state meant that it could not influence the decisions of ecclesiastical authorities through coercion. The internal regulations of religious associations were not part of the system of legal norms of the state and could not attain the status of state law. Therefore, the provisions of the internal law of religious associations were only effective within the given association. Within the limits specified by the provisions of the Constitution, religious associations could freely carry out activities related to religious functions. The cult activity of religious associations includes establishment of dogmas of faith, interpretation of religious norms, establishment of liturgical law, and determination of the manner in which religious rites or ceremonies are celebrated. It follows from the principle of freedom of confession that religious associations enjoy autonomy in the scope of these activities. Restrictions on

this freedom may result from specific provisions and may be justified on grounds of protection of public safety, health, public decency, etc. Until 1976 the provisions of the Constitution of the Polish People's Republic included the aforementioned clause allowing for punishment for actions contrary to the interests of the Polish People's Republic.

As it quickly turned out, the practices of the communist authorities did not comply with the Constitution. First of all, the communists persecuted believers and people who openly practised religion, treating them as citizens of an inferior category who were unsuitable for public functions.[40] Meanwhile, atheism was promoted to the rank of the state ideology.[41]

3. Freedom of conscience and confession on the basis of the Decree of 5 August 1949 – Law on Associations

Immediately after liberation from the German occupation, the situation of religious associations in Poland was governed by the provisions of the law from the interwar period. Until 1949 there were three groups of non-Roman Catholic religious associations. The regulation of religious associations belonging to the first group was based on the provisions of the Constitution of 1921 and resolutions of the Council of Ministers.

The second group were religious associations whose legal status was regulated by the Ministry of Public Administration's rescripts from 1946.[42]

The third group consisted of religious associations with an unregulated legal situation, operating based on the regulations of the partitioning states or without a legal basis.[43]

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[40] Krukowski, J. *Polskie prawo wyznaniowe*, Warszawa 2007, p. 34.

[41] Mezglewski, A., Misztal, H., and Stanisz, P. *Prawo wyznaniowe*, Warszawa 2006, p. 30.

[42] Rescript of the Minister of Public Administration of 1 February 1946 on the legal recognition of the Polish Catholic-National Church, AAN, UdSW, L. V.14486/45; Rescript of the Minister of Public Administration of 26 April 1946, APG, ZMiMRN, file ref. no. 80, k. 3; Rescript of the Minister of Public Administration of 5 May 1946 L.V. 2433/66.

[43] The following should be mentioned here: Decree of 16 October 1945 on the relationship of the state to the Methodist Church in the Republic of Poland, (Journal of Laws of 1945, no. 46, item 259); Decree of 5 September 1947 on the regulation of the legal situation of the Evangelical-Reformed Church in the Republic of Poland, the Mariavite Church, and the Old Catholic Church (Journal of Laws of 1947, no. 59, item 316); Decree of 19 September 1946 on the amendment of the Decree of the President of the Republic of Poland of 25 November 1936 on the relationship of the state to the Evangelical Church of the Augsburg Confession in the Republic of Poland (Journal of Laws, no. 52, item 272).

In 1949 the Decree amending certain provisions of the Law on Associations of 1932[44] extended the legal force of the Law on Associations to include unregulated religious associations, religious orders, and religious congregations. As a result of the foregoing, after 90 days had passed from the moment the decree entered into force, religious unions that did not regulate their legal status were to cease functioning. In this manner, the division into legally recognised and non-recognised religious associations was also removed. A number of social organisations operating on the basis of special provisions were excluded from the scope of the Act on Associations. The exclusion covered, among others, religious orders, congregations, and other associations aimed solely and directly at the performance of religious worship of legally recognised churches and religious associations. One of the types of social organisations benefiting from this exclusion were associations serving Catholic religious and confessional purposes.[45]

Taking advantage of the significant extent of destruction of official registers because of losses resulting from wartime destruction, the communist authorities introduced an obligation for associations to re-register or be faced with a ban of further activity. According to the literature on the subject, the procedures applied by administrative authorities in connection with this re-registration made it possible to drag out the process. One such example of a procedure used to hinder the activities of religious associations was the requirement to obtain the opinion of the Office of Public Security (UBP), the opinion of which was binding on administrative bodies. What is more, the UBP was not bound by any deadline for the issuance of an opinion, nor was the principle of "tacit consent" applied.[46]

The 1934 Regulation on associations serving Catholic religious and confessional purposes was repealed in 1947 as being in violation of the principle of equal treatment of religious associations.[47] In view of this repeal

[44] Decree of 5 August 1949 amending certain provisions of the law on associations (Journal of Laws of 1949, no. 45, item 335).

[45] Regulation of the Council of Ministers of 28 January 1934 on associations serving Catholic religious and confessional purposes (Journal of Laws of 1934, no. 9, item 72).

[46] For more on this topic, see: Ordon, M. "*Prawo o stowarzyszeniach jako instrument antykościelnej polityki władz komunistycznych w okresie Polski Ludowej – zarys problemu*", Studia z Prawa Wyznaniowego, 4(2002), pp. 91–108.

[47] Journal of Laws of 1947, no. 65, item 395, Regulation of the Council of Ministers of 2 October 1947 on the repeal of the Regulation of the Council of Ministers of 28 January 1934 on associations serving Catholic religious and confessional purposes (Journal of Laws of 1934, no. 9, item 72).

of the special provisions concerning Catholic associations, such associations entered into the scope of the Law on Associations of 1932. Thanks to the repeal of the provisions taking the specificity of Catholic associations into account, administrative bodies gained an opportunity to hinder or prevent the registration of organisations of this type.[48]

Even more far-reaching changes were brought about by the abolition of the exclusion of religious organisations from the provisions of the Law on Associations. This resulted in the need to legalise the operation of religious associations. Due to the far-reaching requirements placed by the authorities on organisations applying for registration (including the requirement to submit a statute, a list of members indicating the entrusted functions, assets, etc.),[49] the Polish Episcopate issued an order stating that church associations whose purpose was to perform religious worship or conduct charity and formation activities, especially youth associations, should not apply to the state authorities for registration.[50]

4. Freedom of conscience and confession of minors on the grounds of the educational laws

4.1. Legal status until 1956

As indicated in the literature on the subject, the legal[51] situation of citizens and institutions was regulated not by normative acts in the shape of the Constitution and parliamentary acts, but in fact by lower-order legal acts taking the form of ordinances, circulars, instructions, and guidelines. Not all of them were published. The formal requirement for instructional acts to comply with the applicable statutory laws was not actually respected. In the period immediately following the end

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[48] For example, reference is made to the invocation of Article 6(a) of the Law on Associations.

[49] Regulation of the Minister of Public Administration of 6 August 1949 on the implementation of the Decree of 5 August 1949 amending certain provisions of the law on associations (Journal of Laws of 1949, no. 47, item 358).

[50] Biedroń, T. *Organizacje młodzieży katolickiej w Polsce w latach 1945–1953*, Kraków 1991, pp. 25–26.

[51] Mezglewski, A. *Polski model edukacji religijnej w szkołach publicznych. Aspekty prawne*, Lublin 2009, p. 37.

of World War II, the basic normative act was the March Constitution of 1921. The authorities did not recognise the April Constitution, determining that its adoption was inconsistent with the law in force at that time and that the act had no legal force.[52]

Among those acts regulating religious relations in the Polish state, including freedom of conscience and confession, the provisions of the Concordat of 10 February 1925 remained in force for a short period. In addition, the Regulation of the Minister of Religious Affairs and Public Education on the teaching of the Catholic religion of 9 December 1926 was still in effect.[53]

Therefore, for a short time the prevailing legal status was the same as the one in effect before 1 September 1939. Pursuant to the provisions of Article 120 of the March Constitution, religious education in public schools was compulsory for young people under the age of 18. Article XIII of the Concordat of 1925, which modified the aforementioned provision of the Constitution, was still in force. The provisions of the Regulation of 9 December 1926 on the teaching of the Catholic religion also remained in force.

The March Constitution was formally in effect until the adoption of the Constitution of the Polish People's Republic in 1952. As a result of a unilateral government resolution of 12 September 1945,[54] the provisions of the Concordat ceased to be considered legally binding.

In connection with the *de facto* unilateral declaration of the Concordat's termination, the Minister of Education issued an official interpretation of the provision of Article 120 of the Constitution of 1921, which sought to remove any doubt as to the group of entities covered by this regulation.[55] According to the new interpretation, the obligation to receive

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[52] Cf. *Manifest PKWN*, pp. 315–316. According to the declaration: "The State National Council and the Polish Committee of National Liberation operate on the basis of the constitution of 17 March 1921, the only legal constitution in force that was adopted in accordance with the law. The basic assumptions of the constitution of 17 March 1921 will apply until the convening of a Legislative Sejm elected in a general, direct, equal, secret, and proportional vote, which will adopt, as the expressor of the will of the nation, a new constitution."

[53] Journal of Laws of 1927, no. 1, item 9.

[54] See: Pawluk, T. *"Problem wygaśnięcia konkordatu polskiego z 1925 r."*, Prawo Kanoniczne, 29(1986), nos. 1–2, pp. 134–135; Mezglewski, A. *"Spór o wygaśnięcie konkordatu polskiego z 1925 roku"*, Roczniki Nauk Prawnych, 8(1988), pp. 325–240; and Misztal, H. *Polskie prawo wyznaniowe*, t. 1: *Zagadnienia wstępne. Rys historyczny*, Lublin 1996, p. 174.

[55] Journal of Laws of the Ministry of Education of 1945, no. 4, item 189, circular letter no. 50. The preamble of the ordinance states that the reason for its issuance is the practice of some

religious education as set out in Article 120 of the Constitution covered all scientific institutions in which persons under 18 years of age received education and which were maintained by the state or local governments. However, it was noted that the obligation provided for in Article 120 of the Constitution could not interfere with the principle expressed in Article 112, according to which it was forbidden to coerce anyone, not including persons under parental authority or care, into participating in religious activities or rites.

Moreover, individual freedom of conscience and confession was guaranteed according to Article 111 of the Constitution, so the injunction contained in Article 120 of the Constitution had to be interpreted in connection with the indicated guarantee provisions.

Based on this assumption, the new interpretation indicated that the obligation to teach religion did not apply to young people whose parents or guardians did not belong to any religion or whose worldview did not accept the religion taught at school. Thus, based on Article 120 of the Constitution, religious instruction could be given to students belonging to legally recognised religious associations. With regard to students who did not belong to any legally recognised religion, there was no obligation to receive religious education at school. It was noted that the issue of teaching religion in the case of such young people should remain within the choice and will of parents or guardians. Moreover, it was indicated that the school authorities should limit themselves to accepting parents' or guardians' declarations of the child's unwillingness to attend the religious classes at a given school. However, they were not authorised to collect information about the religion of the child's parents or guardians.

The ordinance stated that in the event of disagreements between the deceased parents and those currently caring for the child regarding the issue of the child's religious education, the caregiver should refer to the guardianship authority.[56]

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schools, which violated the provisions of Article 111 of the Constitution in their application of the provisions of the regulation of 9 December 1926 on the teaching of the Catholic religion. For this reason, in a letter (Journal of Laws 1089/45) addressed to the Minister of Education, the Minister of Justice provided explanations as to the manner of interpreting the religious provisions of the Constitution.

[56] Decree of 14 May 1946 – Guardianship Law (Journal of Laws of 1946, no. 20, item 135).

Based on the indicated premises, the Minister of Education ordered that religious education be a compulsory subject in all schools financed by the state or local governments, for all students belonging to religions recognised by the state. Pupils whose parents or guardians declared that it was the will of their children or wards not to participate in religious education at school were exempted from participating in these activities. In the case of such students, moreover, they were not assigned a grade for religion on school certificates. Setting aside the manner in which the foregoing issue was regulated by way of an ordinance of the minister, as well as the possibility that the recognition and application of this legal act was inconsistent with the provisions of Article 120 of the Constitution and Article XIII of the Concordat, it should be assumed that beginning 13 September 1945, the date of entry into force of the ordinance, the obligation of young people to attend religious classes was practically abolished.

The formally binding provisions of Article 120 of the Constitution and Article XIII of the Concordat[57] were marginalised by a lower-order legal act. The wording of the said provisions meant that, from a formal point of view, participation in religious classes was obligatory for students attending schools maintained or supported by the state or local governments. It can be said, therefore, that religion was a compulsory subject from the point of view of the Constitution. However, the new interpretation made by the Minister of Education essentially reduced the subject of religion to a group of optional classes. The exemption from the requirement of a child who was a member of one of the legally recognised religions to participate in religious classes took effect upon submission of such a declaration by the parents or guardians. Moreover, as can be seen from the content of the explanations mentioned, the exemption could have been the result of a decision of the guardianship court in the event that the will of the guardian with regard to the minor's religious

[57] The issue of the effects of the resolution of the Provisional Government of National Unity of 12 September 1945 stating the loss of the binding force of the Concordat has been the source of disputes in the legal sciences – see: Rzepecki, A. "*Problematyka wygaśnięcia Konkordatu zawartego między Rzeczpospolitą Polską a Stolicą Apostolską w dniu 10 lutego 1925 r.*", Studia Erasmiana Wratislaviensia, 5(2011), pp. 285–304. A lengthy discussion of the reasons, the manner, and the associated doubts concerning the effectiveness of the resolution of the Provisional Government of National Unity on the termination of the Concordat, along with extensive references to literature, was presented by A. Mezglewski in his article entitled *Spór o wygaśnięcie konkordatu polskiego z 1925 roku*.

education was contrary to the will of the deceased parents. Therefore, the statement of the parents or guardian shaped the legal status of the minor. According to the ordinance, the authority receiving the declaration was not competent to examine or gather information on the reasons for such a decision.

The ordinance did not regulate the issue of resolving possible disputes between living parents or between parents and a child regarding participation in religious classes. Taking into account the wording of the applicable Article 120 of the Constitution in conjunction with Article 112 of the same act, it should be regarded that the will of the minor was irrelevant when implementing their obligation to attend religious classes. Provided the minor was under parental authority, they were not an entity entitled to invoke the prohibition against coerced participation in religious activities. Therefore, the will of their parents or guardian was decisive (in the event that there was no discrepancy between the beliefs of the guardian and the deceased parents). In the event of a disagreement between the parents, it seems well-founded to apply as an analogy the situation provided for in the event of a disagreement between the will of the deceased parents and the guardian, and to therefore transfer the decision to the competence of the guardianship authority. Doubts regarding this were resolved by the issuance of the decree of 22 January 1946 regulating family law.[58] Pursuant to Article 20 (2) of that act, in the event of a conflict of will between parents jointly exercising parental authority, the decision of the guardianship authority was decisive. It should therefore be recognised that from the date of entry into force of the aforementioned provision, in the absence of parental consent regarding the obligation of a minor to attend religious lessons, the case was decided by a court acting as the guardianship authority.

Analysing the consequences of the ordinance of the Minister of Education of 13 September 1945 – setting aside the ideological basis of its issuance and the issue of whether, from the point of view of legal science, it can be considered an act with legal force – it should be considered that it did in some way increase the scope of freedom of confession of minors. The ordinance regulated the issue of the rights of non-religious people – an issue that was consistently ignored in prewar legislation

[58] Journal of Laws of 1946, no. 6, item 52, Decree of 22 January 1946 – Family Law.

– and furthermore made the non-confessional upbringing of a child an actual possibility, one which in the practice of the interwar period was almost impossible. In retrospect, it is clear that the purpose of issuing the aforementioned act was to implement the plan to marginalise the role of the church in social life. However, when assessing the legal status without reference to the motives for adopting a given legal act, it should be considered that, formally, the stated ordinance was an act extending the scope of freedom of conscience and confession of minors in the course of their school education. The direction of the government's policy towards the presence of religion in education is illustrated by the position expressed at the meeting of the Sejm Education Committee on 26 November 1947, when the progressing process of clericalisation of the Polish school was deemed dangerous for the education of young people. The Minister of Education stated at the time that "reactionary factors, under the guise of teaching religion, conduct hostile policies" on school premises.[59]

Due to a fear of protests on the part of the Episcopate, an additional interpretation of the 1926 ordinance and the aforementioned Circular was prepared as a classified, "top secret" document. The interpretation concerned an increase in the number of students for which a class in religion would be introduced, from 12 to 20. It was agreed that school leaders could inspect the teaching of religion; religious instruction was to be limited to instruction in the strict sense of the word (all religious practices were optional and could take place during extracurricular hours, and prayers could only be performed in classrooms where all students attended religion lessons).[60]

The 1950 agreement between the government and the Episcopate stated that: "The government does not intend to limit the current state of religious education in schools; religious education programs will be developed by the school authorities together with representatives of the Episcopate; schools will be provided with appropriate textbooks; teachers of religion, laymen and clergy, will be treated equally to teachers of other subjects; school authorities will appoint inspectors of religious education

[59] The Archives of Modern Records, Legislative Sejm of the Republic of Poland, vol. VI, Minutes of the 11th meeting of the Education Committee of 26 November 1947, p. 132.

[60] The Archives of Modern Records, Ministry of Education, Notes on the Ordinance of 9 December 1926 and 13 September 1945, file ref. no. 449.

in consultation with the Episcopate. The authorities will not prevent students from taking part in religious practices outside the school."

4.2. Legal status in the years 1956–1961

The attitude of the state authorities towards the Church was softened due to the events related to the workers' protests in Poznań and indirectly also due to the suppression of the Hungarian revolution. The circumstances accompanying the change in the authorities' position towards the Church were aptly presented by B. Noszczak, who noted that: "In the second half of 1956 there was a kind of revival of religious life; the faithful, overcoming the successive barriers of fear, gradually moved beyond the framework of a Christianity limited to the confines of the sacristy – a Christianity barely tolerated by the communist authorities. The most prominent examples of this phenomenon in the period discussed included: the June Uprising in Poznań, where postulates concerning, among other things, the matters of the Church were formulated in such a radical form of mass social protest for the first time after the war; and the vows of the Polish Nation made in August at Jasna Góra."[61]

In October 1956 the bishops sent a memorandum to the First Secretary of the Central Committee of the Polish United Workers' Party, which stated that: "The agreement guaranteed Catholic youth the teaching of religion in the same manner in which it had been taught until that time (that is, in the same manner which had existed on the day of the agreement). Meanwhile, practice has diverged far from this point of the agreement [...]. Simply put, the piles of documents in which parents demand the return of prefects or catechists to schools testify to the tremendous interest of parents in the issue of religious education at school. The bishops, for their part, taking into account the actual state of affairs, ordered priests to teach children and young people – deprived of religious instruction at

[61] Noszczak, B. "*Okoliczności uwolnienia kardynała Stefana Wyszyńskiego z internowania w Komańczy (październik 1956 r.)*", Studia Prymasowskie, 1(2007), pp. 80–81 and the literature cited therein: Jankowiak, S., Makowski, E. *Poznański czerwiec 1956 w dokumentach*, Poznań 1995; Makowski, E. *Poznański Czerwiec 1956 – pierwszy bunt społeczeństwa w PRL*, Poznań 2001; *Poznański Czerwiec 1956*, edited by S. Jankowiak and A. Rogulska, Warszawa 2002; *Poznański Czerwiec w świadomości i historii*, edited by A. Górny, Poznań 1996; and *Przełomowy rok 1956. Poznański Czerwiec, Polski Październik, Budapeszt. Materiały międzynarodowej konferencji naukowej, Poznań 26–27 czerwca 1996 roku*, edited by E. Makowski and S. Jankowiak, Poznań 1998.

school – outside of school. Here, it would seem, that there would be no more difficulties on the part of administration. Meanwhile, the Church has encountered many obstacles here as well. This is why the matter requires urgent and just settlement."[62]

On 4 December 1956 another agreement was signed between the Episcopate and representatives of the government of the Polish People's Republic regarding the possibility of restoring catechesis in schools. The agreement stated in point 2: "Full freedom is guaranteed, and voluntary religious instruction is guaranteed in primary and secondary schools for children whose parents desire it. Religious instruction will be conducted at school as an extracurricular subject. School authorities shall be obliged to enable religious instruction to be obtained through the appropriate scheduling of school activities. Teachers of religious instruction shall be appointed by the school authorities in agreement with the ecclesiastical authorities. Teachers of religion shall be remunerated from the budget of the Ministry of Education. Religious instruction programs and religious instruction books require the approval of church authorities and educational authorities. Inspection of religious instruction will be carried out by church and school authorities. School authorities shall endeavour to enable children and young people to participate freely in religious practices outside of school. School authorities and clergy will ensure complete freedom and tolerance for believers and non-believers alike and will resolutely counteract any violation of freedom of conscience."

Despite the formal support for freedom of religion in schools, the actions of the authorities in practice were completely different. Here, one should mention the activities that marginalised the role of religion and made it difficult to conduct classes in this subject. One example is the limitation of the importance of teachers of extracurricular subjects (with religion belonging to this group) by excluding them from the deliberations of the pedagogical board.[63] An important act regulating the principles

[62] Memorandum of the Polish Episcopate to the First Secretary of the Central Committee of the Polish United Workers' Party Władysław Gomułka on the staffing of clergy posts, the return of removed bishops, religious instruction in schools, and the appointment of a joint commission for consideration of the relations between the State and the Church of 27 October 1956, "Circular Letter", 1990, no. 7, p. 28.

[63] Journal of Laws of the Ministry of Education of 1956, no. 16, item 155. Ordinance of the Minister of Education of 7 December 1956 (no. SO 7–6858–56) on the participation of teachers of non-compulsory subjects in the meetings of pedagogical boards.

of conducting religious classes was the ordinance of the Minister of Education of 8 December 1956 on teaching religion in schools.[64] According to its content, religious instruction in schools enjoyed complete freedom, and the state guaranteed the voluntary nature of its teaching. Religion was an extracurricular subject organised for students whose parents gave their individual consent to it. According to the ordinance, religious curricula were approved by church and school authorities. The teaching of religion was to be provided by teachers appointed by the school authorities in consultation with the ecclesiastical authorities. A ban on combining the role of teacher of secular subjects with that of teacher of religion was introduced. It was the duty of the school authorities to ensure complete tolerance for both religious and non-religious students. Moreover, the school authorities were obliged to resolutely counteract any form of violation of freedom of conscience. At the same time, the authorities guaranteed the freedom of participation in religious practices outside of school during time free from school and educational duties, as well as the provision of an exemption from classes due to Advent and Lenten church retreats.

Another act was the Circular of 11 December 1956 on the implementation of the ordinance of the Minister of Education of 8 December 1956 on the teaching of religion in schools.[65] This act – in order to ensure full freedom of conscience for school youth – allowed for the operation of schools without religious instruction if the majority of parents expressed such a will.

Another sign of the marginalisation of the role of religion in education was the ordinance of the Minister of Education of 27 March 1957 on the amendment of the rules of classification and promotion of pupils.[66] According to section 1 of the ordinance, grades for non-compulsory subjects were not included in school completion certificates.

A new plan of action in the area of religious policy was approved by the Political Bureau of the Central Committee of the Polish United Workers' Party in June 1957. Although the authorities were to stop

[64] Ibid., item 156.

[65] Ibid., item 157.

[66] Journal of Laws of the Ministry of Education of 1957, no. 5, item 49. Ordinance of the Minister of Education of 27 March 1957 (GM 2–479–57) on the amendment of the rules of classification and promotion of pupils.

the use of repression against religious school children and teachers alike, measures were planned to strengthen the processes of creating religious indifference. The planned method of achieving the intended goal was limitation of the forms of religious activity carried out outside of churches, e.g. limitation of access to participation in pilgrimages and parish groups. In the process of secularisation, great importance was attached to the spread of the "scientific worldview among young people".[67] In July 1958 the Secretariat of the Central Committee of the Polish United Workers' Party sent a letter to lower-level party authorities discussing "the principles of the party's policy towards the Church and current tasks in this field". This document served as a presentation (and, at the same time, a collection of guidelines for the local apparatus) of the intentions and aspirations of the authorities, which were aimed at limiting the role of the Church. These included the postulates that members of religious orders – an "element detached from life and the most fanatical" – be deprived of the right to teach religion, that the number of schools without religious instruction be increased, that a ban on hanging crucifixes in schools be introduced and that the Church's construction plans be limited, and last but not least, that a campaign be conducted to explain to the public the policy of the authorities towards the Church.[68]

The implementation of these intended actions was reflected in Ordinance no. 9 of August 1958 on the observance of the principles of secularism of the school and on the removal from school of teachers of religions belonging to religious congregations,[69] as well as in Circular no. 26 on the adherence to the principles of secularism of the school.[70] Ordinance no. 9 pursued two goals: first of all, it limited the influence of that part of the clergy which was considered the most fanatical; secondly, by limiting the number of catechists, it automatically reduced the number of schools in which religion was taught (in addition, it introduced significant administrative hurdles for candidates for catechists). Circular no. 26, on the other hand, regulated issues

[67] Friszke, A. "*Wytyczne stanowiska partii w sprawie stosunków między państwem a Kościołem*", Więź, 1997, no. 3, pp. 132–151.
[68] Dudek, Gryz, *Komuniści i Kościół w Polsce*, pp. 142–145.
[69] Journal of Laws of the Ministry of Education of 1958, no. 9, item 121.
[70] Ibid., item 123.

concerning the presence of religious symbolism in schools, the participation of teachers in religious practices organised for young people, and organisational issues pertaining to the placement of religious classes in teaching schedules (generally through scheduling arrangements that encouraged students to skip them).

In turn, the Ordinance of the Minister of Education of 4 August 1958 on teachers of religion introduced a ban on exercising the role of teacher of religion in relation to members of religious congregations.[71]

Anticipating the ultimate goal of the actions taken by the authorities, the Church appealed in August 1957: "Please send children only to schools where religion is taught. This is a great duty of your conscience. The private schools of the Society of Secular Schools (Towarzystwo Szkół Świeckich) have not included religious instruction in their curriculum. Children will not hear the holy word of faith there. We warn such Catholic parents who would dare to send their children to schools without religious instruction thusly, borrowing the words of the Divine Saviour: 'Whoever causes one of these little ones who believe in Me to stumble, it would be better for him if a millstone were hung around his neck, and he were thrown into the sea.'"[72]

In June 1958 a message of the Polish Episcopate, in which bishops asked parents to demand religious instruction at school, was read in all Polish churches. The authors recalled: "The teaching of religion at school is organised for those students whose parents express in writing their individual wishes in this matter. [...] Don't be intimidated by people who shouldn't decide what school is going to look like."[73]

One of the most far-reaching acts, one which in theory ensured freedom of religion in education and *de facto* limited the influence of the Church, was Circular no. 26 of 4 August 1958 on the adherence to the principles of secularism of the school.[74] It was issued in response to "numerous cases of misinterpretation of the principle of the secular nature of the school,

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[71] Ibid., item 121. Ordinance of the Minister of Education of 4 August 1958 (GM no. 1–3146/58) on teachers of religion.

[72] Majcher, E. "*Udział ks. Andrzeja Santorskiego w działalności katechetycznej*", Warszawskie Studia Teologiczne, 22(2009), no. 2, p. 45.

[73] "*Orędzie Episkopatu Polski do rodziców katolickich o nauce religii w szkole z czerwca 1958 r.*", in: *Listy Pasterskie Episkopatu Polski 1945–1974*, Paris 1975, pp. 176–177.

[74] Journal of Laws of the Ministry of Education of 1958, no. 9, item 123. Circular no. 26 of 4 August 1958 (no. GM 1–3145/58) on compliance with the principles of secularity of the school.

or clear violation of this principle and failure to observe the conditions guaranteeing full tolerance at the school".[75] As a result of the actions mentioned, in mid-September 1958 crucifixes were hung in 7% of all Polish schools.[76]

In view of the finding of such violations of the principle of full secularism and tolerance, it was decided that the participation of teachers and educators in the organisation of religious practices among young people was unacceptable; that the decoration of school premises should not violate the secular nature of the school, and therefore that it was forbidden to decorate school premises with religious emblems. It was also unacceptable, due to the secular nature of the school, to pray before or after the completion of instruction in compulsory subjects. In addition, religious lessons could only be scheduled after or before the hours of compulsory classes. It was reiterated that the participation of teachers of religion in pedagogical boards was only permissible if matters concerning the teaching of religion needed to be regulated.

The obstruction of the organisation of religious activities was also achieved through actions involving, for example, prohibiting Lenten church retreats on school days: "Church authorities may organise church retreats for pupils on their own during the spring holidays or outside the hours of school instruction."[77]

The Circular of 14 April 1959 on schools and classes without religious instruction[78] confirmed the possibility of operating schools without the provision of religious instruction.

The educational policy was intended to completely cut off young people from the influence of the Church. On a nationwide scale, the government's actions were increasingly aimed at removing religion from Polish schools. This was achieved through the Act of 15 July 1961 on

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[75] Examples of violations of the principle of the secular nature of the school included decorating school rooms with religious emblems, praying before or after classes, and the participation of some teachers in organising young people's involvement in religious services and pilgrimages.

[76] Archive of the Office for Religious Affairs (AUdsW), file ref. no. 56/856, information of the Organisational Department of the Central Committee of the Polish United Workers' Party no. 82/1819 of 12 September 1958.

[77] Journal of Laws of the Ministry of Education of 1959, no. 2, item 25. Circular of 19 February 1959 on church retreats.

[78] Journal of Laws of the Ministry of Education of 1959, no. 3, item 39. Circular of 14 April 1959 on schools and classes without religious instruction.

the development of the educational system.[79] During discussions on the draft act, the reporting MP Andrzej Werblan stated that "secularity of the school is consistent with the democratic postulates of freedom of conscience, because the teaching of religion introduces an educationally and socially harmful division of children into those attending and those not attending religion classes and creates the grounds for fanaticism and intolerance."[80]

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[79] Act of 15 July 1961 on the development of the educational system (Journal of Laws of 1961, no. 32, item 160).

[80] Stenographic records from the session of the Sejm, available at: https://bs.sejm.gov.pl/exlibris/aleph/a22_1/apache_media/A43J5EEQSNFLABI9M5NHS2Q8ERXAQ2.pdf [20.04.2016].

"The modern school, and especially the socialist school, should be a secular school. School matters are matters of science, not faith. Our state recognises religion as a private matter of citizens. In the People's Poland, no obstacles are made, nor shall they be made, to anyone who wants their child to learn the principles of religion. However, it is in the interest of the successful course of the teaching process that these children receive religious education outside of school, because teaching religion at school violates the necessary unity of the didactic and educational tasks of the school, contrasts religious beliefs with the truths of science, and thus makes it difficult for the school to fulfil its main and basic duty, which is to equip young people with modern knowledge [...]. The secularity of the school is consistent with the democratic postulates of freedom of conscience because the teaching of religion introduces an educationally and socially harmful division of children into those attending and those not attending religion and creates the ground for fanaticism and intolerance. [...] In recent years, most parents – including parents of believers – have understood these needs and principles of the school and have considered teaching religion outside the school area to be a more just and beneficial solution. As a result, with the consent of parents, religious instruction is not currently carried out in the vast majority of schools in our country. [...] An integral part of socialist teaching and education is the formation of a scientific view of the world. We want a young person graduating from school to be convinced that the views that determine their behaviour and understanding of the world should be derived from the data of science. They should adopt as a directive of thinking and action only those indications that are based on scientifically verifiable premises. The draft act stipulates that the school is a secular institution and that teaching and upbringing in it should be secular in nature. The attitude of our party towards religion and the Church has been explained many times. As a Marxist-Leninist party, we maintain a materialist worldview. In its state policy, the party implements the principle of separation of the church from the state and the principle of the citizens' freedom of conscience and freedom to profess a religion or not to profess any religion. Teaching religion outside of school fully corresponds to the principle of freedom of conscience both in relation to the children of believing parents and non-believing parents. [...] From the point of view of the tasks performed by the school, any division between believers and non-believers must be eliminated from within its walls. [...] religious faith in our country is [...] a private matter of citizens. Our state protects religions and guarantees full freedom of worship. Therefore, the teaching of religion must be left to the free discretion of those parents who want to give their children a religious upbringing. However, it should take place outside the school. In fact, the teaching of religion at school is becoming a source of unhealthy division among children, creating a basis for intolerance and fanaticism. Other isolated and criticised statements pointed to the distinction between the concept of secularism and doctrinal laicism, the need to include believers in the social and political life of the country, and the creation of a school in which differences of worldview will not be a depreciating factor. The need to guarantee the possibility of free catechesis in catechetical points was also mentioned. Moreover, it was pointed out

4.3. Legal status in the years 1961–1990

The Act of 15 July 1961 on the development of the educational system established the secular nature of education in the Polish People's Republic. This principle was explicitly expressed in Article 2 of the Act.[81]

The removal of religious instruction from schools was only one stage in the struggle for the secularisation of the youth. On 19 August 1961 the Minister of Education issued an ordinance subjecting religious instruction conducted in catechetical points to state supervision.[82] On 21 November 1961 the Minister of Education issued an instruction concerning

that education should be freed from metaphysical and fideist burdens. Among the arguments confirming the adopted concept of a secular school, it was pointed out that this process already began from the bottom up, and that: 'in the last few years a mass and conscious process of secularisation of schools in various environments has been taking place. This process, carried out with the full approval of teachers, took place almost everywhere at the initiative of the society. As a result of these transformations, religion was no longer taught in the vast majority of schools throughout the country in the past school year. [...] the act, by deciding that the school in Poland is secular, basically confirms what has already been regulated by the needs of life.' During the discussion, examples of secular schools from the history of Poland were cited, including the University of Kraków, where the Faculty of Theology was established only after some time, Bartłomiej Nowodworski's junior high school, the Raków Academy, or the curriculum implemented by the Commission of National Education, the institutes modelled on French ones, and real schools. It was argued that freedom of conscience is guaranteed by the provisions of the Constitution, which ensures tolerance. This tolerance was manifested, among other ways, by financing the reconstruction of sacral buildings. It was mentioned that the principle of the secular school contained in Article 2 of the Act 'can remove many conflict matters that arose between believers and non-believers and does not necessarily limit the possibility of religious upbringing of those children whose parents so wish [...]'. While emphasising the merits of the clergy in our history, it must be clearly stated that, according to the teaching of the Church, its task, regardless of the historical period, is to teach the principles of faith and morality. It was pointed out that the Church can freely carry out its task within the framework of catechetical points, the existence of which is fully approved by the state. It was pointed out that: 'The entire school system in our country is lay and secular. We do not believe that this is in conflict with, or in contradiction to, the existence and normal development of a large community of believers in our country.' The discussion contrasted the school model proposed in the draft act with the school of the interwar period, indicating that: 'The Polish school in the interwar period [...], the task of which was precisely the religious development of young people, [...] raised us in a fideistic spirit and, in accordance with the orders of the then-authorities, forced, for example, teachers to participate in the religious practices of young people, to lead young people to these practices, while the school forced young people to participate in religious practices such as going to church, praying, etc.' It was pointed out that the Church still does not fully accept the achievements of science, maintaining, among other things, an index of prohibited books, which often contains items constituting mandatory school reading materials. The position taken by the Church in the interwar period was also cited: '[...] the clergy was a supporter of religious schools that would divide both students and teachers and create special, separate schools for individual faiths.'

[81] Article 2 of the Act provided: "Schools and other educational establishments shall be secular institutions. All teaching and upbringing in these institutions shall be secular."

[82] Journal of Laws of the Ministry of Education of 1961, no. 10, item 124.

the procedure for implementing this ordinance.[83] Both the ordinance and the instruction introduced a number of restrictions concerning the teaching of religion in catechetical points, especially with regard to monks. According to the ordinance of 19 August 1961, catechetical points could only be created in churches, public chapels, or other parish rooms. Although the aforementioned instruction of 21 November 1961 still maintained the prohibition on the use of monastic premises for catechetical purposes, it additionally permitted the organisation of catechetical points in private premises. The publication of the law and the accompanying circulars in 1961 caused a reaction on the part of the Episcopate.[84]

The situation caused by the aforementioned provisions lasted basically until the early 1980s. Catechesis was recognised as an internal matter of the Church by virtue of the Ordinance of 23 October 1981 on enabling school children and adolescents to participate in parish catechesis.[85]

5. Guarantee of protection of freedom of conscience and confession of minors on the basis of criminal law

5.1. Legal status before 1969

Beginning immediately after the end of the war, the Criminal Code of 1932 entered into force in the territory of the Polish People's Republic. The change in socio-economic relations and the need to ensure security in the post-war period created the necessity to adopt new solutions in the field of criminal law. The Decree of 16 November 1945 on crimes particularly dangerous in the period of reconstruction of the Polish State[86] introduced the penalisation of acts consisting in public incitement

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[83] Journal of Laws of the Ministry of Education of 1961, no. 13, item 177.

[84] See: "*List Episkopatu do Dyrektora Urzędu do Spraw Wyznań T. Żabińskiego z dnia 31 sierpnia 1961 r. w sprawie zarządzenia Ministra Oświaty o prowadzeniu punktów katechetycznych*", in: Raina, P. *Kościół w PRL. Kościół katolicki a państwo w świetle dokumentów 1945–1989*, t. 2: *lata 1960–1975*, Poznań 1994, p. 136; "*List Episkopatu do Rady Ministrów z dnia 2 stycznia 1963 r. w sprawie podporządkowania pozaszkolnej nauki religii władzom oświatowym*", in: ibid., pp. 217–218.

[85] Ordinance of the Minister of Education of 23 October 1981 on enabling school children and adolescents to participate in parish catechesis. Journal of Laws of the Ministry of Education of 1981, no. 10, item 76.

[86] Journal of Laws of 1945, no. 53, item 300.

of national, religious, or racial feuds, or in praise of such feuds. According to Article 21 of the Decree, such acts were punishable by up to five years of imprisonment. Moreover, it was prohibited to publicly insult, deride, or humiliate groups of the population or individuals for reasons of nationality, religion, or race. Even harsher penalties were applied if such offences resulted in death, serious bodily injury, or a threat to public security.

Article 30 of the Decree of 13 June 1946 on crimes particularly dangerous in the period of reconstruction of the Polish State[87] introduced criminal liability for public incitement of national, religious, or racial discord, which was punishable by imprisonment of up to five years. Similar criminal liability was applied in the case of public praise of such actions. Article 31 of the Decree penalised the public taunting, deriding, or degrading of groups of the population or individuals on grounds of nationality, religion, or race. Moreover, criminal liability extended to individuals who violated the physical integrity of others or caused even slight bodily injury to others for the aforementioned reasons.

In both cases, the Decree provided for a prison sentence of up to five years or detention. Pursuant to Article 32 of the Decree, the perpetrator of offences directed against a group of people or individuals on the grounds of nationality, religion, or race and which resulted in death or serious bodily injury, disruption of the normal course of public life, or a threat to public security was punishable by a sentence of at least three years in prison, life imprisonment, or the death penalty. The Decree also penalised participation in a criminal conspiracy to commit the offences listed in Articles 30–32. Theoretically, the scope of freedom of conscience and confession could also be covered by the provision of Article 37, which penalised the management of an association which had been denied legalisation by the state authorities. In a situation in which some religious associations were subject to the provisions of the law on associations, this provision could therefore be applicable.

One legal act devoted *strictly* to ensuring freedom of conscience and confession was the Decree of 5 August 1949 on the protection of freedom of conscience and confession.[88]

[87] Journal of Laws of 1946, no. 30, item 192.

[88] Journal of Laws of 1949, no. 45, item 334, Decree of 5 August 1949 on the protection of freedom of conscience and confession.

The Decree introduced a guarantee of freedom of conscience and confession to all citizens.[89] The provisions of the Decree penalised any restrictions on the freedom of citizens on the basis of their religious affiliation, religious beliefs, or lack of religious affiliation.[90]

In addition, the legislation prohibited the forcing of another person to participate or not to participate in religious activities or rites.[91] The law also penalised the abuse of religious freedom through refusal to perform a religious rite or religious act.[92] Offences of insulting religious feelings or of insulting objects of religious worship or places intended for religious rites were also punishable.[93] Other criminalised acts included publicly insulting, mocking, or humiliating groups of the population or individuals as well as violating their physical integrity for reasons of religious affiliation, religious beliefs, or non-religiousness.[94] The Decree also introduced the possibility of punishment for the abusive use of freedom of conscience and confession for purposes hostile to the Republic of Poland, as well as for the misuse of freedom of conscience and confession for the purpose of achieving financial gain.[95] The Decree also penalised participation in gatherings aimed at committing crimes related to freedom of confession.[96]

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[89] Article 1 of the Decree provided: "The Republic of Poland guarantees all citizens freedom of conscience and confession."

[90] Article 2 of the Decree provided: "Whoever restricts a citizen in their rights due to their religious affiliation, religious beliefs, or lack of a religious affiliation shall be liable to imprisonment of up to 5 years."

[91] Article 3 of the Decree provided: "Whoever in any way forces another person to participate in religious activities or rituals, or unlawfully prevents them from doing so, shall be liable to imprisonment of up to 5 years."

[92] Article 4 of the Decree provided: "Whoever abuses freedom of confession by refusing the performance of a religious rite or religious activity due to political, social, or scientific activities or views is liable to imprisonment of up to 5 years."

[93] Article 5 of the Decree provided: "Whoever insults religious feelings by publicly insulting objects of religious worship or places intended for religious rites is liable to imprisonment of up to 5 years."

[94] Section 1 and 2 of Article 7 of the Decree.

[95] Article 8 of the Decree provided: "Whoever misuses the freedom of conscience and confession for purposes hostile to the political system of the Republic of Poland is liable to imprisonment for at least three years." According to section 2 of the cited provision, preparation for the commission of the underlying act was also punishable. Meanwhile, according to Article 9 of the Decree: "Whoever misuses freedom of confession for personal, financial, or other gain, exploits human credulity by spreading false news, or misleads others by fraudulent or deceptive acts shall be liable to imprisonment."

[96] Article 10 of the Decree provided: "Whoever participates in a conspiracy aimed at the commission of the offence referred to in Articles 3 through 8, or who knowingly participates in a public gathering which jointly commits such an offence, shall be liable to imprisonment or detention."

Regarding determination of the limits of criminal liability, the provisions of Chapter XI of the Criminal Code of 1932 were retained. According to these provisions, a minor under 13 years of age could not be attributed liability and convicted for such offences. Meanwhile, minors 14 to 17 years of age and acting with discernment of the crime committed could be sentenced to imprisonment.

5.2. Legal status after 1969

The Decree on the protection of freedom of conscience and confession became the basis of the solutions contained in Chapter XXVIII of the Criminal Code of 1969.[97]

In its original wording, Chapter XXVIII of the Criminal Code included seven articles. It penalised the restriction of citizens' rights due to their non-religiousness or religious affiliation.[98] The issue of responsibility for public denigration, ridicule, or humiliation because of religious reasons was resolved similarly as in the Decree on the protection of freedom of conscience and confession of 1949.[99] One provision that retained an extremely repressive nature was the provision penalising the misuse of freedom of conscience to the detriment of the interests of the Polish People's Republic.[100] The provision penalising the use of religious beliefs to mislead and cause public unrest or another disturbance of the public order should be treated similarly.[101] In fact, the imprecise wording of the provision provided a justification for the pacification of ceremonies organised by the Church. The remaining provisions guaranteed protection against coercion in religious matters[102] as well as the protection of religious ceremonies, corpses, burial sites,[103] and the religious feelings of other people.[104]

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[97] Journal of Laws of 1968, no. 13, item 94, as amended, Criminal Code.

[98] Article 192 of the Criminal Code of 1969: "Whoever restricts a citizen in their rights due to their religious affiliation or lack of a religious affiliation is subject to the penalty of imprisonment of up to 5 years."

[99] Article 193 of the Criminal Code of 1969.

[100] Article 194 of the Penal Code of 1969 provided: "Anyone who abuses freedom of conscience and freedom of confession in the performance of religious rites or other religious functions to the detriment of the interests of the Polish People's Republic shall be punished with 1 to 10 years' imprisonment."

[101] Article 195 of the Criminal Code of 1969.

[102] Article 196 of the Criminal Code of 1969.

[103] Article 197 of the Criminal Code of 1969.

[104] Article 198 of the Criminal Code of 1969.

Due to the wording of Article 9 of the Code, the lower limit of juvenile liability was 17 years of age.

In view of the subjection of minors to parental authority, the exercise of parental rights constituted a circumstance excluding, on the basis of non-statutory countertype, liability for the act described in Article 196 of the Criminal Code of 1969.

In the context of the protection of freedom of conscience and confession under criminal law, attention should also be given to Article 70 (3) of the Constitution of the Polish People's Republic, which criminalised the misuse of freedom of conscience and confession for purposes detrimental to the interests of the Polish People's Republic. This provision, the nature of which was that of a general clause, was in force until the amendment of the Constitution in 1976. At that time, as justification for the repeal of this provision, it was noted that: "Due to the profound changes that have taken place in our state and nation, the negative phenomena which these provisions concerned are now completely marginal and there is no need for them to be addressed in the Constitution. In this respect, the interests of the state and society are sufficiently protected by ordinary laws."[105]

6. Protection of the freedom of conscience and confession of minors on the basis of civil law

6.1. Legal status before 1964

Civil law was not codified and unified during the Second Polish Republic. The existing legal particularism was a factor significantly impeding the functioning of the state. Moreover, new ideological foundations motivated the authorities to carry out the process of adapting the law to the secular character of the future state.

The decision to carry out unification was taken by the Council of Ministers in June 1945. The basic unification decrees prepared

[105] Stenographic records from the 32nd sitting of the Sejm of 10 February 1976, p. 17. Digital version available at https://bs.sejm.gov.pl/exlibris/aleph/a22_1/apache_media/SKECEB-4H7TY9NA315V9JYTIVR3Q27Y.pdf [20.02.2016].

by the legislative department of the Ministry of Justice[106] included: 1) the Decree of 29 August 1945 – Personal Law[107] together with the Decree of 25 September 1945 – Law on Civil Status Records;[108] 2) the Decree of 25 September 1945 – Marriage Law;[109] 3) the Decree of 22 January 1946 – Family Law;[110] 4) the Decree of 14 May 1946 – Guardianship Law[111] together with the Decree of 21 May 1946 on proceedings before the guardianship authority; 5) the Decree of 29 May 1946 – Matrimonial Property Law;[112] 6) the Decree of 8 October 1946 – Inheritance Law [113] together with the Decree of 8 September 1946 on inheritance proceedings; 7) the Decree of 11 October 1946 – Property Law;[114] 8) the Decree of 11 October 1946 – Land and Mortgage Register Law;[115] and 9) the general provisions of the Decree of 12 November 1946 – Civil Law.[116]

The Personal Law of 29 August 1945 introduced, in Article 3, a definition of the age limits of legal capacity.[117] However, Article 4 provided for the possibility of a minor becoming a legal adult through marriage.

The Law on Civil Status Records of 15 September 1945 introduced a secular form of keeping civil status records. In the area of freedom of religion, it should be noted that there is no requirement to collect and

[106] For the background and course of the unification process, see: Wasilkowski, J. "*Kodyfikacja prawa cywilnego w Polsce*", Nowe Prawo, 1950, no. 12, p. 3 et seq.; Buczkowski, S., Szer, S., Wolter, A. "*Prawo cywilne*", in: *Dziesięciolecie prawa Polski Ludowej. Zbiór studiów*, Warszawa 1955, p. 157 et seq.; Ohanowicz, A. "*Unifikacja i reforma prawa cywilnego*", Ruch Prawniczy i Ekonomiczny, 1959, vol. 3, p. 73 et seq.; and Szer, S. "*Unifikacja i kodyfikacja prawa rodzinnego i cywilnego*", Nowe Prawo, 1945, nos. 7–8, p. 30. Especially worth recommendation is the monumental work of P. Fiedorczyka, *Unifikacja i kodyfikacja prawa rodzinnego w Polsce (1945–1964)*, Białystok 2014.

[107] Journal of Laws of 1945, no. 40, item 223 – Decree of 29 August 1945 – Personal Law.

[108] Journal of Laws of 1945, no. 48, item 272 – Decree of 25 September 1945 – Law on Civil Status Records.

[109] Journal of Laws of 1945, no. 48, item 270 – Decree of 25 September 1945 – Marriage Law.

[110] Journal of Laws of 1946, no. 6, item 52 – Decree of 22 January 1946 – Family Law.

[111] Journal of Laws of 1946, no. 20, item 135. Guardianship Law Decree.

[112] Journal of Laws of 1946, no. 31, item 197.

[113] Journal of Laws of 1946, no. 60, item 328.

[114] Journal of Laws of 1946, no. 57, item 319.

[115] Journal of Laws of 1946, no. 57, item 320.

[116] Journal of Laws of 1946, no. 67, item 369.

[117] Pursuant to Article 3, section 1: "A child who is under seven years of age does not have the capacity to take legal action." According to section 2: "A minor who has reached the age of seven has limited legal capacity." According to section 3: "Whoever is over eighteen years of age is of legal age and has full legal capacity." In addition, the Decree provided in Article 4 for the possibility of reaching legal adulthood through marriage.

disclose information about one's religion or its absence in the content of a civil status record.

The Marriage Law of 25 September 1945 introduced – with effect from 1 January 1946, uniformly throughout the country – the institution of secular (civil) marriage concluded exclusively before a civil registrar, along with the possibility to dissolve a marriage through divorce.

The Decree of 22 January 1946 introduced modern regulation in the area of family law. Issues related to the freedoms of minors were regulated in particular by Section 3, which governed the scope of parental authority over the person of the child.[118]

In accordance with Article 24 of the Family Law, the parents managed the upbringing of the child and were obliged to prepare the child for a profession, taking into account the child's physical and spiritual capabilities. Pursuant to Article 25, so long as the child remained under parental authority, they were subject to the requirement to be obedient to the parents. According to Article 23 of the Family Law, parental authority ceased when the child reached the age of majority or when the child reached legal adulthood. The Family Law also regulated the situation of extramarital children, specifying in Article 62 that parental authority over the extramarital child was to be exercised by the mother of the child.

The Family Law also provided for the case of improper exercise of parental authority by one or both parents. Pursuant to the provisions of Articles 40–45, parental authority was subject to restriction, suspension, or revocation in the event of improper exercise thereof or of impediments to its exercise. In this case, authority over the child was entrusted to the guardianship authority.

The Decree of 22 January 1946 was replaced by the Family Code Act,[119] passed on 27 June 1950.[120]

In accordance with Article 35 of the Act, the parents were responsible for the child's person and property. They were obliged to take care of the child's physical and spiritual development.

Pursuant to Article 53 of the Act, the child remained under the parental authority of both parents until reaching the age of majority. It was

[118] For more, see: Fiedorczyk, P. *Unifikacja i kodyfikacja*, p. 48 et seq.
[119] Journal of Laws of 1950, no. 34, item 308 – Act of 27 June 1950 – Family Code.
[120] On the works on codification, see: Fiedorczyk, P. *Unifikacja i kodyfikacja*, p. 226 et seq.

also permissible for one of the parents to exercise parental authority, e.g. when one of the parents could not exercise it due to a lack of legal capacity or the deprivation or suspension of parental authority. The provisions of the Act provided for the possibility of depriving one or both parents of parental authority and subjecting a child to the custody of a parental authority.

Where no parent was able to exercise parental responsibility either permanently or temporarily, the child was placed in the care of a guardianship authority.

In accordance with Article 54, parental authority included, in particular, the right and duty of parents to direct the child [...]. Pursuant to Article 55 of the Act, each parent could apply to the state authorities if the proper exercise of parental authority so required.

Further codification work,[121] among other areas, in the field of civil law, was initiated by the resolution of the Presidium of the Government of 27 September 1950.[122]

6.2. Legal status after 1964

The result of the work was the development and adoption of the Family and Guardianship Code of 25 February 1964[123] and the Civil Code of 23 April 1964,[124] which entered into force on 1 January 1965.

Issues related to the protection of the freedom of conscience and confession of minors in civil law regulation should be considered in the context of the provisions of the Civil Code that regulated the ability of minors to undertake legal activities, as well as the provisions of the Family and Guardianship Code in the area of the rights of parents – stemming from parental authority – to interfere in the sphere of the child's freedom.[125]

Determining the degree of intellectual development of a child is the task of the psychological sciences. Based on the results of those disciplines,

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[121] On the work of the codification committee, see: Wolter, A. "*Nowy projekt kodeksu cywilnego*", PiP, 1962, no. 2, p. 212 et seq.

[122] Monitor Polski (Official Gazette of the Republic of Poland) of 1950, no. A-106, item 1339, resolution of the Presidium of the Government on the development of new codes of the People's Poland.

[123] Journal of Laws of 1964, no. 9, item 59.

[124] Journal of Laws of 1964, no. 16, item 93.

[125] As to the premises of the biological and psychological nature of minors remaining under the care and authority of parents or guardians, which was also the basis for the regulation of the institution of parental authority in Polish family law, see: Szer, S. *Prawo rodzinne w zarysie*, Warszawa 1969, p. 201 et seq.

it must be concluded that it is difficult to determine the developmental threshold allowing for independent decision-making on the exercise of one's rights. It should be mentioned that, on the one hand, there are some who claim that this threshold is met upon reaching the age of 12,[126] while on the other hand there are studies suggesting that most of the population is not able to achieve a sufficient level of formal thinking until the age of 16.[127]

The provisions governing the issue of legal capacity are of vital importance for issues related to human freedoms. According to the provisions of the Civil Code, an adult – and thus someone fully capable of legal actions – is any person who is at least 18 years of age and who has not been incapacitated. The provisions of the Family and Guardianship Code modify this principle by introducing the possibility of reaching legal adulthood through marriage. This is a scenario that can only apply to women who are at least 16 years of age and have obtained the consent of the guardianship authority to marry. Importantly, such a woman does not lose her designation as an adult even if her marriage is annulled or she divorces before reaching the age of 18.

Persons who have not reached the age of majority are referred to as minors. Depending on the age of the minor, they may have limited legal capacity or no legal capacity at all. In the case of minors who are under 13 years of age, they do not have legal capacity. Minors who are at least 13 years of age and who have not been completely incapacitated have limited legal capacity.

The issue of having full legal capacity is important for issues related to judicial capacity, which is necessary for the effective protection of personal freedoms.

With regard to freedom of opinion, there is no doubt that it is a personal right and is protected under Articles 23[128] and 24[129] of the Civil

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[126] Hurlock, E. B. *Rozwój dziecka*, Warszawa 1985, p. 194.

[127] Brynat, P. E., Coleman, A. M. *Psychologia rozwojowa*, Warszawa 1995, p. 101.

[128] Article 23. "The personal rights of a person, in particular those such as health; freedom; honour; freedom of conscience; surname or pseudonym; image; secrecy of their correspondence; inviolability of their place of residence; and scientific, artistic, inventive, and rationalising creativity remain under the protection of civil law regardless of the protection provided for in other regulations."

[129] Article 24. "§ 1. The person whose personal rights are threatened by someone else's action may demand that this action be discontinued, unless it is not unlawful. In the event of a committed infringement, they may also require the person who committed the infringement to perform

Code. Personal rights are psychophysical values which are a manifestation of a person's individuality and personality. They are of a non-pecuniary nature and are closely related to the person, to the specific individual.[130]

Personal rights are inherent in the person and are an attribute of every natural person, regardless of the state of their psyche or their degree of sensitivity. It is not possible to assign these rights a monetary value, although they may indirectly affect the financial and economic situation of a person, e.g. their employment or their level of earnings resulting from their loss of good reputation.[131]

The classic definition of personal rights developed by Stefan Grzybowski defines personal rights as "non-pecuniary, individual values of the world of feelings, the state of a person's mental life". We can refer to something as a violation of personal rights when it has caused a feeling of violation of these individual values.

In turn, according to the definition developed by Adam Szpunar, they are "non-pecuniary values related to human personality, commonly recognised in a given society".[132]

Initially, there was broad support for a subjective assessment of the violation of personal rights. At present, the prevailing view in Polish academia is that it is necessary to use objective criteria when explaining the essence of personal rights and assessing their violation.[133] In light of this objective approach, the recognition of certain values as personal rights cannot be determined solely by a subjective assessment of the entity demanding protection, but by an objective finding of the violation of certain non-pecuniary values related to human personality and widely accepted in a given society.

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actions necessary to remedy its consequences, in particular, to make a statement of appropriate content and form. In accordance with the rules set forth in the Code, they may also demand monetary compensation or payment of an appropriate sum of money for a specified social purpose. § 2. If, as a result of a violation of personal rights, property damage has been caused, the injured party may demand its repair on general terms. § 3. The above provisions are without prejudice to the rights provided for in other provisions, in particular, in copyright and invention law."

130 *Podstawy prawa cywilnego*, edited by E. Gniewek, Warszawa 2010, p. 48.

131 Radwański, Z. *Prawo cywilne, część ogólna*, Warszawa 2009, p. 156.

132 Szpunar, A. *Ochrona dóbr osobistych*, Warszawa 1979, p. 106.

133 Cisek, A. *Dobra osobiste i ich niemajątkowa ochrona w kodeksie cywilnym*, Wrocław 1989, pp. 37–38.

The catalogue of personal rights is neither closed nor exhaustive.[134] It is constantly developed through legal doctrine and judicial decisions. The Supreme Court held that personal rights also include religious feelings[135] or religious traditions.[136] A prerequisite for the protection of personal rights is the illegality of violating or threatening such rights. Any action that is contrary to legal norms, the legal order, or the principles of social coexistence is unlawful.[137]

The violation of rights does not have to be culpable, and as such the intentions of the person who committed the violation are irrelevant. The protection of personal rights belongs to a category called objective protection.[138]

The interpretation of Article 24 of the Civil Code implies the presumption of illegality of an act violating personal rights.

Due to the limitations resulting from the lack of legal capacity or limited legal capacity, the task of caring for a minor's personal rights rests with the persons exercising parental authority or caring for the minor. These persons have the right and obligation to seek from the violator the cessation of the violation and possible compensation of damage caused to the minor as a result of the violation of their personal rights in terms of their freedom of confession.

Among the personal rights listed in Article 23 of the Civil Code, the rights defined as freedom of conscience and confession has not been mentioned. However, there can be no doubt that freedom of confession also lies within the limits of the right described as freedom of conscience.

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[134] The catalogue of personal rights is subject to continuous supplementation through the work of legal doctrine and jurisprudence. Due to the sheer number and breadth of the works devoted to this subject, only a sampling of such are mentioned here: Zoll, F. "*Prawa osobiste w zarysie ze stanowiska prawa prywatnego austriackiego"*, Czasopismo Prawno-Ekonomiczne, 4(1903), pp. 535–564; Szpunar, A. "*O ochronie sfery życia prywatnego*", Nowe Prawo, 1982, nos. 3–4, p. 5; Smyczyński, T. "*Integralność człowieka w świetle jego statusu rodzinnego*", RPEiS, 1988, no. 2; and numerous court judgements – SN 13.01.1965, OSN 1965, item 171; 13.02.1979, OSN 1979, item 195; 28.11.1980 r., OSN 1982, item 170; 18.10.1967, PiP 1968, no. 7, p. 178; 11.03.1986 OSP 1987, item 86; 6.12.1990, SP 1990, item 214; and 22.03.1991, PS 1991, nos. 3–6, p. 118.

[135] See the judgement of the Supreme Court of 6 April 2004, I CK 484/03, OSNC 2005, no. 4, item 69, where it is mentioned that: "By protecting freedom of religion, one protects the sphere of notions, ideas, beliefs, and religious feelings of a given person. Therefore, it is possible to distinguish religious feelings as a legally protected personal right."

[136] Judgement of the Supreme Court of 28 February 2003, V CK 308/02.

[137] S. Dmowski, in: Dmowski, S. and Rudnicki, S. *Komentarz do Kodeksu cywilnego*, t. I: *Część ogólna*, Warszawa 2006, p. 103.

[138] Judgment of the Supreme Court of 25 October 1982, I CR 239/82.

A definition of the conceptual scope of the personal right that is freedom of conscience and confession was developed, among other means, through judicial interpretation. As the Supreme Court stated: "Freedom of conscience is the right to freely express a specific worldview and is, therefore, also the right to freely choose and express a specific religion. In addition, the use of Article 9 of the Convention in the interpretation of the concept in question leads to the conclusion that the freedom of conscience referred to in Article 23 of the Civil Code should be understood as the freedom, among others, to choose a religion (confession) and the freedom to practice this religion individually or jointly with other believers. Among the personal rights that are listed in Article 23 of the Civil Code and which are subject to protection, therefore, are the freedom to adopt a specific religion, the freedom to express one's religious beliefs, and the freedom to perform specific practices. Occurrences such as imposing obligations to adopt a specific religion or to undertake certain practices, or taking such actions that will constitute an obstacle to the implementation of any of the indicated aspects of freedom of confession will, therefore, constitute a violation of the analysed personal right."[139]

In the event of an unlawful violation or threat to the personal rights of the entitled party, protective measures are applied in the form of the following legal actions: a determination based on Article 189 of the Code of Civil Procedure – the claimant may request that the court determine the existence or non-existence of a legal relationship or right, if they have a legal interest in it; discontinuation (Article 24 § 2 of the Civil Code); removal of the effects of the violation (Article 24 of the Civil Code); and monetary compensation or payment for a social purpose (Article 24 § 1 sentence 3 of the Civil Code).

Protection can only be claimed by the person directly injured, which in this context means the person to whom (against whom) a statement or behaviour was addressed. [140] It should be mentioned that in case law practice there is a consensus as to the lack of grounds for establishing a violation of personal rights resulting from the actions of parents exercising their rights to manage the upbringing of a child. As an example,

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[139] See: Judgement of the Supreme Court of 12 June 2002, III CKN 618/00.

[140] "*Komentarz do art. 23 KC*", in: *Kodeks cywilny. Komentarz. Część ogólna*, edited by B. Giesen [et al.], Warszawa 2014.

one can point to the judgement of 20 June 2013 of the Appeal Court in Katowice,[141] in which the court determined that baptising a child and teaching them a religion with the consent and knowledge of their parents is not an act causing harm.

Issues related to the scope of liberty in the exercise of the freedom of worldview are related to the scope of parental authority exercised by parents or legal guardians over the minor. From the point of view of a child's freedom of conscience, it is important to emphasise that the rights related to this freedom are generally vested in their parents or legal guardians.[142]

In the Polish civil law system, these issues are regulated by the provisions of the Act of 25 February 1964 – Family and Guardianship Code.

According to the current legal state, the child remains under parental authority[143] until reaching the age of majority. The parental authority of the child's mother is established at the moment of the child's birth. The parental authority of the father depends on whether the child comes from a formal (marital) or informal (extramarital) relationship. The law also provides for a situation in which, due to age or the incapacitation of one or both parents, parental authority does not arise at all.

Parental authority is vested in both parents.[144] Unless a family court has ruled on the exercise of parental authority, neither parent is privileged in their exercise. Exceptions to this rule result from the fact of death, incapacitation, or limitation of the scope of parental authority of one or both parents. In a situation in which neither parent can exercise parental authority, the family court establishes custody for the child.

When considering the extent of the child's freedom to exercise their own rights (including in the area of freedom of belief), it is important to

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[141] Judgement of the Court of Appeals in Katowice of 20 June 2013, file ref. no. I ACa 353/13.

[142] Mezglewski, A. "*Prawo dziecka do nieujawniania lub wyrażania przekonań religijnych w aspekcie przepisów prawa polskiego dotyczących nauczania religii*", in: *Dziecko. Studium interdyscyplinarne*, edited by E. Sowińska [et al.], Lublin 2008, p. 232.

[143] Article 92. The child remains under parental responsibility until the age of majority. It is worth noting that the terms "responsibility of parents" or "parental responsibility" have recently appeared in international law – see: Article 18 of the Convention on the Rights of the Child, Council of Europe Regulation of 27 November 2003, no. 2201/2003/EC; Regulation of 29 May 2000, no. 1347/2000/ EC; and Council of Europe recommendation no. R(84)4. However, this a concept that is broader than the scope of parental authority described in the Family and Guardianship Code.

[144] Article 93. § 1. Parental authority is vested in both parents.

determine what parental authority is. It should be noted that the Family and Guardianship Code does not contain any definition of legal parental authority. The scope of this notion can be decoded by analysing the individual duties and powers comprising this authority.[145] According to the Family Code, parental authority is a complex of mutual rights and obligations of parents and the child.[146] For the parents, this includes their duty and right to exercise custody over the person and property of the child and to raise the child with respect for their dignity and rights.[147] The child under parental authority owes obedience to the parents. Parental authority should be exercised as required by the best interests of the child[148] and the public interest. Parents are obliged to manage the child's upbringing, and in doing so to take care of their physical and spiritual development.[149] The latter entails the obligation of the child to listen to the opinions and recommendations of the parents before deciding on matters in which the child can make decisions independently.

The scope of parental authority – the result of views that evolved over the years, culminating in the understanding and acceptance of the rights of the child as a human person – is not unlimited. The law imposes on parents the obligation to respect the dignity of the child as well as the obligation to exercise parental authority in a way that does not harm the well-being of the child or the social interest. Due to the process of the child's growing up and maturing, parents should consider the child's opinions when making decisions on matters relevant to the child and should take

[145] Article 95. § 1. Parental authority includes, in particular, the obligation and right of parents to exercise custody over the person and property of the child and to raise the child, respecting their dignity and rights. § 2. The child under parental authority should obey the parents, and in matters in which they can make decisions on their own and make declarations of will, they should listen to the opinions and recommendations of the parents formulated for their own good. § 3. Parental responsibility should be exercised as required by the best interests of the child and the public interest. § 4. Before making decisions on more important matters concerning the child's person or property, parents should listen to the child if their mental development, state of health, and degree of maturity so permits, and take into account, as far as possible, their reasonable wishes.

[146] It is worth noting the resolution of the Supreme Court of 9 June 1976, file ref. no. III CZP 46/76, in which the Supreme Court noted that parental authority primarily consists of the parents' obligations towards the child, and that rights are a secondary component of this authority.

[147] Cf. the resolution of the Supreme Court of 14 June 1988, III CZP 42/88, OSNCPiUS 1989, no. 10, item 156; and III CZP 46/75, OSNCPiUS 1976, no. 9, item 184.

[148] See: SN 11.01.2000, I CKN 327/98, Biul. SN 2000, no. 4, item 14; and SN 12.06.1992, III CZP 48/92, OSNCPiUS 1992, no. 10, item 179.

[149] Cf. J. Ignatowicz, in: *Kodeks rodzinny i opiekuńczy. Komentarz*, edited by K. Pietrzykowski, Warszawa 2003, pp. 813–814.

them into account in cases where these opinions are reasonable and possible to implement without harming the child's interests.

One manifestation of the minor's freedom in exercising their freedom of confession is the issue of their being able to freely dispose of certain property for the benefit of religious associations or similar organisations. It should be noted that, in accordance with the norms of family law, certain elements of the minor's property are, in principle, excluded from the management exercised in whole or in part by the parents or guardians caring for the minor. According to the norms discussed, minors over 13 years of age can freely dispose of their earnings as well as the property placed at their disposal.[150] In this case, restrictions may be imposed by the guardianship court. Therefore, in the aforementioned area, a minor may, as part of their freedom of confession, dispose of their property for the benefit of religious associations.

The process of upbringing includes directing the mental, physical, and social development of the child.[151] Spiritual development also includes matters pertaining to the formation of the child's worldview, which is an area related to the freedom of conscience and confession. The law allows parents to interfere in this sphere of the child's rights. This is based on the assumption that the child, having limited experience and knowledge, can make irrational decisions in the area of worldview, as well.

Of course, as noted before, the extent of the permissible interference depends on the child's welfare, the respect for their dignity, the degree of the minor's psychological maturity, as well as – in extreme cases – the child's health.

Parental authority obliges those to whom it is entrusted to take active measures to ensure "that the child lives in a certain atmosphere, in conditions that allow them to meet their reasonably understood needs... so that they do not get hurt".[152]

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[150] Szer, S. *Prawo rodzinne w zarysie*, p. 207.

[151] Article 96. § 1. Parents raise a child under their parental authority and direct them. They are obliged to take care of the physical and spiritual development of the child and to properly prepare them to work for the good of society in accordance with their talents. § 2. Parents who do not have full legal capacity shall participate in the ongoing care and upbringing of the child, unless the guardianship court decides otherwise for the child's own good. On the catalogue of activities included in the process of "directing the child", cf. J. Ignatowicz, in: *Kodeks rodzinny i opiekuńczy*, pp. 813–815.

[152] Haak, H. *Kuratela i opieka*, Toruń 2004, p. 188.

The exercise of parental authority requires the creation of an atmosphere of understanding and cooperation between the parents and the child. Due to the risk of misunderstandings during the educational process, the provisions of the law provided for the possibility of interference of the state authorities in the sphere of parental rights. In the event of a conflict of those exercising parental authority that threatens the well-being of the child, important decisions may be taken by the guardianship court.[153]

In the event that neither parent can exercise parental authority, the guardianship court appoints a guardian for the minor.[154]

However, it should always be borne in mind that the principle of family autonomy in Polish law means that state interference in the sphere of family relations is seen as a last resort and, as indicated in the literature, is most often permissible in pathological situations causing a threat to the child's well-being.[155]

The position of the case law on the exercise of parental responsibility should be cited here. According to the resolution of the Supreme Court of 9 June 1976, file ref. no. III CZP 46/75:[156] "Parental authority covers the entirety of the child's affairs and custody of their person, management of their property, and their representation. In particular, it is up to parents to provide the basic direction of the child's upbringing, but this direction should not violate the basic principles of socialist morality and the goals of the People's Republic. In raising a child, parents should cooperate with the school and with youth organisations. As a rule, the well-being of the child remains in full harmony with the interests of the parents. If, exceptionally, there is a discrepancy between these values, the principle of the good of the child cannot lead to the parents' interests being questioned in the court's decisions. If, therefore, the protection of the child is ultimately compatible with the interests of the parents, the court cannot disregard their interests, even on the assumption that the decision will

[153] Article 97. § 1. If parental authority is vested in both parents, each of them is obliged and entitled to exercise it. § 2. However, the parents decide on important matters of the child jointly; in the absence of an agreement between them, the guardianship court decides.

[154] Article 94. § 3. If neither parent has parental authority or if the parents are unknown, guardianship is established for the child.

[155] Stelmachowski, A. *Zarys teorii prawa cywilnego*, Warszawa 1998, p. 38; and *Prawo rodzinne i opiekuńcze*, p. 3.

[156] OSNCP 1976, no. 9, item 184.

have some temporary adverse effects on the child. The interests of the parents must therefore be removed from the foreground only when they are in no way compatible with the legitimate interests of the child."

When analysing the foregoing guidelines, one should note the emphasis on an upbringing that is not in conflict with "socialist morality". Taking into account the attitude of the authorities of the Polish People's Republic towards issues related to religion, such wording of guidelines addressed to lower courts of law could undoubtedly be relevant with regard to potential threats to freedom of confession in the case of parents guided by principles based on religious values and not based on socialist ideology.

From the point of view of the freedom of the minor, rules providing for the limitation of parental authority for the sake of the child's best interests are important. It should be noted that the nature of parent-child relationships results in the lack of *ex lege* supervision of the guardianship court over the exercise of parental authority by parents (a different situation occurs in the case of guardianship). In the case of parental authority, the intervention of the guardianship court occurs when the welfare of the child is at risk.[157]

In the event of a violation of the child's well-being as a result of improper exercise of parental authority, the guardianship court has the following options to intervene in order to remove the threat to the child's interests. The literature indicates four groups of measures of guardianship court intervention in the sphere of parental authority.[158]

First, the court has at its disposal the means of interference applied in situations where the exercise of parental authority by the parents is hindered by obstacles of a legal or factual nature. The situations provided for in Article 97 § 2, Article 99, Article 102, and Article 101 § 3 of the Family and Guardianship Code are indicated here.

The second group of interference measures are court actions that do not deprive of parental authority, but to some extent interfere with this authority. Such a situation is provided for in the wording of Article 58 § 1, Article 107, and Article 109 of the Family and Guardianship Code.

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[157] See the decision of the Supreme Court of 28 April 2000, file ref. no. II CKN 452/00.

[158] *Władza rodzicielska i kontakty z dzieckiem. Komentarz*, edited by J. Ignaczewski, Warszawa 2012, p. 155 et seq.

The third group consists of measures leading to the suspension or exclusion of parental authority. These are the situations described in Article 110 and Article 111, respectively, of the Family and Guardianship Code.

The last group consists of all measures and forms of assistance that the guardianship court should provide to the parents. This is the situation provided for in Article 100 of the Family and Guardianship Code.

It should be emphasised that limitation of parental authority is applied as a consequence of the threat to the child's well-being; whether that threat is caused by those exercising such authority, or is the result of improper, ineffective exercise of such authority, or stems from erroneous beliefs regarding what is good for the child is legally ambivalent.[159]

The notion of "essential matters of the child" used in the provision of Article 97 § 2 of the Family and Guardianship Code is a vague concept. Therefore, the scope of this term should be decoded by referring to the achievements of the doctrine of family law and jurisprudence. When analysing the views expressed in the literature, it can be observed that the category of "essential matters of the child" includes, among others, decisions regarding: the child's name and place of residence; the submission of an application for a passport or identity card;[160] the method of fulfilling maintenance obligations;[161] the choice of a school and future profession; travels abroad; citizenship;[162] how to spend the holidays;[163] which of the parents will take parental leave; and – of particular importance with regard to the subject of the present considerations – determination of the direction of the child's upbringing.[164] It should be emphasised that in the case of deprivation or suspension of the parental authority of one or both parents, as well as in the case of the undetermined or denied paternity of a child, an appeal to the court pursuant to Article 97 § 2 of the Family and Guardianship Code cannot be made.

According to the provisions of the Family and Guardianship Code, parental authority may be vested in both parents, one of the parents,

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159 Ibid., p. 156.

160 Resolution of the Supreme Court of 3 February 2012, (I CZ 153/11), LEX no. 1130293.

161 Resolution of the Supreme Court of 30 May 1985, (III CZP 26/85), OSNC 1986/4, item 45.

162 J. Ignatowicz, in: *System prawa rodzinnego i opiekuńczego*, edited by J.S. Piątowski, Wrocław 1985, p. 808.

163 H. Ciepła, in: *Kodeks rodzinny i opiekuńczy z komentarzem*, edited by K. Piasecki, Warszawa 2002, p. 618.

164 Haak, H. *Władza rodzicielska. Komentarz*, Toruń 1995, p. 59.

or be taken away from both parents. According to the current wording of Article 58 of the Family and Guardianship Code, the court may entrust the exercise of parental authority to one of the parents while limiting the parental authority of the other parent to perform certain duties and exercise certain rights in relation to the person of the child. As indicated in the literature, this type of solution is currently the basic model for deciding on parental authority in a divorce judgement, because leaving it to both parents is dependent on the fulfilment of additional conditions (joint request of the parents, presentation of an "agreement" reached by them, legitimate expectation that they will cooperate in matters of the child).[165] The consequence of the foregoing is the requirement to include the scope of rights and obligations of the parent to whom the limitation applies in the operative part of a judgement issued on the basis of Article 58 § 1a of the Family and Guardianship Code.[166] This requirement corresponds to the position expressed by the Supreme Court in the Guidelines for the system of justice and judicial practice on the application of the provisions of Article 56 and Article 58 of the Family and Guardianship Code.[167]

Parental authority may also be limited pursuant to Article 109 of the Family and Guardianship Code.

The premise for limiting parental authority under Article 109 of the Family and Guardianship Code is a threat to the child's well-being. It may be pronounced against one or both parents and may apply to one or all of the specific parents' children.[168] The court is free to determine the scope of the limitation of parental authority.

The most far-reaching forms of limitation of parental authority include placement of the child in a foster family,[169] in a family children's home, in institutional foster care, or in a care and treatment facility in a nursing

[165] W. Stojanowska, in: *Nowelizacja prawa rodzinnego na podstawie ustaw z 6 listopada 2008 r. i 10 czerwca 2010 r. Analiza. Wykładnia. Komentarz*, edited by idem., Warszawa 2011, pp. 76–77.

[166] Thusly: W. Stojanowska, in: *Prawo rodzinne i opiekuńcze*, p. 694.

[167] Resolution of the Supreme Court of 18 March 1968 (III CZP 70/66), OSNC 1968/5, item 77. In point 5 of the guidelines it was indicated that the content of the duties of a parent whose parental authority has been limited may include, for example, "decisions on issues related to the change of the place of stay of children, the organisation of their rest and holidays, their medical treatment, the choice of school, out-of-school education, the principles of upbringing, the direction and scope of education, professional practice, the choice of profession, etc.".

[168] *System prawa rodzinnego i opiekuńczego*, p. 860.

[169] For analysis of the institution and the practice of its application, see: Holewińska-Łapińska, E. "*Orzekanie o umieszczeniu małoletniego w rodzinie zastępczej*", Prawo w Działaniu, 4(2008), pp. 12–103, and the broad literature indicated therein.

and care facility or in a medical rehabilitation facility (Article 109 § 2 point 5 of the Family and Guardianship Code). In this case, Article 1121 of the Family and Guardianship Code provides for the division of care between the parents and the foster parents, persons running a family children's home, and those managing the listed institutions. Pursuant to this provision, the foster family (and other persons listed in the said provision) with whom the child is placed have the obligation and right to exercise ongoing care and to bring them up, as well as the obligation to represent them in these matters, particularly in the pursuit of benefits intended to meet their needs. However, other obligations and rights arising from parental authority remain vested in the child's parents.[170] The exercise of ongoing care, upbringing, and representation of the child in these matters has been excluded from the scope of duties and rights of parents. Therefore, the question arises as to whether the scope of the (legally undefined) notion of "current custody" also includes deciding on issues related to freedom of conscience and confession.[171] It should be considered, it seems, that ongoing care includes making decisions on current matters concerning, for example, participation in religious rites. However, decisions of a more long-term nature (e.g. change of religion) seem to exceed the scope of ongoing care. Based on freedom in the area of worldview, judicial intervention would therefore be justified, for example, in the event that principles of the faith professed by the parents would require the performance of rites that endanger the child's health or morality. A similar situation may occur when the parents' confession limits the child's ability to receive certain forms of medical assistance.[172]

However, it should be emphasised that for the application of measures leading to the limitation or deprivation of parental authority, the threat – although still potential in nature – must be direct and real.

[170] Słyk, J. "*Rozstrzyganie o istotnych sprawach dziecka w przypadku braku porozumienia rodziców (art. 97 § 2 k.r.o.)*", Prawo w Działaniu, 14(2013), p. 86.

[171] This is guided by the position expressed in the literature, according to which decisions concerning prospective matters for the child do not constitute ongoing care – J. Strzebińczyk, in: *Prawo rodzinne i opiekuńcze*, edited by T. Smyczyński, Warszawa 2011, p. 344 (*System prawa prywatnego*, vol. 12). Decisions concerning freedom of conscience and confession would not fall within the scope of ongoing care. Similar conclusions can be drawn based on the position presented by J. Ignaczewski, *Władza rodzicielska i kontakty z dzieckiem*, p. 159.

[172] Except when the regulations governing the provision of medical services exempt doctors from the need to obtain parental consent to perform the procedure.

One of the branches of civil law is legislation devoted to the regulation of labour relations. Issues related to the protection of workers' rights, including freedom of conscience and confession, are included in the Act of 26 June 1976 of the Labour Code.[173] The role of guarantee provision under labour law is fulfilled by the norm of Article 113 of the Labour Code, which prohibits any discrimination based on – among other categories – age, religion, or confession,[174] as well as by Article 18, which establishes the principle of equal treatment at work. The issue of protection of freedom of conscience and confession in labour law concerns juvenile workers. According to the provisions of the Labour Code, a juvenile is a person who is at least 16 but not yet 18 years of age.[175] When it comes to the protection of freedom in the area of worldview, labour law does not differentiate the rights of juvenile and other employees.

In accordance with the provisions of labour law, the employer is obliged to respect the dignity and other personal rights of the employee.[176] Labour law prohibits the use of any solutions discriminating or differentiating employees on the basis, among others, of religion.[177] In addition to the aforementioned norms determining the equality of employees regardless of their gender, age, disability, race, religion, nationality, political beliefs, trade union membership, ethnic origin, confession, or sexual orientation, guarantees of the freedom of conscience and

[173] Journal of Laws of 1974, no. 24, item 141, as amended.

[174] The prohibition of discrimination in the field of labour law corresponds to the standards of Article 2 (1) of the UDHR, Article 26 of the ICESCR, Article 2 (2) of the ICCPR, and Article 1 (1) (a) of ILO Convention, no. 111 of 25 June 1958. See: judgement of the Supreme Court of 10 September 1997, I PKN 246/97. As regards the prohibition of discrimination on grounds of religious belief, see the judgement of the Supreme Court of 6 September 1990, I PRN 38/90.

[175] Article 190. § 1. A juvenile within the meaning of the Code is a person who has reached the age of 16 but not the age of 18 years. § 2. It is prohibited to employ a person under the age of 16 years.

[176] Article 111. The employer is obliged to respect the dignity and other personal rights of the employee.

[177] Article 113. Any discrimination in employment, direct or indirect, in particular with regard to gender, age, disability, race, religion, nationality, political beliefs, trade union membership, ethnic origin, confession, and sexual orientation, as well as due to employment for a specified period or indefinite period or full or part-time work is unacceptable. Article 183a. § 1. Employees should be treated equally with regard to the establishment and termination of the employment relationship, employment conditions, promotion conditions, as well as access to training in order to improve professional qualifications, in particular, regardless of sex, age, disability, race, religion, nationality, political beliefs, trade union membership, ethnic origin, confession, and sexual orientation, as well as regardless of employment for a definite or indefinite period of time or full time or part time employment.

confession are also manifested in provisions that regulate the right to free time needed to perform religious practices provided for by the principles of a given confession.

Determination of the individual days constituting holidays for particular denominations was made in the laws regulating the status and relation of the Polish state to individual churches and religious associations. A young employee who is a follower of one of the faiths with a normalised status has the right to be exempted from work for the time necessary to perform religious rites.

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As mentioned at the beginning of the present chapter, the Polish People's Republic had an open legal system. The legal situation of citizens and institutions was regulated not by normative acts in the form of the Constitution and acts of parliament, but in fact by lower-order legal acts, frequently taking the form of ordinances, circulars, instructions, or guidelines. Although there was a formal requirement for instructional acts to comply with applicable statutory laws, it was not actually respected.

The change in ideology constituting the basis for the adopted legal solutions led to a radically different perception of the role of religion in social life. The communist authorities, inspired by models applied in countries located beyond the eastern border, were guided by the concept of secularisation of social life. The adopted solutions formally indicated respect for the principle of freedom of conscience and confession and guaranteed protection against discrimination based on one's confession or religious beliefs. The regulation of the legal situation and protection of non-religious persons, who were generally not recognised in the law of the Second Polish Republic, should be treated as a *novelty*.

In the case of civil and criminal law, a unification and subsequent codification of the law was carried out. It should be noted that the provisions of criminal law protected freedom of conscience and confession. Of course, the provisions of statutory law were one matter, and the practice of their application was another matter altogether. The provisions of criminal law left quite a considerable margin for interpretation – this

allowed for them to be used to combat the Catholic Church, which was considered the most dangerous opponent of the party.

In the case of civil and family law, codification led to the establishment of a secularised system of law.

As mentioned in the literature, implementation of the goals pertaining to the secularisation of social life was supposed to be achieved through a number of administrative measures directed against the initiatives of the Church and which went beyond the walls of temples. An important element of this tactic was to place emphasis on the development of religiously indifferent attitudes in society with the goal of achieving full secularisation of public life.[178] The actions of the authorities directed against the activity of the Church varied in their form and intensity. Without going into a detailed analysis, which has been the subject of extensive literature,[179] it can be noted that the scope of these actions included efforts to undermine the authority of the Catholic Church,[180] to undermine the economic foundations of its functioning,[181] and to hinder its functioning through the harassment of priests and monks.[182] Depending on the period and legal norms in force at that time, these measures could take more or less drastic forms.

As noted in the literature, the Polish People's Republic in the later stage of its existence was not an example of a classic totalitarian state.[183] Despite this fact, in order to maintain power the authorities were required to identify the activity of any centres that could compete with them, to control these centres and the people sympathising with them, and to respond to such activity. The authorities forming the internal security apparatus, in particular the Security Service (Polish: Służba Bezpieczeństwa,

[178] Dudek, A. and Gryz, R. *Komuniści i Kościół w Polsce*, pp. 125–127.

[179] Among others, see: Marek, Ł. *„Kościół to nasz wróg". Polityka władz państwowych wobec Kościoła katolickiego na terenie województwa katowickiego w latach 1956–1970*, Katowice 2009; and Łatka, R. and Marecki, J. *Kościół katolicki w Polsce rządzonej przez komunistów*, Warszawa 2017.

[180] Primarily through propaganda activities, but also by publicising events that, due to actual or alleged misconduct of clergy, caused a negative evaluation of their behaviour.

[181] Mainly through the seizure of church property as a measure directed against the Church as an institution, but also in the form of pressure exerted on clergy using penal and fiscal measures.

[182] Here, in addition to administrative sanctions, the main measure employed – at least during the initial period of existence of the Polish People's Republic – were criminal sanctions, which were applied with exceptional ruthlessness. See the extensive discussion in: *Represje wobec osób duchownych i konsekrowanych w PRL w latach 1944–1989*, edited by A. Grześkowiak, Lublin 2004.

[183] A definition of the totalitarian state and the criteria that determine such a state are presented in: Friedrich, C. J. and Brzezinski, Z. *Totalitarian Dictatorship and Autocracy*, Cambridge 1965.

or SB), played an important role in these activities. Various (covert) reconnaissance activities directed against any centres competing with the authorities complemented overt propaganda activities aimed at undermining citizens' trust in the opposition (understood as any groups questioning the existing state of affairs). The operational activities undertaken by the Security Service against groups related to, among others, the Catholic Church are the subject of numerous studies based on preserved operational materials.[184]

Indoctrination and propaganda – methods of direct influence – were used against minors while simultaneously cutting them off from any possibility of becoming acquainted with other points of view. However, in the case of most activities related to the freedom of minors in the area of world view, the state authorities focused on hindering the operation of the Catholic Church through administrative measures and activities aimed at surveillance of the Catholic Church and gaining influence on its activities. It should be noted that the state formally recognised the principle of freedom of conscience, only its interpretation was exceptionally one-sided. Moreover, it should be noted that the actions of the state authorities were mostly carried out in such a way as not to provoke excessive resistance. Tactical concessions were used in order to achieve their long-term goal.

The scope of freedom of conscience and confession of minors was mainly reflected in the area of regulations regarding education. Due to the considerable attention given by both the authorities and the Catholic Church to the matter of the struggle to shape the beliefs of young people, it was precisely the issue of the ability to teach religion at schools that became the subject of the most heated disputes.

As mentioned previously, the authorities sought to secularise education and initially they pursued this goal indirectly, effecting changes through provisions concerning the competences of teaching staff

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[184] Due to the vast extent of the literature on the subject, I mention the following merely by way of example: Poniński, A. "*Formy inwigilacji służby bezpieczeństwa wobec włocławskiego seminarium duchownego w latach 1956–1989"*, Studia Włocławskie, 11(2009), pp. 371–404. It is noteworthy that surveillance and identification of potential collaborators began already at the stage of secondary school (sic!!) – see: Kosobudzka, E. "*Rozpracowanie Kurii Biskupiej w Lublinie przez aparat bezpieczeństwa PRL w latach 1946–1974*", Annales UMCS. Sectio F, Historia, 67(2012), vol. 1, pp. 87–110; or Dziurdziok, A. *Aparat bezpieczeństwa wobec kurii biskupich w Polsce*, Warszawa 2009.

providing religious instruction, by recognising religion as an extra-curricular subject, and, in particular, by consistently ignoring the provisions of the March Constitution and the Concordat on the compulsory teaching of religion in public schools. The amendment of the Constitution in 1952 opened the way for the removal of religion from schools. The culmination of this process came with the Education System Act of 1961.

In the practice of the first years of the Polish People's Republic, the provisions of the March Constitution were formally in force likewise in the fields of freedom of confession and of religious instruction. However, their interpretation radically changed. Article 120 of the Constitution was *de facto* undermined as more emphasis was placed on Articles 111 and 112 of the Constitution.[185]

The Polish People's Republic formally recognised freedom of confession (as recognised in the provisions of the March Constitution in force until 1952, or in the Decree of 5 August 1949 and then the Constitution of 1952). However, the interpretation of norms on the part of the authorities was completely different from the manner in which the same provisions were interpreted, for example, by the Catholic Church. For the Church, the provisions of the decree constituted the basis for demanding preservation of the right to practice religion, including the teaching of religion, while for the authorities they constituted the basis for persecuting clergy who were supposedly violating the freedom of confession of minors or their parents by forcing them to participate in or to enrol their children in religious classes. Since such disputes were resolved by bodies that were *de facto* subordinate to the central authority, there was no doubt as to which interpretation would be considered correct. Tactical concessions made by the authorities (such as the signing of the agreement of 14 April 1950) were only a tactical ploy and were supposed to create an image of the authorities being more prone to compromise. The real intentions of the authorities were evidenced by administrative measures limiting the availability of religion in schools. This involved, for example, creating

[185] A consequence of this interpretation was Circular no. 50 of 13 September 1945 and the Circular of 30 October 1945. Consequently, the provision on the obligation to attend religious classes was not enforced because it was the will of parents that decided whether children would attend religious classes. See: Konopka, H. *Religia w szkołach Polski Ludowej. Problem nauczania religii w polityce państwa (1944–1961)*, Białystok 1998, p. 24; and Harmaciński, G. "*Podstawy prawne katechizacji w Polsce po 1945 roku*", Studia Paradyskie, 5(1995), p. 66.

the appearance of freedom of choice in religious instruction in schools (Circular no. 32 of 11 December 1956, or Circular no. 11 of 14 April 1959) or making it difficult to provide enough staff to conduct catechesis (Ordinance of 26 January 1957, and then subsequent acts preventing members of religious congregations from teaching religion).

One way to limit the role of the Church and religion at the educational stage was, without a doubt, the creation of schools in which there was no religion at all. Schools of the Society of Friends of Children (Polish: Towarzystwo Przyjaciół Dzieci, or TPD) were established with this intention.

In addition to activities related to universal education, the authorities also directly attacked educational institutions run by the Church. One such manifestation of this was the elimination of lower clerical seminaries and attempts to place higher clerical seminaries under state supervision.[186] As part of efforts to limit the influence of religion and the Church on children and young people, extensive actions were taken to "manage" the leisure time of young people. Sports or cultural activities were supposed to discourage youth from participating, for example, in retreats or other events organised by the Church. In accordance with the government's intentions, an important role in the indoctrination of young people was to be played by popular organisations modelled on the Soviet pioneers – this included the Union of Polish Youth (Związek Młodzieży Polskiej) and its affiliates[187] as well as related organisations such as the Union of Rural Youth (Związek Młodzieży Wiejskiej) and the Union of Socialist Youth (Związek Młodzieży Socjalistycznej).[188] Likewise, great emphasis was placed on

[186] This issue is broadly covered in the literature. For a discussion of the liquidation of the so-called small seminaries, dormitories, and schools run by religious communities, see: Marecki, J. *"Likwidacja niższych seminariów zakonnych na terenie woj. Krakowskiego"*, in: *Kościół katolicki w czasach komunistycznej dyktatury. Między bohaterstwem a agenturą. Studia i materiały*, vol. 1, edited by R. Terlecki and J. Szczepaniak, Kraków 2007, pp. 135–164; Wąsowicz, J. *"Likwidacja salezjańskich zakładów wychowawczych"*, Biuletyn Instytutu Pamięci Narodowej, 2007, no. 4, pp. 49–56; and Mezglewski, A. *"Akcja likwidacyjna niższych zakonnych seminariów duchownych w dniu 3 lipca 1952 roku"*, in: *Divina et Humana. Księga jubileuszowa w 65. rocznicę urodzin księdza Profesora Henryka Misztala*, edited by A. Dębiński, W. Bar, and P. Stanisz, Lublin 2001, pp. 145–157. With regard to similar actions taken in other countries of the Eastern Bloc, see: *Represje wobec duchowieństwa Kościołów chrześcijańskich w okresie stalinowskim w krajach byłego bloku wschodniego*.

[187] This has been covered extensively, among others, by J. Wołoszyn, in: *„Walczyć o dusze młodzieży". Zmagania Związku Młodzieży Polskiej z Kościołem katolickim na Lubelszczyźnie 1948–1957*, Lublin 2009.

[188] Wierzbicki, M. *Związek Młodzieży Polskiej i jego członkowie*, Warszawa 2006.

attempts to eliminate all references to religion or Christian tradition from the scouting movement.[189]

It should be mentioned that this was just one of the means of controlling the Church, one which was consistently used throughout the existence of communist Poland. The process of negating and minimising the role of the Catholic Church in society and public life lasted until the final years of the communist era. As mentioned in the literature, during the existence of the Polish People's Republic, the legal system formally recognised the principle of freedom of confession and conscience, and "the formal foundations of religious freedom were not questioned in Poland, they were granted official protection, and acts of theft or vandalism on religious grounds were actually effectively punished. The ideological struggle was waged with great intensity in an indirect way, using administrative and legal means."[190]

In reality, formal guarantees of freedom of conscience and confession were not reflected in everyday practice. The authorities invoked the principle of freedom of conscience to justify removing the competing influence of the Church from public life.

The fundamental obstacle to the observance of freedom of conscience was the lack of institutional guarantees for the exercise of rights arising from this principle. Moreover, it is necessary to point out the scope of extralegal instruments whose use by various authorities affected the scope of freedom of conscience.

Formally accepted acts of international law, which regulated the issues of freedom of conscience and confession within a specific scope, were not translated into the practice of application of the law.

When discussing the actual implementation of freedom of conscience and confession, it is impossible to omit one other element of extraordinary significance. The most important matter is not so much the establishment of formal instruments for the protection of freedoms but more so their actual operation, which should be understood as the existence of bodies independent of legislative or executive authorities whose task is to temper

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189 See: Hausner, W. and Kapusta, M. *Harcerstwo duchowej niepodległości. Duszpasterstwo harcerskie w dokumentach Służby Bezpieczeństwa i archiwaliach harcerskich 1983–1989*, Kraków 2009.

190 Sokołowski, T. "*Prawo cywilne o naruszaniu wolności religijnej*", in: *O wolność słowa i religii. Praktyka i teoria*, edited by F. Longchamps de Berier and K. Szczucki, Warszawa 2016, pp. 20–21.

the impulses of these authorities. Of course, this pertains to the tripartite separation of powers. Here one should quote an accurate assessment of the concept of separation of powers in force in Soviet theory and practice of law: "In the organisation of state power, the Soviet state does not recognise the principle of separation of powers. The same bodies perform legislative and administrative functions, and the courts are only technically separate administrative bodies. The principle of judicial independence is considered fiction and is not recognised. Due to the non-recognition of the principle of rule of law, the hierarchy of norms also disappears, so the material difference between a statutory act (law), an administrative act, and a court judgement is not considered important."[191]

There is no doubt that in a *quasi-totalitarian* state, formal provisions of law are usually applied in a manner consistent with the expectations of the authorities. Since there is currently no doubt now that the judiciary was subordinate to the executive authorities of the Polish People's Republic,[192] the freedoms guaranteed by the statutory provisions were an illusion, except when they were to be used in the interest of the authorities. This circumstance is highlighted in the literature in the context of the first post-war legal and criminal regulations and their application as a means to persecute the clergy, among other things.[193] One should agree with the claim that "paradoxically, it was not the literal content of the provisions cited above that was dangerous. The rather discretionary interpretation of the statutory characteristics (i.e. the characteristics that had to be fulfilled for the given behaviour to be considered criminal) led to a significant extension of the scope of criminal liability of persons on this legal basis. This was not in accordance with the requirements of interpretation functioning in the legal sciences. However, the main goal was to fight the class enemies."[194] The foregoing comments were applicable in

[191] Grzybowski, K. *Ustrój Związku Socjalistycznych Sowieckich Republik. Doktryna i konstytucja*, Kraków 1929, pp. 146–147.

[192] Rzepliński, A. "*Przystosowanie ustroju sądownictwa do potrzeb państwa totalitarnego w Polsce w latach 1944–1956*", in: *Przestępstwa sędziów i prokuratorów w Polsce lata 1944–1956*, edited by W. Kulesza and A. Rzepliński, Warszawa 2000.

[193] *Represje wobec osób duchownych i konsekrowanych w PRL w latach 1944–1989*, p. 69; and Rejmanowa, G. "*Prawo karne jako środek przymusu państwowego w latach 1944–1956*", Niepodległość i Pamięć, 1997, no. 1(7), pp. 11–23.

[194] Harasimiak, G. "*System represji karnych w latach 1945–1956 wobec duchowieństwa Kościoła Katolickiego w Polsce – zbiorowego kustosza tradycji i tożsamości narodowej*", Colloquia Theologica Ottoniana, 2008, no. 1, p. 71.

the later period as well, only the scale of the application of these most radical measures of repression changed. Subordination of the judiciary to state authority was one of the most important stages in establishing the new order,[195] one which fully justifies the statement of H. Świątkowski: "The courts in communist Poland are one of the instruments of the dictatorship of the proletariat."[196]

The governing authorities were unwilling to genuinely accept the principle of separation of powers, and a number of actions were therefore taken to subordinate the judiciary to executive power.[197] Due to concerns about the "reactionary" nature of the former staff of the judiciary branch, steps[198] were taken to ensure, among other things, that the prosecutor's offices and courts were staffed with people beholden to the new authorities.[199] The extension of the jurisdiction of military courts to civilians as well as the frequent manipulation of criminal proceedings through the use of investigative measures not included in the procedure were also key

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[195] Rzepliński, A. *Sądownictwo w Polsce Ludowej*, Warszawa 1999, p. 17 et seq.

[196] *"Konferencja sędziów – absolwentów Szkół Prawniczych"*, Demokratyczny Przegląd Prawniczy, 1950, no. 5, p. 59.

[197] For more on this topic, see: Lityński, A. *"Sąd Najwyższy w trudnym okresie polskich dziejów"*, Czasopismo Prawno-Historyczne, 64(2012), vol. 2, pp. 493–494; idem., *Pół wieku kodyfikacji prawa w Polsce (1919–1969). Wybrane zagadnienia*, Tychy 2001; idem., *O prawie i sądach początków Polski Ludowej*, Białystok 1999; Stawarska-Rippel, A. *"Prawnicy bez studiów"*, in: *Z dziejów prawa*, vol. 3, edited by A. Lityński, Katowice 2002; and Rzepliński, A. *Sądownictwo w Polsce Ludowej*. Examples that are of interest from the point of view of the period in which they were created are included, among other places, in: Chajn, L. *"Sądy a prasa"*, Demokratyczny Przegląd Prawniczy, 1945, no. 1, pp. 12–13.

[198] L. Chajn stated: "A significant portion of judges and prosecutors show a passive attitude towards all these changes that are taking place in the country. As a result of this passive attitude, and as a result of the ossification of the Polish judiciary caused by the negative effects of the Sanation regime – the regime of subjugation of the judiciary – we undoubtedly still have an abnormal state in the judiciary today. [...] We would like to [...] introduce a new social blood stream into the judiciary." He further indicated that: "We believe that the entry into the judiciary of people with working-class and peasant backgrounds will result in the active attitude of the Polish justice system, and will be a guarantee of the rule of law." – Stenographic report from the State National Council meetings on 26–28 April 1946, Praesidium Office of the State National Council, vol. 427, Warszawa 1946, p. 433. See also: Lityński, A. *"Organizacja wymiaru sprawiedliwości oraz prawo sądowe"*, in: *Historia ustroju i prawa Polski*, edited by A. Lityński and M. Kallas, Warszawa 2000.

[199] Decree of 22 January 1946 on exceptional admission to judicial, prosecutorial, and notarial positions and inclusion on the list of lawyers (Journal of Laws of 1946, no. 4, item 33). See: Grat, I. S. *"Uchwalenie dekretu z 22 stycznia 1946 r. o wyjątkowym dopuszczeniu do obejmowania stanowisk sędziowskich, prokuratorskich i notarialnych oraz do wpisywania na listę adwokatów"*, Miscellanea Historico-Iuridica, 6(2008), pp. 97–107; Machnikowska, A. *Wymiar sprawiedliwości w Polsce w latach 1944–1950*, Gdańsk 2008; and Zaborski, M. *"Szkolenie 'sędziów nowego typu' w Polsce Ludowej"*, Palestra, 42(1998), nos. 1–2(481–482), pp. 79–92.

in the process of adapting the line of jurisprudence to the will of the authorities.[200] The subordination of the judiciary to political interests[201] determined the illusory nature of the guarantees of freedoms contained in legal acts. Some modifications of the authorities' attitude to the issue of freedom of religion were usually motivated by tactical political goals, such as the need to address social tensions. It should be noted, however, that the fundamental goal – the secularisation of society – was never negated. "Our attitude should be far from 'withdrawing'. We must not give up our ideological position. And that is why, seemingly withdrawing now, we must see a distant perspective that leads to a situation which will allow us to achieve complete secularisation of our society."[202] These words can be regarded as the theme of every behaviour of the communist authorities throughout the entire period of the Polish People's Republic. Depending on changes in the socio-political situation in the country and the weakening or strengthening of the party's position, the authorities tightened or softened their position towards the Church and thus its followers who demanded genuine respect for the formally sanctioned freedom of confession. However, they never renounced their goal of pushing religion out of political and social life, only justifying temporary concessions on the grounds of "raison d'état". Therefore, as there is no doubt that the notion of independence of the judiciary in the years 1945–1990 was solely theoretical in nature – and, in fact, the communist authorities turned the courts as well as prosecutors' offices into instruments of their policies – it would be naive to expect these bodies to defend the violated freedoms (especially those that the authorities saw as a significant threat to their position).

[200] Ostafiński-Boder, R. *Sądy wojskowe w polskich siłach zbrojnych i ich kompetencje w sprawach karnych w latach 1914–2002*, Toruń 2002; *„My sędziowie nie od Boga". Z dziejów sądownictwa wojskowego PRL 1944–1956. Materiały i dokumenty*, edited by J. Poksiński, Warszawa 1996; and Zaborski, M. "*Oni skazywali na śmierć. Szkolenie sędziów wojskowych w Polsce w latach 1944–1956*", in: *Oblicze systemu komunistycznego. U źródeł zła*, Warszawa 1997, pp. 121–152.

[201] Watoła, A. "*Problem niezawisłości w świetle obsady kadr Sądu Najwyższego i Najwyższego Sądu Wojskowego w początkach Polski Ludowej*", Z Dziejów Prawa, 2011, 4(12), pp. 235–248.

[202] Żaryn, J. *Dzieje Kościoła katolickiego w Polsce (1944–1989)*, Warszawa 2003, p. 179.

CHAPTER SIX

Guarantees of Freedom of Conscience and Confession of Minors in Poland after 1989

After the political changes associated with the collapse of the Soviet Union and the entire so-called Eastern Bloc, there was a significant change in the position of religion in public life in Poland and other countries of the so-called "people's democracy".

In the period of the Polish People's Republic, the state authorities – guided by communist ideology and patterns adopted from the Soviet Union – sought, with varying intensity and using various methods, to eliminate any competition in the fight for the "rule over people's hearts and minds", which was associated with organisations basing their ideological system on religion. Due to the strong Catholic traditions in Poland, communism's main competitor was the Catholic Church. It was only the collapse of the socialist system that created conditions conducive to religion regaining its importance in Polish social life.

Such circumstances meant that the specific manner of understanding freedom of conscience and confession presented by the authorities of socialist states, which in fact boiled down to emphasising elements encouraging the rejection of religion in favour of a materialistic world view, lost its raison d'être. The rejection of socialist patterns of creating social ties or understanding the fundamentals of the functioning of the state resulted in

Poland's return to the Western European community of values, shaped on the one hand by Christian tradition, and on the other by liberal thought.

In this system, the values of law and religious freedoms belong to the set of basic principles, i.e. human rights, on which modern legislation is based. This is due to the leading role that religion has in shaping humanistic values.[1]

There is no question that in contemporary Western legal systems freedom of thought, conscience, and confession is one of the most important freedoms included in the category of human rights and not civil (political) rights.[2] It should be agreed that the aforementioned three freedoms "constitute the foundations of the Western ideology of human rights. The first two are necessary elements for the proper functioning of democracy, and all three form the principles of respect for the individual."[3]

The importance attributed to freedom in the realm of belief confirms the generally unquestioned recognition that the freedoms of thought, conscience, and confession belong to the so-called non-derogable rights. The consequence of such a position is that the public authorities do not have a delegation to suspend the exercise of the guarantees resulting from these freedoms, even in the event of an exceptional public danger, and in these very exceptional cases, when certain restrictions are necessary, they cannot undermine what constitutes the essence of a given right.

Issues related to the evolution of the notion of religious freedom in genere were discussed in earlier parts of this work, hence it should only be mentioned here that in the case of statutory law, regulations relating to religious freedom appeared in state legislation only in the eighteenth century.[4]

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[1] See: Danchin, P. G. *"Religion, Religious Minorities and Human Rights: An Introduction"*, in: *Protecting the Human Rights of Religious Minorities in Eastern Europe*, edited by P. G. Danchin and E. A. Cole, New York 2002, pp. 4–6.

[2] Gomien, D., Harris, D., and Zwaack, L. *Law and Practice of the European Convention on Human Rights and the European Social Charter, Council of Europe Publishing*, Strasbourg 1996, p. 263.

[3] Jastrzębski, M. *"Wolność myśli, sumienia i religii"*, in: *Prawa człowieka. Wybrane zagadnienia i problemy*, edited by L. Koba and W. Wacławczyk, Warszawa 2009, p. 233.

[4] "That religion, or the duty which we owe to our Creator, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence; and therefore all men are equally entitled to the free exercise of religion, according to the dictates of conscience; and that it is the mutual duty of all to practise Christian forbearance, love, and charity toward each other." – *Virginia Declaration of Rights of 12 June 1776*, quoted in: *Prawa i obowiązki obywateli. Wybór źródeł*, edited by Z. Kędzia, Wrocław 1978, pp. 29–30.

1. Constitutional guarantees

1.1. The so-called "Small Constitution" of 1992

The Small Constitution of 1992,[5] by virtue of Article 77, derogated the entire Constitution of 1952 except for the enumeratively indicated provisions,[6] which remained in force temporarily. Therefore, within the scope regulating the limits of freedom of confession, all provisions of the 1952 Constitution remained in force.

However, one should agree with the view conveyed in the literature, according to which, even though the literal wording of the provisions mentioned was maintained, their interpretation had undergone significant changes.[7] It should be noted that the change in systemic principles resulted in the loss of the axiological basis of the provisions carried over from the 1952 Constitution. Even though the literal wording of the aforementioned provisions was identical, the practice of their application took a sharp turn in relation to the practice in place during the existence of the communist state.[8]

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[5] The Constitutional Act of 17 October 1992 on mutual relations between the legislative and executive powers of the Republic of Poland and on territorial self-government (Journal of Laws, no. 84, item 426).

[6] Article 77. We hereby repeal the Constitution of the Republic of Poland of 22 July 1952 (Journal of Laws of 1976, no. 7, item 36; Journal of Laws of 1980, no. 22, item 81; Journal of Laws of 1982, no. 11, item 83; Journal of Laws of 1983, no. 39, item 175; Journal of Laws of 1987, no. 14, item 82; Journal of Laws of 1988, no. 19, item 129; Journal of Laws of 1989, no. 19, item 101 and no. 75, item 444; Journal of Laws of 1990, no. 16, item 94, no. 29, item 171, and no. 67, item 397; Journal of Laws of 1991, no. 41, item 176 and no. 119, item 514; and Journal of Laws of 1992, no. 75, item 367), except that the provisions of Chapters 1, 4, and 7, with the exception of Article 60 (1); Chapters 8 and 9, with the exception of Article 94; and Chapters 10 and 11 shall remain in force. Chapter 1 regulated the issues of the political system; Chapter 4 was devoted to the Supreme Audit Office (Polish: Najwyższa Izba Kontroli); Chapter 7 was devoted to courts and prosecutors' offices; Chapter 8 was devoted to the basic rights and obligations of citizens; Chapter 9 was devoted to the principles of electoral law; Chapter 10 regulated the emblem, flag, and anthem of the Republic of Poland; and Chapter 11 concerned the principles of amendments to the Constitution.

[7] More broadly on the changes in the interpretation of regulations governing the issue of freedom of confession after the loss of axiological grounds based on regulations derived from the Constitution of 1952: Brożyniak, J. *Konstytucyjne dylematy regulacji stosunków wyznaniowych we współczesnej Polsce*, Warszawa 1996, p. 44; and Górowska, B. "*Wolność sumienia i religii w realiach polskich*", in: *Dylematy wolności sumienia i wyznania w państwach współczesnych*, edited by A. Czohara [et al.], Warszawa 1996, p. 65 et seq.

[8] Misztal, H. "*Okres 1945–1989*", in: *Prawo wyznaniowe*, edited by idem., Lublin 2003, p. 128 et seq; and Winiarczyk-Kossakowska, M. *Państwowe prawo wyznaniowe w praktyce administracyjnej*, Warszawa 1999, p. 31 et seq.

1.2. Constitution of the Republic of Poland of 2 April 1997

According to the legislator, the source of human rights protected by the Constitution is the inherent dignity of human beings.[9] The basic law sees the content of freedoms and human rights as a part of natural law. Therefore, every human being has inalienable, inviolable rights to freedoms resulting from the inherent dignity of the human person, the observance and protection of which are guaranteed by the constitutional legislator.[10]

The constitutional notion of dignity is the basis for the protection of human rights and freedoms in other areas of law. The inalienability of this right means that an individual cannot renounce their dignity, and inviolability should be regarded as a prohibition against the deprivation of human dignity as well as its limitation by private persons, public authorities, or state bodies.[11] The religious rights and freedoms of citizens guaranteed by the modern state are inscribed in a broader category of basic human rights. They are expressed in a number of legal acts arranged hierarchically from the most general, which are at the same time of the highest rank (such as the Constitution, ratified international agreements, or the Concordat), to statutory acts (laws), to acts regulating the most detailed issues and which are at the same time of the lowest rank (regulations).[12]

It should be mentioned that in modern legal orders, the default rule is the recognition of freedom in the religious sphere. Religious freedom is one of the fundamental rights of a human because it is directly derived from the dignity of the human person. This freedom has been recognised in the constitutions of many modern states.[13]

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[9] Article 30 of the Constitution states: "The inherent and inalienable dignity of the person is a source of freedoms and rights of persons and citizens. It shall be inviolable. The respect and protection thereof shall be the obligation of public authorities."

[10] Policastro, P. *Prawa podstawowe w demokratycznych transformacjach ustrojowych. Polski przykład*, Lublin 2002, p. 367.

[11] Skrzydło, W. *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, Kraków 2002, pp. 10–11.

[12] Cebula, S. *Prawa i wolności religijne we współczesnej Polsce, ustawodawstwo a realia społeczno-kulturowe*, Kraków 2011, p. 15.

[13] For example, in Africa religious freedom was recognised, among other places, in Article 15(1) of the Constitution of the Republic of South Africa of 4 February 1997 (see: *Konstytucja Republiki Południowej Afryki*, translated by A. Wojtyczek-Bonnand and K. Wojtyczek, Warszawa 2006, p. 54). Among the countries of South America, religious freedom was recognised, for example, in Article 5 of the Constitution of Brazil of 5 October 1988 (see: *Konstytucja Federacyjnej*

The main place in the hierarchy of Polish legal acts is occupied by the Constitution of the Republic of Poland of 2 April 1997.[14]

References to the role of religion are found in the content of the Preamble to the Constitution, where its creators made an attempt, now seen as rather unfortunate, to define God as the source of universal values. It should be emphasised that the Preamble to the Constitution also refers to "persons who do not share" faith in God, which should be considered appropriate. As mentioned in the literature, "the dispute over invocatio Dei was concluded with a reference to God, which is recognition of the rights of believers who treat God as a source of truth, justice, goodness, and beauty, while also recognising the beliefs of those who derive

Republiki Brazylii, translated by A. Wojtyczek-Bonnand, Warszawa 2004, p. 47). In Europe, religious freedom was recognised, among other places, in: Article 40 of the Constitution of Croatia of 22 December 1990 (see: *Konstytucja Republiki Chorwacji*, translated by T.M. Wojcik and M. Petryńska, Warszawa 2007, p. 29); Article 15(1) of the Constitution of the Czech Republic of 16 December 1992 (see: *Konstytucja Republiki Czeskiej*, translated by M. Kruk, Warszawa 1994, p. 73); § 68 of the Constitution of Denmark of 5 June 1953 (see: *Konstytucja Królestwa Danii*, translated by M. Grzybowski, Warszawa 2002, p. 57); § 40 of the Constitution of Estonia of 28 June 1992 (see: *Konstytucja Estonii*, translated by A. Puu, Warszawa 2000, p. 39); Article 11 of the Constitution of Finland of 11 June 1999 (see: *Konstytucja Finlandii*, translated by S. Sagan and V. Serzhanowa, Rzeszów 2003, p. 52–53); Article 16 of the Spanish Constitution of 27 December 1978 (see: *Konstytucja Hiszpanii*, translated by T. Mołdawa, Warszawa 2008, p. 34); Article 6(1) of the Constitution of the Netherlands of 28 March 1814 (see: *Konstytucja Królestwa Holandii*, translated by A. Głowacki, Warszawa 2003, p. 34); Article 44(2)(1) of the Constitution of Ireland of 1 July 1937 (see: *Konstytucja Irlandii*, translated by S. Grabowska, Warszawa 2006, p. 77); Article 63 of the Constitution of Iceland of 17 June 1944 (see: *Konstytucja Republiki Islandii*, translated by S. Sagan, Rzeszów 2006, p. 50); Article 26 of the Constitution of Lithuania of 25 October 1992 (see: *Konstytucja Republiki Litewskiej*, translated by H. Wisner, Warszawa 2006, p. 38); Article 19 of the Constitution of Luxembourg of 17 October 1868 (see: *Konstytucja Wielkiego Księstwa Luksemburga*, translated by S. Sagan and V. Serzhanova, Rzeszów 2005, p. 77); Article 99 of the Constitution of Latvia of 15 February 1922 (see: *Konstytucja Republiki Łotewskiej*, translated by P. Kierończyk, Warszawa 2001, p. 52); Article 40(1) of the Constitution of Malta of 21 September 1964 (see: *Konstytucja Malty*, translated by J. Winczorek, Warszawa 2007, p. 49); § 2 of the Constitution of Norway of 17 May 1814 (see: *Konstytucja Królestwa Norwegii*, translated by J. Osiński, Warszawa 1996, p. 23); Article 41(1) of the Constitution of Portugal of 2 April 1974 (see: *Konstytucja Republiki Portugalskiej*, translated by A. Wojtyczak-Bonnand, Warszawa 2000, p. 57); Article 28 of the Constitution of Russia of 12 December 1993 (see: *Konstytucja Federacji Rosyjskiej*, translated by A. Kubik, Warszawa 2000, p. 46); Article 24 of the Constitution of Slovakia of 1 September 1992 (see: *Konstytucja Republiki Słowackiej*, translated by K. Skotnicki, Warszawa 2003, pp. 49–50); Article 15 of the Constitution of Switzerland of 18 April 1999 (see: *Konstytucja Federalna Konfederacji Szwajcarskiej*, translated by Z. Czeszejko-Sochacki, Warszawa 2000, p. 45); § 60 of the Constitution of Hungary of 18 August 1949 (see: *Konstytucja Republiki Węgierskiej*, translated by H. Donath, Warszawa 2002, p. 71); and Article 19 of the Constitution of Italy of 27 December 1947 (see: *Konstytucja Republiki Włoskiej*, translated by Z. Witkowski, Warszawa 2004, p. 62).

[14] The Constitution of the Republic of Poland of 2 April 1997, adopted by the National Assembly on 2 April 1997, approved by the nation in a constitutional referendum on 25 May 1997, signed by the President of the Republic of Poland on 16 July 1997 (Journal of Laws of 1997, no. 78, item 483).

these universal values from other sources. Therefore, a text was adopted which, in the intention of its authors, should unite and not divide society, referring to values and goals that are common for all citizens."[15] A consequence of this is the expansion of the system of guarantees of human and civil liberties and rights. Social life is shaped and developed within a state where there may be a conflict between the rights of the community of citizens and the rights of the individual. The Constitution expresses the position that in such cases there may be a necessity and possibility of limiting the freedoms and rights of the individual in the interest of the common good. Poland, as a common good, is obliged to take care of both the rights of the majority and the protection of the rights of minorities, which also form a part of the Republic of Poland.[16]

The Constitution contains provisions guaranteeing rights and freedoms in the religious sphere in two groups of regulations. Norms in the strict sense include Articles 25 and 53, while specific (detailed) norms include Articles 30, 48, 54, 57, 58, 70, and 85. Article 25 of the Constitution[17] regulates the principles of coexistence of religious associations and the state. The emphasis on the principle of equal rights of churches and other religious associations can be explained by its fundamental importance in a democratic state of law (legal state) and a pluralistic contemporary society.[18] In a democratic state, the relationship between the state and church is based on the guarantees of individual freedom of conscience and religion.[19]

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[15] Skrzydło, W. *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, p. 2.

[16] Ibid.

[17] Article 25 states: "1. Churches and other religious organisations shall have equal rights. 2. Public authorities in the Republic of Poland shall be impartial in matters of personal conviction, whether religious or philosophical, or in relation to outlooks on life, and shall ensure their freedom of expression within public life. 3. The relationship between the State and churches and other religious organisations shall be based on the principle of respect for their autonomy and the mutual independence of each in its own sphere, as well as on the principle of cooperation for the individual and the common good. 4. The relations between the Republic of Poland and the Roman Catholic Church shall be determined by international treaty concluded with the Holy See, and by statute. 5. The relations between the Republic of Poland and other churches and religious organisations shall be determined by statutes adopted pursuant to agreements concluded between their appropriate representatives and the Council of Ministers."

[18] Winczorek, P. *Komentarz do Konstytucji Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 r.*, Warszawa 2000, p. 38.

[19] Krukowski, J. "*Konstytucyjny system relacji między państwem a Kościołem katolickim oraz innymi kościołami i związkami wyznaniowymi*", in: *Ustrój konstytucyjny Rzeczypospolitej Polskiej*, edited by R. Mojak, Lublin 2000.

Among the other provisions of the Constitution that are relevant in the context of the subject matter of this work, it is certainly necessary to give attention to Article 72 of the Constitution, which establishes the constitutional principle of protecting the rights of the child.[20] The importance of the aforementioned clause was emphasised by the Constitutional Tribunal in the content of ruling P 12/99 of 15 November 2000, [21] which mentioned the importance of protecting the rights of the child as one of the most important goods and its significance as one of the most important constitutional values.[22]

Among the most important principles of coexistence and cooperation between religious associations and the state, the legislator pointed to the principle of equal rights of confessions, the impartiality of authorities in matters of religious, world view, and philosophical beliefs, and ensuring the internal autonomy of religious associations. These provisions are the result of a compromise; hence they do not declare the separation of church and state or the leading role of one religion. The principle of equal rights of the church and other religious associations means that authorities are under the obligation to give equal treatment to all religious associations legally operating in the territory of the Republic of Poland. Designation of "legality" means that the principle of equal rights applies only to those religious associations that have received a positive decision of the competent minister concerning the entry of religious associations[23] in the register. The foregoing

[20] Article 72 states: "1. The Republic of Poland shall ensure protection of the rights of the child. Everyone shall have the right to demand of organs of public authority that they defend children against violence, cruelty, exploitation, and actions which undermine their moral sense. 2. A child deprived of parental care shall have the right to care and assistance provided by public authorities. 3. Organs of public authority and persons responsible for children, in the course of establishing the rights of a child, shall consider and, insofar as possible, give priority to the views of the child. 4. The competence and procedure for appointment of the Commissioner for Children's Rights shall be specified by statute."

[21] Judgement of the Constitutional Tribunal of 15 November 2000, file ref. no. P. 12/99 (Journal of Laws of 2000, no. 100, item 1085).

[22] For more on this topic, see: Morawska, E. H. "*Ochrona praw dziecka w świetle art. 72 Konstytucji RP: uwagi na tle orzecznictwa Trybunału Konstytucyjnego*", Kwartalnik Prawa Publicznego, 7(2007), no. 4, pp. 125–144.

[23] In accordance with Article 34(2) of the Law on Guarantees of Freedom of Conscience and Confession of 17 May 1989 (Journal of Laws of 1989, no. 29, item 155 as amended). Upon entry in the register of churches and religious associations, a church or another religious association acquires, as a whole, legal personality and exercises all rights and is subject to the obligations set out in laws.

provision means that no criteria can be legally applied to differentiate the position of religious associations. First and foremost, the differentiating criterion cannot be the number of followers of a given religion or their representativeness in a given area. The foundation of the equal rights of churches is recognition of the equal dignity of all people. In the positive aspect, the equality of religious associations means that, by law, they are to be treated identically where each of them has a certain characteristic to an identical degree, and only due to that characteristic. All religious associations cannot be treated identically, especially if there are significant differences between them. Each of them should be treated differently and always in accordance with this differentiation.[24] The principle of impartiality of the authorities in matters of religious, world view, and philosophical beliefs means that it is the duty of state authorities to ensure that citizens can exercise their beliefs in the realm of religion or philosophy. It does not imply a requirement to maintain the neutrality of state authorities in this respect, so long as they do not violate the rights of citizens to freely exercise their beliefs.[25]

On the other hand, it follows from the norm contained in Article 25(2) of the Constitution that public authorities have no right to impose beliefs on citizens in these matters. It is also clear that public authorities cannot discriminate against anyone on the grounds of professing and proclaiming beliefs of any kind. The Constitution does not force persons holding positions of public authority to renounce or hide their religious, world view, or philosophical beliefs. These people, like everyone else, have the right to profess and proclaim them.[26]

In conclusion, one should fully agree with the position presented in the doctrine, according to which the solutions adopted in the Constitution of the Republic of Poland correspond to the model of coordinated separation.[27]

[24] Krukowski, J. *Konstytucyjny system relacji*, p. 105.
[25] This issue emerged during disputes over the placement of religious symbols in public offices or public schools.
[26] Krukowski, J. *Konstytucyjny system relacji*, p. 193.
[27] Pietrzak, M. *Prawo wyznaniowe*, Warszawa 1999, p. 53 et seq.; and Krukowski, J. and Warchałowski, K. *Polskie prawo wyznaniowe*, Warszawa 2000, p. 25 et seq.

When making certain decisions, public authorities should be guided not by the religious, world view, or philosophical beliefs of their officers, but by the law in force, the common good, and the public interest.[28]

The notion of impartiality should be understood as the absence of interference of public authorities not only in the internal affairs of churches and other religious associations, but also in the religious, world view, and philosophical beliefs of individuals.[29]

The principle of internal autonomy of religious associations, expressed in the third paragraph of Article 25 of the Constitution, means in practice that the internal affairs of religious associations are left outside the scope of interest of the state authorities. Freedom concerns both the principles of faith and the internal organisation of a given religious association. This freedom may, of course, be limited in areas in which the competences of the state and the religious union must be exercised jointly. An example of this is the need to inform the competent state authorities about the content of the curriculum of religious instruction in general education schools.

Restrictions on the autonomy of a religious union in the strictly religious or worship-related sphere may, of course, also derive from other causes. Such situations concern, for example, the issue of ritual slaughter, where the sphere of rights of followers of a given belief are in competition with the provisions of the law concerning the humane treatment of animals.

Article 53 of the Constitution[30] defines a model for lower-order acts, indicating the scope of freedom of conscience and religion.

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[28] Szymanek, J. "*Bezstronność czy neutralność światopoglądowa państwa. Uwagi na tle art. 25 ust. 2 Konstytucji RP*", PiP 2004, no. 5, pp. 32–48.

[29] Misztal, H. "*Wolność religijna i jej gwarancje prawne*", in: *Prawo wyznaniowe III Rzeczypospolitej* (stan prawny na 15 listopada 1998 r.), edited by H. Misztal, Lublin – Sandomierz 1999, p. 17.

[30] Article 53 states: "1. Freedom of conscience and religion shall be ensured to everyone. 2. Freedom of religion shall include the freedom to profess or to accept a religion by personal choice as well as to manifest such religion, either individually or collectively, publicly or privately, by worshipping, praying, participating in ceremonies, performing of rites or teaching. Freedom of religion shall also include possession of sanctuaries and other places of worship for the satisfaction of the needs of believers as well as the right of individuals, wherever they may be, to benefit from religious services. 3. Parents shall have the right to ensure their children a moral and religious upbringing and teaching in accordance with their convictions. The provisions of Article 48(1) shall apply as appropriate. 4. The religion of a church or other legally recognised religious organisation may be taught in schools, but other peoples' freedom of religion and conscience shall not be infringed thereby. 5. The freedom to publicly express religion may be limited only by means of statute and only where this is necessary for the defence of State security, public order, health, morals or the freedoms and rights of others. 6. No one shall be compelled to participate or not participate in religious practices. 7. No one may be compelled by organs of public authority to disclose his philosophy of life, religious convictions, or belief."

Freedom in the area of confession and belief is one of the most important and fundamental human freedoms. According to the content of the aforementioned provision, freedom of conscience and religion[31] is granted to every person. The provision of the Constitution does not indicate any criterion differentiating the scope of this freedom. Therefore, it should be assumed that freedom of conscience and religion belongs to every human individual, regardless of their marital status, nationality, age, etc. This freedom is guaranteed and protected by the state authorities.[32] Therefore, the legislator ensures freedom of conscience and religion to every person. The subject of this freedom are not only citizens, but all people regardless of their age, gender, citizenship, social or political affiliation, or world view.[33] The aforementioned provision of the Constitution contains a definition of the notion of freedom of religion, which constitutes the freedom to profess or accept a religion by personal choice as well as to manifest such a religion, either individually or collectively, publicly or privately, by worshipping, praying, participating in ceremonies, performing rites, or teaching. Freedom of religion also includes possession of sanctuaries and other places of worship for the satisfaction of the needs of believers as well as the right of individuals, wherever they may be, to benefit from religious services. Freedom of religion includes the rights vested in an individual as well as rights exercised through religious associations. Detailed guarantees regarding the rights deriving from religious freedom are contained in Article 53(2) of the Constitution.

When analysing this provision, the question arises as to whether the catalogue of rights indicated in its content is a closed set. An answer in the affirmative is supported by the lack of use of the phrase "in particular" in the content of the provision. However, due to the general nature of the regulations of the Constitution, it seems reasonable to adopt a purposive interpretation and to state that the catalogue of rights resulting

[31] It should be noted that the term "freedom of conscience and religion" was the subject of frequent criticism on the part of the doctrine, questioning, among other things, the propriety of introducing such a wording alongside the classic phrasing "freedom of conscience and confession" included, for example, in the content of Article 48 of the Constitution.

[32] Article 30 of the Constitution provides: "The inherent and inalienable dignity of the person is a source of freedoms and rights of persons and citizens. It shall be inviolable. The respect and protection thereof shall be the obligation of public authorities." Meanwhile, according to Article 31(1) of the Constitution: "Freedom of the person shall receive legal protection."

[33] Makarska, M. *Przestępstwa przeciwko wolności sumienia i wyznania*, Lublin 2005, p. 23.

from freedom of conscience and confession is an open set, and that those rights which have been cited in the content of the mentioned provision are only an example of the most obvious behaviours resulting from the exercise of worship.[34] It should be noted that the provision in question defines the objective scope of freedom of conscience, which is broader than freedom of religion. This is because it includes the freedom to adopt both religious beliefs and philosophical and world view beliefs, which a person can externalise individually and collectively, publicly and privately.[35] At this point, it should be mentioned that the doctrine indicates that Article 53(2) of the Constitution "is offensive due to its inconsistency and the accidental application of the terms used in it".[36] Among other things, critics question the attempt to enumerate, in the basic law, what the legislator understands by the notion of religious freedom. It is argued that this may cause the state authorities to treat the indicated manifestations of freedom as a closed catalogue and that they would not "respect those manifestations of freedom of religious expression that were not enumerated in the Constitution".[37]

In the further part of Article 53, the legislator included provisions regulating parents' rights to the moral and religious education of their children in accordance with their beliefs; the teaching of religion in schools; the principles of limiting the manifestation of religion; and the protection of the individual's freedom from coercion based on religious premises. The regulation contained in Article 53(5) constitutes a limitation clause. According to the wording of the aforementioned provision, the freedom to publicly express one's religion may be limited only by means of a statute and only where this is necessary for the defence of state security, public order, health, morals, or the freedoms and rights of others. Therefore, possible restrictions may concern only external manifestations of the practice of a confession and may be introduced only by means

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[34] Furthermore, the jurisprudence of the Constitutional Tribunal also assumes that "it is not possible to draw conclusions from the wording of Article 53(2) of the Constitution on the exclusion of the possibility of exercising freedom of religion in yet another way" (Judgement of the Constitutional Tribunal of 10 December 2014, file ref. no. K 52/13, OTK ZU no. 11/A/2014, item 118).

[35] Krukowski, J. *Polskie prawo wyznaniowe*, Warszawa 2007, p. 73.

[36] Mezglewski, A. "*Uzewnętrznianie przekonań religijnych*", in: Mezglewski, A., Misztal, H., and Stanisz, P. *Prawo wyznaniowe*, Warszawa 2008, pp. 87–91.

[37] Szymanek, J. "*Klauzule wyznaniowe w Konstytucji RP*", Studia z Prawa Wyznaniowego, 8(2005), p. 38.

of a legal act of the rank of statute (i.e. an act of parliament). Moreover, the basis for their introduction must be a situation in which the unlimited right to manifest elements of worship would cause a threat to state security or a violation thereof, a threat to the public order or a violation thereof, or would bring about a threat to health, an offence against morality, or a threat to or encroachment on the freedom of others. It should also be noted that the regulation concerning the issue of limiting freedom of religion and conscience was included in the text of Article 233 of the Constitution. The stated provision, located in Chapter XI of the Constitution, which is devoted to states of emergency, introduces a prohibition on limiting rights by way of statute, among other areas, in the realm of freedom of conscience and religion, as well as a prohibition on limiting human and civil rights, inter alia, solely on the basis of religion.[38] The provisions of paragraphs (6) and (7) of Article 53 also serve to protect religious freedom. They contain a norm protecting against being coerced into participating or not participating in the exercise of worship as well as a norm guaranteeing the "right to remain silent" in matters of confession or belief. Freedom of religion in the negative aspect consists in freedom from being coerced into manifesting or not manifesting one's religious beliefs. It includes a prohibition against the coercion of anyone (and by anyone) to participate or not to participate in religious practices.[39] Another important guarantee is the constitutionally introduced prohibition against requiring citizens to disclose their world view, religious beliefs, or confession.

[38] Article 233 states: "1. The statute specifying the scope of limitation of the freedoms and rights of persons and citizens in times of martial law and states of emergency shall not limit the freedoms and rights specified in Article 30 (the dignity of the person), Article 34 and Article 36 (citizenship), Article 38 (protection of life), Article 39, Article 40 and Article 41, para.4 (humane treatment), Article 42 (ascription of criminal responsibility), Article 45 (access to a court), Article 47 (personal rights), Article 53 (conscience and religion), Article 63 (petitions), as well as Article 48 and Article 72 (family and children). 2. Limitation of the freedoms and rights of persons and citizens only by reason of race, gender, language, faith or lack of it, social origin, ancestry or property shall be prohibited. 3. The statute specifying the scope of limitations of the freedoms and rights of persons and citizens during states of natural disasters may limit the freedoms and rights specified in Article 22 (freedom of economic activity), Article 41, paras. 1, 3 and 5 (personal freedom), Article 50 (inviolability of the home), Article 52, para. 1 (freedom of movement and sojourn on the territory of the Republic of Poland), Article 59, para. 3 (the right to strike), Article 64 (the right of ownership), Article 65, para. 1 (freedom to work), Article 66, para. 1 (the right to safe and hygienic conditions of work) as well as Article 66, para. 2 (the right to rest)."

[39] Krukowski, J. *Polskie prawo wyznaniowe*, p. 77.

It should be noted that, concerning the wording of Article 53(7) of the Constitution, allegations are stated in the literature, according to which the specific provisions relating to the teaching of religion in public schools, the submission of declarations concerning attendance of religious classes, and the inclusion of grades for the subject of religion on school certificates constitute a violation of the right to silence. In response to such positions, arguments are raised that the right to silence is not the same as the obligation to remain silent in matters of world view and religious beliefs.[40] The contents of the declarations referred to in Article 53(7) of the Constitution and the contents of declarations on the attendance of religious classes are different. Therefore, attending or not attending religious lessons is not identical in substance with the declaration referred to in the analysed provision. A person may have a religious world view and at the same time not attend religion classes, or vice versa.[41]

The provision contained in the third paragraph of the aforementioned article is important. It guarantees respect for the will of parents in choosing the direction of the upbringing of their children in the sphere of religious and philosophical beliefs. According to this provision, "parents shall have the right to ensure their children a moral and religious upbringing and teaching in accordance with their convictions. The provisions of Article 48(1) shall apply as appropriate."

Thus, the constitutional legislator granted primacy to the will of parents in the area of shaping the world view of children. However, the provision refers to Article 48 of the Constitution,[42] which requires that the degree of maturity of the child as well as respect for their freedom of conscience and confession and their beliefs be factored into their upbringing. The manner in which the foregoing issue is regulated raises doubts in the doctrine.[43] It is noted, inter alia, that the provision of Article 53(3) is inconsistent with the provision of Article 53(6), because the parents'

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[40] Mezglewski, A. *Polski model edukacji religijnej w szkołach publicznych. Aspekty prawne*, Lublin 2009, p. 118.

[41] Ibid., p. 118.

[42] Article 48 states: "1. Parents shall have the right to rear their children in accordance with their own convictions. Such upbringing shall respect the degree of maturity of a child as well as his freedom of conscience and belief and also his convictions. 2. Limitation or deprivation of parental rights may occur only in the instances specified by statute and only on the basis of a final court judgement."

[43] See: Pietrzak, M. *Prawo wyznaniowe*, p. 254.

exercise of their rights resulting from the freedom to shape the child's religious or philosophical attitudes may violate the child's freedom resulting from the prohibition against being coerced into participating or not participating in religious rituals. However, it seems that the stated conflict of norms can be effectively avoided by applying the directive resulting from Article 48 of the Constitution, i.e. by reasonably taking into account the beliefs of the child. Of course, it may be a contentious issue to determine from which point in the child's mental development do they have sufficient discernment to make an informed decision about the choice of world view. Moreover, there is the related question of determining the procedures for resolving disputes arising on this basis between parents and the child, or possibly between one parent and the child along with the other parent. It seems reasonable to apply in such cases the relevant provisions of the Family and Guardianship Code of 1964 governing the exercise of parental authority.

The second element guaranteed by Article 53 of the Constitution is freedom of conscience. As this concerns the question of an individual's internal attitude, the law does not define the content of this notion. It should be noted that it concerns the compliance of choices made with the value system recognised by a given person. As such, it is practically impossible to introduce any limitations or restrictions by way of legal regulation. It should be emphasised that although the Constitution guarantees freedom of conscience, it does so without including its definition or allowing for the possibility of its limitation by law. This kind of freedom refers to the mental sphere of the individual and concerns the entirety of their personal ideas in matters of world view and related experiences, reflections, and feelings. The aforementioned sphere eludes effective regulation by statutory law. According to the doctrine of religious law, freedom of conscience includes the right of an individual to freely choose, shape, and change their views and beliefs in matters of religion and, more broadly, the right to choose, shape, and change their world view.[44]

When presenting the constitutional scope of freedom of conscience and confession, it is also necessary to note the possible limitations of this freedom. As previously mentioned, freedom of conscience is one of the most

[44] Borecki, P. "*Wolność sumienia i wyznania*", in: *Wolność myśli, sumienia i wyznania. Poradnik prawny*, edited by A. Mikulska, Warszawa 2003, p. 10.

important human rights, but it cannot be ruled out that some aspects of this freedom must give way to other values. One such situation is when there is a threat to the public safety. The Constitution of the Republic of Poland of 2 April 1997 provides for three types of states of emergency. According to Article 228(1) of the Constitution, these are: martial law,[45] a state of emergency,[46] and a state of natural disaster.[47] Since the announcement of any of the foregoing is, in essence, tantamount to the occurrence of special events in the territory of the state, wherein ordinary legal or administrative measures are not sufficient to control the situation, the use of instruments or solutions that violate the rights and freedoms of citizens may be required. The Constitution specifies the scope of possible violations of rights and freedoms that are admissible in the event that it is necessary to declare any of the aforementioned states of emergency, indicating in the content of Article 233 which human rights cannot be limited or abolished in the event of a state of emergency.[48]

[45] Article 229 of the Constitution provides: "In the case of external threats to the State, acts of armed aggression against the territory of the Republic of Poland or when an obligation of common defence against aggression arises by virtue of international agreement, the President of the Republic may, on request of the Council of Ministers, declare a state of martial law in a part of or upon the whole territory of the State."

[46] Article 230(1) provides: "In the case of threats to the constitutional order of the State, to security of the citizenry or public order, the President of the Republic may, on request of the Council of Ministers, introduce for a definite period no longer than 90 days, a state of emergency in a part of or upon the whole territory of the State."

[47] Article 232 of the Constitution provides: "In order to prevent or remove the consequences of a natural catastrophe or a technological accident exhibiting characteristics of a natural disaster, the Council of Ministers may introduce, for a definite period no longer than 30 days, a state of natural disaster in a part of or upon the whole territory of the State. An extension of a state of natural disaster may be made with the consent of the Sejm."

[48] Article 233 of the Constitution indicates the scope of interference: "The statute specifying the scope of limitation of the freedoms and rights of persons and citizens in times of martial law and states of emergency shall not limit the freedoms and rights specified in Article 30 (the dignity of the person), Article 34 and Article 36 (citizenship), Article 38 (protection of life), Article 39, Article 40 and Article 41, para.4 (humane treatment), Article 42 (ascription of criminal responsibility), Article 45 (access to a court), Article 47 (personal rights), Article 53 (conscience and religion), Article 63 (petitions), as well as Article 48 and Article 72 (family and children). Limitation of the freedoms and rights of persons and citizens only by reason of race, gender, language, faith or lack of it, social origin, ancestry, or property shall be prohibited. The statute specifying the scope of limitations of the freedoms and rights of persons and citizens during states of natural disasters may limit the freedoms and rights specified in Article 22 (freedom of economic activity), Article 41, paras. 1, 3 and 5 (personal freedom), Article 50 (inviolability of the home), Article 52, para. 1 (freedom of movement and sojourn on the territory of the Republic of Poland), Article 59, para. 3 (the right to strike), Article 64 (the right of ownership), Article 65, para. 1 (freedom to work), Article 66, para. 1 (the right to safe and hygienic conditions of work) as well as Article 66, para. 2 (the right to rest)."

In the case of rights not covered by the restrictions derived from the aforementioned provision, the legislator clarifies the scope of interference of individual rights by way of a law. Therefore, freedom of conscience and religion constitutes a right to freedom that is of a non-derogable nature (this freedom was mentioned in the wording of Article 233(1) and was not mentioned in Article 233(3) of the Constitution).

Freedom of conscience and religion is a prerequisite for guaranteeing the right to a number of freedoms – in particular, rights such as freedom of expression or freedom of assembly – because their basis is the freedom of opinion and belief.[49] The right to freedom of opinion is also an inseparable component and at the same time an expression of the right to privacy. The omission of this freedom results in depriving the individual of the guarantee of respect for their right to privacy.[50]

As regards the implementation of the prohibition against restricting or abolishing freedom of confession, we may mention the provision of Article 22(2) of the Act of 29 August 2002 on martial law and the competences of the Supreme Commander of the Armed Forces and the rules of his subordination to the constitutional authorities of the Republic of Poland,[51] the scope of which impacts religious assemblies. Religious freedom in the collective dimension is also implemented through the norm contained in point 3 of Article 24(1) of the discussed Act, the scope of which allows for the possibility of suspending educational activities in religious schools and seminaries.

It should be noted that other restrictions introduced in the event of martial law may interfere with the aforementioned guarantees of collective freedom of confession (e.g. the right to religious assemblies may conflict, for example, with restrictions on the freedom of movement).

A similar conflict may concern the suspension of educational activities and the right to teach religion (thus, the freedom of religion in the collective sense may be limited by depriving a religious association of the ability to conduct religious instruction in school buildings; similarly, the right

[49] Szymanek, J. "*Wolność sumienia i wyznania w Konstytucji RP*", Przegląd Sejmowy, 14(2006), no. 2(73), p. 41.

[50] See: Łopatka, A. *Jednostka. Jej prawa człowieka*, Warszawa 2002, p. 106 et seq.

[51] Journal of Laws of 2002, no. 156, item 1301, as amended – Act of 29 August 2002 on martial law and the competences of the Supreme Commander of the Armed Forces and the rules of his subordination to the constitutional authorities of the Republic of Poland.

of students to receive this education may be limited), as well as restrictions on the broadcasting or reception of media messages and the freedom of religious associations to proclaim religious content (similarly, collective as well as individual freedom of conscience and religion may be limited).

The Act of 21 June 2002 on the state of emergency provides for similar restrictions.[52] As in the case of martial law, restrictions on assemblies do not include religious assemblies (Article 16 (2)). Similarly, restrictions in the form of suspending the operations of educational institutions do not apply to seminaries and divinity schools (Article 21, point 3). Due to the possibility of introducing restrictions on movement and imposing the obligation to perform the indicated works, the reservations expressed in the considerations on the impact of such restrictions during martial law remain valid.

Another type of limitation is provided for in the Act of 18 April 2002 on the state of natural disaster.[53] The restrictions affecting freedom of conscience and confession in the event of a state of natural disaster generally pertain to the restrictions on freedom of movement (for example, Article 21(1), point 12, 13, or 15) and the imposition of an obligation to participate in the indicated works and other activities (e.g. Article 21(1), point 19).

2. Ratified acts of international law

The Republic of Poland, as a member of the international community in the universal sense, i.e. as a member of the United Nations, and in the regional sense, i.e. as a member of the European Community, is obliged to introduce legal solutions that are not inconsistent with the content of adopted acts of international law and which accept the standards of human rights and freedoms set out in declaratory acts.[54]

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[52] Journal of Laws of 2002, no. 117, item 985.

[53] Journal of Laws of 2002, no. 62, item 55.

[54] It should be emphasised that Article 9 of the Constitution states that "the Republic of Poland shall respect international law binding upon it". This article is undoubtedly a fundamental point of reference when assessing the impact of the international legal order on the Polish legal order. This principle applies not only to international obligations arising under treaties, but also to customary law or general principles of international law. The foregoing principle is binding on all authorities of the Republic of Poland. The Constitutional Tribunal in its judgement of 27 April 2005 (file ref. no. P1/05) stated: "Article 9 of the Constitution is not only an important declaration to the international community, but also an obligation of state

As an element of broadly understood human rights, the right to freedom of belief became an object of interest of international organisations in the period following the end of World War II. Undoubtedly, the painful experiences of forming totalitarian regimes and the consequences of the implementation of their vision of international and domestic relations were the catalyst for discussions on establishing and guaranteeing the protection of human rights, including one of the most important rights to freedom that is the expression of one's beliefs. The experience gained during the global conflict and, in particular, the unprecedented scale of violations of the dignity of human individuals caused the international community to devote more attention to the protection of human rights, including the protection of world view freedoms. Both soft law acts, developed in the course of activities of various international agencies,[55] as well as those of a legally binding nature became the foundation of the guarantee and protection of the right to freedom of conscience and confession. The Republic of Poland, as a member of the international community, is obliged to take into account the standards set by international law in the area of protection of the freedoms in question.

Due to political conditions, the process of incorporating international agreements on religious freedom into the national legal order could not in fact be initiated and implemented until after the collapse of the socialist system. Poland's inclusion in the structures of the EU also made it necessary to incorporate certain EU standards concerning freedom of opinion.

The achievements of the international community include legal acts of universal scope, such as the Charter of the United Nations,[56]

authorities, including the government, parliament, and courts, to comply with international law binding on the Republic of Poland. The implementation of this obligation may require – in addition to appropriate changes in the domestic legal order – the adoption by public authorities, within the scope of their competences, of specific behaviours." See: Stadniczeńko, S. L. *"Prawa dziecka częścią składową systemu praw człowieka i obywatela"*, in: *Konwencja o prawach dziecka. Wybrane zagadnienia prawne i socjalne*, edited by idem., Warszawa 1994, p. 42.

[55] According to the definition presented on the website of the Ministry of Justice, these are international standards that are not legally binding but which have their own specific legal significance. This concept makes it possible to distinguish non-treaty agreements – including, for example, resolutions, guidelines, recommendations, and codes of conduct – from legally binding acts (*hard law*) and ordinary political statements. *Soft law* gives states the opportunity to conclude non-binding agreements and negotiate common rules or standards of conduct in situations where there is no political will yet to make binding commitments in a given area. – https://ms.gov.pl/pl/prawa-czlowieka/miekkie-prawo-miedzynarodowe/ [10.02.2016].

[56] Journal of Laws of 1947, no. 23, item 90 – Charter of the United Nations, Statute of the International Court of Justice and the Agreement Establishing the Preparatory Commission

the Universal Declaration of Human Rights (UDHR),[57] the International Covenant on Economic, Social and Cultural Rights,[58] the International Covenant on Civil and Political Rights (ICCPR),[59] the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief,[60] as well as regional acts in the form of documents prepared, among others, by the Conference on Security and Cooperation in Europe, or EU legislation. The aforementioned acts constitute a model for human rights regulations. Given the nature of these acts, they generally do not qualify as directly applicable law. They are resolutions of interstate bodies, not international agreements,[61] and therefore do not create binding law.[62]

The Charter of the United Nations defines the purpose and principles of the United Nations, membership in the organisation, and the functioning of its organs. It establishes the foundations of the global security system, defining the principles of peaceful settlement of disputes, actions to be taken in the event of aggression, and international economic and social cooperation. The goals of the United Nations include developing and promoting "respect for human rights and fundamental freedoms for all, regardless of race, sex, language or religion".[63] The Charter of the United Nations does not specify the content of individual human rights. The issue of defining universally recognised human rights and their content was entrusted to the United Nations Economic and Social Council and the Commission on Human Rights. The functioning of the aforementioned bodies led to the development of the UDHR, the International Covenant on Economic, Social and Cultural Rights, and the ICCPR.

The content of the notion of the right to religious freedom can be decoded from the content of the norms of several basic provisions of international law. The fundamental content of the right to religious freedom

of the United Nations.

[57] Available at: http://libr.sejm.gov.pl/tek01/txt/onz/1948.html [3.03.2016].

[58] Journal of Laws of 1977, no. 38, item 169 – International Covenant on Economic, Social and Cultural Rights, opened for signature in New York on 19 December 1966.

[59] Journal of Laws of 1977, no. 38, item 167 – International Covenant on Civil and Political Rights, opened for signature in New York on 19 December 1966.

[60] Available at: http://libr.sejm.gov.pl/tek01/txt/onz/1981.html [12.02.2016].

[61] Klafkowski, A. *Prawo publiczne międzynarodowe*, Warszawa 1971, p. 237.

[62] Berezowski, C. *Prawo międzynarodowe publiczne*, part 2, Warszawa 1969, p. 64.

[63] Article 1 of the Charter of the United Nations.

is defined in Article 18 of the UDHR.[64] It establishes the right of every person to freedom of thought, conscience, and religion. This freedom includes the possibility of changing one's religion or belief and the freedom to propagate the principles of one's religion or belief. Freedom concerns both the sphere of activities of the individual as well as that of the communities created by the followers of a given religion. It should be emphasised that the subject of rights pertaining to freedom of religion or belief is every human being. Therefore, the declaration does not make the exercise of this freedom dependent on any criteria such as reaching a certain age limit, the possession of citizenship, etc.

It should be noted that the content of this provision corresponds to the wording of Article 18 of the ICCPR.[65] This provision sets out the same scope of religious freedom and, in addition, defines the principle of prohibition of coercion aimed at inducing the profession, renunciation, or alteration of one's religion, faith, or belief.

In addition, it follows from the content of the aforementioned provision that the only basis for limiting the freedom to manifest one's confession or beliefs may be a law issued in order to protect public security, order, health, or morals as well as to protect the fundamental rights and freedoms of others. It is important to clearly state that the envisaged restrictions, introduced solely by way of a statutory act issued in order to protect the most important freedoms, may only concern the expression of one's beliefs "externally". As such, no permission is given to interfere with the scope of this freedom not exhibited in a manner visible to other

[64] "Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance." – https://www.un.org/en/about-us/universal-declaration-of-human-rights [15.12.2023].

[65] Article 18 of the ICCPR states: "1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching. 2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice. 3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others. 4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions." – quoted after: Journal of Laws of 1977, no. 38, item 167 – International Covenant on Civil and Political Rights, opened for signature in New York on 19 December 1966.

people. It should be noted that, as in the case of the Declaration, the Covenant does not make the exercise of freedom dependent on meeting any designation. Therefore, it should be recognised that minors can benefit from the scope of freedom of conscience provided for in the act.

However, it should be noted that, due to the provision of Article 18(4) of the Covenant, the scope of the capacity of minors to exercise this freedom must be correlated with the primacy of the will of their parents or legal guardians. Although this provision obliges state authorities to take into account the will and beliefs of parents, it should be concluded that since state authorities are obliged to provide parents with the opportunity to raise their children in accordance with their own beliefs, this in a certain way constitutes – in the exercise of the rights resulting from religious freedom – a presumption of the primacy of the parents' will over that of the child.

As far as the relationship between the parents and the minor child is concerned, it seems that recognition of the primacy of the parents' will excludes, at least to a certain extent, the principle of prohibition of coercion stemming from Article 18(2) of the Covenant. The provision of Article 18(4) of the ICCPR corresponds to and at the same time constitutes a clarification of the principle resulting from the wording of Article 26 of the UDHR of 1948, which specifies the scope of the right to education.[66] The content of paragraph 3 of this provision includes the right of parents to have priority in choosing the direction of their children's education. Therefore, since this law also covers the scope of children's philosophical education, the right of parents in this respect should be regarded as primary in relation to state authority.

In the case of the UDHR, according to Article 29,[67] the limits to the exercise of freedom are based on the need for the individual to

[66] Article 26 of the UDHR states: "1. Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit. 2. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace. 3. Parents have a prior right to choose the kind of education that shall be given to their children." – https://www.un.org/en/about-us/universal-declaration-of-human-rights [15.12.2023].

[67] Article 29 of the UDHR states: "1. Everyone has duties to the community in which alone the free and full development of his personality is possible. 2. In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely

respect the principles and standards necessary for the proper functioning of the community within which the individual operates. Restrictions on individual freedom must result from the provisions of law and must be based on the protection of the rights of others, the safeguarding of public order, morality, and well-being. Another limit to the exercise of freedom is the inviolability and respect for the purposes and principles of the United Nations. It should be noted that, unlike those acts containing a limitation clause, the UDHR does not directly specify to which elements of religious freedom the restrictions may refer.

In the case of the ICCPR, it was explicitly indicated that restrictions on religious freedom may concern only the manifestation of beliefs. In the case of the UDHR, there is no such definition, which in extreme cases may lead to the assumption that it is possible to extend the limitation of freedom to actions or behaviours not consisting in the manifestation of beliefs. The scope of rights and freedoms may, in principle, be modified using so-called derogation clauses. The right to religious freedom is generally recognised in the doctrine as a mandatory right belonging to the so-called "inviolable core" or "nucleus" of human rights, which cannot be limited in its essence by means of derogation clauses. This is confirmed in Article 4 of the ICCPR.[68] The aforementioned regulations indicate that restrictions on the scope of freedom may be justified by the freedom (including religious freedom) of other persons. To avoid the use of this principle as a justification for unauthorised restriction of religious freedom, norms were introduced in the content of the aforementioned acts to protect against the instrumental use of religious freedom for the purpose

for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society. 3. These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations." – https://www.un.org/en/about-us/universal-declaration-of-human-rights [15.12.2023].

[68] Article 4 of the ICCPR states: "1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin. 2. No derogation from articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 may be made under this provision."

Article 18 of the ICCPR provides: "1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching."

of limiting the rights of others. Legal standards functioning as safeguards are included, among other places, in the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief,[69] the UDHR,[70] and the ICCPR.[71] A definition of the scope of religious freedom is also included in the Declaration on the Elimination of All Forms of Discrimination, which is not a binding act but merely a programmatic act, but which is nevertheless a model to be pursued by United Nations member states. The scope of freedom is defined in the content of Article 1 of the Declaration,[72] and the scope of these notions is further clarified in the content of Article 6 of the Declaration.[73]

[69] In part, the preamble to the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief states: "Considering that religion or belief, for anyone who professes either, is one of the fundamental elements in his conception of life and that freedom of religion or belief should be fully respected and guaranteed. Considering that it is essential to promote understanding, tolerance and respect in matters relating to freedom of religion or belief and to ensure that the use of religion or belief for ends inconsistent with the Charter, other relevant instruments of the United Nations and the purposes and principles of the present Declaration is inadmissible." – https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-elimination-all-forms-intolerance-and-discrimination [15.12.2023].

[70] Article 30 of the UDHR states: "Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein."

[71] Article 5 of the ICCPR provides: "1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognised herein or at their limitation to a greater extent than is provided for in the present Covenant. 2. There shall be no restriction upon or derogation from any of the fundamental human rights recognised or existing in any State Party to the present Covenant pursuant to law, conventions, regulations or custom on the pretext that the present Covenant does not recognise such rights or that it recognises them to a lesser extent."

[72] Article 1 of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief states: "1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have a religion or whatever belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching. 2. No one shall be subject to coercion which would impair his freedom to have a religion or belief of his choice. 3. Freedom to manifest one's religion or belief may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others."

[73] Article 6 of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief states: "In accordance with article 1 of the present Declaration, and subject to the provisions of article 1, paragraph 3, the right to freedom of thought, conscience, religion or belief shall include, inter alia, the following freedoms:

(a) To worship or assemble in connection with a religion or belief, and to establish and maintain places for these purposes;

(b) To establish and maintain appropriate charitable or humanitarian institutions;

(c) To make, acquire and use to an adequate extent the necessary articles and materials related to the rites or customs of a religion or belief;

Other international documents affecting the shape of current solutions of the Polish legal system in the field of freedom of conscience and confession include the Final Act of the Conference on Security and Cooperation in Europe, signed on 1 August 1975.[74] This act, known as the Helsinki Accords, was not a treaty within the meaning of international treaty law. It was a solemn declaration of intent of political and moral significance.

In the area of human rights, including the right to freedom of confession or belief, the act emphasised the need to respect human rights and fundamental freedoms, including the freedom of thought, conscience, religion, and belief of everyone regardless of their race, gender, language, or religion.[75] Although the Final Act of the Conference on Security and

(d) To write, issue and disseminate relevant publications in these areas;
(e) To teach a religion or belief in places suitable for these purposes;
(f) To solicit and receive voluntary financial and other contributions from individuals and institutions;
(g) To train, appoint, elect or designate by succession appropriate leaders called for by the requirements and standards of any religion or belief;
(h) To observe days of rest and to celebrate holidays and ceremonies in accordance with the precepts of one's religion or belief;
(i) To establish and maintain contacts with individuals and communities in the field of religion or belief at the national and international levels."

[74] Available at: http://stosunki-miedzynarodowe.pl/traktaty/akt_koncowy_KBWE.pdf [16.04.2016].

[75] Article VII of the Final Act of the CSCE states: "Respect for human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief. The participating States will respect human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief, for all without distinction as to race, sex, language or religion. They will promote and encourage the effective exercise of civil, political, economic, social, cultural and other rights and freedoms all of which derive from the inherent dignity of the human person and are essential for his free and full development. Within this framework the participating States will recognise and respect the freedom of the individual to profess and practice, alone or in community with others, religion or belief acting in accordance with the dictates of his own conscience. The participating States on whose territory national minorities exist will respect the right of persons belonging to such minorities to equality before the law, will afford them the full opportunity for the actual enjoyment of human rights and fundamental freedoms and will, in this manner, protect their legitimate interests in this sphere. The participating States recognise the universal significance of human rights and fundamental freedoms, respect for which is an essential factor for the peace, justice and wellbeing necessary to ensure the development of friendly relations and co-operation among themselves as among all States. They will constantly respect these rights and freedoms in their mutual relations and will endeavour jointly and separately, including in co-operation with the United Nations, to promote universal and effective respect for them. They confirm the right of the individual to know and act upon his rights and duties in this field. In the field of human rights and fundamental freedoms, the participating States will act in conformity with the purposes and principles of the Charter of the United Nations and with the Universal Declaration of Human Rights. They will also fulfil their obligations as set forth in the international declarations and agreements in this field, including inter alia the International Covenants on Human Rights, by which they may be bound.

Cooperation in Europe concluded in 1975 was not formally included in the European system of human rights, it significantly influenced – according to J. Krukowski – the adoption and ratification by modern Eastern Bloc countries – including Poland,[76] on 3 March 1977 – of the ICCPR and the International Covenant on Social and Cultural Economic Rights of 1966. In Poland these documents became legally binding after their ratification.[77] The aforementioned acts of international law define standards for the protection of freedom in the area of belief and confession in genere. In most of these acts, every human being is recognised as a subject of rights. Hence, they also apply to minors. However, it is essential to determine whether the minor enjoys full rights or whether their rights are vested in the parents, who should consider, to a certain extent, the will of the minor when making decisions that shape the situation of the minor in the area of religious freedom.

The aforementioned acts of international law and documents of international organisations concern human rights and freedoms as such. Recognition of the importance and significance of international regulation of the issues of individual categories of entities forming the human community was the reason for, among other things, the development of documents and acts devoted strictly to the rights and freedoms of minors. Already in the interwar period, the international community tried to draw attention to the necessity of respecting the rights of children. The result was the announcement of the so-called "Geneva Declaration", i.e. the 1924 Declaration of the Rights of the Child,[78] followed by the United Nations Declaration of the Rights of the Child adopted by the General

[76] Act ratifying the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights of 3 March 1977 (Journal of Laws of 1977, no. 38, item 169).

[77] Krukowski, J. *Ochrona wolności religijnej w umowach międzynarodowych*, Lublin 2001, pp. 59–60.

[78] This was an extremely concise document: "By the present Declaration of the Rights of the Child, commonly known as 'Declaration of Geneva', men and women of all nations, recognising that mankind owes to the Child the best that it has to give, declare and accept it as their duty that, beyond and above all considerations of race, nationality or creed: 1) The child must be given the means requisite for its normal development, both materially and spiritually. 2) The child that is hungry must be fed; the child that is sick must be nursed; the child that is backward must be helped; the delinquent child must be reclaimed; and the orphan and the waif must be sheltered and succored. 3) The child must be the first to receive relief in times of distress. 4) The child must be put in a position to earn a livelihood, and must be protected against every form of exploitation. 5) The child must be brought up in the consciousness that its talents must be devoted to the service of fellow men."

Assembly on 20 November 1959.[79] While the former document was characterised by its extremely laconic content, the United Nations Declaration of the Rights of the Child clarified the rights of minors in the context of previously adopted acts of a general nature.

The Preamble to the Declaration states that the international community recognises that everyone should enjoy all the rights and freedoms set forth in the United Nations Universal Declaration of Human Rights without distinction of any kind, such as that of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status. A special part of the human community are children who, due to their physical and mental immaturity, require special care and attention, as well as appropriate legal protection both before and after birth.

Based on these premises, it was recognised that the subject of the rights and freedoms indicated in the Declaration includes all children, regardless of differences arising from race, colour, sex, language, religion, political or other views, nationality or social origin, property, birth, or any other basis. The rights of the child include the right to a name and nationality from birth; the right to adequate food, housing, entertainment, and medical care; and the right to an education, which should be free and compulsory at least in the elementary stages. This education should be aimed at forming their general culture and enabling them, under conditions of equal opportunity, to develop their abilities, to develop common sense and a sense of moral and social responsibility, as well as to become useful members of society. The child should have the right to protection against all kinds of neglect, cruelty, and exploitation, as well as against practices that may lead to racial, religious, or any other type of discrimination.

It should be mentioned that the Declaration does not explicitly express the child's right to freedom of belief.

The issue of children's rights was regulated, this time in the form of an act of international law of a binding nature, in 1989 through the adoption of the Convention on the Rights of the Child, adopted by the United Nations General Assembly on 20 November 1989.[80]

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[79] Available at: https://ms.gov.pl/Data/Files/_public/ppwd/akty_prawne/onz/deklaracja_praw_dziecka.pdf [05.05.2015].

[80] Journal of Laws of 1991, no. 120, item 526 – Convention on the Rights of the Child, adopted by the General Assembly of the United Nations on 20 November 1989.

The Preamble states that the child is entitled to exercise the rights and freedoms expressed in the UDHR and in the International Covenants on Human Rights.[81] The Convention clarified the subject of the rights derived from its contents, indicating in the wording of Article 1 that a child is generally considered to be a person under the age of 18.[82]

Pursuant to subsequent provisions of the Convention, an obligation was introduced for States Parties to ensure the protection of children's rights without discriminating on grounds of race, religion, or any other basis. Importantly, children also cannot be discriminated against because of any specific designations assigned to their parents.[83] In accepting the right of parents to priority in the upbringing of a child,[84] the Convention reflected the strengthening position of the child itself in managing their own affairs.[85] The Convention explicitly recognises

[81] The Preamble to the Convention on the Rights of the Child states, among other things, that: "Recognising that the United Nations has, in the Universal Declaration of Human Rights and in the International Covenants on Human Rights, proclaimed and agreed that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. [...] Convinced that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community […]"

[82] Article 1 states: "For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier."

[83] Article 2 states: "1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status. 2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members."

[84] Article 5 states: "States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognised in the present Convention."

[85] Article 12(1) states: "States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child." Article 13(1) states: "The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice."

the child's right to freedom of opinion, but does not deny the role of parents in the process of directing the child's upbringing.[86]

When discussing the obligations of the States Parties to the Convention in the area of freedom of opinion, one should note the obligation to protect the rights of ethnic or religious minorities concerning their freedom to raise children in their own faith or in accordance with their own beliefs.[87] The mechanism guaranteeing compliance by States Parties with the obligations assumed in ratifying the Convention is the establishment of the Committee on the Rights of the Child, an institution whose competence includes, among other things, the verification of reports on the observance of children's rights submitted by signatories to the Convention.

In ratifying the Convention on 7 June 1991, the Republic of Poland took the opportunity to submit its reservations and declarations, among others, on the scope of parental authority and its impact on the rights of the child.[88] The interpretative declaration submitted by Poland concerned the application of Articles 12–16 of the Convention, namely, those regulating freedom of opinion, expression, thought, confession, conscience, and association and protection of the private sphere. Additionally, in the area of freedom of religion, the aforementioned provisions guarantee the right of parents to direct the child in terms of their world view. The declaration submitted, as regards the indicated norms, stipulates that in their application Poland will take into account local customs and traditions. This should be regarded as an expression of Poland's conservative understanding of the model of family relations and the influence

[86] Article 14 states: "1. States Parties shall respect the right of the child to freedom of thought, conscience and religion. 2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child. 3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others."

[87] Article 30 states: "In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language."

[88] "[...] The Republic of Poland considers that the exercise by a child of their rights as set out in the Convention, in particular the rights set out in Articles 12 to 16, is done with respect for parental authority and in accordance with Polish customs and traditions regarding the place of the child in the family and outside the family [...]."

of Catholic ideology regarding family and upbringing. When assessing the provisions of the Convention, one should generally express acceptance of the catalogue of children's freedoms indicated therein. However, the literature points to some shortcomings of the regulations. Among them is one such objection commonly voiced regarding international acts, i.e. that they focus on establishing the aspect of substantive rights and freedoms, while omitting institutional and procedural solutions that may contribute to the actual guarantee of the declared rights. In addition, it is noted that the Convention ignores in its provisions the importance of the process of the child's development as a criterion for differentiating the scope of the rights exercised independently by the child. Moreover, as regards the protection of the rights of unborn children, the issue of the lack of clear regulation of the boundaries of childhood is raised.[89]

When analysing the state of the solutions contained in international acts, it should be noted that the issue of defective or incomplete legislation is brought up repeatedly. In this context, it is mentioned that there are no procedural solutions allowing for the effective enforcement of the declarations contained in the texts of the Convention and other acts. It is pointed out that "the Convention on the Rights of the Child is a legal act that contains many shortcomings in terms of the design of the provisions. The language of the convention is partly juridical, but to a large extent it is the language of politics."[90]

The doctrine points to a lack of uniformity and consistency in the drafting of the provisions of individual international acts, which may cause conflicts of norms. One such example is the question concerning the primacy of the will of the parents over the will of the child in matters of freedom of confession and conscience. The norms of the Convention for the Protection of Human Rights and Fundamental Freedoms and the ICCPR indicate the primacy of the will of the parents over that of the child. The Convention on the Rights of the Child regulates this issue differently.[91]

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[89] For more information on defective or incomplete regulations of the Convention, see: Wiśniewski, L. "*Konwencja o prawach dziecka na tle paktów praw człowieka i innych aktów prawa międzynarodowego*", in: *Konwencja o prawach dziecka. Wybrane zagadnienia prawne i socjalne*, edited by T. Smyczyński, Warszawa 1994, pp. 3–8; and Wójcik, D. "*Rozwój psychiczny dzieci i młodzieży a prawa gwarantowane przez Konwencję o prawach dziecka*", in: ibid., pp. 20–31.

[90] Wiśniewski, L. "*Konwencja o prawach dziecka na tle paktów*", p. 7.

[91] Cf. Article 2 of the Additional Protocol to the ECHR, Article 18 (4) of the ICCPR, and Article 13 (5) of the ICESCR with Article 14 of the Convention on the Rights of the Child.

Objections are also directed against the institution of reservations to the Convention, the submission of which often distorts or negates the content of certain norms.[92]

Reference should also be made to the reservations of the Republic of Poland regarding the Convention. According to the statement of the Polish government, the exercise by a child of their right to freedom of thought, conscience, and religion should take place with respect to parental authority and in accordance with Polish customs and traditions regarding the place of the child inside and outside the family.[93] Criticism of this provision is justified because "Polish customs and traditions" were not specified, either in the form of a reference or in descriptive form. The criteria for determining whether a given behaviour is consistent with Polish tradition and to what extent was also left unspecified. Moreover, some customs may be in clear contradiction to the recognition of the child's freedom in the scope discussed. This raises concerns about the reservation's opportunistic use to promote an interpretation of the Convention norms in accordance with the current interests of the ruling party. It was argued in the doctrine that in the case of ill will, a reservation could annihilate the essence of the freedoms recognised by the Convention.[94]

At this point, one should also mention the actual implementation of convention obligations by the Polish state. The literature indicates that there is insufficient implementation of commitments mainly in the area of social and cultural rights, especially concerning people exposed to social exclusion and marginalisation. Regarding the obligations concerning freedom of conscience and freedom of confession, it is noted that only

[92] It is noted that the reservations made to certain provisions of the Convention are manifestly contrary to the principles expressed in Article 19 of the Vienna Convention on the Law of Treaties, which prohibits reservations made on grounds contrary to the object and purpose of the treaty. However, there are no legal norms to determine that such a reservation is invalid *erga omnes* by virtue of the law itself, and no authority has been appointed that can take a binding position on obvious violations of the principles and norms indicated. For more on this topic, see: Wiśniewski, L. "*Geneza Konwencji o Prawach Dziecka i stosunek jej norm do innych aktów prawa międzynarodowego*", in: *Konwencja o prawach dziecka. Analiza i wykładnia*, edited by T. Smyczyński, Poznań 1999, pp. 17–18.

[93] "The Republic of Poland considers that the exercise by a child of their rights as set out in the Convention, in particular the rights set out in Articles 12 to 16, is done with respect for parental responsibility and in accordance with Polish customs and traditions regarding the place of the child in the family and outside the family."

[94] See: Łopatka, A. "*Konwencja Praw Dziecka w Polsce*", in: *Prawa dziecka. Deklaracje i rzeczywistość*, edited by J. Bińczycka, Kraków 1999, p. 25.

a small number of schools provide alternatives to instruction in the Roman Catholic religion.[95]

It should be noted that both the Convention and other acts of international law concerning the realm of freedom of opinion do not limit the area that is subject to protection only to those world views based on religious beliefs.[96]

Among the acts of international law concerning issues related to the definition of the limits of freedom of conscience and confession and the guarantee of its protection, one should also mention the Convention on Preventing and Combating Violence Against Women and Domestic Violence, which was opened for signature in Istanbul on 11 May 2011.[97] The Convention entered into force after its ratification by the required number of signatory states on 1 August 2014. At the end of 2016 the Convention was ratified by 22 signatory states.[98] The Convention was ratified by the Republic of Poland pursuant to the Act of 6 February 2015.[99]

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[95] For more information on Poland's implementation of its convention obligations, see: Burek, W. "*Polska jako państwo – strona Konwencji o prawach dziecka z 1989 roku*", in: *Prawa dziecka w prawie międzynarodowym*, edited by E. Karska, Warszawa 2014.

[96] See: Sokołowski, T. "*Wolność myśli, sumienia i wyznania dziecka*", in: *Konwencja o prawach dziecka. Analiza i wykładnia*, p. 258.

[97] It should be mentioned that the work on the adoption of the Convention preceded, among others, the following recommendations of the Committee of Ministers for the Member States of the Council of Europe: Recommendation Rec (2002)5 on the protection of women against violence; Recommendation Rec (2007)17 on standards and mechanisms regarding gender equality; and Recommendation Rec (2010)10 on the role of men and women in conflict prevention and resolution and in peace-making. The preamble to the Convention also refers to acts of international law such as the Convention for the Protection of Human Rights and Fundamental Freedoms (CETS no. 5, 1950) and its protocols; the European Social Charter (CETS no. 35, 1961, as amended in 1996; CETS no. 163); the Council of Europe Convention on Action against Trafficking in Human Beings (CETS no. 197, 2005); the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS no. 201, 2007); the International Covenant on Civil and Political Rights (1966); the International Covenant on Economic, Social and Cultural Rights (1966); the United Nations Convention on the Elimination of All Forms of Discrimination against Women ("CEDAW", 1979) and its Optional Protocol (1999), as well as CEDAW Committee's General Recommendation 19 on Violence against Women; the United Nations Convention on the Rights of the Child (1989) and its Optional Protocols (2000); the United Nations Convention on the Rights of Persons with Disabilities (2006); the Rome Statute of the International Criminal Court (2002); the Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War (1949) and its Additional Protocols 1 and 2 (1997); and the jurisprudence of European Courts.

[98] Available at: http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/210/signatures [20.04.2017].

[99] Journal of Laws of 2015, item 398 – Act of 6 February 2015 on the ratification of the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence, opened for signature in Istanbul on 11 May 2011.

The aim of the Convention is to devise instruments to legally counteract all forms of violence against women at the European level, as well as to prevent, prosecute, and eliminate violence against women and domestic violence. The work was based on the will to ensure greater equality between women and men, because violence against women is deeply rooted in gender inequalities and perpetuated by a culture of patriarchy and indifference to this phenomenon. The material scope of the Convention covers all types of violence (physical and psychological violence, sexual abuse, forced marriage, female genital mutilation, harassment, forced sterilisation or abortion) regardless of the age, ethnic origin or nationality, religion, social origin, migration status, or sexual orientation of the victim.

It should be noted that violence against women may deprive them of the ability to exercise their human rights, and thus one cannot exclude the possibility of violence that is intended to force actions or omissions that interfere with freedom of belief of various kinds.[100]

From the point of view of considerations on the freedom of conscience and confession of minors, it is vital to mention that the Convention also recognises girls under the age of 18, i.e. those considered as minors from the perspective of Polish law, as "women".[101] Therefore, I was obliged to include this source of law in the present discussion, as well as to include the date of its entry into force in Poland in the title of this work.

Article 4(3) of the Convention states that the incorporation of its provisions concerning the guarantee of protection against violence must be performed without discrimination, among other grounds, on the basis of one's religion or a political or other type of opinion.[102] The raising of such a reservation should be regarded as one of the elements of protection against making use of the instruments provided for in the Convention dependent on one's fulfilment of unspecified requirements concerning the question of religion or a wider world view.

[100] See: *Konwencja o zapobieganiu i zwalczaniu przemocy wobec kobiet i przemocy domowej. Komentarz*, edited by E. Bieńkowska [et al.], Warszawa 2016, p. 137.

[101] Article 3(F) states: "'women' includes girls under the age of 18."

[102] Article 4(3) states: "The implementation of the provisions of this Convention by the Parties, in particular measures to protect the rights of victims, shall be secured without discrimination on any ground such as sex, gender, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth, sexual orientation, gender identity, age, state of health, disability, marital status, migrant or refugee status, or other status."

Attention should also be given to the norm contained in Article 12(5) of the Convention[103] (as well as the directly related Article 42 of the Convention[104]), which requires signatory states to the agreement to construct rules of domestic law in such a way as to avoid the possibility of excluding responsibility for acts of violence by means of a counter type based on behaviour consistent with tradition, religion, custom, culture, or "honour". It should be recognised that this applies mainly to the protection of women from immigrant communities – primarily from those of the Muslim faith, who reject the traditional European way of life.[105]

The category of norms protecting the freedom of belief of minor women includes Article 37 of the Convention,[106] which obliges the parties to the agreement to create legal instruments penalising forced marriage. It seems that the provisions contained in Articles 38[107] and 39[108] of the Convention should be treated in a similar way. They require the creation of instruments guaranteeing the penalisation of those behaviours indicated in the content of the provision in situations in which the acts described in them would be motivated by considerations of a religious (for example) nature.

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[103] Article 12(5) states: "Parties shall ensure that culture, custom, religion, tradition or so-called "honour" shall not be considered as justification for any acts of violence covered by the scope of this Convention."

[104] Article 42(1) states: "Parties shall take the necessary legislative or other measures to ensure that, in criminal proceedings initiated following the commission of any of the acts of violence covered by the scope of this Convention, culture, custom, religion, tradition or so-called "honour" shall not be regarded as justification for such acts. This covers, in particular, claims that the victim has transgressed cultural, religious, social or traditional norms or customs of appropriate behaviour." Article 42(2) states: "Parties shall take the necessary legislative or other measures to ensure that incitement by any person of a child to commit any of the acts referred to in paragraph 1 shall not diminish the criminal liability of that person for the acts committed."

[105] Cf. https://www.brusselsjournal.com/node/1143 [20.01.2017]; see: Chesler, P. "*Worldwide Trends in Honor Killings*", The Middle East Quarterly, 17(2019), no. 2, pp. 3–11.

[106] Article 37(1) states: "Parties shall take the necessary legislative or other measures to ensure that the intentional conduct of forcing an adult or a child to enter into a marriage is criminalised."

[107] Article 38 states: "Parties shall take the necessary legislative or other measures to ensure that the following intentional conducts are criminalised: a) excising, infibulating or performing any other mutilation to the whole or any part of a woman's labia majora, labia minora or clitoris; b) coercing or procuring a woman to undergo any of the acts listed in point a; c) inciting, coercing or procuring a girl to undergo any of the acts listed in point a."

[108] Article 39 states: "Parties shall take the necessary legislative or other measures to ensure that the following intentional conducts are criminalised: a) performing an abortion on a woman without her prior and informed consent; b) performing surgery which has the purpose or effect of terminating a woman's capacity to naturally reproduce without her prior and informed consent or understanding of the procedure."

In analysing the provisions of the Convention against the background of Polish legal solutions, one should agree with the thesis presented by commentators, namely, that in the majority of cases Polish solutions comply with the recommendations and obligations formulated in the content of this act, and that in some cases they go even further.[109] As a side note, it should be mentioned that on 20 January 2021 the Sejm adopted a law amending the scope of the Istanbul Convention, one which did not signify a deterioration in the level of protection guaranteed to underage women. This Convention will be in force in Poland until 1 February 2026.[110]

3. Guarantees of EU law after 1 May 2004

References to tradition and religious heritage can also be found in the content of European primary law. In the Preamble to the Treaty on European Union of 7 February 1992, there is an explicit reference to the religious heritage of Europe, which is the source of inviolable human rights as well as freedoms, among other things.[111] The fundamental basis of EU law in the realm of freedom of conscience and confession is Article 3(5) of the Treaty on European Union.[112] This provision was introduced into the text of the Treaty by virtue of Article 1(4) of the Treaty of Lisbon.[113]

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[109] *Konwencja o zapobieganiu i zwalczaniu przemocy wobec kobiet i przemocy domowej (Convention on Preventing and Combating Violence Against Women and Domestic Violence)*, pp. 138–139, 445, 450–451, 460.

[110] Act of 20 January 2021 amending the scope of applicability of the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence, opened for signature in Istanbul on 11 May 2011 (Journal of Laws of 2021, item 149).

[111] Cf. Recital II of the preamble to the Treaty on European Union: "Drawing inspiration from the cultural, religious and humanist inheritance of Europe, from which have developed the universal values of the inviolable and inalienable rights of the human person, freedom, democracy, equality and the rule of law."

[112] In its relations with the wider world, the Union shall uphold and promote its values and interests and contribute to the protection of its citizens. It shall contribute to peace, security, the sustainable development of the Earth, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and the protection of human rights, in particular the rights of the child, as well as to the strict observance and the development of international law, including respect for the principles of the United Nations Charter. Content of the provision quoted after the consolidated version of the Treaty: http://oide.sejm.gov.pl/oide/index.php?option=com_content&view=article&id=14803&Itemid=945 [30.05.2015].

[113] Journal of Laws of 2009, no. 203, item 1569 – Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, signed at Lisbon on 13 December 2007

As mentioned in the literature, although they are of great importance to the shaping of human rights awareness, universal international conventions are actually ineffective due to the multiplicity of interpretations as well as the lack of control over their implementation.[114] For this reason, regional agreements are considered to be more valuable. In Europe, the issue of religious freedom is addressed by documents such as the Convention for the Protection of Human Rights and Fundamental Freedoms of 1953 (also known as the European Convention on Human Rights); the Final Act of the Conference on Security and Cooperation in Europe of 1975; and the Treaty of Lisbon of 2007, within which the Charter of Fundamental Rights of 2000 applies.

The European Convention on Human Rights (ECHR) was signed in Rome on 4 November 1950 and entered into force on 8 September 1953.[115] The ECHR is an international agreement in the area of human rights protection and was concluded by the member states of the Council of Europe.

The Preamble to the ECHR contains a reference to the UDHR. Based on the Convention's findings, the European Court of Human Rights was established in 1959 with its seat in Strasbourg. Particular importance should be attached to the norm of the ECHR indicating that "everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance".[116] Two elements are important in this regard. First, the ECHR determines the content of the definition of freedom of conscience and religion, combining it with freedom of thought. Secondly, the definition of the group of entities enjoying this freedom is significant. Within the meaning of the ECHR, this covers every human being. As such, the Convention applies directly to minors as well.

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[114] Krukowski, J. *Ochrona wolności religijnej*, p. 55.

[115] Warchałowski, K. *Prawo do wolności myśli, sumienia i religii w Europejskiej Konwencji Praw Człowieka i Podstawowych Wolności*, Lublin 2004, p. 48.

[116] Article 9 of the Constitution states: "1. Everyone has the right to freedom of thought, conscience, and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance. 2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health, or morals, or for the protection of the rights and freedoms of others."

While analysing the achievements of European legislation, one should also point to the Additional Protocol (Protocol no. 1) to the European Convention on Human Rights of 20 March 1952,[117] which closely links the right to religious freedom with the right to education and upbringing. This is expressly stated in Article 2 of the aforementioned protocol.

The ECHR does not directly guarantee parents or legal guardians the right to decide on the education of their children, but it generally guarantees the right to freedom of thought, conscience, and religion. Protocol no. 1 to the ECHR guarantees the right to the education of children in accordance with religious or philosophical beliefs, within the framework of the state education system.

The scope of religious freedom in the regional dimension was defined in Article 9 of the ECHR.[118] It should be noted that Poland has been a member of the Council of Europe since 1992, a fact which obliges the authorities of the Republic of Poland to comply with the articles contained in the ECHR.

This document, chronologically preceding the ICCPR, indicates that everyone has the right to freedom of thought, conscience, and confession. The ECHR also defines the scope of the notion of freedom of religion, indicating that it includes the freedom to change one's confession or belief, and the freedom to manifest one's confession or belief both individually and collectively. This manifestation consists in the practice of worship, teaching the principles of a confession or the principles on which a particular world view is based, and performing religious practices and ritual activities in accordance with the principles of a confession. The manifestation of a confession or belief may be restricted only by law and only for reasons necessary to ensure public security, to protect public order, health, and morals, and to protect the rights and freedoms of others.

[117] Article 2 of the Additional Protocol to the ECHR provides: "No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions."

[118] Article 9 of the ECHR: "1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance. 2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others." Text: https://www.echr.coe.int/documents/d/echr/Convention_ENG [18.12.2023].

When analysing the foregoing provision, it should be noted that it is consistent with the regulation of Article 18 of the ICCPR, both in terms of the content of the notion of freedom of confession, as well as in relation to the possibility of restrictions on the expression of this freedom.

It should be noted that the principles adopted in Article 18(4) of the ICCPR are also reflected in Article 2 of Protocol no. 1 to the ECHR.[119] This provision, referring to the right to education, indicates that this right also includes a right to education in the religious and philosophical sphere, and that the state is obliged, in exercising its authority in the area of teaching, to take into account the right of parents to bring up their children in accordance with their own convictions in this sphere.

The scope of the right to religious freedom is also defined in the content of Articles 10[120] and 14[121] of the Charter of Fundamental Rights of the European Union (CFR).

The scope of religious freedom as defined in Article 10 of the CFR is identical with the previously presented provisions of the ICCPR and the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, and includes the right to choose and change one's religion or belief and to manifest one's religion or belief, individually and collectively, through the practice of worship, teaching, and participation in the rites related to a given religion. One novelty is the clear indication and recognition of the right to refuse actions contrary to one's conscience. However, this right is de facto dependent on the relevant provisions of national law. Article 14 of the CFR declares respect for the right of parents to ensure that their children are brought up and

[119] Article 2 of the Additional Protocol to the ECHR states: "No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions." Text: https://www.echr.coe.int/documents/d/echr/Convention_ENG [18.12.2023].

[120] Article 10 of the CFR states: "1) Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change religion or belief and freedom, either alone or in community with others and in public or in private, to manifest religion or belief, in worship, teaching, practice and observance. 2) The right to conscientious objection is recognised, in accordance with the national laws governing the exercise of this right."

[121] Article 14 of the CFR states: "1. Everyone has the right to education and to have access to vocational and continuing training. 2. This right includes the possibility to receive free compulsory education. 3. The freedom to found educational establishments with due respect for democratic principles and the right of parents to ensure the education and teaching of their children in conformity with their religious, philosophical and pedagogical convictions shall be respected, in accordance with the national laws governing the exercise of such freedom and right."

taught in accordance with their own religious and philosophical convictions. The scope of the exercise of these entitlements is left to national legislation.

The scope of religious freedom is determined by the so-called limitation clauses contained in the content of the provisions defining the scope of this freedom. In the case of the ICCPR and the ECHR, limitation clauses indicate that the exercise of this freedom is limited by considerations of public security, to ensure health, order, and morality, as well as the freedom of others. In the case of the UDHR and the CFR, the articles defining the scope of religious freedom do not contain any limitation clauses. Possible restrictions on the exercise of entitlements which constitute the content of this freedom result from the provisions governing the exercise of all rights guaranteed in the aforementioned acts. In the case of the CFR, pursuant to Article 52[122] of Title VII, which sets forth the general rules for the application and interpretation of its provisions, restrictions on freedoms guaranteed by the CFR must be established in an act of law of a statutory rank, and such restrictions must not compromise the essence of the right in question. In addition, restrictions may be imposed in compliance with the principle of proportionality, where their application is compatible with the general interest recognised by the Member States and results from the need to protect the freedom

[122] Article 52 of the CFR states: "1. Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others. 2. Rights recognised by this Charter for which provision is made in the Treaties shall be exercised under the conditions and within the limits defined by those Treaties. 3. In so far as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection. 4. In so far as this Charter recognises fundamental rights as they result from the constitutional traditions common to the Member States, those rights shall be interpreted in harmony with those traditions. 5. The provisions of this Charter which contain principles may be implemented by legislative and executive acts taken by institutions, bodies, offices and agencies of the Union, and by acts of Member States when they are implementing Union law, in the exercise of their respective powers. They shall be judicially cognisable only in the interpretation of such acts and in the ruling on their legality. 6. Full account shall be taken of national laws and practices as specified in this Charter. 7. The explanations drawn up as a way of providing guidance in the interpretation of this Charter shall be given due regard by the courts of the Union and of the Member States."

Content: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:C2012/326/02 [18.12.2023].

of others. The CFR does not directly indicate to which elements of religious freedom restrictions may apply. In the case of the ECHR, it was explicitly stated that restrictions on religious freedom may concern only the manifestation of beliefs. In the case of the CFR, no such definition exists, which in extreme cases may lead to the assumption that it is possible to extend the limitations of this freedom to actions or behaviours not consisting in the manifestation of beliefs. The scope of rights and freedoms may, in principle, be modified by the use of so-called derogation clauses. The right to religious freedom is generally recognised in the doctrine as a mandatory right belonging to the so-called "inviolable core" or "nucleus" of human rights, which cannot be limited in its essence by means of derogation clauses. This is confirmed in Article 4 of the ICCPR.[123]

Interestingly enough, there is no analogous provision in the content of the ECHR. Article 15 of the ECHR explicitly lists the right to life, the prohibition of torture, the prohibition of slavery and servitude, and the prohibition of punishment without a legal basis as non-derogable.[124]

The legal acts created at the initiative of EU bodies also include the Treaty of Amsterdam of 2 October 1997. As mentioned earlier, this act was supplemented by a number of declarations. One such declaration that is

[123] Article 4 of the ICCPR states: "1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin. 2. No derogation from articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 may be made under this provision."

Article 18(1) of the ICCPR provides: "Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching."

[124] Article 15 of the ECHR states: "1. In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law. 2. No derogation from Article 2, except in respect of deaths resulting from lawful acts of war, or from Articles 3, 4 (paragraph 1) and 7 shall be made under this provision."

Article 2 provides: "1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law. 2. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary: (a) in defence of any person from unlawful violence; (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained; (c) in action lawfully taken for the purpose of quelling a riot or insurrection."

important from the point of view of issues related to freedom in the sphere of world view is the so-called "Church Declaration" (no. 11), which establishes the principles for coexistence of religious associations and the European Community. Due to the fact that the ecclesiastical clause is not included in the content of the Treaty, it only has the character of a declaration stating that "Churches have the same legal status in the European Union as they enjoy in the legislation of individual Member States of the European Union; this status cannot be violated by the bodies of the European Union, but is to be treated as in national legislation".[125] In the literature, due to the form of this clause, it is noted that: "The document feels in a certain way insufficient, because it is merely a declaration of a political nature. Therefore, it does not introduce any harmonisation of the principles of relations between the state and ecclesiastical institutions, which are guided by the member states in their legal systems. This document fails to fulfil the demand for respect for churches as a permanent element of European culture."[126]

Another important act of regional importance is the Lisbon Treaty signed on 13 December 2007. It contains the so-called Charter of Fundamental Rights,[127] adopted at the Nice Summit on 7 December 2000. This charter was originally intended to be the second chapter of the Treaty establishing a constitution for Europe. When signing the Lisbon Treaty, the governments of Poland and the United Kingdom limited the application of the Charter of Fundamental Rights by adopting an additional protocol. After ratification by the member states, the aforementioned act entered into force on 1 December 2009.

The purpose of the Charter is to strengthen the protection of individual rights in the legal system of the European Community. This is done by including, in a single legal act, various rights previously declared in other Community documents and referred to in the case law of the Court of Justice, as well as those rights guaranteed by the constitutions of the Member States as a result of concluded international agreements.[128]

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[125] Krukowski, J. "*Unia Europejska a Kościół katolicki. Zarys problematyki*", Roczniki Nauk Prawnych, 13(2003), vol. 1, p. 213.

[126] Ibid., p. 214.

[127] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:C2012/326/02 [18.12.2023].

[128] Przyborowska-Klimczak, A. "*Klauzula o Kościołach w Traktacie Amsterdamskim*", in: *Kościół i jego porządek prawny wobec jednoczącej się Europy*, edited by A. Kaczor, Lublin 2001, pp. 60–61.

The Introduction to the Lisbon Treaty refers not only to the act's cultural and humanistic inspiration, but also to the religious heritage of Europe from which arose universal values that constitute inviolable and inalienable human rights.

The Charter of Fundamental Rights explicitly mentions protection of freedom in the philosophical and religious sphere as one of the fundamental principles on which the EU is founded.[129] The principle of freedom of religion and belief leads to prohibition of discrimination based on grounds of a religious nature.[130]

With regard to children's rights, the Charter stresses the paramount importance of ensuring the child's well-being. It also grants the child the right to have their own views, though it does not specify a catalogue of areas to which this right applies.[131] It should be noted that the European Union does not interfere with the Member States' regulations on the national status of churches and religious associations. Fundamental rights guaranteed by the constitutions or internal laws of the Member States cannot be limited by the provisions of the Charter of Fundamental Rights.[132]

Among the latest acts of EU law, the recommendations adopted by the Foreign Affairs Council on 24 June 2013 on the promotion and protection of freedom of religion or belief should be mentioned.[133] These

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[129] Article 10 of the Charter states: "1) Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change religion or belief and freedom, either alone or in community with others and in public or in private, to manifest religion or belief, in worship, teaching, practice and observance.

2) The right to conscientious objection is recognised, in accordance with the national laws governing the exercise of this right."

[130] Article 21(1) provides: "Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited."

[131] Article 24 of the Charter states: "1. Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity. 2. In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration. 3. Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests."

[132] Article 52 of the Charter of Fundamental Rights.

[133] EU Guidelines on the promotion and protection of freedom of religion or belief, Foreign Affairs Council meeting, Luxembourg, 24 June 2013. The text of the guidelines is available at: https://eeas.europa.eu/sites/eeas/files/137585.pdf [25.04.2016].

guidelines fully confirm the EU's position to date on the protection of freedom of thought, belief, and religion. The most important issues that were contained in the document include emphasising the dimension of collective respect for religious freedom, recognising the right of parents to educate their children in accordance with their religious beliefs, the free operation of religious institutions, and giving more attention to the issues of respect for freedom in the sphere of beliefs when applying the principle of non-discrimination. In addition, the guidelines introduced an obligation to include clauses concerning respect for freedom of religion when concluding contracts. It should be emphasised that the foregoing guidelines were positively received by representatives of the Catholic Church.[134]

When analysing the guarantees of freedom of conscience and confession based on European law, it is necessary to note those having direct or indirect links with the situation of minors in Poland.

When work on the Convention for the Protection of Human Rights and Fundamental Freedoms began, it was clear from the very beginning that freedom of confession should be included in the list of fundamental rights protected by the ECHR.[135]

Initially, this convention was to protect "religious freedom". However, as editorial work progressed, a decision was made to use the expression "freedom of thought, conscience and religion" as borrowed from the UDHR.[136] It should be noted that both the ECHR and the UDHR derive the existence of the right to freedom of thought, conscience, or religion from a legal-natural notion of the existence of natural and inalienable human freedoms – these freedoms, since they are inextricably linked to the human person, exist independently of statutory law (positive law).

According to the European Court of Human Rights, this freedom is also one of the cornerstones of a democratic society, one which is also important for atheists or agnostics, because in such a society many religions can exist side by side with mutual respect for one another.[137] The ECHR

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[134] See: *UE: wolność religijna prawem człowieka*, http://gosc.pl/doc/1609383.UE-wolnosc-religijna-prawem-czlowieka [25.04.2016].

[135] Warchałowski, K. *Prawo do wolności myśli*, p. 51.

[136] Freeman, M. *Prawa człowieka*, Warszawa 2007, p. 49.

[137] Judgement in the case of Buscarini and Others v. San Marino, 18 February 1998, application 24645/94, RJD 1998-VII, § 43.

mentions, as elements of this freedom, the person's freedom "to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance".[138]

Freedom of thought, conscience, and confession, protected by Article 9 of the ECHR, is one of the values of a democratic society. Religious freedom is one of the most essential elements of believers' identity and their concept of life, and it is also of value to atheists, agnostics, sceptics, and religiously indifferent people. It results from pluralism, the achievement of which required significant sacrifices over the centuries.[139] In determining the scope of cognition, the Court interpreted the philosophical beliefs subject to protection under Article 9 of the ECHR. The jurisprudence of the Strasbourg Court seems to represent the notion of "identifiable religion".[140] It should be noted that, on the basis of this concept, the Court deems that religion within the meaning of the freedom guaranteed in Article 9 should be understood to also include a lack of identification with any religion (atheism, agnosticism), as well as attitudes such as pacifism.[141]

The jurisprudence of the Court devoted a lot of space to determining the limits to interference with the scope of freedom of conscience. In this regard we should point to fundamental rulings regarding the prohibition of religious indoctrination by state authorities,[142] as well as the prohibition of any coercion aimed at forcing a change in world view[143] or violation of the right not to profess a religion.[144]

The case law has also devoted much attention to indicating the limits of the permitted forms of expression of one's world view. Due to

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138 *Europejska Konwencja Praw Człowieka*, edited by P. Hofmański, Kraków 1997, p. 48.

139 This position, repeated many times on various occasions, was presented for the first time in the case of Kokkinakis v. Greece – judgement of 25 May 1993, A. 260-A; for similar cases, see: judgement of 7 December 1976 – Kjeldsen, Busk Madsen and Pedersen v. Denmark; judgement of 14 May 1988 – Müller and Others v. Switzerland; judgement of 22 February 1989 – de Geouffre de la Predelle v. France; and judgement of 16 December 1992 – Hadjianastassiou v. Greece.

140 Gronowska, B., Jasudowicz, T., Balczerzak, M., Lubiszewski, M., and Mizerski, R. *Prawa człowieka i ich ochrona*, Toruń 2005, p. 326.

141 Arrowsmith v. United Kingdom, 12 December 1978, application 7050/75, DR 19/5, p. 19, section 69.

142 Judgement in the case of Buscarini and Others v. San Marino, 18 February 1998, application 24645/94, RJD 1998-VII.

143 Ivanova v. Bulgaria, 12 April 2007, application 52435/99.

144 Judgement in the case of Alexandridis v. Greece of 21 February 2008, application 19516/06.

the subject of this work, the judgements referring to the display of religious symbolism in educational institutions should be mentioned here.[145] In examining complaints related to the foregoing, the Court has drawn up a line of jurisprudence indicating that a prohibition on wearing religious symbols does not constitute a breach of Article 9 of the ECHR (also in conjunction with Article 14) as long as such regulations are neutral and do not distinguish between the followers of different religions.[146] It is also necessary to cite the Court's position regarding the possible impact of religious symbols in schools on the implementation of religious education of minors by their parents, who do not automatically lose their dominant influence on the formation of their children's world view.[147]

When analysing the solutions of EU law (and universal international law) that are aimed at ensuring the implementation of freedom of conscience and confession, in light of the aforementioned views indicating a certain weakness of international acts of law – consisting in the fact that they focus only on the material aspect without creating the requisite procedural and institutional facilities[148] – it should be noted that attempts are being made to create institutions and mechanisms intended to improve the implementation of protected freedoms. "Article 43 of the Convention on the Rights of the Child, which establishes the Committee on the Rights of the Child as the body set up to examine progress in the implementation of the obligations laid down in that Convention, is also of fundamental importance in this area. Therefore, the Committee should, in principle,

[145] Commission on Human Rights – Karaduman v. Turkey, complaint no. 16278/90, decision of 3 May 1993, Decisions and Reports 74; Dahlab v. Switzerland, decision of 15 February 2001, Chamber (Section II) complaint no. 42393/98 (headscarf worn by a teacher bears the features of illicit proselytism); see: Nowicki, M. A. *Nowy Europejski Trybunał Praw Człowieka. Wybór orzeczeń 1999–2004*, Kraków 2005, pp. 949–954. These judgements include the judgement in the case of Lautsi v. Italy, Judgement of the Chamber of 2009, Judgement of the Grand Chamber of 2011.

[146] Emine Arac v. Turkey, 19 September 2006, complaint 9907/02 (rejection of an application due to photo in which the applicant appears in a headscarf); Decision in the case of Sefik Kose and 93 others v. Turkey, 24 January 2006 (Leyla Şahin v. Turkey, complaint 26625/02 – ban on wearing a headscarf in a secondary school with a theological profile); Decision in the case of Kurtumulus v. Turkey, 24 January 2006, complaint 65500/01 (loss of job due to violation of the ban on wearing a headscarf).

[147] The Tribunal noted that despite the children's exposure to religious symbols placed in school, the parent retained the full right to educate and advise their children and could play the role of educator in relation to them and determine the child's life path in accordance with their own philosophical beliefs.

[148] See: Wiśniewski, L. *Konwencja o prawach dziecka na tle paktów*, p. 3.

be consulted immediately, including in any case of religious persecution to which children have been subjected."[149]

Among those institutional guarantees established to ensure respect for human rights, and thus also the rights of children, we should mention the European Union Agency for Fundamental Rights, created in 2007.[150] An important element of the protection of rights and freedoms within the framework of EU legislation (in the light of the need to adapt the legislation of member states or those aspiring to join the EU) are undoubtedly those institutions performing, to a greater or lesser extent, the functions of an ombudsman, that is, an advocate for civil or human rights.[151]

Matters pertaining to the examination of complaints about the activities of EU institutions or bodies fall within the competence of the European Ombudsman. The Ombudsman's office was established by the Treaty establishing the European Community.[152] Accordingly, the European

[149] Sokołowski, T. "*System prawny wobec prześladowania religijnego dzieci*", RPEiS, 73(2011), vol. 2, p. 151.

[150] Council Regulation (EC) no. 168/2007 of 15 February 2007 establishing a European Union Agency for Fundamental Rights, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:L:2007:053:TOC [18.12.2023].

[151] Paul, J. "*Rola i znaczenie Rzecznika Praw Obywatelskich Unii Europejskiej*", Studenckie Zeszyty Naukowe, 2006, no. 9/14, pp. 100–105; Łuszczuk, M. *Rzecznik Praw Obywateli Unii Europejskiej*, Warszawa 2000; Chrupek, Z. "*Rzecznik Praw Obywatelskich Unii Europejskiej*", Ekonomia. Rynek. Gospodarka. Społeczeństwo, 2004, no. 12, pp. 51–63; Popławska, E. "*Instytucja Ombudsmana europejskiego*", Studia Europejskie, 1997, no. 3, pp. 27–44; and Sadowski, P. *Europejski Rzecznik Praw Obywatelskich: studium prawno-ustrojowe*, Zamość 2013.

[152] "1. The European Parliament shall appoint an Ombudsman empowered to receive complaints from any citizen of the Union or any natural or legal person residing or having its registered office in a Member State concerning instances of maladministration in the activities of the Community institutions or bodies, with the exception of the Court of Justice and the Court of First Instance acting in their judicial role. In accordance with his duties, the Ombudsman shall conduct inquiries for which he finds grounds, either on his own initiative or on the basis of complaints submitted to him direct or through a Member of the European Parliament, except where the alleged facts are or have been the subject of legal proceedings. Where the Ombudsman establishes an instance of maladministration, he shall refer the matter to the institution concerned, which shall have a period of three months in which to inform him of its views. The Ombudsman shall then forward a report to the European Parliament and the institution concerned. The person lodging the complaint shall be informed of the outcome of such inquiries. The Ombudsman shall submit an annual report to the European Parliament on the outcome of his inquiries. 2. The Ombudsman shall be appointed after each election of the European Parliament for the duration of its term of office. The Ombudsman shall be eligible for reappointment. The Ombudsman may be dismissed by the Court of Justice at the request of the European Parliament if he no longer fulfils the conditions required for the performance of his duties or if he is guilty of serious misconduct. 3. The Ombudsman shall be completely independent in the performance of his duties. In the performance of those duties he shall neither seek nor take instructions from any body. The Ombudsman may not, during his term of office, engage in any other occupation, whether gainful or not. 4. The European Parliament

Parliament appoints an ombudsman endowed with the right to receive complaints from all EU citizens or natural and legal persons residing or having their registered office in a member state, concerning cases of mismanagement in the activities of Community institutions or bodies, with the exception of the Court of Justice and the Court of First Instance acting in their judicial role. The European Ombudsman therefore investigates complaints of maladministration in EU institutions and bodies such as the European Commission, the Council of the European Union, the European Parliament, the European Environment Agency, or the European Agency for Safety and Health at Work. In view of the scope of the Ombudsman's competence, it can be assumed that the subject of the Ombudsman's examination may be individual acts of the bodies mentioned that have the potential to threaten the freedom of belief of minors.

4. Guarantees on the basis of the Polish Concordat of 28 July 1993

A specific type of international agreement is the concordat. The special nature of the concordat consists in the fact that such an agreement may only be concluded with the Holy See (Apostolic See). As international agreements, concordats are a source of law generally applicable in the Republic of Poland.[153]

The withdrawal of the Concordat of 1925 (i.e. the cessation of its application)[154] caused the "freezing" of relations between the Polish state and the Holy See. One of the few attempts to begin the process of normalising diplomatic relations was the delegation to the Vatican of a permanent contact group.[155] Subsequent attempts to establish closer contacts

shall, after seeking an opinion from the Commission and with the approval of the Council acting by a qualified majority, lay down the regulations and general conditions governing the performance of the Ombudsman's duties."

[153] Article 87(1) of the Constitution of the Republic of Poland states: "The sources of universally binding law of the Republic of Poland shall be: the Constitution, statutes, ratified international agreements, and regulations."

[154] As indicated in Chapter 4 of this work, assessments of the manner in which the Concordat of 1925 expired vary depending on the views of the authors describing this issue.

[155] For more, see: Raina, P. *Kościół w PRL. Kościół katolicki a państwo w świetle dokumentów 1945–1989*, t. 2: *lata 1960–1975,* Poznań 1994–1996, p. 642 et seq.

took place in the late period of existence of the Polish People's Republic (1986–89). Full diplomatic relations were established after the political changes of 1989.

In the sphere of diplomatic relations normalisation was realised by the signing in Warsaw of the Concordat of 28 July 1993. Due to political turmoil of a varied nature, the Concordat was ratified only on 23 February 1998 and entered into force on 25 April 1998.[156] Analysis of the content of the Preamble to the Concordat allows us to conclude that the parties wished to express their will to respect the universal standards contained in multilateral international conventions on the protection of human rights and fundamental freedoms and the elimination of all forms of intolerance and discrimination on religious grounds. The Concordat should therefore be seen as a complement to multilateral international agreements on the protection of human rights.[157]

The content of the Preamble to the Concordat allows us to learn about the intentions and views of the parties leading to the conclusion of the indicated act. One of the important motives was a desire to safeguard religious freedom and to remove the threat of religious intolerance.[158] As mentioned in the literature: "These principles are contained [...] in international declarations and conventions accepted by the Polish state and, of course, also recognised by the Church, given they are usually interpretations of superior moral principles derived from natural law. [...] In turn, this religious freedom, which the Preamble to the Concordat adopts as its supreme norm, [...] has its basis and closer interpretation both in the constitutional principles of the Polish State and its laws as well as in the documents of the Second Vatican Council and in the Code of Canon Law. It is therefore characteristic that, at the very beginning of the Concordat, there is mutual acceptance by the parties to the Concordat agreement of their doctrinal and legal sys-

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[156] For more on the circumstances of the signing of the Concordat and the reasons for its long process of ratification, see: Trzeciak, B. *Relacje państwo – kościół. Konkordat '93–'98*, Warszawa, 1998, pp. 98–129; and Gowin, J. *Kościół w czasach wolności 1989–1999*, Kraków 1999, pp. 250–264.

[157] Krukowski, J. *Polskie prawo wyznaniowe*, p. 94.

[158] Such a motif is indicated, among others, by the preamble of the Concordat, which states: "guided by the abovementioned values and by the general principles of international law, and also by those principles concerning respect for human rights and fundamental freedoms as well as the elimination of all forms of intolerance and discrimination on religious grounds."

tems and their philosophy."[159] The Concordat guarantees the Church, in the institutional dimension, religious freedom understood as the necessary freedom of action that every individual should enjoy in professing their religion, both individually, privately and collectively, socially, externally, and publicly, according to the conviction of their conscience. The freedom of the Church as a community of believers is an extension and a natural reflection of the freedom of the individual.[160] Institutional religious freedom of the Church manifests itself in the following: guaranteeing, in the content of the Concordat, recognition of the legal personality of the Church as such and not just its individual organisational units, as was practiced in the period of the Polish People's Republic;[161] guaranteeing the possibility of having assets to carry out tasks; specifying the personal rights of individuals[162] resulting from the acceptance and respect by the authorities of freedom of conscience and confession;[163] specifying guarantee mechanisms for the aforementioned rights; specifying the mutual relations of the state and religious associations; and specifying the scope of powers of religious

[159] Dudziak, J. *Gwarancje wolności religijnej w Konkordacie zawartym między Stolicą Apostolską a Rzeczpospolitą Polską w 1993 roku*, Tarnów 2002, p. 13.

[160] Ibid., p. 17–18.

[161] Article 4(1) of the Concordat provides: "The Republic of Poland recognises the legal status of the Catholic Church."

[162] Article 2 states: "Enjoying freedom of conscience and confession, citizens can, in particular:
(1) establish religious communities, hereinafter referred to as 'churches and other religious associations', established for the purpose of confessing and spreading the religious faith, with their own constitution, doctrine, and worship rites;
(2) in accordance with the principles of their confession, participate in religious activities and rites and fulfil religious duties and celebrate religious holidays;
(2[a]) belong or not belong to churches and other religious associations;
(3) profess their religion or beliefs;
(4) raise children in accordance with their beliefs in matters of religion;
(5) remain silent about their religion or beliefs;
(6) maintain contacts with fellow believers, which includes participating in the work of religious organisations with an international reach;
(7) use sources of information on religion;
(8) produce, acquire, and use objects needed for the purposes of worship and religious practices;
(9) produce, acquire, and possess the articles necessary for the observance of religious rules;
(10) choose a clerical or religious status;
(11) associate with others in secular organisations in order to carry out tasks resulting from the professed religion or belief in matters of religion;
(12) receive a burial in accordance with religious principles or beliefs in matters of religion."

[163] Article 1(1) of the Act provides: "The Republic of Poland ensures freedom of conscience and confession to every citizen."

associations,[164] the manner of their creation,[165] and the scope of their autonomy and competences.[166]

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[164] See Section II of the Act, in particular Articles 8, 9(1), 10(1), and 11(1).

Article 8 states: "Churches and other religious unions in Poland perform their activities within the framework of the constitutional system of the Polish People's Republic; their legal situation and possession of property are regulated by separate laws."

Article 9(1) states: "In the Republic of Poland, the relationship of the state to all churches and other religious unions is based on observance of freedom of conscience and confession."

Article 10(1) states: "The Republic of Poland is a secular state, neutral in the matters of religion and convictions."

Article 11(1) states: "Churches and other religious unions are independent of the state in performing their religious functions."

[165] See Section III of the Act, in particular Articles 30, 31(1), 34(2), and 35(1).

Article 30 states: "The right to be entered in the register of churches and other religious associations, hereinafter referred to as 'the register', which is maintained by the minister responsible for religious confessions, shall be exercised by the submission to that minister, hereinafter referred to as 'the register body', of a declaration on the establishment of a church or other religious association and application for entry in the register."

Article 31(1) states: "The right to lodge an application referred to in Article 30 shall be granted to at least 100 Polish citizens with full legal capacity, hereinafter referred to as 'applicants'."

Article 34(2) states: "As soon as a church or another religious union is entered into the register, it obtains, as a whole, the status of a legal person and enjoys all the rights and is also subject to obligations defined by the laws."

Article 35(1) states: "Changes to the statutes of a church or other religious association entered in the register shall be made in accordance with the procedure in force at the time of their registration."

In addition, reference should be made to Articles 36 and 36a governing the grounds for the removal of a religious association from the register.

[166] Article 19 of the Act provided: "1. Churches and other religious associations shall enjoy, on the basis of equality, the freedom to exercise their religious functions. 2. In fulfilling their religious functions, churches and other religious associations may, in particular: a) define religious doctrine, dogmas, and principles of the faith and the liturgy; b) organise and publicly exercise worship; c) render religious services, including those referred to in Article 4, and organise religious rites and assemblies; d) govern their own affairs according to their own law, freely exercise their spiritual power, and manage their own affairs; e) establish, educate, and employ clergy; f) carry out sacral investments and other ecclesiastical investments; g) acquire, own, dispose of, and manage movable and immovable property; h) collect contributions and receive donations, inheritances, and other benefits from natural and legal persons; i) produce, acquire, and use objects and articles needed for the purposes of worship and religious practices; j) teach and preach religion, including through the press, books, and other prints, as well as through films and audiovisual means; k) use mass media; l) conduct educational activities; m) create and run religious orders and diaconates; n) create organisations aimed at activities for religious formation, public worship, and counteracting social pathologies and their effects; o) carry out charitable and caring activities; p) (repealed); q) establish national, inter-church organisations; r) belong to international religious and inter-faith organisations and maintain foreign contacts in matters related to the exercise of their functions. [...]"

Article 19a(1) provided: "Churches and other religious associations have the right to own, manage, establish, and expand burial cemeteries."

Article 20(1) provided: "Churches and other religious associations may teach religion and educate children and young people religiously, according to the choice made by their parents or legal guardians."

In addition to regulating the status of the Catholic Church in the Republic of Poland as well as the nature of cooperation between institutions of secular power and ecclesiastical institutions, the Concordat devotes attention to issues related to freedom of religion in the individual sense.

Here, it is necessary to mention the provision ensuring the freedom of the Church to carry out its mission, which also means the possibility of teaching the principles of its confession and providing individual spiritual services to the faithful.

Based on the Concordat's regulations, the Church has the freedom to perform cult activities,[167] to conduct care, missionary, and charitable activities,[168] as well as to conduct activities in the area of instruction and education of the clergy.[169] In the area of strictly understood cult-related activity, the Concordat guarantees the Church the freedom to perform missionary activities[170] and to possess the infrastructure necessary for worship,[171] as well as the recognition of church holidays by secular institutions.[172]

Article 21(1) provided: "Churches and other religious associations have the right to establish and operate schools and kindergartens and other schooling, educational, or educational childcare institutions in accordance with the rules set forth in the laws."

Article 22(1) provided: "Churches and other religious associations have the right to establish and to operate religious schools and seminaries according to their own independently determined curricula."

Article 25(1) provided: "In order to perform their functions, churches and other religious unions have the right to publish press, books, and printed materials as well as to establish and own publishing houses and printing works with observance of the binding provisions in this respect."

[167] Article 23 provided: "Ecclesiastical legal persons may, according to the provisions of Polish law, acquire, possess, use, and dispose of immovable and movable property and acquire and dispose of property rights."

[168] Article 21(1) of the Concordat provided: "Relevant ecclesiastical institutions have the right, each according to its nature, to conduct missionary, charitable, and caring activities. For this purpose, they may create organisational structures and organise public fund-raising." Article 22(1) of the Concordat provided: "Activities serving humanitarian, charitable, welfare, scientific, and educational purposes undertaken by ecclesiastical legal entities are legally equivalent to activities serving similar purposes and carried out by state institutions. [...]"

[169] Article 15(1) of the Concordat provided: "The Republic of Poland shall guarantee the Catholic Church the right to establish and freely manage higher educational establishments, including universities, autonomous faculties, and higher theological seminaries, as well as scientific research institutes."

[170] Article 5 of the Concordat provided: "Respecting the right to religious freedom, the State shall guarantee the Catholic Church, irrespective of rites, the free and public exercise of its mission, as well as the exercise of its jurisdiction, management, and administration of its own affairs in accordance with Canon Law." In connection with Article 8(1), the Republic of Poland guaranteed "the Catholic Church the freedom to conduct religious services".

[171] Article 24 of the Concordat provided: "The Church shall have the right to build, extend, and maintain sacred and ecclesiastical buildings as well as cemeteries."

[172] Article 9(1) of the Concordat provided: "Sundays and the following holy days shall be free from work:

An important issue regulated by the Concordat was that of religious instruction. While accepting the Church's mission in the field of Christian education of the faithful, the Concordat accepts the right of parents to the religious upbringing of their children and accepts the principle of tolerance.[173] The Concordat guarantees the possibility of religious instruction in public primary and secondary schools as well as in state-operated kindergartens. Religion is taught to students whose parents or legal guardians have expressed – or in the case of adult students, those who themselves have expressed – their will concerning attendance of religious classes. Among the most important findings of the Concordat in this respect is Article 12(1).[174] The issue raised by the aforementioned article is extremely important, considering the fact that the document has the rank of an international agreement and because of its rank guarantees the presence of religious instruction from kindergarten through secondary school.[175]

1) 1 January – Feast of Mary, the Holy Mother of God (New Year's Day);
2) Second day of Easter;
3) Feast of Corpus Christi;
4) 15 August – feast of the Assumption of the Blessed Virgin Mary;
5) 1 November – All Saints' Day;
6) 25 December – first day of Christmas;
7) 26 December – second day of Christmas."

[173] Article 12 of the Concordat provided: "1. Recognising the rights of parents with regard to the religious education of their children, as well as the principles of tolerance, the State shall guarantee that those public pre-elementary, elementary, and secondary schools managed by civil administrative organisations or independent bodies shall arrange, in conformity with the desire of interested parties, the teaching of religion within the framework of an appropriate school or preschool curriculum. 2. The curriculum for teaching the Catholic religion, as well as the textbooks used, shall be determined by ecclesiastical authority, and shall be made known to the relevant civil authorities. 3. Teachers of religion must have authorisation (*missio canonica*) from their diocesan bishop. Withdrawal of this authorisation signifies loss of the right to teach religion. The criteria for this educational training, as well as the form and means of completing the same, shall be the object of agreements made between the competent civil authorities and the Bishops' Conference of Poland. 4. As far as the content of religious instruction and upbringing are concerned, the teachers of religion must observe the laws and regulations of the Church; in other matters they must obey the norms of civil laws. 5. The Catholic Church shall enjoy the liberty of organising adult catechesis, including academic ministry."

[174] "Recognising the rights of parents with regard to the religious education of their children, as well as the principles of tolerance, the State shall guarantee that those public pre-elementary, elementary, and secondary schools managed by civil administrative organisations or independent bodies shall arrange, in conformity with the desire of interested parties, the teaching of religion within the framework of an appropriate school or preschool curriculum."

[175] Mąkosa, P. "*Nauczanie religii w szkole publicznej w świetle prawa międzynarodowego i polskiego*", in: *Rada Naukowa Konferencji Episkopatu Polski. Kościół w życiu publicznym. Teologia polska i europejska wobec nowych wyznań*, vol. 3, Lublin 2005, pp. 451–467.

In the course of providing catechesis, the Catholic Church obtained considerable guarantees of autonomy within the scope of its right to establish school curricula and textbooks. Pursuant to Article 12(2) of the Concordat, the curriculum of the Catholic religion and its textbooks are prepared by the ecclesiastical authority and communicated to the competent state authority. The aforementioned provision therefore gives the Church a guarantee of independence from state authorities, which stems from the constitutional principle of respecting the independence of the Church within the scope of its competence. Since religious instruction is carried out in public schools and kindergartens, its curriculum and textbooks are to be communicated to the competent state authority.[176] Among the guarantees of the freedom of conscience and confession of minors, one should also mention Article 13 of the Concordat, which guarantees the right to participate in religious rites and practices for children staying at organised holidays.[177] Article 9 of the Concordat, which provides for the granting of exemption from work (e.g. for minor workers) and education on certain days that are religious holidays, should also be considered as a guarantee for minors.

As indicated in the literature, the "religious practices" of which the Concordat speaks should be understood as the various forms of manifesting one's beliefs, such as: saying daily prayer, hanging the cross and other religious symbols, reading religious texts, and in particular, participation in Holy Mass on Sundays and holidays. The subject covered by the right to perform these practices are children and young people of the Catholic faith who, according to the wishes of their parents (legal guardians) or their own wishes, want to perform religious practices during summer, winter holidays, etc. at organised youth camps. The organisers of the place of stay of the pupils are to provide them with care during religious practices, to enable them to partake in religious and educational meetings with clergy or laypersons, as well as to enable them to participate in Lenten retreats or similar practices.[178]

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[176] Krukowski, J. *Polskie prawo wyznaniowe*, p. 153–154.

[177] "For Catholic children and young people who take part in summer holiday camps, youth camps, and other forms of collective vacationing, religious practice and, in particular, participation in Holy Mass on Sundays and other holy days shall be guaranteed."

[178] Krukowski, J. *Polskie prawo wyznaniowe*, p. 157.

5. Statutory guarantees

5.1. Law on Guarantees of Freedom of Conscience and Confession of 17 May 1989

The Law on Guarantees of Freedom of Conscience and Confession of 17 May 1989 is of fundamental importance for the issue of regulation of religious freedom.[179]

This law incorporates international standards into the Polish legal system, as indicated by the reference in its preamble to the UDHR, the ICCPR, the Final Act of the Conference on Security and Cooperation in Europe, and the United Nations Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief. The aforementioned law serves as an implementing act of constitutional norms that defines the notion of freedom of conscience and confession,[180] which it understands as the absence of restrictions on the choice of one's religion or belief and on the expression of that religion or belief. The law defines the personal rights of individuals[181]

[179] Journal of Laws of 1989, no. 29, item 155 – Law on Guarantees of Freedom of Conscience and Confession of 17 May 1989.

[180] Article 1(2) of the act provides: "Freedom of conscience and confession comprises the freedom to choose one's religion or convictions and to express them individually and collectively, in private and in public." The literature notes that this definition is the best one determining the scope of the term "freedom of conscience and confession" present in the Polish legal system (cf. Cebula, S. *Prawa i wolności religijne we współczesnej Polsce*, p. 43).

[181] Article 2 states: "Enjoying freedom of conscience and confession, citizens can, in particular:

(1) establish religious communities, hereinafter referred to as 'churches and other religious associations', established for the purpose of confessing and spreading the religious faith, with their own constitution, doctrine, and worship rites;

(2) in accordance with the principles of their confession, participate in religious activities and rites and fulfil religious duties and celebrate religious holidays;

(2[a]) belong or not belong to churches and other religious associations;

(3) profess their religion or beliefs;

(4) raise children in accordance with their beliefs in matters of religion;

(5) remain silent about their religion or beliefs;

(6) maintain contacts with fellow believers, which includes participating in the work of religious organisations with an international reach;

(7) use sources of information on religion;

(8) produce, acquire, and use objects needed for the purposes of worship and religious practices;

(9) produce, acquire, and possess the articles necessary for the observance of religious rules;

(10) choose a clerical or religious status;

(11) associate with others in secular organisations in order to carry out tasks resulting from the professed religion or belief in matters of religion;

(12) receive a burial in accordance with religious principles or beliefs in matters of religion."

stemming from the acceptance by the authorities of respect for freedom of conscience and confession;[182] defines the mechanisms of guaranteeing the foregoing rights; determines the mutual relations of the state and religious associations; and determines the scope of powers of religious associations,[183] the manner of their formation,[184] and the scope of their autonomy and competence.[185]

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[182] Article 1(1) of the act provides: "The Republic of Poland ensures freedom of conscience and confession to every citizen."

[183] See Section II of the act, in particular Articles 8, 9(1), 10(1), and 11(1).

Article 8 states: "Churches and other religious unions in Poland perform their activities within the framework of the constitutional system of the Polish People's Republic; their legal situation and possession of property are regulated by separate laws."

Article 9(1) states: "In the Republic of Poland, the relationship of the state to all churches and other religious unions is based on observance of freedom of conscience and confession."

Article 10(1) states: "The Republic of Poland is a secular state, neutral in the matters of religion and convictions."

Article 11(1) states: "Churches and other religious unions are independent of the state in performing their religious functions."

[184] See Section III of the act, in particular Articles 30, 31(1), 34(2), and 35(1).

Article 30 states: "The right to be entered in the register of churches and other religious associations, hereinafter referred to as 'the register', which is maintained by the minister responsible for religious confessions, shall be exercised by the submission to that minister, hereinafter referred to as 'the register body', of a declaration on the establishment of a church or other religious association and application for entry in the register."

Article 31(1) states: "The right to lodge an application referred to in Article 30 shall be granted to at least 100 Polish citizens with full legal capacity, hereinafter referred to as 'applicants'."

Article 34(2) states: "As soon as a church or another religious union is entered into the register, it obtains, as a whole, the status of a legal person and enjoys all the rights and is also subject to obligations defined by the laws."

Article 35(1) states: "Changes to the statutes of a church or other religious association entered in the register shall be made in accordance with the procedure in force at the time of their registration."

In addition, reference should be made to Articles 36 and 36a governing the grounds for the removal of a religious association from the register.

[185] Article 19 of the act provided: "1. Churches and other religious associations shall enjoy, on the basis of equality, the freedom to exercise their religious functions. 2. In fulfilling their religious functions, churches and other religious associations may, in particular: a) define religious doctrine, dogmas, and principles of the faith and the liturgy; b) organise and publicly exercise worship; c) render religious services, including those referred to in Article 4, and organise religious rites and assemblies; d) govern their own affairs according to their own law, freely exercise their spiritual power, and manage their own affairs; e) establish, educate, and employ clergy; f) carry out sacral investments and other ecclesiastical investments; g) acquire, own, dispose of, and manage movable and immovable property; h) collect contributions and receive donations, inheritances, and other benefits from natural and legal persons; i) produce, acquire, and use objects and articles needed for the purposes of worship and religious practices; j) teach and preach religion, including through the press, books, and other prints, as well as through films and audiovisual means; k) use mass media; l) conduct educational activities; m) create and run religious orders and diaconates; n) create organisations aimed at activities for religious formation, public worship, and counteracting social pathologies and their effects; o) carry out

It is important to identify the subject empowered to protect their freedom of belief and opinion. Due to the enactment of the Law on Guarantees of Freedom of Conscience and Confession while still under the rule of the Constitution of 1952, which guaranteed freedom of conscience and confession to the citizens of the Polish People's Republic, the law renders every citizen the subject of rights in the scope of individual freedoms,[186] while at the same time granting the same rights to foreigners and stateless persons residing on the territory of the Republic of Poland.[187]

As part of the guarantee of freedom of conscience and confession, the law indicates the rights of citizens (and, in fact, of everyone residing on the territory of the Republic of Poland, according to the wording of Article 7) that form the notion of freedom of confession and conscience. The powers specified in Article 2 of the law may be limited only to the extent of their externalisation, in the manner and in the cases specified in Article 3 of the law.[188]

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charitable and caring activities; p) (repealed); q) establish national inter-church organisations; r) belong to international religious and inter-faith organisations and maintain foreign contacts in matters related to the exercise of their functions. […]"

Article 19a(1) provided: "Churches and other religious associations have the right to own, manage, establish, and expand burial cemeteries."

Article 20(1) provided: "Churches and other religious associations may teach religion and educate children and young people religiously, according to the choice made by their parents or legal guardians."

Article 21(1) provided: "Churches and other religious associations have the right to establish and operate schools and kindergartens and other schooling, educational, or educational childcare institutions in accordance with the rules set forth in the laws."

Article 22(1) provided: "Churches and other religious associations have the right to establish and to operate religious schools and seminaries according to their own independently determined curricula."

Article 25(1) provided: "In order to perform their functions, churches and other religious unions have the right to publish press, books, and printed materials as well as to establish and own publishing houses and printing works with observance of the binding provisions in this respect."

[186] Article 1 provides: "1. The Republic of Poland ensures freedom of conscience and confession to every citizen. 2. Freedom of conscience and confession comprises the freedom to choose one's religion or convictions and to express them individually and collectively, in private and in public. 3. Citizens of all faiths and non-believers have equal rights in state, political, economic, social, and cultural life."

[187] Article 7 provides: "1. Foreigners residing on the territory of the Republic of Poland enjoy freedom of conscience and confession on an equal basis to that of Polish citizens. 2. The provision of paragraph 1 shall apply accordingly (mutatis mutandis) to stateless persons."

[188] Article 3(1) provides: "Manifesting individually or collectively one's religion or convictions may be subject to such limitations as are prescribed by law and are necessary to protect public safety, order, health, morals or the fundamental rights and freedoms of others."

In specifying the scope of freedom of persons performing specific tasks or placed in specific organisational units, the law indicates that freedom is not limited by the fact of performing military service or staying in hospitals, prisons, etc.[189] An important guarantee function is also provided by the provision prohibiting discrimination and coercion in religious matters.[190] Since it covers all citizens without differentiating the scope of protection based on an age limit, it should be assumed that it also protects minors. However, such an assumption may cause a conflict between the freedom of the minor and the rights of parents derived, for example, from the provisions of the Family and Guardianship Code.

Matters important from the point of view of minors include guarantees of the right to participation in religious activities and rites, the right to fulfilment of religious duties and observance of religious holidays, and – in relation to those staying at summer camps organised by state bodies as well as minors staying at educational and correctional facilities – the right to possession of items required for the purposes of worship. The safeguarding of, on the one hand, the individual freedom of the minor in the form of the right to receive religious instruction and, on the other hand, of the collective freedom of confession in the form of the right to propagate and teach the principles of faith is achieved through the provisions guaranteeing churches and religious associations the right to teach religion.[191]

The norm restricting the freedom of religious associations to the limits of parental authority also serves to protect the freedom of the minor – with regard to coercion in religious or philosophical matters by persons other than the parents – but at the same time is a prerequisite for recognising the primacy of the will of the parents over that of the minor. This is one of the restrictions allowed by the law in the scope of restrictions on

[189] Article 4(1) provides: "The right defined in Article 2 point 2 as well as the right to possess and use items necessary for the practice of worship and religious practice can also be vested in the following persons:
a) those performing military service or basic service in civil defence;
b) those staying in health care and social care institutions as well as children and young people staying in summer camps organised in Poland by state institutions;
c) those in penal, correctional, and educational institutions as well as in detention centres, social adjustment centres, and shelters for minors."

[190] Article 6 provides: "1. No one can be discriminated or privileged because of religion or convictions in the matters of religion. 2. Citizens must not be forced to abstain from religious functions and services, or to participate in them."

[191] See Articles 19 and 20 of the act.

freedom of confession.[192] It should therefore be concluded that since parental authority is a value placed higher than one of the elements of freedom of confession – namely, the freedom of propagation of the principles of faith – then one is justified in accepting the thesis that the legislator takes the view that the scope of the freedom of confession of the minor is limited by the primacy of the will of the parents. One important guarantee of freedom of confession is the provision by the legislator of the right to celebrate religious ceremonies defined by the principles of faith. One of the guarantees of the foregoing is a provision of the act defining the right to take time off from work and from education as needed to participate in the rituals of a given religion.[193] In the case of minors, a relevant application is to be submitted by the parent or guardian.

5.2. The Education System Act of 1991

A special case of realisation of the freedom of conscience and confession is the teaching of religion at school. Józef Krukowski writes the following about this topic: "The accumulation of guarantees concerning these rights to freedom is reflected in the teaching of religion in public schools."[194] The possibility of organising religious lessons and ethics lessons within the educational system is an expression of the freedom of conscience and religion and the right of parents to raise their children in accordance with their own beliefs. Freedom of thought, conscience, and religion was guaranteed in the fundamental acts of international law concerning the protection of human rights and freedoms: Article 18 of the ICCPR, Article 9 of the ECHR, and Article 10 of the CFR. The right of parents to honour

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[192] Article 27(1) provides: "The activity of churches and other religious unions can not infringe on provisions of generally binding laws protecting public safety, order, health, public morals, or the fundamental rights and freedoms of other persons."

[193] Article 42 provides: "1. Persons belonging to churches and other religious unions whose religious holidays fall on days which are not by law free from work can, on their own request, obtain leave of absence from work or studying for a period of time indispensable to celebrate these holidays in accordance with the requirements of the religion they profess. 2. Minors may exercise the right referred to in paragraph 1 at the request of their parents or legal guardians. 3. The exemption from work referred to in paragraphs 1 and 2 may be granted provided that the time of dismissal is made up for, without the right to additional remuneration for work on public holidays or overtime. 4. The minister competent for labour matters and the ministers competent for schooling, education, and higher education, in agreement with the minister competent for religious confessions, shall determine, by means of a regulation, the detailed rules for granting exemptions as referred to in paragraphs 1 and 2."

[194] Krukowski, J. *Polskie prawo wyznaniowe*, p. 157.

their religious and philosophical beliefs in the education of their children is an expression of the right to respect for private and family life, freedom of thought, conscience, and confession, and freedom of expression.

The right of parents to bring up their children in accordance with their own religious and philosophical convictions, which forms a part of the right to education, is expressed in Article 2 of Protocol no. 1 to the ECHR, in Article 14 of the CFR, and in Article 18 of the ICCPR.

The freedom of religion together with the freedom to manifest it, among other ways, through teaching, and the right of parents to provide children with moral and religious education and teaching consistent with their beliefs are guaranteed on the grounds of national law in Article 53 of the Constitution.

According to Article 53(3) of the Constitution, the religion of a church or religious association with a regulated legal position may be taught at school, but the freedom of conscience and religion of other persons may not be violated.

According to Article 48(1) of the Constitution, parents have the right to bring up their children in accordance with their own convictions; such education should take into account the degree of maturity of the child, as well as the child's freedom of conscience, confession, and belief. The limits to this right are determined by other constitutional norms, such as the previously mentioned right to education and the obligation to receive education up to the age of 18, as expressed in Article 70(1) of the Constitution.

The Constitution also stresses that the right of parents is limited by the right of children to exercise their freedom of conscience and confession, as also provided for in Article 14 of the Convention on the Rights of the Child. On the one hand, freedom of conscience and confession in the case of the educational system is based on enabling minors to participate in catechetical classes; this is an issue requiring the cooperation of state authorities with the relevant bodies of religious associations. It is a manifestation of positive freedom. On the other hand, however, this can take the form of negative freedom consisting in the inability to force minors to participate in such activities. The framework of this freedom is formed by the previously discussed acts of international law, the Constitution, and the Concordat. Detailed solutions are included in a number of laws and implementing acts containing norms in the field of educational law.

The basis for the formal return of catechesis classes to public schools was the Law of 17 May 1989 on the Relationship of the State to the Catholic Church in the Polish People's Republic. In accordance with Articles 18[195] and 19[196] of the foregoing, the state recognised the right of the Church to teach religion and to provide religious education to children and young people according to the choice made by parents or legal guardians, while also permitting religious instruction on school premises. It should be noted that the provisions of the said law did not explicitly provide for the inclusion of religious classes in the school curriculum; it only allowed for the provision of premises located within schools for the purposes of catechetical classes.

The wording of Article 18(1) of this law, which indicated that religious instruction and religious education of children and young people are the result of a choice made by their parents or legal guardians, is important. Such a provision could suggest granting full power to parents or legal guardians to decide on religious education while ignoring the will of children. A similar provision was also included in the Law of 17 May 1989 on Guarantees of Freedom of Conscience and Confession.[197]

The years 1990–91 are described in the literature as a period of provisional solutions in the area of teaching religion in public schools.[198]

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[195] Article 18 provides: "1. The State recognises the right of the Church to the religious teaching and religious upbringing of children and young people according to the choice made by their parents or legal guardians. 2. Children and school youth, working youth, and adults benefit from the teaching of religion in accordance with the curriculum determined by the ecclesiastical authority. 3. The teaching of religion, as an internal matter of the Church, is organised by parishes and monasteries under the authority of the diocesan bishop."

[196] Article 19 provides: "1. The religious instruction of children and young people shall take place in catechetical centres organised in churches, chapels, and church buildings, as well as in other premises made available for this purpose by a person authorised to dispose of the premises. 2. Religious instruction of public-school pupils may also take place in schools in accordance with the rules set forth in a separate law."

[197] Article 20 provides: "1. Churches and other religious unions can teach religion and bring up children and young people according to religious standards in conformity with the choice made by their parents and legal guardians. 2. Religious instruction of children and young people is an internal matter of churches and other religious unions. It is organised in conformity with the programme determined by the authorities of a church or another religious union in catechetical centres which operate in churches, houses of prayer, or other quarters rendered accessible for this purpose by a person authorised to administer them. 3. Religious education of public-school pupils and pupils of public kindergartens may also take place in schools and kindergartens on terms specified in a separate law."

[198] Mezglewski, A. *Polski model*, p. 61.

The formal introduction of religious classes into the framework of school programs was made pursuant to an instruction of the Minister of National Education of 3 August 1990.[199] In the light of this document, religion became a voluntary subject in all public schools. Even though this document was created, in fact, by way of arrangements between the representatives of the government and the Episcopate, it formally secured the freedoms of other religious associations as well.[200] It should be noted that the form of introduction of these solutions concerning the teaching of religion – by way of instruction of the minister, i.e. an internal act – became the reason for the submission of a complaint to the Constitutional Tribunal. The Tribunal dismissed the complaint in its judgement of 30 January 1991.[201]

The issue of introducing the possibility of conducting classes for non-Catholic denominations was formally regulated by the next instruction of the Minister of National Education, issued on 24 August 1990.[202] It should be noted that, in view of the doubts as to the legal basis for choosing this method of restoring the possibility of religious instruction within general education schools, both instructions were viewed as ad hoc acts.[203] The issue of the presence of religion in school instruction was regulated in another act, one which is fundamental for the entire educational system, namely, the Education System Act of 7 September 1991.[204]

The Preamble to the Act mentions the values inspiring its creators. Explicit reference should be made to the source of inspiration, i.e. the solutions adopted in documents and acts of international law concerning issues of rights and freedoms.[205] Two elements worth mentioning are

[199] Instruction of the Minister of National Education of 3 August 1990 concerning the reinstatement of religious instruction in schools in the 1990/91 school year. See: Górowska, B. and Rydlewski, G. *Regulacje prawne stosunków wyznaniowych w Polsce. Zbiór przepisów i dokumentów. Stan na dzień 31 października 1992 r.*, Warszawa 1992, pp. 138–140.

[200] See: Mezglewski, A. *Polski model*, p. 63.

[201] Judgement of the Constitutional Tribunal of 30 January 1991, file ref. no. K. 11 /90.

[202] Instruction of the Minister of National Education of 24 August 1990 concerning the reinstatement of religious instruction in schools in the 1990/91 school year, setting out the principles of cooperation with churches and religious associations outside the Catholic Church. See: Górowska, B. and Rydlewski, G. *Regulacje prawne stosunków wyznaniowych w Polsce*, pp. 142–144.

[203] See: Mezglewski, A. *Polski model*, p. 64, 75–76. Moreover, it should be mentioned that doubts were raised as to whether the case in question could have been based on the provisions of both "May" acts. For more detailed information, see pp. 66–68.

[204] Journal of Laws of 1991, no. 95, item 425, as amended – Act on the education system of 7 September 1991.

[205] The preamble to the Education System Act states: "Education in the Republic of Poland is a common good of the whole society; it is guided by the principles contained in the Constitution

the Christian value system as the foundation of the education system, as well as the goals of education, including education in the spirit of tolerance and respect for freedom.

From the point of view of securing the exercise of freedom in the religious sphere, it is important to guarantee the possibility of providing and participating in religious activities.[206] According to the previously mentioned provision of Article 12 of the Education System Act, religious classes are organised in public kindergartens, primary schools, lower-secondary schools, and upper-secondary schools. The prerequisite for the organisation of such classes is the expression of will, respectively: in the case of kindergartens, primary schools, and lower-secondary schools (in the years 1999–2019), by the parents (this category also includes persons exercising legal custody over minors); in the case of upper-secondary schools, the will to have such religious classes organised at school may be expressed by either the parents (legal guardians) or the pupils. This state lasts until the student reaches the age of majority, which allows them to independently express their will on this matter. It should be noted that the Act does not provide for a potential situation in which there is a conflict of will between parents (guardians) and children enrolled in secondary school (prior to reaching the age of majority) regarding participation or non-participation in religious classes. Nor does it provide for procedures to resolve such a situation.

The statutory regulation was further detailed by means of the Regulation of the Minister of National Education of 14 April 1992 on

of the Republic of Poland, as well as the indications contained in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the Convention on the Rights of the Child. Teaching and education are based on universal ethical principles, while respecting the Christian system of values. Education and upbringing serve to develop in young people a sense of responsibility, love of their homeland, and respect for Polish cultural heritage, while at the same time opening them up to the values of the cultures of Europe and the world. School should provide each student with the necessary conditions for their development and prepare them to fulfil family and civic duties based on the principles of solidarity, democracy, tolerance, justice, and freedom."

[206] Article 12 of the Act provided: "1. Public kindergartens, primary schools, and lower-secondary schools shall organise the study of religion at the request of the parents, while public upper-secondary schools do so at the request of either the parents or the pupils themselves; after reaching the age of majority, students shall decide on their study of religion. 2. The minister competent for schooling and education, in agreement with the authorities of the Catholic Church and the Polish Autocephalous Orthodox Church and other churches and religious associations, determines, by means of a regulation, the conditions and manner in which schools perform the tasks referred to in paragraph 1."

the conditions and manner of organising religious education in public schools.[207]

According to the original wording of the foregoing act, religion or ethics is taught, as part of the school curriculum, in public primary and secondary schools for pupils whose parents or legal guardians have expressed such a wish, with the stipulation that secondary school pupils may also express such a will on their own. The possibility of parents or legal guardians interfering in the student's decision expires after they reach the age of majority. Again, it should be noted that the Regulation, like the Education System Act, does not provide for any manner of resolving possible conflicts of opinion between parents and secondary school students with regard to receiving education in religion or ethics. In view of the link between the freedom to decide whether to attend classes on religion or ethics and reaching the age of majority, it seems reasonable to resolve possible conflicts by means of analogy with family law and the scope of parental authority.

According to the Regulation, the will to participate in classes on religion or ethics can be expressed in the simplest form.

The Regulation also includes a provision prohibiting any discrimination on the grounds of participation or non-participation in classes on religion or ethics. For organisational reasons, the Regulation imposed on schools the obligation to organise classes for groups of interested pupils of not less than seven people. In the case of a smaller number of pupils interested in learning a given religion, it is permissible to organise classes in the form of inter-school groups or at an out-of-school catechetical point.

In the event that parents (legal guardians) or, in the case of secondary schools, students themselves express their will not to participate in classes on religion or ethics, the school is obliged to provide them with care or educational activities during this time.

According to the Regulation, the weekly time allotment for religious instruction is two hours. In the case of ethics classes, the Regulation indicates that the number of hours of classes is determined by the school principal. This is an incomprehensible difference, probably resulting from

[207] Journal of Laws of 1992, no. 36, item 155 – Regulation of the Minister of National Education of 14 April 1992 on the conditions and manner of organising religious education in public schools.

a belief that there would be limited interest in participating in such classes and that there would be organisational problems related to the employment of teachers for the subject in question. It seems that the allocation of fewer hours for ethics classes than in the case of religious classes can be considered a manifestation of discrimination on the grounds of world view by limiting access to information in this sphere.

Grades for religion or ethics are included on school certificates. To limit the potential danger of such information being used for discriminatory purposes, the type of religion the student was taught is not indicated. The grade for religion is not taken into account when deciding on the student's promotion to the next form.

The aforementioned act was amended by the Regulation of the Minister of National Education of 30 June 1999.[208] The Regulation was adapted to the new school system structure in which lower-secondary schools had been introduced. The most important change was the extension of the catalogue of educational establishments in which religious lessons are provided to also include public kindergartens.

It should be noted that the Regulation provided for the possibility of providing religious lessons in kindergartens only at the parents' request.

Another amendment to the applicable law was made through the Regulation of the Minister of National Education of 25 March 2014.[209] The most important change was its specification of the manner of submitting declarations of willingness to participate in religious classes. Pursuant to the new wording of section 1(2) of the Regulation, declarations of the will to receive religious instruction are to be submitted in writing.

This legal state, formulated in such a manner, shapes the state of religious instruction in Polish public schools.

It should be noted that issues concerning the place of religion in the school system are the subject of further discussion. Currently, the most important issue related to the foregoing topic is the question as to whether religion can become a subject fully recognised for the purposes of school leaving exams.

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[208] Journal of Laws of 1999, no. 67, item 753 – Regulation of the Minister of National Education of 30 June 1999 amending the Regulation on the conditions and manner of organising religious education in public schools.

[209] Journal of Laws of 2014, item 478 – Regulation of the Minister of National Education of 25 March 2014 amending the Regulation on the conditions and manner of organising religious education in public kindergartens and schools.

Analysis of the regulations governing issues related to the teaching of religion in schools allows for the identification of certain "flashpoints", that is, factors of possible violations of the right to freedom of confession and conscience.

The first problem, as stated in the literature, is the lack of uniform statutory regulation of issues pertaining to the teaching of religion in public schools. The adopted solutions – in the form of a guarantee of the right of religious associations to teach religion, as contained in the individual laws regulating the status of religious associations, and a guarantee of the right to teach religion, as contained in the Education System Act – constitute a framework only for these issues. Detailed regulation was originally made through the actions of the competent minister by means of an act of internal law, namely, instructions enabling the reinstatement of religious classes in schools – this manner raised certain legal doubts. The current arrangement, based on transferring to legal acts with the rank of regulation the competence to set specific solutions, also raises doubts in some areas. The problem of regulating the correlation of catechetical goals pursued by religious associations with the goals of the educational system is noted in this regard.[210]

Another issue related to the exercise of freedom of conscience and confession is the problem of the possible violation of one's right to silence due to the need to submit a declaration of the will to attend religious classes. The right to "silence in matters of world view", guaranteed directly by Article 53(7) of the Constitution, is exercised by prohibiting public authorities from demanding that citizens disclose their philosophical or religious beliefs. It seems reasonable to state that the requirement to submit a declaration of one's willingness to attend classes on religion or ethics does not constitute a direct violation of the right to silence. One should agree with Artur Mezglewski's apt observation that the mere fact of making a statement concerning one's will to attend religious classes does not mean the automatic disclosure of one's (or a child's) religious beliefs. This solely constitutes a statement expressing the desire to participate in these classes without indicating one's motives (which may vary).[211]

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[210] See: Mezglewski, A. *Polski model*, pp. 116–117.

[211] Idem., "*Prawo dziecka do nieujawniania lub wyrażania przekonań religijnych w aspekcie przepisów prawa polskiego dotyczących nauczania religii*", in: *Dziecko. Studium interdyscyplinarne*, edited by E. Sowińska [et al.], Lublin 2008 p. 233.

It should be noted here that the right to silence is not tantamount to an obligation of silence on the part of those concerned. In addition, submitting a declaration of one's desire or will to attend classes on a given religion does not constitute a declaration that it is their preferred confession. The motives for such a declaration may result from reasons related to the desire to learn about the principles of a given belief system, i.e. the exercise of one's right to obtain information. The submission of a declaration is also helpful in the strictly administrative and organisational sense. It would be difficult to require the school authorities to take measures related to providing adequate facilities for the purposes of teaching religion or ethics without having knowledge of the needs in this regard.

Furthermore, with regard to considerations on the right to silence, it should be noted that the inclusion on school completion certificates of information about the grade received in religion or ethics does not affect this right. The inclusion of such a grade is a de facto consequence of one's declaration of their willingness to participate in such classes. As such, if the person concerned has expressed their will to disclose that they want to attend classes on religion or ethics, their rights are not violated by the disclosure of this fact. It should be noted that the literature also mentions the issue of one's right to manifest their beliefs being violated by the lack of inclusion of information about the class they attended. The argument of such a position is that the rights of people concealing their beliefs are more strongly protected than the rights of those who would like to disclose their beliefs.[212]

The implementation of one of the elements of the right to freedom of confession, namely, the freedom to learn the principles of a given religion, may be violated by restrictions stemming from organisational issues related to this problem, e.g. the minimum number – as introduced by the implementing regulations – of interested parties obliging school authorities to organise classes on a given religion or ethics. The fact that the organisation of classes depends on gathering a sufficient number of students was criticised – among others, by Michał Pietrzak – as

[212] See: idem., "*Kwestie problematyczne związane z wprowadzeniem nauczania religii do szkół publicznych w Polsce*", Prawo – Administracja – Kościół, 3(2005), no. 22, pp. 77–80; additionally, see the Judgement of the Constitutional Tribunal of 30 January 1991, file ref. no. K. 11/90.

violating the principle of equal rights of religious associations. The author also argues that the introduction of such limits by means of implementing provisions is not justified.[213] It should be noted that such a problem may realistically concern members of geographically dispersed religious minorities. Of course, it would be desirable for the principles of every religion to be taught in any given public school. But of course, objective organisational and financial obstacles stand in the way. Due to pragmatic considerations, limits as to the number of pupils apply to the educational system as a whole, not only in the field of religious instruction. They are also found in other legal systems.[214]

It should be noted that issues related to violations of the freedom of conscience and confession in the educational process in Poland were of interest to the European Court of Human Rights. The judgement of the European Court of Human Rights of 15 June 2010 (application no. 7710/02), which is relevant in view of the subject of the present work, should be mentioned here.

An important issue related to the implementation of this freedom is the determination of the scope of freedom of minors in the exercise of their rights resulting from the freedom of conscience and confession during education. The regulations previously discussed clearly recognise the freedom of conscience and confession of minors. This also applies to the extent of the freedoms associated with the implementation of the teaching process.

In accordance with the aforementioned regulations of the Minister of National Education, in the case of minors attending kindergartens, primary schools, and lower-secondary schools, their parents or legal guardians decide whether or not they are to attend the classes in question. However, it should be noted that, in making such a decision, they ought to consider the possible will of the minor, which is an expression of respect for the minor's freedom of conscience and confession.[215]

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[213] See: Pietrzak, M. *Prawo wyznaniowe*, p. 281; and Mezglewski, A. *Polski model*, p. 120.

[214] See: ibid., pp. 121–123 and the literature cited therein.

[215] The right of the child to express their will in the matter of world view stems directly from the Convention on the Rights of the Child (Article 14), wherein the question subject to interpretation is the scope of parents' interference in this sphere (such a possibility results from Article 14(2) of the Convention). It also results from the traditions of the states party to the Convention, which was allowed in the form of reservations made to the content of the Convention (including, among others, by the Polish authorities).

It should be stipulated that if a student of a lower-secondary school reaches the age of majority (whether due to reaching the age of 18, or because of marriage in the case of a minor woman), this right is transferred in its entirety to such a student.

In the case of upper-secondary school pupils, it is for parents, legal guardians, or minors themselves to decide whether or not to attend classes on religion or ethics. Comments analogous to those indicated previously should be made here, and it should also be noted that there is no doubt that the mental development of the child entitles them to demand greater respect for their will, among other areas, in the realm of world view.[216] Such conclusions can also be derived from the wording of Article 48(1) of the Constitution, which indicates that parents, when carrying out the educational process, should take into account the degree of the child's maturity. The issue of determining dynamic changes in the scope of the child's freedom to exercise their rights in the area of freedom of world view raises controversy in the doctrine. On the one hand, it is noted that according to the traditional view, younger children cannot exercise their will in any way against the will of their parents, and that at later points the will of the parents has greater "power" than the will of the minor.

Such an approach is expressed in the views presented, among others, by J. Krukowski, who noted: "The constitutional clause for parents to take into account the beliefs of children should not, however, be interpreted in the sense that children have the right to decide for themselves completely on matters of religious and moral upbringing. Deciding on such an important matter cannot be passed from parents to minor children, because ultimately parents are responsible for children until they reach adulthood. Therefore, it should be assumed that in the event of a conflict between the parents' decision and the child's will to participate in religious education at school, parents should enter into a dialogue with the child in order to explain their decision to them and should take into account the degree of the child's maturity."[217]

Proponents of a more liberal approach to this problem refer to the patterns prevailing in Western European countries. However, they point to

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[216] See: Łopatka, A. *Prawo do wolności myśli, sumienia i religii*, Warszawa 1995, p. 24.
[217] Krukowski, J. *Polskie prawo wyznaniowe*, p. 159.

the problem resulting from the lack of a legal definition or indication of the criteria for the child to reach maturity and to fully enjoy freedom in the area of world view.[218]

As is aptly noted in the literature, the legislator, in regulating issues related to participation in religious classes, precisely indicated who makes decisions in this regard and at what stage of education, while at the same time completely omitting the issue of resolving any disputes that may arise in the event of a conflict of will between parents and children already attending upper-secondary schools (in the then legal status and three-tier structure of schools). It is noted – and rightly so – that in extreme situations such cases will go to the family courts in the manner prescribed in the Family and Guardianship Code.[219]

The current regulation only allows for the acceptance of positive statements, i.e. confirming the will to attend religious classes. The issue of negative statements, i.e. those clearly confirming the lack of will to attend religious classes, was examined by the Constitutional Tribunal, which, following the motion of the Ombudsman, found the provisions of section 3, paragraph 3 of the Regulation of the Minister of National Education of 14 April 1992 to be inconsistent with the Constitution.[220]

Originally, the regulations did not specify the form in which declaration of willingness to attend classes on religion or ethics were to be submitted. The provisions only stipulated that it should be as simple as possible. Only in the Regulation of 14 April 2014, in the amended provision of section 1, was the form of a written statement introduced. In this way it was possible to neutralise the objections sometimes raised, according to which the lack of a specific form of declaration may have led to the conclusion that implied will was permissible.[221] The provisions do not regulate the issues of the declaration's content or the procedure for its submission. It should be noted that the lack of a specific minimum content of the declaration means that there is no violation of the principle

[218] See: M. Bielecki, M. "*Wolności i prawa konstytucyjne ucznia. Wybrane zagadnienia*", in: *Współczesne problemy prawa oświatowego*, edited by M. Pyter, Lublin 2009, pp. 59–65.

[219] As argued, among others, by M. Bielecki – see: "*Prawa dziecka na tle praw rodzicielskich*", in: *Ochrona dziecka w prawie publicznym*, edited by M. Bartnik [et al.], Tomaszów Lubelski 2007, p. 47.

[220] Judgement of the Constitutional Tribunal of 20 April 1993, file ref. no. U. 12/92.

[221] See: Borecki, P. "*Konstytucyjność regulacji szkolnej nauki religii. Głos w dyskusji*", Studia Prawnicze, 2008, no. 7, p. 32.

of silence, e.g. through an obligation to indicate the religious association that would organise classes, and at the same time there is no violation of the rights of people who want to manifest their beliefs, because nothing prevents them from including such information in the content of the declaration.

In turn, the lack of indication of the procedure for submitting such declarations means that they are submitted to school bodies. This may raise doubts as to the violation of the principle of impartiality of the educational system in terms of world view.[222]

Another issue prompting concern about the potential violation of the freedom of confession of minors during the educational process may be the problem of displaying religious symbols.

In general, because of the principle of impartiality of education, it can be deduced that schools should be free from any form of display of religious symbols in situations where this may violate the freedom of confession of persons of other confessions or of non-believers.

In the case of a practically homogeneous religious state, such as Poland,[223] this problem is, of course, much smaller than in countries with a significant percentage of the population professing religions other than the various branches of Christianity. For this reason, the issue of displaying religious symbols occupies an important place in the jurisprudence of the courts of Western European countries and European tribunals (in the latter case, however, this is due to complaints lodged by citizens of countries other than Poland). However, it should be noted that the determination and consolidation of the line of jurisprudence by the European Court of Human Rights may have consequences for internal legislation. In this respect, reference should be made to the key judgement delivered in the case of Lautsi v. Italy,[224] in which the Court initially ruled

[222] Pietrzak, M. "*Glosa do orzeczenia Trybunału Konstytucyjnego z dnia 20 kwietnia 1993 roku*", PiP, 1993, no. 8, p. 115.

[223] According to data on the religious structure of Poland, derived from the 2011 National Census of Population and Housing, 95.95% of respondents identified themselves as members of the Roman Catholic Church. A lack of belonging to any religion was declared by 2.64% of the respondents, while 1.41% of the respondents reported belonging to minority religions.

[224] Lautsi v Italy, application 30814/06, first judgement of 3 November 2009 (https://pracownik.kul.pl/files/26914/public/cases_of_ECHR/CASE_OF_LAUTSI_v._ITALY.pdf), and the judgement of the Grand Chamber of the Court of 18 March 2011. This judgement was broadly discussed – cf. Borecki, P. and Pudzianowska, D. "*Glosa do wyroku z 3 XI 2009 w sprawie Lautsi v. Włochy, skarga nr 30814/06*", PiP, 2010, no. 4, p. 124 et seq; and Kowalski, M. "*Symbole religijne*

on the violation of Article 9 of the ECHR and subsequently, during a re-examination of the case, ruled on the admissibility of placing crucifixes in classrooms. The reason for such a ruling was the statement that it was not proven that the display of a religious symbol on the schoolroom wall had an impact on students, and therefore it was not substantiated that there was an impact on young people whose beliefs were still being shaped. In addition, the Court found that a crucifix hung on a wall is an "essentially passive symbol" and cannot be regarded as having an influence on pupils to a degree comparable to that of a teacher's words or participation in religious activities.

At this point it is appropriate to present the current state of respect for freedom of conscience and confession in Polish schools. In 2015 research on the issue was carried out by the Polish Anti-Discrimination Society (Polish: Polskie Towarzystwo Antydyskryminacyjne). The result was a report entitled "The Last Call. On the Deficits of the Formal Education System in the Area of Counteracting Discrimination and Violence Motivated by Prejudice" („Ostatni dzwonek. O deficytach systemu edukacji formalnej w obszarze przeciwdziałania dyskryminacji i przemocy motywowanej uprzedzeniami"),[225] which analyses examples of violations of freedom of conscience and confession in schools and diagnoses the form of these violations.

According to an analysis of the foregoing study, the freedom of conscience and confession of minors belonging to religions other than Roman Catholicism is violated by the penetration into schools of practices related to the Catholic faith (such as organisation of retreats, masses, prayers, and meetings with bishops in school buildings and during lessons; exemption from lessons in connection with religious ceremonies; use of Catholic references in the school anthem; and depreciation of or prohibition against the cultivation of secular traditions such as Halloween and St. Andrew's Day, which are regarded as "pagan" and contrary to the Catholic religion) as well as difficulties in being able to receive ethics lessons; the dominance of practices, symbols, and content related

w przestrzeni publicznej – w poszukiwaniu standardów europejskich", in: *Prawne granice wolności sumienia i wyznania*, edited by R. Wieruszewski, M. Wyrzykowski, and L. Kondratiewa-Bryzik, Warszawa 2012, pp. 61–64.

[225] Available at: http://www.tea.org.pl/Paulina Jabłońskafiles/raporty/tea_raport_www_final.pdf [26.04.2016].

to the Catholic religion in schools; and students having difficulties in receiving ethics lessons because of prayers during classes.[226]

Problems related to the actual implementation of freedom of conscience and confession in schools are also mentioned by the Ombudsman.[227] The analysis carried out by the authors of the study mentions the following manifestations of discriminatory activity: lack of effective action on the part of the school or the governing body at the municipal level to include minority religion lessons in the educational system; failure to take into account on school certificates the grades received for classes on minority religions; lack of remuneration for teachers of minority religions; hindering the organisation of minority religion lessons for children of the same age and exerting pressure for the creation of combined classes; showing reluctance towards people of a different religion and, accordingly, the slow processing by headmasters and governing body officials of matters related to the organisation of minority religion lessons; requesting a declaration of refusal to participate in religious lessons, especially in the presence of other parents or students; negative reactions to notification by parents, youth, and children of the willingness to participate in ethics classes; refusal to organise ethics lessons due to the small number of interested people and the lack of a teacher, lack of funds, or for other reasons; organising ethics lessons during hours and at facilities hindering participation in lessons; and not informing those concerned of the possibility of choosing ethics classes.[228]

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[226] The content of the report includes real examples of violations – see: Goślińska, M. *"Dzieci modlą się przed matematyką. Dyrektorka szkoły: 'Nikt się dotąd nie skarżył'"*, Gazeta Wyborcza, 24 February 2015, https://katowice.wyborcza.pl/katowice/7,35063,17474764,dzieci-modla-sie-przed-matematyka-dyrektorka-szkoly-nikt.html [13.01.2016]; idem., "*10-letni uczeń musiał odejść ze szkoły. Przez modlitwę przed matematyką"*, Gazeta Wyborcza, 9 March 2015, https://katowice.wyborcza.pl/katowice/7,35063,17539838,10-letni-uczen-musial-odejsc-ze-szkoly-przez-modlitwe-przed.html?piano_d=1[13.01.2016]; and Smolak, A. "*W Golasowicach. Dzieci przed lekcjami nadal się modlą, bo chcą. Ale to nie jedyny problem*", Dziennik Zachodni, 6 March 2015, http://www.dziennikzachodni.pl/artykul/3774625,w-golasowicach-dzieci-przed-lekcjami-nadal-sięmodla-bo-chca-ale-to-nie-jedynyproblem,2,id,t,sa.html [13.01.2016].

[227] See: *"Dostępność lekcji religii wyznań mniejszościowych i lekcji etyki w ramach systemu edukacji szkolnej"*, Biuletyn Rzecznika Praw Obywatelskich, 2015, no. 6 (*Zasada równego traktowania – prawo i praktyka*, no. 17), https://www.rpo.gov.pl/sites/default/files/BIULETYN%20RZECZNIKA%20 PRAW%20OBYWATELSKICH%202015%20nr%206.pdf [16.01.2016].

[228] Ibid., p. 48n.

5.3. Individual religious laws

In addition to the Concordat, the relations of the state with the Catholic Church are governed by the Law of 17 May 1989 on the Relationship of the State to the Catholic Church.[229]

It is an important act in terms of ensuring the freedom of confession of persons (including minors) belonging to the Roman Catholic Church, as well as the collective freedom of the Church, because it was the first act to create the formal possibility of reinstating religion in public schools.[230]

The aforementioned law also contains a provision guaranteeing minors the possibility of accessing religious services during their stay at summer camps organised by the state as well as during their stay in hospitals or educational and correctional centres.[231] In fact, the scope of these

[229] Journal of Laws of 1989, no. 29, item 154 – Law of 17 May 1989 on the Relationship of the State to the Catholic Church in the Polish People's Republic.

[230] Article 18 provides:

"1. The State recognises the right of the Church to the religious teaching and religious upbringing of children and young people according to the choice made by their parents or legal guardians.

2. Children and school youth, working youth, and adults benefit from the teaching of religion in accordance with the curriculum determined by the ecclesiastical authority.

3. The teaching of religion, as an internal matter of the Church, is organised by parishes and monasteries under the authority of the diocesan bishop."

Article 19 provides:

"1. The religious instruction of children and young people shall take place in catechetical centres organised in churches, chapels, and church buildings, as well as in other premises made available for this purpose by a person authorised to dispose of the premises. 2. Religious instruction of public-school pupils may also take place in schools in accordance with the rules set forth in a separate law."

[231] Article 30 provides:

"1. Children and young people in educational and care facilities, as well as in sanatoriums, kindergartens, and hospitals, shall be granted the right to exercise religious practices and to receive religious services and catechisation, pursuant to the principle of mutual tolerance. In particular, they are given the opportunity to participate in Holy Mass on Sundays and on holidays and in church retreats.

2. Children and young people staying at domestic summer camps organised by state institutions shall be granted the right to exercise religious practices, in particular to participate in Holy Mass on Sundays and holidays."

Article 32(3) provides:

"Minors placed in correctional facilities and juvenile shelters shall be provided with the opportunity to perform religious practices, to receive catechisation and religious services, and to participate in Holy Mass on Sundays and holidays. Minors who are unable to attend Holy Mass must be given the opportunity to listen to the Holy Mass transmitted by means of mass media."

entitlements is analogous to that provided for in the aforementioned Law on Guarantees of Freedom of Conscience and Confession.

The legal basis for the functioning of religious associations other than the Catholic Church consists of 14 other individual laws and various specific acts. There are currently 163 churches and religious associations functioning on their basis. Apart from the Latin and Greek rites of the Catholic Church, which operate on the basis of the Concordat, the following churches operate on the basis of individual laws: the Polish Autocephalous Orthodox Church,[232] the Evangelical Reformed Church in the Republic of Poland,[233] the Evangelical Church of the Augsburg Confession in the Republic of Poland,[234] the Evangelical Methodist Church in the Republic of Poland,[235] the Old Catholic Mariavite Church in the Republic of Poland,[236] the Catholic Mariavite Church in the Republic of Poland,[237] the Eastern Old Believers' Church,[238] the Muslim Religious Union in the Republic of Poland,[239] the Karaite Religious Union in the Republic of Poland,[240] the Pentecostal Church in the Republic of Poland,[241] the Polish Catholic Church in the Republic of Poland,[242] the Seventh-Day Adventist Church in the Republic of Poland,[243] the Baptist Christian Church in the Repub-

[232] Journal of Laws of 1991, no. 66, item 287 – Law of 4 July 1991 on the Relationship of the State to the Polish Autocephalous Orthodox Church.

[233] Journal of Laws of 1994, no. 73, item 324 – Law of 13 May 1994 on the Relationship of the State to the Evangelical Reformed Church in the Republic of Poland.

[234] Journal of Laws of 1994, no. 73, item 323 – Law of 13 May 1994 on the Relationship of the State to the Evangelical Church of the Augsburg Confession in the Republic of Poland.

[235] Journal of Laws of 1995, no. 97, item 479 – Law of 30 June 1995 on the Relationship of the State to the Evangelical Methodist Church in the Republic of Poland.

[236] Journal of Laws of 1997, no. 41, item 253 – Law of 20 February 1997 on the Relationship of the State to the Old Catholic Mariavite Church in the Republic of Poland.

[237] Journal of Laws of 1997, no. 41, item 252 – Law of 20 February 1997 on the Relationship of the State to the Catholic Mariavite Church in the Republic of Poland.

[238] Journal of Laws of the Republic of Poland of 1928, no. 38, item 363 – Regulation of the President of the Republic of Poland of 28 March 1928 on the relationship of the State to the Eastern Old Believers' Church without a clerical hierarchy.

[239] Journal of Laws of 1936, no. 30, item 240 – Law of 21 April 1936 on the Relationship of the State to the Muslim Religious Union in the Republic of Poland.

[240] Journal of Laws of 1936, no. 30, item 241 – Law of 21 April 1936 on the Relationship of the State to the Karaite Religious Union in the Republic of Poland.

[241] Journal of Laws of 1997, no. 41, item 254 – Law of 20 February 1997 on the Relationship of the State to the Pentecostal Church in the Republic of Poland.

[242] Journal of Laws of 1995, no. 97, item 482 – Law of 30 June 1995 on the Relationship of the State to the Polish Catholic Church in the Republic of Poland.

[243] Journal of Laws of 1995, no. 97, item 481 – Law of 30 June 1995 on the Relationship of the State to the Seventh-Day Adventist Church in the Republic of Poland.

lic of Poland,[244] and the Union of Jewish Religious Communities in the Republic of Poland.[245]

The remaining 170 churches and other religious associations operate based on Article 30 of the Law on Guarantees of Freedom of Conscience and Confession, obtaining their ability to function based on an administrative decision and entry in the register of churches and religious associations. The manner of regulating the rules of functioning of churches and religious associations governed by individual laws is, in principle, consistent with the scheme resulting from the content of the Law on Guarantees of Freedom of Conscience and Confession. The scope of powers of individual churches and religious associations is the same; the differences concern organisational issues directly arising from the internal structure and internal legislation of churches, or possibly from the principles of a given confession.[246]

As regards the specific rules protecting the individual freedom of minors, we should mention the provisions contained in the aforementioned acts guaranteeing the right to exemption from school activities for the duration of the holidays of a given religion,[247] the right to instruction in the principles of faith,[248] and the right to receive religious services when

[244] Journal of Laws of 1995, no. 97, item 480 – Law of 30 June 1995 on the Relationship of the State to the Baptist Christian Church in the Republic of Poland.

[245] Journal of Laws of 1997, no. 41, item 251 – Law of 20 February 1997 on the Relationship of the State to Jewish religious communities in the Republic of Poland.

[246] For example, due to the principles of a given religion, individual laws provide different regulation of issues related to non-working days resulting from holidays of a given church.

[247] Article 14 of the Law of 4 July 1991 on the Relationship of the State to the Polish Autocephalous Orthodox Church; Article 14 of the Law of 13 May 1994 on the Relationship of the State to the Evangelical Reformed Church in the Republic of Poland; Article 9 of the Law of 13 May 1994 on the Relationship of the State to the Evangelical Church of the Augsburg Confession in the Republic of Poland; Article 12 of the Law of 30 June 1995 on the Relationship of the State to the Evangelical Methodist Church in the Republic of Poland; Article 9 of the Law of 20 February 1997 on the Relationship of the State to the Old Catholic Mariavite Church in the Republic of Poland; Article 34 of the Law of 21 April 1936 on the Relationship of the State to the Muslim Religious Union in the Republic of Poland; Article 27 of the Law of 21 April 1936 on the relationship of the State to the Karaite Religious Union in the Republic of Poland; Article 12 of the Law of 20 February 1997 on the Relationship of the State to the Pentecostal Church in the Republic of Poland; Article 11 of the Law of 30 June 1995 on the Relationship of the State to the Polish Catholic Church in the Republic of Poland; Article 11 of the Law of 30 June 1995 on the Relationship of the State to the Seventh-Day Adventist Church in the Republic of Poland; Article 11 of the Law of 30 June 1995 on the Relationship of the State to the Baptist Christian Church in the Republic of Poland; and Article 11 of the Law of 20 February 1997 on the Relationship of the State to Jewish Religious Communities in the Republic of Poland.

[248] Article 15 of the Law of 4 July 1991 on the Relationship of the State to the Polish Autocephalous Orthodox Church; Article 15 of the Law of 13 May 1994 on the Relationship of the State

staying at hospitals, care institutions, educational institutions, corrective institutions, summer camps, etc.[249]

6. Guarantees of the freedom of conscience of minors in other branches of the law

The considerations concerning the existing solutions in civil, family, and labour law discussed earlier in this work remain valid.

Provisions and institutions designed to monitor and counteract exposed violations of freedom of confession can be found in many legal acts. These acts establish official bodies that are aimed at the institutional protection of human rights and freedoms.

to the Evangelical Reformed Church in the Republic of Poland; Article 14 of the Law of 13 May 1994 on the Relationship of the State to the Evangelical Church of the Augsburg Confession in the Republic of Poland; Article 13 of the Law of 30 June 1995 on the Relationship of the State to the Evangelical Methodist Church in the Republic of Poland; Article 10 of the Law of 20 February 1997 on the Relationship of the State to the Old Catholic Mariavite Church in the Republic of Poland; Article 17 of the Regulation of the President of the Republic of Poland of 28 March 1928 on the relationship of the State to the Eastern Old Believers' Church without a clerical hierarchy; Article 32 of the Law of 21 April 1936 on the Relationship of the State to the Muslim Religious Union in the Republic of Poland; Article 26 of the Law of 21 April 1936 on the Relationship of the State to the Karaite Religious Union in the Republic of Poland; Article 13 of the Law of 20 February 1997 on the Relationship of the State to the Pentecostal Church in the Republic of Poland; Article 12 of the Law of 30 June 1995 on the Relationship of the State to the Polish Catholic Church in the Republic of Poland; Article 12 of the Law of 30 June 1995 on the Relationship of the State to the Seventh-Day Adventist Church in the Republic of Poland; Article 12 of the Law of 30 June 1995 on the Relationship of the State to the Baptist Christian Church in the Republic of Poland; and Article 12 of the Law of 20 February 1997 on the Relationship of the State to Jewish Religious Communities in the Republic of Poland.

[249] Articles 26 and 27 of the Law of 4 July 1991 on the Relationship of the State to the Polish Autocephalous Orthodox Church; Articles 21 and 22 of the Law of 13 May 1994 on the Relationship of the State to the Evangelical Reformed Church in the Republic of Poland; Article 12 of the Law of 13 May 1994 on the Relationship of the State to the Evangelical Church of the Augsburg Confession in the Republic of Poland; Articles 19 and 20 of the Law of 30 June 1995 on the Relationship of the State to the Evangelical Methodist Church in the Republic of Poland; Article 16 of the Law of 20 February 1997 on the Relationship of the State to the Old Catholic Mariavite Church in the Republic of Poland; Article 19 of the Law of 20 February 1997 on the Relationship of the State to the Pentecostal Church in the Republic of Poland; Articles 18 and 19 of the Law of 30 June 1995 on the Relationship of the State to the Polish Catholic Church in the Republic of Poland; Article 18 of the Law of 30 June 1995 on the Relationship of the State to the Seventh-Day Adventist Church in the Republic of Poland; Articles 18 and 19 of the Law of 30 June 1995 on the Relationship of the State to the Baptist Christian Church in the Republic of Poland; Article 16 of the Law of 20 February 1997 on the Relationship of the State to Jewish Religious Communities in the Republic of Poland.

Among the bodies whose scope of authority also includes issues related to the protection of human rights, and thus, also the freedom of conscience and confession, we should mention the Commissioner for Human Rights (also: Ombudsman) and the Commissioner for Child Rights (also: Children's Ombudsman). Both bodies serve as ombudsman (i.e. public advocate).

The Office of the Commissioner for Human Rights was established by the Act of 15 July 1987 on the Commissioner for Human Rights.[250] In accordance with the provisions of this Act, the Commissioner for Human Rights protects human and civil rights and freedoms as defined by the Constitution and other provisions of law.[251] The Commissioner examines whether – as a result of actions or omissions of bodies, organisations, and institutions obliged to respect and exercise these freedoms and rights – there has been any violation of either the law or the principles of coexistence and social justice.[252] When taking legally defined measures, the Commissioner is obliged to determine the content of the civil right and the nature of its violation by state authorities in the case under consideration. In the event of commencement of proceedings, the Commissioner may conduct activities independently or ask the bodies and institutions indicated in the Act to commence proceedings in the examined case.[253]

The Act provided the Commissioner for Human Rights with a number of competences regarding controlling, signalling, and initiating as well as intervention rights and procedural powers.[254] The task of the Commissioner for Human Rights is to protect the entirety of human and civil

[250] Act of 15 July 1987 on the Commissioner for Human Rights (Journal of Laws of 1987, no. 21, item 123, as amended)

[251] Article 1(2). The Commissioner for Human Rights, hereinafter referred to as "the Commissioner", shall safeguard human and civil freedoms and rights, including the implementation of the principle of equal treatment, as set forth in the Constitution of the Republic of Poland and in other legislative acts.

[252] Article 1(3). In matters concerning the safeguarding of human and civil freedoms and rights, the Commissioner shall examine whether the law or the principles of social conduct and social justice have not been violated as a result of acts or omissions of authorities, organisations or institutions required to respect and implement these freedoms and rights.

[253] Article 12 1) carry out an explanatory procedure independently, 2) request the examination of the case, in whole or in part, by competent authorities, in particular by supervisory authorities, public prosecutors, state audit authorities, professional supervision bodies or social oversight bodies, 3) request the Sejm of the Republic of Poland to order the Supreme Audit Office to examine the case in whole or in part.

[254] See Articles 13 through 17 of the Act on the Commissioner for Human Rights.

rights and freedoms, regardless of the source of their origin (constitutionally guaranteed freedoms, freedoms resulting from other legal acts, customary freedoms, etc.). The Commissioner's activities are aimed at identifying potential or actual manifestations of discrimination, signalling the existence of such situations, and demanding the initiation of procedural measures guaranteeing the protection of civil rights. In the area of protection of freedom of conscience and confession, one can point to a number of actions typically taken by the Commissioner: signalling activities in the form of inquiries to competent ministers on issues related to violations of freedom of conscience and confession,[255] or requests addressed by the Commissioner to the Constitutional Tribunal in order to examine the conformity of normative acts with the Constitution.[256]

After the Republic of Poland ratified the Convention on the Rights of the Child in 1991, Polish regulations had to be adapted to its standards. One such example of the foregoing was the inclusion in Article 72(4) of the Constitution of the Republic of Poland of a delegation for the establishment of an institution to protect children's rights – an institution taking the form of the Commissioner for Child Rights (also: Children's Ombudsman).[257] The Commissioner for Child Rights works alongside the Commissioner for Human Rights.[258] In accordance with Article 1(2a) of the Act on the Commissioner for Human Rights, the Commissioner cooperates with the Commissioner for Child Rights (Children's Ombudsman) in matters concerning children.

[255] Case ref. no. RPO/253349/97/I of 20 August 1997, in which the Commissioner applied to the Minister of National Defence in connection with a letter from a citizen who raised the problem of violation of freedom of conscience and confession in the army.

[256] See: Case ref no. RPO/668855/90/I of 16 August 1990 – application to the Constitutional Tribunal on religion in schools (Instruction of the Minister of National Education of 3 August 1990 concerning the reinstatement of religious instruction to schools in the school year 1990/91) or RPO/67161/90/I of 28 August 1990 – application to the Constitutional Tribunal on religion in schools (Instruction of the Minister of National Education of 24 August 1990 concerning the reinstatement of religious instruction to schools in the school year 1990/91, setting out the principles of cooperation with churches and religious associations outside the Catholic Church) – both complaints were recognised by the Constitutional Tribunal in its Judgement of 29 January 1991, case ref. no. K 11/90.

[257] Act of 6 January 2000 on the Commissioner for Child Rights (Journal of Laws of 2000, no. 6, item 69, as amended)

[258] The provisions of the Act on the Commissioner for Child Rights and Act on the Commissioner for Human Rights contain norms regulating the mutual cooperation of both bodies. See Article 1(2a) of the Act on the Commissioner for Human Rights.

The constitutional basis for the institution of the Commissioner for Child Rights is provided by Article 72 of the Constitution, as mentioned previously. The execution of the will of the constitutional legislator was realised by the Act of 6 January 2000 on the Commissioner for Child Rights, which established the position of the Commissioner for Child Rights. Pursuant to Article 1(2a) of that Act, the obligation of the Commissioner for Human Rights to cooperate with the Commissioner for Child Rights concerns issues related to the protection of the rights or freedoms of the persons referred to in Article 2(1) of the Act on the Commissioner for Child Rights. It should be mentioned here that the definition of the notion of "child" contained in the Act on the Commissioner for Child Rights is the broadest possible in the sense that it does not allow any interpretative procedures regarding the concept of "human being" and considers every human being to be a child from the moment of their conception.[259]

The position of the Commissioner for Child Rights within the structure of state bodies is determined by the fact that its functioning is regulated by a statutory act, that it is an entity independent from other state bodies in the performance of its activities, as well as the fact that it is accountable only to the Sejm.

The basic task of the Commissioner for Child Rights is to protect the rights of the child by ensuring the full and harmonious development of the child, with respect for their dignity and subjectivity.[260] The Act formulates an open catalogue of rights, the protection of which should be the focus of the Commissioner's activities, and which includes the right to life and protection of health, the right to be raised in a family and in decent social conditions, and the right to education.[261]

[259] Similar to the Judgement of the Constitutional Tribunal of 28 May 1997, file ref. no. K 26/96, OTK of 1997, no. 2, item 19, in which the Tribunal acknowledged that constitutional guarantees of human life apply to every phase of its development.

[260] Article 1(2). The Commissioner for Child Rights, hereinafter referred to as "the Ombudsman", shall safeguard the rights of children as set forth in the Constitution of the Republic of Poland, the Convention on the Rights of the Child, and other regulations of law, with respect for the responsibility, rights, and obligations of parents.

[261] Article 3 of the Act provides: "(1) The Commissioner shall take measures on terms set forth in this Act to provide the child with full, harmonious development, respecting the dignity and subjectivity of the child. (2) The Commissioner acts for the rights of the child, in particular: (a) the right to life and health protection, (b) the right to be raised in a family, (c) the right to decent social conditions, (d) the right to education. (3) The Commissioner shall take measures

In order to carry out the tasks entrusted to them, the Commissioner for Child Rights has been entrusted with a number of powers. The scope of the Commissioner's activities includes controlling, signalling, and initiating competences, intervention, and procedural powers.[262] As part of the foregoing, the Commissioner received a number of procedural instruments[263] as well as signalling and initiating instruments.[264]

Importantly, the Act on the Commissioner for Child Rights clearly defines the beginning of legal subjectivity of the child, indicating that children are protected from the time of conception until reaching the age of majority.[265]

It should be mentioned here that the establishment of the Commissioner for Child Rights does not exclude the possibility for complaints regarding violations of children's rights to also be examined by the Commissioner for Human Rights. Anyone can apply to the Commissioner for Human Rights for the protection of their freedoms or rights. The term "everyone" should be understood as encompassing any natural person (citizen, foreigner, stateless person), regardless of whether they have full legal capacity (Article 11 of the Civil Code), limited legal capacity (Article 15 of the Civil Code), or no legal capacity at all (Article 12 of the Civil Code). Moreover, the term "everyone" also includes other entities apart from natural persons, such as legal persons, social organisations, associations, foundations, political parties, etc.[266]

aiming at protection of the child against violence, cruelty, exploitation, demoralisation, neglect, and other forms of maltreatment."

262 Jaros, P. *Rzecznik Praw Dziecka w Polsce. Komentarz do ustawy*, Warsaw 2013, p. 140.

263 A number of such powers are provided for in Article 10 of the Act: the possibility of initiating proceedings by requesting an authorised prosecutor to initiate pre-trial proceedings in criminal cases [Article 10(1) point 4], as well as in civil matters [Article 10(1) point 3]; the right to take part in proceedings against minors [Article 10(1) point 3a]; and the right to act in proceedings concerning the rights of the child before the Constitutional Tribunal or in cases of constitutional complaint [Article 10(1) point 2a]. In addition, as part of an intervention, the Commissioner may apply for punishment in proceedings concerning misdemeanours [Article 10(1) point 6].

264 Article 10a of the Act grants the Commissioner a scope of powers allowing for the Commissioner to apply to competent authorities, organisations, or institutions to take action within the scope of their competence as part of the protection of the child. Importantly, this power is strengthened by the obligation to cooperate imposed on the institutions addressed by the Commissioner (Article 10b of the Act).

265 Article 2(1). Within the understanding of the Act, a child is every human being from conception to the age of majority.

266 The Supreme Court in its judgement of 2 April 2002 (file ref. no. III RN 133/01) determined that the Commissioner may also protect the rights of legal persons.

The guarantees under civil law discussed in the previous chapter remain valid. They are further clarified and developed through judicial jurisprudence and the work within the doctrine. However, the essence and wording of the provisions contained in the Civil Code have not changed. In supplementation of the previous arguments, it is necessary to indicate the position of the jurisprudence on matters related to the protection of freedom of conscience and confession. Of significant importance in this matter was the position expressed by the Supreme Court in the judgement regarding the claim for compensation for the violation of personal rights by the act of a chaplain rendering service in a health care unit, conferring the sacrament of anointing a sick person.[267] Although this ruling does not directly apply to minors, in practice a situation analogous to the one under consideration may occur in relation to a minor. The Supreme Court indicated that conferring a sacrament on a non-believer may constitute a violation of their personal rights if the relevant authorities of a particular health care unit do not make efforts to obtain information about the will of the person subjected to the sacrament. In addition, the Supreme Court took the position that – in the foregoing circumstance – the hospital may obtain information in

[267] Judgement of the Supreme Court of 20 September 2013, file ref. no. II CSK 1/13 – "Article 37 of the Act on Patient Rights provides that in the event of deterioration of the patient's health or a threat to their life, a medical entity performing medical activities, such as stationary and 24-hour health services within the meaning of the provisions on medical activities, is obliged to enable the patient to contact a clergyman of their religion. It should be emphasised that the right referred to in this provision is implemented not by enabling the patient to contact the clergyman of the confession that is statistically the most frequently professed in a given community, but by contacting the clergyman of the confession that is professed by the patient who is in a state of deterioration of health or whose life is threatened. However, a more important issue is that it is not possible to implement this right without obtaining information as to whether the patient wants to benefit from pastoral care on the premises of the institution in which they are staying, whether they wish to contact the clergyman of their confession if they find themselves in a state of deterioration of health or one in which their life is threatened, and what their confession is. The assessment of this argument must take into account that the aforementioned Article 53(7) of the Constitution of the Republic of Poland prohibits public authorities from obliging anyone to disclose their world view, religious beliefs, or confession. The defendant is not a public authority but an entity performing medical activities, using public funds provided for this purpose. Of course, this does not mean that the defendant is free to collect data on world view, including the religion of the persons to whom it provides services, but it is impossible to deny the defendant access to this information to the extent that it is necessary for the performance of the obligations imposed on it in order for the defendant's patients to exercise the rights reserved to them in Article 53(2) of the Constitution of the Republic of Poland. This provision guarantees everyone, as part of the exercise of freedom of religion, 'the right to receive religious assistance wherever they are'."

the implementation of its tasks, and that this does not violate the prohibition on collecting data on religious beliefs.

One should also mention another Judgement of the Supreme Court, that of 22 January 2014 regarding the limits of interference in implementing the guarantee of freedom of world view and criticism of the motives underlying the actions taken for this purpose.[268]

In view of the widespread access to content published in the media, the position expressed by the District Court for Warsaw in its judgement of 24 January 2011 regarding the obligations of broadcasters to verify broadcast content with regard to possible threats to the shaping of the personality of minors is also important in terms of protecting the freedom of world view of minors.[269] The position presented by the courts on the violation of personal rights through "forced" incorporation into the Church by way of baptism also seems important. Actions for redress were based on the assumption that, for obvious reasons, the decision to baptise a child belongs to the parents of a minor who, due to the doctrine of the Church, must "bear the consequences" of their parents' will.[270]

Additionally, the procedural instruments for protecting the freedom of a minor in civil proceedings should be mentioned. Procedural safeguards for securing the minor's freedom in civil proceedings are set out in Article 2161 of the Code of Civil Procedure. This provision was added by Article 3(6) of the Act of 6 November 2008 amending the Family and Guardianship Code and some other acts. In non-procedural proceedings,

[268] Judgement of the Supreme Court of 22 January 2014, file ref. no. III CSK 123/13 – This ruling, admittedly, concerns the violation of personal rights. However, the essence of the dispute is freedom of expression in relation to persons trying to exercise their freedom of belief. The ruling protects freedom of conscience from actions aimed at limiting it in cases not covered by the law. Freedom of conscience and confession includes the freedom to choose religions and different beliefs, as well as to express them individually and collectively, privately and publicly. It may be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interest of public safety, for the protection of public order, health, or morals, or for the protection of the rights and freedoms of others.

[269] Judgement of the District Court in Warsaw of 24 January 2011, file ref. no. XX GC 78/09 – "The imperative to respect religious feelings applies not only to the Catholic religion but also to all varieties of Christianity and all other faiths, regardless of their origin, number of followers, or the content of their religious views. The linguistic interpretation of Article 18(2) of the Broadcasting Act leads to the conclusion that the phrasing used in this provision, and in particular 'respect for the Christian system of values', is an exemplary enumeration justified by the deep rootedness of these values in the tradition and culture of Polish society, regardless of the attitude of a given person towards religion."

[270] Judgement of the Court of Appeals in Katowice of 20 June 2013, file ref. no. I ACa 323/13

a similar function is performed by Article 576 § 2 of the Code of Civil Procedure.[271] The institution of hearing the child in matters concerning them – provided for in the foregoing provisions – is an expression of recognition of their legal personality.[272] The hearing of minors in civil proceedings is closely related to the substantive and legal regulations introduced into the Family and Guardianship Code that require the child's position to be taken into account in more important matters concerning their person or property (Article 95 § 4 of the Family and Guardianship Code). The hearing of the child in these proceedings is of a relatively obligatory nature (except for the situation provided for in Article 118 of the Family and Guardianship Code). It should be noted that the implementing regulation on the hearing of the child in civil proceedings is imperfect.[273] In criminal proceedings, the protection of minors is ensured through precise regulation of the rules for the questioning of children.[274] In the case of civil proceedings, however, the lack of comprehensive regulation of these issues raises concerns about the proper protection of the rights of the child. Moreover, the issue of practical non-application

[271] We should also take account of the regulation contained in the Convention on the Rights of the Child, which provides in Article 12 that: "States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child… For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body…" In civil matters, the practical dimension of the court's obligations in this respect in the member states of the Council of Europe is determined by the provisions of the European Convention on the Exercise of Children's Rights, to which Poland is also a party. Pursuant to the provisions of the Constitution of the Republic of Poland, in the course of determining the rights of a child, public authorities and responsible persons are obliged, in accordance with Article 72(3), to listen to and, insofar as possible, take into account the child's opinion.

[272] Regarding the practice of using the institution of hearing the child in proceedings, see: Stojanowska, W. "*Dziecko w postępowaniu sądowym*", Jurysta, 1997, no. 5; Cieśliński, M. M. "*Wysłuchanie dziecka w procesie cywilnym (art. 2161 k.p.c.)*", PS, 2012, vol. 6, pp. 63–70; Rydzewski, A. '*Problematyka uczestnictwa małoletnich w postępowaniu przed sądem opiekuńczym w sprawach z zakresu „władzy rodzicielskiej"*', Rejent, 7(1997), no. 11, pp. 86–101; Morawska, E. H. "*Ochrona praw dziecka w świetle art. 72 Konstytucji RP. Uwagi na tle orzecznictwa Trybunału Konstytucyjnego*", Kwartalnik Prawa Publicznego, 2007, no. 4, pp. 121–133; Zajączkowska, J. "*Głos dziecka na wokandzie – o instytucji wysłuchania małoletniego*", Palestra, 58(2013), no. 7–8, pp. 56–67; and Czech, B. "*Artykuł 58 k.r.o. w związku z problematyką ustawy nowelizującej z dnia 6 listopada 2008 r.*", Rodzina i Prawo, 2009, no. 12, pp. 5–35.

[273] Address of the Commissioner for Child Rights of 29 October 2015 to the Minister of Justice.

[274] Journal of Laws of 2013, item 1642, Regulation of the Minister of Justice of 18 December 2013 on the manner of preparing a hearing conducted in the mode specified in Articles 185a–185c of the Code of Criminal Procedure.

of these standards is raised in the literature.[275] Thus, there arose the situation in which the legislator formally follows the principle of prioritising the best interests of the child by listening to their opinion and reasonable wishes and ensuring their right to a judicial (direct) hearing in court proceedings, yet at the same time the legislator does not explicitly indicate in the legal provisions a precise catalogue of cases in which the rules on hearing apply.

The legislator did not specify a minimum age at which the child can be heard; a decision in this respect is taken each time by the court, assessing whether the mental development, condition of health, and degree of maturity of the child allow for a hearing to take place at all.[276]

Concerning labour law, the solutions contained in the Labour Code of 26 June 1974 (as amended) remain valid. This includes the rights of the juvenile worker, including religious rights in the workplace and the right to a day off from work, as well as the issue of non-discrimination (direct and indirect) of such an employee on religious grounds.

In addition, it is necessary to mention the introduction of a procedure for granting exemptions from work due to the principles of a given religion, which is specified in the regulation of the Ministers of Labour and National Education of 11 March 1999.[277]

It should be noted that the exercise of the aforementioned right may entail a threat to one's "right to silence". In theory, the employer, in order to determine the validity of the employee's request for exemption from work, may demand that the fact of belonging to the religion in question be substantiated.

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[275] Słyk, J. "*Orzekanie w sprawach o zezwolenie na dokonanie czynności przekraczającej zakres zwykłego zarządu majątkiem dziecka*", Prawo w Działaniu, 21(2015), p. 243.

[276] The issue of hearing children in court proceedings is described broadly and based on *case studies* in: Cieśliński, M. *Praktyka sądowa w zakresie wysłuchiwania małoletnich w postępowaniach cywilnych w kontekście idei przyjaznego wysłuchiwania dziecka. Raport z badania*, Warsaw 2015.

[277] Journal of Laws of 1999 no. 26, item 235, Regulation of the Ministers of Labour and Social Policy and of National Education of 11 March 1999 on exemptions from work or education for persons belonging to churches and other religious associations for the purpose of celebrating religious holidays which are not statutory public holidays. See also: Hajn, Z. "*Prawo pracowników należących do mniejszości wyznaniowych do zwolnień od pracy w celu uprawiania kultu religijnego*", Gdańskie Studia Prawnicze, 17(2007), no. 2, p. 117; Piecyk, K. "*Zwolnienia od pracy z tytułu świąt religijnych*", Praca i Zabezpieczenie Społeczne, 2010, no. 4, pp. 38–39; and Mielczarek, M. A. "*Wolność wyznania a realizacja stosunku pracy*", Studia Prawno-Ekonomiczne, 72(2005), p. 129 et seq.

It should be noted that granting an exemption is, in fact, the employer's obligation, which stems from the wording of Article 42 of the Law on Guarantees of Freedom of Conscience and Confession. Any speech that violates the freedom of religion of employees (e.g. by pressuring them not to participate in religious ceremonies on the day of their religious worship) constitutes a violation of the legal norm contained in Article 53(6) of the Constitution, according to which "no one shall be compelled to [...] not participate in religious practices". The provisions of labour law pertain to issues concerning the religious rights of a juvenile worker and the possible rights of an adult worker who exercises parental authority over a child, regardless of whether they have any rights guaranteed to them for that reason.

The rules of some religious associations contain prohibitions regarding matters of medical procedures.

Performing a procedure which is considered unacceptable by a given religion may constitute an obvious violation of the principle of freedom of confession and conscience.

Issues concerning the provision of medical assistance are regulated by the provisions of the Act on the professions of physician and dentist.[278]

Pursuant to the provisions of this Act, performance of the procedure generally requires the patient's consent. In the case of minors, the consent of their statutory representative is required; in the absence of such consent or when consent cannot be obtained, the permission of the guardianship court is required. A minor who has reached the age of 16 is entitled to consent to the procedure on their own. If the minor objects to the procedure, the consent of their legal representative and the guardian court is required.[279] The Act also provides for an "extraordinary procedure"

[278] Journal of Laws of 1997, no. 28, item 152, as amended – Act of 5 December 1996 on the profession of physician. As of 1 May 2004, the title of the Act was amended: Act of 5 December 1996 on the professions of physician and dentist (on the basis of Journal of Laws of 2004, no. 92, item 885).

[279] Article 32. 1) A physician may perform an examination or provide other health services, subject to the exceptions provided for by law, after the patient has given their consent.

2) If the patient is a minor or is incapable of giving informed consent, the consent of their statutory representative is required, and if the patient does not have a statutory representative or it is impossible to communicate with them, permission of the guardianship court is required.

3) If there is a need to carry out the examination of the person referred to in paragraph 2, the consent to carry out the examination may also be given by the actual guardian.

4) In the case of a completely incapacitated person, the consent is given by the statutory representative of that person. If such a person is able to express their opinion on the examination with discernment, it is also necessary to obtain the consent of that person.

in which – in the event of special circumstances surrounding a medical condition that requires immediate intervention, and where obtaining the consent of the patient or their statutory representative within a reasonable time is impossible – the legislator exempted a physician performing medical activities from the need to obtain consent.[280]

Similar requirements apply to the performance of surgery or the use of a method of treatment or diagnosis posing an increased risk to the patient. An important restriction on the procedure is the need to obtain written consent.[281] In the case of a minor who is at least 16 years of age, it is necessary to obtain their written consent.[282] In the case of a minor patient, it is necessary to obtain the consent of their statutory representative to perform such procedures; if the patient does not have a representative or it is impossible to communicate with them, obtaining the permission of the guardianship court is required. In special cases in which the delay caused by the procedure for obtaining consent would threaten the patient with the risk of loss of life, severe bodily injury, or a severe health disorder, performance of the given procedure without the consent of the entitled persons is allowed.[283]

5) If the patient is at least 16 years of age, their consent is also required.

6) However, if a minor at least 16 years of age, an incapacitated person, or a mentally ill or mentally handicapped patient who has sufficient discernment objects to medical activities, the permission of the guardianship court is required apart from the consent of their statutory representative or actual guardian, or in the event of their refusal.

7) Unless the law provides otherwise, the consent of the persons listed in paragraphs 1, 2, and 4 may be expressed orally or even through behaviour that clearly indicates their will to undergo the medical activities proposed by the physician.

8) If the patient referred to in paragraph 2 does not have a statutory representative or actual guardian, or it is impossible to communicate with these persons, the physician may, after the examination, proceed to provide further health services only after obtaining the consent of the guardianship court, unless otherwise provided for in the provisions of the Act.

9) The provision of Article 34(7) shall apply mutatis mutandis to the activities referred to in paragraph 1.

10) The guardianship court of competent venue for granting consent to the performance of medical activities is the court in whose district these activities are to be performed.

[280] Article 33. 1) Examination or provision of another health service to a patient without their consent is permissible if they require immediate medical assistance and due to their state of health or age they cannot give consent and it is not possible to communicate with their statutory representative or actual guardian. 2) If possible, a physician should consult with another physician the decision to undertake medical activities in the circumstances referred to in paragraph 1.

[281] Article 34. 1) The physician may perform surgery or apply a method of treatment or diagnosis posing an increased risk to the patient after obtaining their written consent.

[282] Article 34. 4) If the patient is at least 16 years of age, their written consent is also required.

[283] Article 34. 7) The physician may perform the activities referred to in paragraph 1 without the consent of the patient's statutory representative or the consent of the competent

In connection with the foregoing, it should also be noted that the Act of 5 December 1996 on the professions of physician and dentist specifies the cases in which the guardianship court issues a permit for medical intervention in a general way, mentioning the lack of a statutory representative or the impossibility of communicating with them, the objection of a minor 16 years of age or older, or the lack of consent of the statutory representative.[284]

It should be noted that the age limit adopted by the legislator, which differentiates the situation of a minor patient depending on whether they have reached 16 years of age, is the source of doubts signalled in the doctrine. Such doubts concern, among other things, this legal solution's lack of consistency with the provisions defining the threshold for obtaining limited legal capacity, which is 13 years of age in civil law as well as in other acts regarding medical activities (such as in the Act of 1 July 2005 on the collection, storage, and transplantation of cells, tissues, and organs [consolidated text: Journal of Laws of 2015, item 793], which provides in Article 12(3) for an analogous solution consisting in establishing a requirement to obtain consent from a minor donor who is 13 years of age or older).

Concern for the provision of healthcare to the child and the performance of activities in this area constitute a component of the personal element of parental authority over the child.[285] Therefore, the consid-

guardianship court if the delay caused by the procedure for obtaining consent would threaten the patient with the risk of loss of life, serious bodily injury, or a serious health disorder. In such a case the physician is obliged, if possible, to seek the opinion of another physician, preferably of the same specialty. The physician shall immediately notify the statutory representative, the actual guardian, or the guardianship court of the activities performed.

Similarly: Article 35. "1) If, during the performance of surgery or the use of a therapeutic or diagnostic method, there are circumstances that, if not taken into account, would threaten the patient with the risk of loss of life, serious bodily injury, or a serious health disorder, and it is not possible to immediately obtain the consent of the patient or their statutory representative, the physician has the right, without obtaining this consent, to change the scope of the procedure or the method of treatment or diagnosis in such a way as to take these circumstances into account. In such a case the physician is obliged, if possible, to seek the opinion of another physician, preferably of the same specialty.

2) The physician shall make an appropriate annotation in the medical records and inform the patient, the statutory representative, or the actual guardian or guardianship court of the circumstances referred to in paragraph 1.

[284] For more on this topic, see: Janiszewska, B. *Zgoda na udzielenie świadczenia zdrowotnego. Ujęcie wewnątrzsystemowe*, Warsaw 2013 – especially chapter III.

[285] Sokołowski, T. *Władza rodzicielska nad dorastającym dzieckiem*, Poznań 1987, p. 119 et seq.; Słyk, J. "*Władza rodzicielska*", in: *Prawo rodzinne*, edited by G. Jędrejek, Warsaw 2015, p. 597 et seq.

erations regarding the exercise of parental authority over the minor, as presented earlier, are relevant. The legal representatives of the minor are the parents, provided that they have parental authority (Article 98 § 1 of the Family and Guardianship Code). Article 97 § 1 of the Family and Guardianship Code establishes the principle of independent exercise of parental authority by each of the parents. Such exercise is not excluded by the obligation for parents to co-decide on important matters concerning the child, as provided for in Article 97 § 2 of the Family and Guardianship Code. This means that in the case of more serious health services provided to the child, parents should make a joint decision – though consent to the provision of such services can be given by either of them.[286]

Regarding healthcare issues, it should be noted that a potential area of conflict is the refusal on the part of a doctor to provide a medical procedure by invoking the "conscience clause". This issue has been examined, among others, by the Constitutional Tribunal.[287] It should be noted that the comments made in dissenting opinions regarding the decision of the Constitutional Tribunal may be justified in the event that the refusal to provide a service affects a minor.[288]

One of the aspects in which freedom in terms of belief can be expressed is the issue of undergoing medical procedures that may constitute a violation of the norms adopted in a given religious doctrine. For Jehovah's Witnesses, the attitude towards undergoing certain life-saving medical procedures is shaky. Referring to the analysis of Jehovah's Witnesses' views concerning the admissibility of certain medical procedures, as carried out by Katarzyna Krzysztofek,[289] it should be noted that, at present, Jehovah's Witnesses are against blood transfusions (the sanction for accepting a blood transfusion is expulsion from the association). This prohibition applies to most blood transactions, including both accepting blood transfusions and donating blood. It should be noted, however, that

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[286] The foregoing is confirmed, among others, by: Janiszewska, B. *Zgoda na udzielenie*, p. 514; and Ignaczewski, J. "*Spory między rodzicami dotyczące zgody na udzielenie dziecku świadczenia zdrowotnego*", in: *Komentarz do spraw rodzinnych*, edited by idem., Warsaw 2014. A view negating the sufficient nature of consent of one of the parents is presented by R. Kubiak, *Prawo medyczne*, Warsaw 2010, p. 346.

[287] Judgement of the Constitutional Tribunal of 7 October 2015, K12/14

[288] Ibid. – dissenting opinion of Constitutional Tribunal Judge S. Biernat.

[289] Krzysztofek, K. "*Stanowisko świadków Jehowy wobec wybranych współczesnych procedur medycznych w świetle prawa polskiego*", Studia z Prawa Wyznaniowego, 18(2015), pp. 287–309.

until 1945 the position of the association on this issue was diametrically different.[290] In the case of organ transplants, the position of Jehovah's Witnesses has also changed over the years. Until the 1960s no violation of God's law was perceived as a result of the aforementioned measures. This position changed radically in 1968, only to be modified again in the 1980s.[291] Currently, decisions on transplant procedures are left to the will of the faithful, with the reservation that procedures involving blood transfusion are unacceptable. The attitude of the association towards the faithful undergoing vaccination procedures has changed in similar ways. Vaccination was prohibited until the 1950s, and from 1953 the decision was left to the conscience of the faithful.

The aforementioned limitation of the acceptance of certain medical services gives rise to serious consequences resulting from the conflict of the patient's freedom of conscience with the need for a doctor to act in accordance with the provisions of medical law and the code of medical ethics. Further implications concern the matter of possible civil, professional, or criminal liability of physicians. In this respect, the position of the jurisprudence should be mentioned.[292]

Guarantees of freedom of religion are also included in the Act on patients' rights and the Commissioner for Patients' Rights.[293] According to its provisions, every patient – and therefore also a minor patient – has the right to receive pastoral care.[294] The provisions of the Act constitute an implementation of the provisions contained in the Constitution and the Concordat, which guarantee access to pastoral services at the place of stay. Due to the constitutional principle of equality of religions, the right to pastoral care applies regardless of one's religion.

In the event of a violation of a minor patient's rights (including those deriving from freedom of conscience and confession), guarantee functions are performed by the Commissioner for Patients' Rights (and the Commissioners

[290] See more: ibid., p. 292 and the literature cited therein.
[291] Ibid., p. 294.
[292] Judgement of the Supreme Court of 27 October 2005, file ref. no. III CK 155/05
[293] Journal of Laws of 2009, no. 52, item 41, Act of 6 November 2008 on patients' rights and the Commissioner for Patients' Rights
[294] Act on patients' rights..., Article 36 provides: "A patient staying at a medical establishment performing medical activities such as stationary and 24-hour health services within the meaning of the provisions on medical activities has the right to pastoral care." Article 37 provides: "In the event of deterioration of health or a threat to life, the entity referred to in Article 33(1) is obliged to enable the patient to contact a clergyman of their religion."

for Psychiatric Hospital Patients' Rights). At this point, it should be noted that, in cases concerning minors, the Commissioner for Patients' Rights may act only with the consent of the minor's parents or legal guardians.

The Act on patients' rights and the Commissioner for Patients' Rights provides for the possibility for the patient to decide whether or not to undergo certain medical procedures for reasons related, among other things, to world view (which in turn stems from the scope of freedom of confession specified in Article 53 of the Constitution). In the case of minors who are at least 16 years of age, their consent to undergo treatment is required. In the case of minors below this age limit, consent is given by the parents, guardians, or – in the event of inability to obtain such consent – a guardianship court.

Attention should be given to the issue of conscience clauses[295] as regards the right to medical services. In general, the conscience clause may be invoked by a physician when they assess that the provision of a medical service constitutes an unethical act. It should be noted that the conscientious objection clause may be invoked by physicians, nurses, and midwives (Article 12(2) of the Act of 15 July 2011 on the professions of nurse and midwife, consolidated text: Journal of Laws of 2018, item 123). Discussions on extending this clause to include pharmacists as well are currently underway. In this regard, a particularly lively discussion concerns the availability of postcoital contraception. Due to recent legal changes[296] limiting free access to the aforementioned, the issue currently only concerns doctors prescribing such contraceptives.

Restrictions on free access to the aforementioned birth control measures appear to interfere in the sphere of freedom of belief of women. It should be noted that free access to contraception is promoted by a number of international organisations – including the United Nations agencies, which treat the right to contraception (including abortion) as a human

[295] Article 39 of the Act on the professions of physician and dentist. Discussions are currently underway regarding the possibility of including in pharmaceutical law a conscientious objection clause for pharmacists. It should be noted that this postulate reflects the teaching of the Catholic Church – see: Benedykt XVI, *"Farmaceuta ma prawo do sprzeciwu sumienia. Przemówienie do uczestników Międzynarodowego Kongresu Farmaceutów Katolickich (29.10.2007 r.)"*, L'Osservatore Romano (Polish version), 28(2007), no. 12, pp. 22–23. For more on this topic, see: Prusak, M. *Sprzeciw sumienia farmaceutów. Aspekt etyczny, teologiczny i prawny*, Kraków 2015.

[296] Article 23a (1a) of the Act of 6 September 2001 – Pharmaceutical Law, in the wording given by Article 2(2) of the Act of 25 May 2017 amending the Act on health care services financed from public funds and certain other acts (Journal of Laws of 2017, item 1200).

right and its limitation as a violation of the rights derived from the Charter of Human Rights. The relevant decision of the UN Human Rights Committee of 9 June 2016 in the case of Amanda Jane Mellet v. Ireland should be mentioned here.[297] In the Committee's view, Irish legislation prohibiting abortion even in cases of extremely unfavourable prognoses as to the condition of the foetus and a threat to the mother's life constitutes a violation of Articles 7 and 26 of the International Covenant on Political and Civil Rights prohibiting cruel, inhuman, degrading treatment and discrimination. Tellingly, the Committee recommended that the Irish Government amend the contested provisions.

The processing of personal data revealing one's world view and religious beliefs is, in principle, prohibited.[298] This is a consequence of respecting the principle of silence in matters of confession.

The obligation to protect personal data in the Republic of Poland stems directly from Article 51 of the Constitution.[299] It follows from this provision that everyone has the right to request rectification and removal of false information, incomplete information, or information collected in a manner contrary to the law, while the rules and procedures for collecting and sharing information are laid down by statute.

Issues related to the processing and protection of personal data are subject to regulation by EU law, which is implemented into the national legal order.[300] Within the meaning of the Personal Data Protection

[297] Judgement of 9 June 2016, CCPR/C/116/D/2324/2013, available at: http://juris.ohchr.org/search/Detailes/2152 [02.08.2017]

[298] Article 27(1) of the Personal Data Protection Act provides: "The processing of personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, religious, party or trade-union membership, as well as the processing of data concerning health, genetic code, addictions or sex life, and data relating to convictions, decisions on penalties, fines and other decisions issued in court or administrative proceedings shall be prohibited."

[299] Article 51 of the 1997 Constitution provides:

"(1) No one may be obliged, except on the basis of statute, to disclose information concerning their own person.

(2) Public authorities shall not acquire, collect nor make accessible information on citizens other than that which is necessary in a democratic state ruled by law.

(3) Everyone shall have a right of access to official documents and data collections concerning themselves. Limitations upon such rights may be established by statute.

4) Everyone shall have the right to demand the correction or deletion of false or incomplete information, or information acquired by means contrary to statute.

5) Principles and procedures for collection of and access to information shall be specified by statute."

[300] Directive of the European Parliament and of the Council of 24 October 1995 on the protection of natural persons with regard to the processing of personal data and on the free movement

Act of 29 August 1997,[301] bodies of religious associations serve as data controllers within the area of information collected concerning religious affiliation (data collected, for example, in baptismal registers). In practice, there was a problem concerning the intersection of Canon law and the provisions of the Personal Data Protection Act.

The Personal Data Protection Act, which implemented Directive 95/46/EC and the relevant constitutional provision, took into account the autonomy of churches in Poland and introduced in Article 27(2)(4)[302] an exception to the principle of prohibiting the processing of data revealing religious beliefs and religious affiliation in cases where it is necessary to perform the statutory tasks of churches.

Persons belonging to a given religious association have the right to control the processing of personal data concerning them contained in church repositories. In particular, they have the right to request the supplementation, updating, of rectification of personal data, the temporary or permanent suspension of data processing, or the removal of data if such data are incomplete, outdated, untrue, or have been collected in violation of the Act or are no longer necessary to achieve the purpose for which they were collected.[303]

As a side note, it should be mentioned that the provisions of the Personal Data Protection Act excluded the authoritative interference of the Inspector General for the Protection of Personal Data in relation to repositories of data of persons belonging to a church. As a result, the obligation of a church or religious association to supplement, update, or correct data, to temporarily or permanently suspend the processing of contested data, or to remove data from the repository – in the event of an unequivocally

of such data (Official Journal of the EU, L 281, 23 November 1995, p. 31, as amended; Official Journal of the EU, Polish special edition, Chapter 13, vol. 15, p. 355, as amended)

[301] Journal of Laws of 1997, no. 133, item 883 – Act of 29 August 1997 on the protection of personal data

[302] Article 24(2)(4) of the Personal Data Protection Act provides: "Processing of the data referred to in paragraph 1 above shall not constitute a breach of the Act where: [...] processing is necessary for the purposes of carrying out the statutory objectives of churches and other religious unions, associations, foundations, and other non-profit seeking organisations or institutions with a political, scientific, religious, philosophical, or trade-union aim and provided that the processing relates solely to the members of those organisations or institutions or to the persons who have regular contact with them in connection with their activity and subject to providing appropriate safeguards of the processed data."

[303] Article 32 of the Personal Data Protection Act

justified request of a member of the church or association – is not accompanied by any statutory sanction that may enforce such actions.[304]

In this respect, attention should be given to the issue of potential data breaches in the form of religious disclosures related to the institution of so-called "marriage banns", or official announcements of an intended marriage. Based on the norms of both universal canonical and particular law,[305] there is an obligation to proclaim premarital announcements, i.e. to make public the intention of a particular betrothed couple to enter into a sacramental marriage. From the beginnings of Christianity, continuing in the Middle Ages, and until modern times in the Church, the intention to marry has been announced to the public by prospective spouses.[306] This was done to prevent possible attempts at bigamy, as well as to notify of this momentous event the parish community to which the person intending to undergo the sacrament belonged. Of course, when such announcements were made, either orally or in writing, data were disclosed on the basis of which the engaged persons could be identified.[307]

The Code of Canon Law of 1917 stipulated that if a man of at least fourteen years of age or a woman of at least twelve years of age stayed outside the place of current residence for six months prior to marriage, their parish priest had to refer to the local ordinary to decide whether to attempt to make an announcement there, or whether to determine the absence of impediments to the marriage in some other way. The same was supposed to be done even in the event of a shorter stay of one party outside their own parish if there was a reasonable suspicion of the existence of some impediment.[308]

In the Code of Canon Law of 1983, in canon 1083 § 1 the minimum age allowing for marriage was increased (to 16 years for males and 14 years for females). If both of the betrothed after reaching maturity (18 years

304 This is pointed out in the doctrine – see: Barta, J., Fajgielski, P., and Markiewicz, R. *Ochrona danych osobowych. Komentarz*, Warsaw, 2015, p. 355.

305 For example: *Instrukcja Episkopatu Polski o przygotowaniu do zawarcia małżeństwa w Kościele katolickim* [Instruction of the Polish Episcopate on Preparation for Marriage in the Catholic Church], promulgated on 13 December 1989, Kraków 1990, no. 94.

306 For the origins, history, and legal bases of the institution of marriage banns and examples of its use, see: Muszalski, E. "*Zapowiedź małżeństwa*", Prawo Kanoniczne, 12(1969), no. 3–4, pp. 257–292.

307 Janczewski, Z. "*Zapowiedzi przedmałżeńskie a prawo do ochrony danych osobowych*", Ius Matrimoniale, 2007, 12(18), p. 56.

308 Canon 1023, section 1 and 2, of the 1917 Code of Canon Law.

of age for the male, 16 years for the female) live in the parish of their own parish priest for at least six months, it is not required to make marriage announcements in their previous places of stay, even if they resided there for more than six months. However, if they do not stay in the parish of their own parish priest for six months, marriage announcements should also be made in the parish of their most recent former place of permanent or temporary residence (an announcement need not be made in any places of residence prior to that).[309]

Public announcement of the intention to marry involves the disclosure of sensitive data concerning one's religious beliefs. Providing for such a possibility and in connection with the Concordat's standards, the legislator included a clause in the Personal Data Protection Act excluding the unlawfulness of the disclosure of the aforementioned data. Pursuant to Article 27 of the Act, data processing even without the consent of the person concerned is permitted if it is necessary to perform the statutory tasks of churches and other religious unions, associations, foundations, or other non-profit organisations or institutions with religious purposes, provided that the data processing concerns only members of those organisations or institutions or persons maintaining permanent contacts with them in connection with their activities. Therefore, the inclusion in a marriage announcement of information about the religious beliefs of the betrothed does not constitute a violation of the provisions on the protection of personal data.[310]

According to the Code of Canon Law of 1983, parishes of the Catholic Church are obliged to maintain the following parish books (libri paroeciales): 1. The Book of Baptism (Liber baptizatorum – canon 535 § 1); 2. The Book of Marriage (Liber matrimoniorum seu copulatorum – canon 535 § 1); 3. The Book of the Departed (Liber defunctorum seu mortuorum – canon 535 § 1); 4. The Book of Confirmation (Liber confirmatorum – canon 895); 5. The Book of Mass Scholarships (Liber stipendiorum – canon 958 § 1); 6. The Book of Parish Inventory (Liber Inventarium – canon

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[309] *Instrukcja Episkopatu Polski o przygotowaniu do zawarcia małżeństwa w Kościele katolickim* [Instruction of the Polish Episcopate on Preparation for Marriage in the Catholic Church], no. 94.

[310] See: Kulesza, E. "*Ochrona danych osobowych a wolność sumienia i wyznania w prawodawstwie polskim*", in: *Ochrona danych osobowych i prawo do prywatności w Kościele*, edited by P. Majer, Kraków 2001, p. 15 et seq.

1283 § 2–3); 7. The Book of Revenue and Expenditures (Liber accepti et expensis – canon 1285 § 2, no. 7); and 8. The Book of Mass and Other Obligations (Liber onerum et eleemosynarum – canon 1307 § 2).

The aforementioned books also contain data on the religious affiliation of members of the Church, which constitutes personal data within the meaning of secular law. According to the Code of Canon Law, any baptised person is a member of the Catholic Church, and any natural person not yet baptised, regardless of their age, can become one (canon 864, Code of Canon Law) by receiving the sacrament of baptism (canon 849). Baptism, according to Canon law, is the only way for a person to enter this Church (canon 849).

The Code of Canon Law requires an adult who accepts this sacrament, among other things, to express their will to receive baptism (canon 685 § 1, Code of Canon Law). Meanwhile, for the baptism of a child, it is required that the parents – or at least one of them, or those who legally replace them – agree to the baptism, and that there is reasonable hope that the child will be raised Catholic; if such hope is completely absent, the baptism should be postponed in accordance with the provisions of particular law, and the parents should be notified of the cause (canon 868 § 1, Code of Canon Law).

It should be noted that the provisions of the Code of Canon Law do not contain a norm that would entitle the baptised person to "annul" or evade the effects of baptism consisting in admission to the Catholic Church.[311]

Canon law provided for the institution of "withdrawal from the Church" (defectio ab Ecclesia),[312] which could only be carried out by an adult.[313] After such an act, the appropriate annotations are made in the baptismal book and on the baptismal certificate, which then becomes a document confirming the formal act of leaving the Church.[314]

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311 This is an implementation of the principle of *semel catholicus, semper catholicus*, meaning that whoever has become a Catholic remains one forever.

312 Whether such a possibility still exists is questionable due to the change in wording of canons 1086, 1117, and 1124 of the Code of Canon Law.

313 See the Polish Bishops' Conference, *"Zasady postępowania w sprawie formalnego aktu wystąpienia z Kościoła" [Rules of procedure on the formal act of withdrawal from the Church]*, adopted on 27 September 2008, made available in digital format on the website of the Polish Bishops' Conference: http://episkopat.pl/dokumenty/pozostale/5075.1, Zasady_postepowania_w_sprawie_formalnego_aktu_wystapienia_z_Kosciola.html [20.05.2016].

314 See the judgement of the Supreme Administrative Court of 27 March 2013, I OSK 932/12, OSP 2014/2/14.

A different institution is apostasy – the act of abandonment of the faith. Apostasy, as a full manifestation of the will of a natural person deriving from the principle of freedom of world view in terms of one's professed faith, or one's lack of will to profess any religious faith, means a complete abandonment of the faith – in this case, Catholicism.

The declaration of apostasy should also be recorded in the parish's Book of the Baptised.

According to Canon law, the foregoing statements can be made by an adult. This is contrary to the principles of secular law, which regulates the scope of freedom of conscience and confession. In light of the provisions of the Constitution and acts of law, the inability of a minor (acting through their parents or guardians) to leave the Church or abandon their faith would be treated as a clear violation of their freedom of conscience and confession. In addition, practice revealed the previously mentioned problem of making such facts visible in the content of personal data sets kept by church bodies.

The foregoing problem raised serious doubts in administrative and legal jurisprudence. One contentious issue was the determination of the legal basis for examining the effectiveness of a statement on withdrawal from the Church. The position that this should be done based on the provisions of religious law was confirmed in the decisions of the Supreme Administrative Court in its judgements of 27 March 2013, file ref. no. I OSK 932/12; of 4 April 2013, file ref. no. I OSK 897/12; and of 24 October 2013, file ref. no. I OSK 1520/13. The view that the effectiveness of the declaration of will should be assessed in accordance with the provisions of civil law was presented in the judgements of the Supreme Administrative Court of 18 October 2013: file ref. no. I OSK 1339/13, file ref. no. I OSK 129/13, file ref. no. I OSK 2541/12, and file ref. no. I OSK 1487/12.

Recent decisions of the Supreme Administrative Court in matters of complaints in similar cases indicate the formation of a jurisprudence confirming the primacy of religious law regulations.[315]

It seems that the position presented by the Supreme Administrative Court in recent rulings will be the subject of criticism, because

[315] Cf. the judgements issued by the Supreme Administrative Court on 9 February 2016, file ref. nos. I OSK 2691/15, I OSK 2585/15, I OSK 1509/15, I OSK 1466/15, I OSK 3179/15, and I OSK 579/15.

the recognition of the primacy of religious law in the matter of withdrawing from the Catholic Church significantly limits the rights of citizens guaranteed both constitutionally and by statute.

Paradoxically, such a situation may be an example of a conflict of two freedoms: freedom of religion in the individual sense (giving priority to religious law prevents the exercise of freedom stemming from secular law) and one of the manifestations of freedom of religion in the collective sense, i.e. the autonomy of a religious association (giving priority to secular law entails interference in the sphere of autonomy of a religious association that is reserved, for example, for determining its own internal regulations).

In addition, it is possible, hypothetically, to assume the existence of a religious law that does not provide for the possibility of leaving a given religious association or changing one's faith at all. Then, the assessment of the statement in question on the basis of such provisions will invalidate the freedom of confession.

Regarding the legal situation of minors, the Supreme Administrative Court's jurisprudence generates a significant threat to their freedom. As already indicated, nothing prevents a minor – acting through those in charge of the minor – from submitting a declaration of intention to leave the Church, which is permissible under secular law, while under canon law (which the Supreme Administrative Court indicates as the basis for verifying such declarations) it is absolutely not permissible.

7. Freedom of conscience and confession of minors in criminal law

In the area of substantive law, issues related to criminal law and the protection of freedom of conscience and confession are regulated by the current Criminal Code of 6 June 1997.[316]

Criminal law protection of the sphere of religious freedoms is a consequence of the recognition of the particular importance of these values. This corresponds to the position expressed as well in the context of protection of the sphere of philosophical freedoms provided for and guaranteed

[316] Journal of Laws of 1997, no. 88, item 553, as amended – Criminal Code Act

by the Constitution. Here it is necessary to cite the view expressed by the Constitutional Tribunal in the wording of its ruling of 7 June 1994,[317] according to which constitutional protection of freedom of conscience and confession is expressed, among other ways, by prohibiting the violation of religious feelings which "due to their nature are subject to special protection of the law. In fact, they are directly linked to freedom of conscience and confession, which is a constitutional value." With regard to minors/underage people who violate criminal laws or who are threatened by other persons who violate criminal norms, attention should be given to the provisions of the 1989 Convention on the Rights of the Child. The standards contained in Articles 37[318] and 40[319] of the Convention are of particular importance here.

[317] Judgement of the Constitutional Tribunal of 7 June 1994, file ref. no. K 17/93, OTK in 1994, p. 1, item 11

[318] States Parties shall ensure that:

(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;

(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;

(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;

(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

[319] 1. States Parties recognise the right of every child alleged as, accused of, or recognised as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

2. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:

(a) No child shall be alleged as, be accused of, or recognised as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed;

(b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:

(i) To be presumed innocent until proven guilty according to law;

(ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;

The norms of the Convention regulate the issues of dealing with children who violate criminal law, referring to individual procedural guarantees.[320]

Criminal Code regulations on freedom in the sphere of confession and belief are contained in Chapter XXIV, entitled "Crimes against freedom of conscience and confession". This chapter contains only three articles, which describe the crime of discrimination on the basis of religion[321] (Article 194 of the Criminal Code), the crime of malicious interference with the performance of a religious act of a church or religious association with a regulated legal status[322] (Article 195 of the Criminal Code), and the crime of insulting the religious feelings of others through actions consisting in publicly insulting the object of religious veneration

(iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;

(iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;

(v) If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;

(vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used;

(vii) To have his or her privacy fully respected at all stages of the proceedings.

3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognised as having infringed the penal law, and, in particular:

(a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;

(b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.

4. A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.

[320] More broadly: Kołakowska-Przełomiec, H. "*Sytuacja dziecka w prawie karnym*", in: *Konwencja o prawach dziecka. Wybrane zagadnienia prawne i socjalne*, p. 125 et seq.

[321] Article 194. Anyone who restricts a person in their rights on the grounds of their religious affiliation or non-religious affiliation shall be subject to a fine, a penalty of limitation of liberty, or imprisonment for up to 2 years.

[322] Article 195. § 1. Anyone who maliciously obstructs the public performance of a religious act of a church or other religious association with a regulated legal status is subject to a fine, restriction of liberty, or imprisonment for up to 2 years. § 2. The same punishment shall be imposed on those who maliciously interfere with funerals, memorial ceremonies, or mourning rites.

or worship or a place intended for the public performance of religious rites[323] (Article 196 of the Criminal Code).

It should be noted that the provisions on the crime of forcing others to participate or forcing others to refrain from participating in religious or ritual activities have been removed from the Criminal Code.

In addition, other chapters of the Criminal Code also contain provisions penalising crimes motivated by factors pertaining to the religious sphere. These are the provisions of Articles 119,[324] 191,[325] 192,[326] 212,[327] 256,[328] and 257[329] of the Criminal Code.

It should be mentioned that all crimes included in Chapter XXIV of the Criminal Code are of a general nature and can be committed by anyone capable of incurring criminal liability. It does not matter whether the perpetrator is a follower of a given religion, another religion, or a person who does not hold any religious beliefs.

The provisions of the Criminal Code may be applied to minors as perpetrators of crimes against freedom of conscience and confession or as "victims" of such crimes.

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[323] Article 196. Anyone who insults the religious feelings of others by publicly insulting an object of religious veneration or worship or a place intended for the public performance of religious rites is subject to a fine, restriction of liberty, or imprisonment for up to 2 years.

[324] Article 119. § 1. Anyone who uses violence or makes an unlawful threat against a group of persons or an individual because of their national, ethnic, racial, political, religious, or non-religious affiliation is liable to imprisonment for a period of 3 months to 5 years.

[325] Article 191. § 1. Anyone who uses violence or an illegal threat to force another person to conduct themselves in a specified manner, or to refrain from or tolerate a certain conduct is liable to imprisonment for up to 3 years [...]

[326] Article 192. § 1. Whoever performs a medical procedure without the patient's consent is subject to a fine, restriction of liberty, or imprisonment for up to 2 years. § 2. The prosecution takes place at the request of the aggrieved party.

[327] Article 212. § 1. Anyone who unjustly accuses another person, group of persons, institution, legal person, or organisational unit without legal personality of such conduct or of such characteristics or properties that may degrade them in the public opinion or expose them to loss of confidence needed to perform a given position, profession, or activity shall be subject to a fine or penalty of restriction of liberty.

[328] Article 256. § 1. Anyone who publicly promotes a fascist or other totalitarian state system or calls for hatred on the grounds of national, ethnic, racial, or religious differences or on the grounds of non-religiousness shall be subject to a fine, restriction of liberty, or imprisonment of up to 2 years. § 2. The same penalty shall apply to whoever produces, fixes or imports, acquires, stores, possesses, or presents, transports or sends a print, recording, or other object containing the content specified in § 1 or bearing fascist, communist, or other totalitarian symbolism.

[329] Article 257. Whoever publicly defames a group of people or an individual due to their national, ethnic, racial, or religious affiliation or because of their irreligiousness, or for such reasons violates the physical integrity of another person shall be subject to the penalty of deprivation of liberty for up to 3 years.

Due to the provision of Article 10 of the Criminal Code, a person who is under the age of 17 is not criminally liable under the Code. In exceptional cases, a minor at least 15 years of age may be criminally liable as an adult.[330] None of the specific cases justifying reduction of the age of criminal liability applies to acts constituting a violation of freedom of confession or conscience.

Based on the provisions of the Criminal Code, therefore, the possible criminal liability of a minor for committing the acts provided for in Chapter XXIV applies only to minors who are at least 17 years of age. Such persons may be held liable to the full extent for acts committed. Extraordinary leniency may be applied to juvenile perpetrators of the specified acts on the terms provided for in Article 60, in conjunction with Article 54 of the Criminal Code. In this respect, reference should be made to the directive contained in Article 54(1) concerning the educational purpose of the penalty.[331] It should be noted that certain behaviours that may constitute an entry into the sphere of freedom of conscience and confession do not constitute crimes but are also penalised in other legal acts. These acts are described in the Act of 20 May 1971 – Code of Misdemeanours.[332]

From the point of view of minors, it is important that responsibility for the acts described in the Code of Misdemeanours may be borne by a person who is 17 years of age at the time of committing the act.

In the field of executive criminal law,[333] the provisions of the Act of 26 October 1982 on proceedings in juvenile cases apply to minors.[334] The Act applies to minors who are under the age of 18 and in the case of minors who have committed criminal acts against persons, it applies to those who committed such an act after reaching the age of 13 but before reaching the age of 17. In relation to minors who have committed criminal

[330] This applies to the commission by minors of prohibited acts as defined in article 134, article 148 § 1, 2 or 3, article 156 § 1 or 3, article 163 § 1 or 3, article 166, article 173 § 1 or 3, article 197 § 3 or 4, article 223 § 2, article 252 § 1 or 2, and in article 280.

[331] Article 54. § 1. When punishing a minor or a juvenile, the court is primarily concerned with educating the perpetrator.

[332] Journal of Laws of 1971, no. 12, item 114

[333] See: Nikołajew, J. "*Wolność sumienia i religii nieletnich przestępców w zakładach poprawczych i schroniskach dla nieletnich*", Studia z Prawa Wyznaniowego, 15(2012), pp. 157–184, and the literature cited therein.

[334] Journal of Laws of 1982, no. 35, item 228, as amended.

acts after reaching the age of 17, the provisions of the Act of 6 June 1997 – Criminal Enforcement Code shall apply.[335]

Complementing the argument regarding the protection of a minor in criminal proceedings, we should mention the norms regarding the minor's participation in procedural activities, which play a guarantee role. In the history of Polish criminal proceedings, the special character of a child's interrogation in a criminal trial was not noticed for a long time. The 1969 Code of Criminal Procedure only reiterated the previously known principle of not taking an oath from a person under 17 years of age. However, in terms of the rights of the witness, no attention was given to their age, and the model of interrogation itself was also the same regardless of the stage of development of the witness. It should be noted that the legislator introduced more extensive solutions for the protection of minors during the procedural act of a hearing only in relation to certain categories of acts (Article 185a–c of the Code of Criminal Procedure). These do not include any norms indicated in Chapter XXIV of the Criminal Code. It should be mentioned that during the work to amend the Code of Criminal Procedure, projects were submitted which assumed the extension of further-reaching measures to protect the rights of the minor to all cases in which they may be questioned.[336]

The 1997 Code of Criminal Procedure, on the other hand, allowed for the hearing of a minor (or any other witness) with the participation of an expert psychologist if there were any doubts as to their mental state or ability to perceive or reproduce perceptions (Article 192 § 2 of the Code of Criminal Procedure). Special rights of aggrieved parties and witnesses in criminal proceedings who are under 18 years of age were introduced and then significantly expanded by subsequent amending acts of 10 January 2003, 3 June 2005, and 13 June 2013.[337] Without going into a detailed analysis of the changes introduced by the indicated amendments,

[335] Journal of Laws of 1997, no. 90, item 557, as amended.

[336] Draft Act amending the Code of Criminal Procedure (Sejm bill no. 3633) – http://orka.sejm.gov.pl/Druki4ka.nsf/($vAllByUnid)/C51AFB1387227E11C1256F80003FAC03/$file/3633.pdf [20.10.2017]

[337] Respectively: the Act of 10 January 2003 amending the Act – Code of Criminal Procedure; the Act – Provisions introducing the Code of Criminal Procedure; the Act on the Crown Witness and the Act on the Protection of Classified Information (Journal of Laws no. 17, item 155); the Act of 3 June 2005 amending the Act – Code of Criminal Procedure (Journal of Laws no. 141, item 1181); and the Act of 13 June 2013 amending the Act – Criminal Code and the Act – Code of Criminal Procedure (Journal of Laws, item 849).

it should be noted that they introduced solutions aimed at protecting the minor from excessive mental burden accompanying procedural activities (one hearing, participation of the guardian in the hearing, participation of a psychologist).[338] What is important from the point of view of the present considerations is that the previously mentioned norms consistently state that until the age of 15 a minor is in a state of "unformedness and special sensitivity", which justified the possibility and then the requirement for the presence of a psychologist during a hearing.

On 27 January 2014 another amendment to Article 185a of the Code of Criminal Procedure came into force.[339] In the case of minors who are in conflict with the law, apart from the provisions of the Criminal Code, the provisions of the Act of 26 October 1982 on proceedings in juvenile cases apply. The Polish system of dealing with minors pursues a guardianship-educational-protective model. The 1982 Act introduces uniform treatment for minors who show signs of demoralisation and minors who have committed a punishable act. It covers within its scope the following: persons up to 18 years of age – in the area of preventing and combating demoralisation; persons who committed a punishable act at the age of 13–16; persons under the age of 21 towards whom educational and corrective measures are carried out.[340] The basic directive of the treat-

[338] See: Paluszkiewicz, H. "*Nowe środki ochrony praw pokrzywdzonego w prawie karnym procesowym na tle europejskiej polityki karnej*", RPEiS, 2010, vol. 3, pp. 29–38. As regards the assessment of the solutions introduced by the aforementioned amendments in the field of juvenile interrogation, see also: Kosonoga, J. "*Przesłuchanie pokrzywdzonego w trybie art. 185a k.p.k.*", Prokuratura i Prawo, 2004, no. 1, pp. 63–69; Stocka, K. "*Przesłuchanie świadka w trybie art. 185a k.p.k.*", Nowa Kodyfikacja Prawa Karnego, 16(2004); Klejnowska, M. "*Przesłuchanie nieletniego w postępowaniu karnym a europejskie standardy ochrony praw człowieka*", in: *Europejskie standardy ochrony praw człowieka a ustawodawstwo polskie*, edited by E. Dynia and C. P. Kłak, Rzeszów 2005, pp. 309–326; Karczmarska, D. "*Przesłuchanie małoletniego w świetle nowelizacji kodeksu postępowania karnego*", Prokuratura i Prawo, 2014, no. 1, pp. 14–36; and Goss, M. and Ławicki, J. "*Dowód z zeznań małoletniego w świetle nowelizacji art. 185a i 185b k.p.k.*", in: *Katalog dowodów w postępowaniu karnym*, edited by M. Czerwińska and P. Czarnecki, Warsaw 2014, pp. 81–92.

[339] The amendment was the result of the implementation of Directive 2011/93/EU of the European Parliament and of the Council (Official Journal of the EU, L 335 of 17 December 2011; corrigendum to the number of the Directive, Official Journal of the EU, L 18 of 21 January 2011). The amendment significantly expanded the catalogue of offences to which Article 185a of the Code of Criminal Procedure is applied. This includes both the offenses under Chapter XXIII of the Criminal Code (crimes against freedom) as well as all crimes committed with the use of violence or unlawful threats – see: Paprzycki, L. K. *Komentarz aktualizowany do art. 1–424 ustawy z dnia 6 czerwca 1997 r. Kodeks postępowania karnego*, edited by J. Grajewski, Warsaw 2010, LEX no. 470812.

[340] Konarska-Wrzosek, V. *Prawny system postępowania z nieletnimi w Polsce*, Warsaw 2013.

ment of minors covered by the Act is the principle of the child's best interests.[341] The primary goal is to achieve an educational impact that will benefit not only the minor themselves, but also society as a whole.[342] It should be emphasised that the main directive to care for the best interests of the child is complementary to the norms constituting the basis of family and guardianship law[343] and is supported by case law.[344]

The provision of Article 66a of the Act on proceedings in juvenile cases is significant as a guarantee with regard to the exercise of freedom of conscience and confession of minors. According to this provision, during executive proceedings minors have the right to perform religious practices, to use religious services, to participate directly in services held in correctional facilities and shelters for minors on holidays, to listen to religious services broadcast by mass media, and to have books, writings, and objects used for the exercise of religious practices. Under the aforementioned provision, a minor has the right to religious instruction, charity or social activities of the church or other religious association, as well as to individual meetings with the clergy of the church or other religious association to which they belong.

The exercise of these powers must, of course, take into account the specific conditions in which minors are found and the conditions in which the educational process is carried out.

Detailed rules for the organisation of religious instruction and the provision of religious services to minors staying in correctional institutions and educational institutions are specified in the Regulation of the Minister of Justice of 14 September 2001 on detailed rules for participation in religious classes and religious practices, the use of religious services,

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[341] Bojarski, T., Kruk, E., and Skrętowicz, E. *Ustawa o postępowaniu w sprawach nieletnich. Komentarz*, Warsaw 2014, p. 50 et seq.; Ostrihańska, Z. "*Wychowawcze aspekty postępowania w sądzie dla nieletnich*", in: *Ius et Lex. Księga jubileuszowa ku czci Profesora Adama Strzembosza*, edited by A. Dębiński, A. Grześkowiak, and K. Wiak, Lublin 2002, pp. 172–173; and Strzembosz, A. *System sądowych środków ochrony dzieci i młodzieży przed niedostosowaniem społecznym*, Lublin 1985, p. 113.

[342] A. Krukowski, in: *Ustawa o postępowaniu w sprawach nieletnich. Komentarz*, edited by A. Krukowski, Warsaw 1991, p. 25.

[343] Ignatowicz, J., Piasecki, K., Pietrzykowski, J., and Winiarz, J. *Kodeks rodzinny i opiekuńczy z komentarzem*, Warsaw 1993, p. 474 et seq.

[344] Judgement of the Supreme Court of 18 September 1984, III KR 237/84, OSNPG 1985, no. 2, item 291, as well as the resolution of the composition of seven judges of the Supreme Court of 21 November 1984, III CZP 47/84, OSNCP 1985, no. 5–6, item 18.

and the organisation of pastoral work in correctional institutions and shelters for minors.[345]

In accordance with the aforementioned act, the participation of minors in religious classes and religious practices, the use of religious services, and the organisation of pastoral work in the institution is carried out in accordance with the will of the parents (guardians) or taking into account the will of the minor. The will of the persons exercising parental responsibility or that of the minor may be expressed in the simplest form of a statement. The implementation of religious instruction and the provision of religious services is carried out as part of the organisation of work in the institution, subject to ensuring the safety of the institution and observance of the rights of minors.[346] Similar powers are provided for in the Criminal Enforcement Code with respect to convicted juveniles. According to Article 102 of the said Code, a convicted person has the right to exercise their religious freedom.[347] Under the foregoing authorisation, the convicted person has the right to exercise religious practices and to use religious services.[348] The guarantee of provision of meals prepared from products accepted by the principles of a given belief also serves to protect religious freedom.[349] This right is not considered absolute by the legislator, as indicated by the use of the term "as far as possible".

[345] Journal of Laws of 2001, no. 106, item 1157

[346] Section 2(1). The participation of minors in religious classes and religious practices, the use of religious services and the organisation of pastoral work in the institution shall be carried out in accordance with the will of the parents (guardians) or with regard to the will of the minor, expressed in the simplest form of a statement, within the organisation of work in the institution, subject to ensuring the safety of the institution and observance of the rights of minors.

[347] Article 102(3) of the Criminal Enforcement Code

[348] Article 106. § 1. The sentenced person has the right to perform religious practices, to use religious services, to participate directly in services held in the correctional facility on holidays, to listen to services broadcast by mass media, as well as to have the books, writings, and objects necessary for this purpose. § 2. The sentenced person has the right to participate in religious instruction in the penal institution, to participate in the charitable and social activities of the church or other religious association, as well as to individual meetings with the clergy of the church or other religious association to which they belong; these clerics may visit the sentenced persons in the premises in which they reside. § 3. The exercise of religious freedom must not violate the principles of tolerance or interfere with the established order of the prison.

[349] Article 109. § 1. A convict staying in a prison or detention centre receives food and drink of adequate nutritional value three times a day, including at least one hot meal, taking into account the type of work performed and the age of the sentenced person, and, as far as possible, their religious and cultural requirements. [...].

However, it should be noted that such an approach has been found to violate Article 9 of the Convention on Human Rights.[350]

The implementing regulations of the Criminal Enforcement Code set forth detailed rules for ensuring the religious freedom of those sentenced – in accordance with the Regulation of the Minister of Justice of 2 September 2003 on detailed rules for the exercise of religious practices and the use of religious services in prisons and detention centres.[351] According to the provisions of the Regulation, sentenced persons have the right to participate in group or individual religious services and meetings. Group religious meetings take place in a chapel or in another appropriately adapted room or location within the premises of a penal institution or detention centre.[352] In the case of individual meetings, they may take place in residential cells or hospital rooms.[353]

A minor may be the "victim" of crimes described in the Criminal Code or of acts described in the Code of Misdemeanours. In this case, the age of the minor does not matter. It becomes relevant in the event of the need to report a crime. It should be assumed that the person exercising parental responsibility over the minor must act as the person submitting the report.

If the victim is a minor or an incapacitated person, their rights shall be exercised by a legal representative or by a person exercising permanent custody over the victim. The legal consequence of this provision is, in practice, the inability of a minor to effectively report a suspected criminal offense. However, it should be added that both the prosecutor and the police have the ability to initiate preparatory proceedings ex officio, provided there is reasonable suspicion of the commission of a crime.

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350 Judgement of the European Court of Human Rights of 7 December 2010, Jakóbski v. Poland, application no. 18429/06

351 Journal of Laws of 2003, no. 159, item 1546, Regulation of the Minister of Justice of 2 September 2003 on detailed rules for the exercise of religious practices and the use of religious services in prisons and detention centres

352 § 1 (1). Sentenced persons have the right to participate in religious services and meetings, including individual meetings, which take place in a chapel or in another room adapted for this purpose, or in a place within the premises of a penal institution or a detention centre, hereinafter referred to as 'the institution', in accordance with the established internal order of the institution.

353 § 1 point 4. Individual religious practices and services may also be carried out in residential cells, hospital rooms, and infirmaries, provided that they do not interfere with the rules of order and security in force at the institution, and provided that the conditions of privacy for the exercise of these practices and services are ensured.

The possibility of formally accepting a minor's report of a crime to the detriment of such a person is excluded, but it is permissible for the prosecutor to initiate proceedings ex officio after obtaining information – including from a minor.[354]

As a side note, it should be mentioned that, in practice, cases concerning the commission of crimes under Chapter XXIV of the Criminal Code occur in minimal numbers. According to data provided by the Police Headquarters, in the years 2000–2014 only 44 proceedings were initiated in relation to crimes under Article 194 of the Criminal Code, of which in only 12 cases it was found that a crime was committed;[355] in the case of the crime described in Article 195 of the Criminal Code, 234 proceedings were initiated in the same period, leading to the finding that 263 crimes were committed;[356] in the case of Article 196 of the Criminal Code, 780 proceedings were initiated during the indicated period, and 820 crimes were identified.[357] It should be noted that the foregoing statistics do not show the number of such crimes committed by minors, but more important is the conclusion that crimes against freedom of conscience and confession are not excessively frequent. In the aforementioned period, the average number of proceedings initiated each year fluctuated around 1,000,000, and the average number of crimes detected was around 1,100,000.[358]

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The political changes that were initiated when our country regained its sovereignty after 1989 resulted in a "new opening" with regard to

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354 'If an application or another request comes from a person who is unable to assert their rights independently, the public prosecutor, when not obliged to act ex officio, should consider the possibility of providing legal assistance or to indicate the need to provide such assistance to a competent authority, institution, or organisation.' – 47 point 2, Regulation of the Minister of Justice of 7 April 2016 – Rules for the internal functioning of the universal organisational units of the prosecutor's office (Journal of Laws of 2016, item 508).

355 Available at: http://statystyka.policja.pl/st/kodeks-karny/przestepstwa-przeciwko-5/63489,Dyskryminacja-wyznaniowa-art-194.html [15.10.2016]

356 Available at: http://statystyka.policja.pl/st/kodeks-karny/przestepstwa-przeciwko-5/63491,Przeszkadzanie-publicznemu-wykonywaniu-aktu-religijnego-lub-obrzedom-zalobnym-ar.html [15.10.2016]

357 Available at: http://statystyka.policja.pl/st/kodeks-karny/przestepstwa-przeciwko-5/63492,Obraza-uczuc-religijnych-art-196.html [15.10.2016]

358 Available at: http://statystyka.policja.pl/st/ogolne-statystyki/47682,Postepowania-wszczete-przestepstwa-stwierdzone-i-wykrywalnosc-w-latach-1999–2014.html [15.10.2016]

the attitude of the state authorities to a number of issues related to freedom of confession and freedom of conscience. There was a rejection of the communist ideology, which had been aimed at achieving the secularisation of society. The reintegration of religion into the educational system became a symbol of this reorientation. Due to the importance of the Catholic religion in Polish society, the Catholic Church played a special role in this respect. The successes achieved by the Church regarding the return of religion to schools have also had a positive impact on other religious associations. In implementing the principle of prohibiting the differentiation of religious associations, the Polish state was forced to recognise the rights of such associations to propagate and exercise powers analogous to those granted to the Catholic Church.

The protection of freedom of conscience and confession can be considered a classic and relatively uniform element of contemporary constitutional orders. The particular importance of freedom of conscience stems from the well-established conviction that it is an indispensable component of the values that constitute the notion of human dignity. This circumstance further promotes the harmonisation of the fundamental constitutional principles and values of most European countries, which are rooted in their common Christian culture.[359]

The current form of legal solutions providing for the protection of freedom of conscience and confession is based on the provisions of the Constitution of the Republic of Poland. The preamble to the Constitution already contains a reference to conscience, invoking "the sense of responsibility [of every citizen] before God or before their own conscience". In the text of the Constitution the legislator declared that freedom of conscience and religion is guaranteed to everyone. Freedom of religion includes the freedom to profess or to accept a religion by personal choice as well as to manifest such religion, either individually or collectively, publicly or privately, by worshipping, praying, participating in ceremonies, performing of rites or teaching.

In the Law on Guarantees of Freedom of Conscience and Confession of 1989 the legislator assumed that the Republic of Poland provides

[359] Safjan, M. "*Wolność religijna w konstytucjach państw europejskich*", in: *Kultura i prawo*, t. 3: *Religia i wolność religijna w Unii Europejskiej. Materiały III Międzynarodowej konferencji na temat „Religia i wolność religijna w Unii Europejskiej", Warszawa 2–4 września 2002 r.*, edited by J. Krukowski and O. Theisen, Lublin 2003, p. 44.

every citizen with freedom of conscience and confession, which includes the freedom to choose one's religion or beliefs and to express them individually and collectively, privately and publicly, with a guarantee of equal rights in all spheres of social life for believers and non-believers alike. The Law states that the exercise of freedom of conscience and confession allows both for the proclamation of one's religion or belief and for remaining silent in matters of one's religion or beliefs. Freedom of world view is promoted by the principle that citizens must not be forced to abstain from religious functions and services, or to participate in them.

Poland's entry into the European Union in 2004 also had a positive impact on the shape of regulations concerning freedom of conscience and confession, enhancing the institutional guarantees aimed at protecting rights related to freedom in the sphere of world view.

The process of restoring freedom of conscience and confession was not without difficulties. As mentioned before, such difficulties arose either because of actions raising doubts of a legal nature or because of accusations of preferential treatment of the Catholic Church. Certain problems were created by issues concerning the actual capabilities of the state to provide everyone with access to instruction on the principles of their religions.

In terms of ensuring freedom of conscience and confession to minors, Polish regulations should be assessed positively. They comply with international standards. Of course, just like any other regulations, they are not perfect. As the research mentioned in this chapter demonstrates, there are instances of actions that violate freedom of conscience and confession, but they stem from reasons other than incorrect legal regulation.[360]

It should be mentioned that, due to the small number of followers of religions other than the various branches of Christianity, the Polish legal system did not have to deal with problems existing, for example, in Western European countries.

It also seems that there will be no significant changes to the religious structure of Poland in the near future that would become factors propelling changes in the laws regulating matters of freedom of world view.

[360] Pieron, B. "*Prawo do rezygnacji z przynależności do kościołów i innych związków wyznaniowych – czy jest w Polsce przestrzegane?*", in: *O wolności religijnej w Polsce*, edited by K. Mazur and D. Stokłosa-Bierniara, Kraków 2017, p. 66.

It should also be mentioned that there is little interest in issues related to possible actions against freedom of confession, particularly in relation to minors. The number of court proceedings – both in criminal and civil cases – concerning violations of freedom of conscience and confession make up only a tiny fraction of all criminal proceedings.

After presenting the legal environment regulating the matters of freedom of conscience and confession of minors, it is necessary to assess the extent to which these norms operate in the real world, as well as where and why the threat of violation of the said freedom arises.

To this end, I will use studies developed by various social organisations, analyses carried out by competent authorities, and media reports on the observance of the freedom of conscience and confession of minors.[361] Due to the examined issues being concentrated in the realm of education, most assessments concern the extent to which the freedom of belief of minors is respected in school education.

The aforementioned studies are generally devoted to the issue of compliance in the area of instruction of religion/ethics in public schools with the constitutional principles of freedom of world view and equality of persons regardless of their beliefs.[362] Analysis of the previously mentioned

[361] Balsamska, J., Beźnic, S., et al., *Pomiędzy tolerancją a dyskryminacją. O występowaniu i przeciwdziałaniu dyskryminacji na tle religijnym w małopolskich szkołach oraz o treściach etycznych, religijnych i antydyskryminacyjnych w systemie oświaty – raport z badań*, Kraków 2012; idem., *Szkoła to (nie) miejsce kultu. Deficyty równouprawnienia w zakresie wolności sumienia i wyznania w szkołach publicznych w Polsce*, Kraków 2017; *Dostępność lekcji religii wyznań mniejszościowych i lekcji etyki*.

[362] The motives and research area are characterised in the introduction to the first of the studies mentioned, where it was indicated that: "The aim of the project was to monitor public education in terms of its compliance with the constitutional right of freedom of conscience and confession and the right of parents to raise children in accordance with their beliefs (i.e. Article 53 and Article 48(1) of the Constitution of the Republic of Poland), implementation of the Act of 7 September 1991 on the Education System, Ordinance of the Minister of National Education of 14 April 1992 on the conditions and manner of organising religious education in public kindergartens and schools and on the occurrence and prevention of discrimination, violence, and hate speech on religious grounds in schools [...] The inspiration for the project came from observation of the situation in public education in terms of access to ethics classes and irregularities in the organisation of religion classes, as well as numerous media reports concerning, among others: – schools evading the organisation of ethics classes; – religious ceremonies taking place during lessons; – religious ceremonies being included in school celebrations (e.g. commencement of the school year with a Roman Catholic mass); – signing by parents of declarations of non-attendance of catechesis or requests for exemption from it; – difficulties in the organisation of religious classes of religious minorities; – the undetermined situation of non-religious pupils; – conflicts over the presence of religious symbols in schools; – the impact of religious content on curricula and teaching content."

studies allows us to put forward the thesis that, despite years having passed, situations in which violations or the threat of violations of freedom of world view occur are invariably repeated and generally concern the same areas.

The most frequent violations (included in the aforementioned report from 2012) include the practice of delegating teachers who are not catechists to care for pupils participating in Lenten church retreats (this mainly violates the freedom of teachers themselves, though the educational impact on pupils cannot be ignored); the practice of using declarations concerning a pupil's non-attendance of religious classes as the basis for "exemption" from such classes; pressuring pupils to participate in religious ceremonies in connection with school celebrations (e.g. the beginning or end of the school year), which grossly violates applicable regulations; and failure to comply with the declarations of parents or adult pupils concerning their will to participate in religious or ethics classes. Moreover, there are the traditional organisational problems – problems with providing ethics classes or providing care for children who do not attend religion classes.

At the same time it should be noted that the scale of signalling actions in relation to emerging violations of the law in this area is minimal. The data collected by the authorities supervising and operating educational units indicate quite a small number of complaints regarding violations of freedom of world view in schools and kindergartens.[363] In the study mentioned, only 3% of students and parents reported signs of violence or misunderstandings on religious grounds.[364] These activities were limited to submitting complaints and requests to the relevant bodies operating and supervising educational establishments.[365]

Prepared a few years after the aforementioned survey, the report of the Office of the Commissioner for Human Rights identifies examples of activities that bear the hallmarks of discrimination on grounds of religion and world view in the field of education.

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[363] As an example, the data of the Lesser Poland Voivodeship Board of Education shows that in 2010 two applications were recorded, and in 2011 two applications and one complaint were submitted.

[364] Balsamska, J., Beźnic, S., et al., *Pomiędzy tolerancją a dyskryminacją*, p. 42.

[365] Respectively, local government units and boards of education.

Concerning access to religious lessons for minority religions:

- lack of effective actions on the part of the school or the governing body at the municipal level to include minority religion lessons in the education system;
- failure to include grades received in minority religions on school certificates;
- lack of remuneration for teachers of minority religions and denominations;
- hindering the organisation of minority religion lessons for children of the same age;
- demonstrating reluctance towards people of another religion and the associated slow processing of matters by headmasters and officials of governing bodies;
- requesting a declaration of refusal to participate in religious education classes.

Concerning access to ethics classes:

- negative reactions when notified of the willingness to participate in ethics classes by parents, youth, and children;
- refusal to organise ethics classes due to a small number of interested pupils;
- refusal to organise ethics classes due to the lack of a teacher, the lack of funds, or for other reasons;
- organising ethics lessons during hours and at premises that hinder participation in the classes;
- not informing interested parties of the possibility to choose ethics classes.

As is apparent from the foregoing, the problems primarily concern organisational issues (lack of will, resources for organising ethics classes for relatively small numbers of interested pupils) and insufficient provision of information on the rights of students/parents and the duties of educational units.

The most recent study is a report from 2017 describing the situation in public education in terms of the implementation of freedom of conscience and confession and discrimination based on confession and/or world view. The authors mentioned the most important areas in which

violations of freedom of belief can occur in schools. Areas where risks arise include:

a) the practice of delegating teachers to take care of children during church retreats (From 1992 to 2017 this was inconsistent with the provisions of the Regulation of the Minister of National Education of 14 April 1992 on the conditions and manner of organising religious education in public kindergartens and schools – the provision amended in 2017[366] legalises this practice, which undoubtedly may be considered a threat to the freedom of conscience of teachers.);

b) requirement of declarations concerning attendance/non-attendance of religious classes, which violate the applicable regulations, for example, by forcing negative declarations regarding attendance of religious classes (This is a practice incompatible with the applicable regulations, which expressly provide for positive declarations.[367] In addition, there are also situations in which declarations concerning the participation of a pupil in religious and/or ethics classes are placed in school application sheets, or in which there are declaration form templates where, in demanding a written exemption from religion classes, one should choose from the options: I agree/do not agree.);

c) overrepresentation on school premises of religious symbols associated with the Catholic faith;[368] and

d) organisation on school premises of religious rituals or strictly cult-related elements such as masses, processions, and confession, which are usually perceived as appropriate for specialised places of worship, such as churches.[369] Here, years of tradition or a lack of opposition on

366 Journal of Laws of 14 June 2017, item 1147

367 By way of example, see: Gmiterek-Zabłocka, A. "*Religia obowiązkowa? Taki zapis był w statucie jednej z łódzkich podstawówek*", 23.09.2016, http://www.tokfm.pl/Tokfm/1,103454,20735052,religia-obowiazkowa-tak-zapis-był-w-statucie-jednej-z-lodzkich.html [03.05.2018]. Also: Kupracz, A. "*Szkoły w Łodzi. 20 placówek łamie przepisy ws. Religii*", 04.11.2016, http://lodz.wyborcza.pl/lodz/1,35136,20931740,szkoly-w-lodzi-20-placowek-lamie-przepisyws-religii.html [03.05.2018]; BS, "*Księża spowiadali młodzież w szkole. Nauczyciele: Szkoła to nie kościół!*", 10.03.2017, http://epoznan.pl/news-news-74687-Ksieza_spowiadali_mlodziez_w_szkole._Nauczyciele_Szkola_to_nie_kosciol [03.05.2018]; and Makowski, J. "*Spowiedź w szkole, czyli jak biskupi przyczyniają się do upadku religii*", 10.03.2017, http://www.newsweek.pl/opinie/kosciol-i-edukacja-w-polsce-spowiedz-na-lekcjireligii,artykuly,406658,1.html [03.05.2018].

368 One example is the situation described in the article by T. Lis: "*Bronią symboli religijnych w szkole*", 16.12.2016, http://sandomierz.gosc.pl/doc/ 3603907.Bronia-symboli-religijnych-w-szkole [02.05.2018].

369 Gierak-Onoszko, J. "*Czy szkoła publiczna to miejsce na udzielanie sakramentów? Według MEN jak najbardziej*", https://www.polityka.pl/tygodnikpolityka/

the part of parents and teachers are often cited as arguments in favour of such a practice. Moreover, the lack of illegality of such practices is often cited as justification. The Ministry itself also takes such a position. In the opinion of the Ministry of National Education, "educational law does not define the school as a secular institution".[370] Among other arguments, there are those indicating that organising these types of activities in such a manner is easier, and that it is easier not only to ensure the safety of children, but also to ensure better attendance.

There is also the problem of providing care and proper time management for children who do not participate in religious activities.[371] One phenomenon interesting from the viewpoint of the issues described in the previous chapter is the fact of the Church organising certain events that are seen as competing against at least some customs adopted from Western culture. A widely described example is the organisation of events such as All-Saints' Balls or All-Saints' Processions, which compete against Halloween-related events.[372]

There are also reports of actions directed against teachers who (even if only in private) proclaim views questioning the presence of religion

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spoleczenstwo/1703868,1,czy-szkola-publiczna-to-miejsce-na-udzielanie-sakramentow-według-men-jaknajbardziej.read [08.05.2017]; and Szpunar, O. and Kuraś, B. "*Księża spowiadali uczniów w szkole. Kuratorium: To przesada*", 08.03.2017, http://krakow.wyborcza.pl/krakow/7,44425,21472632,ksieza-spowiadali-uczniow-w-szkole-kuratorium-to-przesada.html [04.05.2018].

[370] http://www.sejm.gov.pl/Sejm8.nsf/InterpelacjaTresc.xsp?key=03C5E8FF [5.05.2018]. The responses to the interpellation pointed to "Article 53(2) of the Constitution of the Republic of Poland, which states that the freedom of religion shall include the freedom to profess or to accept a religion by personal choice, as well as to manifest such religion, either individually or collectively, publicly or privately, by worshipping, praying, participating in ceremonies, performing of rites or teaching. In the opinion of the Ministry of National Education, the possibility of holding confession at the conclusion of a retreat that takes place in a public school space falls within the scope of the constitutional guarantees of freedom of conscience and confession. In referring to the term 'secular school', it informs that educational law does not define school as a secular institution. The institution of the school is defined as a public school supporting parents in their educational function. The provision of Article 53(3) of the Constitution of the Republic of Poland guarantees parents the right to provide children with a moral and religious upbringing and education consistent with their beliefs."

[371] See: https://www.newsweek.pl/polska/spoleczenstwo/rekolekcje-modlitwa-zamiast-nauki/8y4bk4h [08.02.2024].

[372] Zuchowicz, K. "*Kościół znalazł sposób na znienawidzone Halloween. „Bale wszystkich świętych" podbijają polskie szkoły*", 14.10.2017, http://natemat.pl/220075,kontrofensywa-kosciola-przeciwko-halloween-konkurencyjne-imprezy-przybieraja-na-sile-zakaz-wiedzm-i-trupow [20.05.2018].

in school life[373] (while this does not directly affect the area of freedom of minors, it is obvious that it does so indirectly).

In the media there are also cases of electronic channels of contact with the school being used to excessively expose religious content.[374]

It is worth noting that attempts to draw attention to the increasing appropriation of educational space by one religion cause reactions often referring to false and radically overblown arguments.[375]

The holding of retreats, celebration of mass, or organisation of confessions or religious processions in schools can be regarded as further elements of the process of appropriation of school space by the Roman Catholic Church, which is dominant in Poland.

As we can see, the problems demonstrated in the earliest of the studies are basically identical to those revealed in the previous study. It could therefore be concluded that, despite the violations being disclosed, no effective solutions have been put in place to neutralise this threat. The small number of interventions therefore leads to the conclusion that the problem lies in the low awareness of these rights on the part of beneficiaries of freedom-protecting measures. It is worth noting that the majority of applications are made through social organisations dealing with issues of freedom of belief.

[373] https://www.rpo.gov.pl/pl/content/rzecznik-interweniuje-w-sprawie-postepowania-dyscyplinarnego-wobec-nauczyciela-z-zagania [20.05.2018]

[374] Jarmuż, A. "*Szkolny dziennik tubą wójta?*", 14.06.2017, https://plus.gloswielkopolski.pl/wiadomosci/a/szkolny-dziennik-tuba-wojta,12176182 [02.12.2017]; and Glanc, M. "*Informacje o mszach i uroczystościach w szkolnych dziennikach. Skarga mieszkańców na wójta gminy*", 14.06.2017, https://poznan.onet.pl/informacje-o-mszach-i-uroczystosciach-w-szkolnych-dziennikach-skarga-mieszkancowna/96g26y3?utm_source=poznan_viasg&utm_medium=nitro&utm_campaign=allonet_nitro_ne-w&srcc=ucs&utm_v=2 [02.12.2017].

[375] "*Chcą wygonić religię ze szkół!!!*", 01.04.2017, http://www.fronda.pl/a/chca-wygonic-religie-ze-szkol,90360.html [12.05.2018]; and Kucharczak, F. "*Zakraplanie mózgu*", 04.05.2017, http://gosc.pl/doc/3860720.Zakraplaniemozgu [12.04.2018].

Conclusion

Freedom of conscience and confession is undoubtedly one of the most important rights enjoyed by human beings. The acceptance of these freedoms constitutes the implementation of "one of the most fundamental principles of the rule of law, respecting and realising the inherent and inalienable dignity of man. [...] The importance of these issues seems special, and the experience of human history confirms their fundamental character."[1]

As I have shown in the foregoing considerations, the present form and content of what is implied by the term "freedom of conscience and confession" is the result of a long process of evolution of various philosophical, theological, and juridical concepts.

The process of arriving at the modern understanding and acceptance of freedom of opinion, especially in our country, was fraught with many dramatic events. Even though such events caused a lot of suffering, it is impossible to avoid the conclusion that they were a catalyst for reflection on human rights and, therefore, also the right to freedom in the sphere of beliefs.

The evolution of the notion of freedom of conscience and confession took place at an intersection of political and religious issues. Analysis of the attitudes of secular and ecclesiastical authorities towards the issue of freedom of opinion allowed us to conclude that the evolution of this freedom was the result of either competition or cooperation between the centres of civil and clerical power.

In the early days of Christianity, the need to solidify the structures of the Church required care for the "purity" of the faith. Hence views

[1] *O wolność słowa i religii. Praktyka i teoria*, edited by F. Longchamps de Berier and K. Szczucki, Warsaw 2016, introduction.

justifying the fight against different factions of the Christian religion were present in the doctrine and accepted in practice. Such factions were considered erroneous and a threat to the cohesion of the Church. It is obvious that under such conditions too little attention was given to acceptance of the notion of freedom of beliefs.

After the Church gained a strong position – one associated with its acquisition in the 390s AD of the status of dominant religion, which resulted from the political tactics of the rulers of Rome – the question of religious freedom lost its significance. Religion associated with the secular authorities became a tool for consolidating the state. For this reason, any deviations from or negation of the existing order were treated ruthlessly and fought against with full ferocity, with the involvement of the state apparatus in this process. It is telling that particular hostility was directed towards apostates from the Christian faith, while to a certain extent freedom was provided, for example, to the followers of Judaism. This freedom was exercised in separate circles and places, but it existed. It should be noted that combating deviations from the true faith was not the exclusive domain of Christianity. Similar actions took place in the religious associations or churches that were created as a result of the various strains of the Reformation.

Originally, the relation between secular and clerical power was based on a model of mutual association. In this model, prevailing in principle until the late Enlightenment period, both forms of authority supported one another and cooperated in achieving their goals. In general, the institutions of state power were not characterised by neutrality of world view. In the model of association, religions other than the prevailing religion were either opposed or merely tolerated. This model often led to the creation of religious states. The aforementioned change in attitude towards other religions took place after the Reformation period. New religious groups proved to be strong enough to create a space for existence, either through forced emigration or, often, armed struggle. It was during the period of religious wars that the foundations of the notion of the right to religious freedom were established – this was initially understood as the right to religious freedom, albeit for the followers of a given religion within a certain territorial authority (this is how the principle of cuius regio eius religio should be understood).

It was only the development of free thinking in the Age of Enlightenment that gave rise to the notion of freedom of confession in the modern sense. It was the legacy of the French Revolution and the Napoleonic era that brought about such changes.

It was only after World War II that freedom of religion and belief came to be fully respected. At that time, the achievements of the international community brought change in the form of acts of international law which, either directly or in the form of a model of desired standards, became a catalyst for the development of guarantees of freedom of conscience and religion.

In the case of Polish law, the evolution of the understanding of freedom of confession and belief reflected changes in the ideology underlying the groups holding power. After the country regained independence in 1918, Polish legislation – created in an arduous process of unification of the law – gave grounds for stating that, at least formally, freedom of conscience and confession functioned in the Polish state. Of course, political, social, and religious conditions left their mark on the form of these legal solutions. From a formal point of view, however, instruments guaranteeing, to a large extent, the implementation of freedom of conscience and confession were provided. Of course, a certain privileged position was taken by Catholicism, but this took place mainly through the practice of applying the law.

During the years 1945–1989 the state legislation in our country formally ensured even greater respect for people of different faiths or adherents of non-religious views. However, the practice of applying the law – motivated by the ideological foundations of the state, which were hostile to religion – pursued an interpretation leading to the obstruction and suppression of religious world views.

Poland's regaining of sovereignty in 1989 brought about a return to "normality". Current Polish legislation guarantees respect for freedom of conscience and confession. A significant role in this is played by the influence of international law, which not only serves as a model to which the norms of national law should be adapted but also, in the case of EU law, provides enhanced guarantees for the protection of the rights stemming from freedom of conscience and confession – including in relation to minors.

One should agree with the view that, in Polish cultural conditions, a child has religious freedom deriving from the fact of their being a human being with inherent dignity, but that primacy in this area of the child's activity belongs to the will of the parents.

With the foregoing in mind, the purpose of this publication is to try to confirm the following hypotheses:

1) The freedom of conscience and confession of the minor (child) was a value that was recognised and accepted in the systems of secular law – especially in the systems applicable within the particular chronological boundaries of the territory of Poland, as well as in the Canon law of the Catholic Church during the years 1918–2015. In the latter case, parents were to determine the scope of this freedom of the minor, e.g. by taking them to church in their infancy to receive baptism and, later, Holy Communion. Prior to World War II the same was true for ethnic and religious minorities.

2) The method of defining the minor's freedom to choose their beliefs, as well as the content of such freedom and its limits, was and is a dynamic process subject to evolution over the course of centuries, resulting from changes in the perception of the role and position of the child, as well as the level of acceptance of human rights *in genere*, the sociological processes taking place in a given community, and the axiological foundations of state policy.

3) Over the course of the one-hundred-year period subject to examination, Poland developed a system of legal institutions that guarantee, directly and indirectly, the freedom of conscience and confession of minors. This system did serve its purpose effectively in the past and continues to do so today.

Considerations concerning the meaning, form, and functioning of the mechanisms for guaranteeing and protecting the freedom of conscience and confession of minors are much more widely recognised and analysed by the legal community than by their beneficiaries, i.e. the minors.

In my opinion, it is justified to verify whether the implementation of such solutions met the interests and expectations of minors as well as those of legislators and law enforcement bodies. It should be borne in mind that the freedom of minors during the period under examination constitutes a field of mutual interference among the will of the state

legislator, the interests of churches and other religious associations, the will of parents and legal guardians, and the expectations of the minors themselves.

Analysis of the perception of the freedom of conscience and confession of minors allows us to draw the following conclusions:

Firstly, setting aside the philosophical foundations, it can be assumed that contemporary Polish law accepts freedom in the sphere of world view for minors. At the same time, this right is not absolute and unlimited. It is, in fact, limited by a number of factors. Firstly, by the legal regulations concerning every human being, i.e. the religious rights of other persons in Poland and other non-religious rights of other persons (right to life, health, etc.). Secondly, due to the physical and mental condition of the minor, their liberty in the exercise of the freedom of conscience and religion is limited by the scope and content of parental authority and the manner in which it is exercised. For each parent, the Constitution of the Republic of Poland of 2 April 1997 guarantees in Article 53(3) the right to provide their children with moral and religious upbringing in accordance with their convictions. The content of this provision is a consequence of the conviction that minors need to be moulded and directed as persons who are inexperienced and exposed to the potentially adverse influences of others, including religious – and perhaps especially religious – influences.

Secondly, it should be mentioned that minors have the right to practice their chosen religion. In this respect, the freedom of religion of minors is inextricably linked to the freedom of conscience and confession in the collective sense. At the same time, in the Polish legal system the will of the minor should be taken into account during the course of their religious upbringing by parents or guardians – for example, regarding participation in religious education in public school. In the Polish practice the limit for this is the age of thirteen, and sometimes higher.

Thirdly, the formally accepted freedom of conscience and confession of the minor can be effectively implemented only with the provision of legal instruments guaranteeing the protection of such a person against violations of this freedom.

Fourthly, it should be noted that the protection of the religious rights of the minor is more clearly defined in the field of traditional religious cults (Catholicism, Orthodox Christianity, Protestantism), and that there

are more difficulties with the protection of freedom of conscience and confession of the minor in the broad sense, including the protection of beliefs of exotic ideological cults – so-called new religious movements or sects or non-religious axiology. In this case, the parents have more of a say and the minor has less freedom of choice.

When analysing the legal status in the historical periods examined, one should agree with the assumption that during the periods of the Second Polish Republic and the Polish People's Republic there were violations of the freedom of confession in the collective sense, violations which undoubtedly also affected individual freedom. These restrictions resulted from the differentiated position of the various religious associations (division into churches and religious associations that were legally recognised and those that were not legally recognised, and a further division of the latter into ones that were tolerated and ones that were not tolerated) in light of the law that Poland inherited after the period of partitions, and furthermore – during the period of the Polish People's Republic – from the intentional obstruction of religious activity by the communist state authorities, especially the limitations placed on the activity of the Catholic Church. At the same time attention should be given to the freedom of conscience and confession that was declared and included in the acts of constitutional rank during both periods. Restriction of freedom was carried out through the application of the law, including the Bartel Circular and others such acts. The research conducted shows that, following the political breakthrough in 1989 and the regaining of sovereignty, there are currently no grounds to believe that the activities of churches and other religious associations that respect the necessary restrictions on the expression of views or the manner of conducting rituals face any non-substantive restrictions. One fact significantly strengthening the guarantee of respect for freedom of confession and conscience is Poland's subordination to the jurisdiction of European tribunals, resulting from the Polish state's membership in the EU structures since 2004.

The research conducted allowed for detailed verification of the hypotheses adopted in the work. It should be accepted that the freedom of conscience and confession of minors was not a recognised and accepted value in every historical era. The evolution of legal norms demonstrates

that a legal status recognising these freedoms to a significant extent has only recently been achieved.

Moreover, it should be acknowledged that, in practice, the freedom of conscience of minors is, at least in the Polish reality, mainly an issue of scientific and theoretical relevance. Factors conducive to this state of affairs seem to include a certain passivity of the beneficiaries of this freedom or their legal guardians that stems from reasons such as the influence of social control, a low degree of impact in the event of violations of this freedom or, finally, the low positioning of issues related to religion in the hierarchy of importance in everyday life.

In summarising the conducted research, it should be emphasised that, due to the breadth of the topic, some detailed issues concerning the investigated problem have only been signalled, which leaves an open field for further research on this topic. Taking into account the current international situation involving the migration of culturally foreign populations to Europe, one may be tempted to say that the issue of guaranteeing freedom of conscience and confession may become extremely important in the near future. It may happen in the future that a case similar to "Lautsi v Italy" takes place in Poland as well.

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[1] The bibliography uses the following method of arrangement: Sources and collections of case law (jurisprudence) in each group are arranged chronologically, while studies and websites are arranged alphabetically.

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1. Collections of Polish jurisprudence

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1.3. Case law of common courts

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1.4. Case law of administrative courts

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