

Paulina Jabłońska

Children's Right to Freedom of Religion



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Warszawa 2024

*This book would have never been born
without the selfless support of my friend.
Thank you for being who you are and for
helping me become the person I am today.*

Waleed, thank you for everything!

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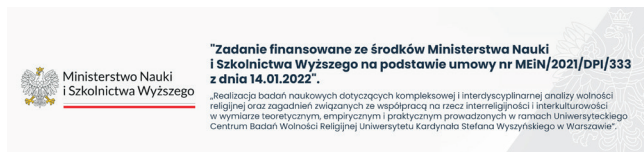
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(*Left to right*) The author's father
Robert Jabłoński and his brother
Krzysztof, 1966



“

A child is a person who has its own dignity and freedom, as well as its civic position in the family, at school and within the society. We just need to create right condition for the child's development, wherever it stays. That is the foundation of esteem and respect for their uniqueness and individuality.

– Anna Komorowska

The wife of the President of the Republic of Poland, Chair of the Honorary Committee of the Year of Janusz Korczak

PREFACE

On Freedom that Inspires Hope

Paulina Jabłońska, PhD, has prepared another publication on religious freedom, this time focusing on the teaching of religion in Polish public schools. The issue raised by the Author concerns the freedom of conscience and confession of minors in light of secular and canon law. This work constitutes a detailed exploration of the issues presented in the previous book: *Freedom of conscience and confession of minors in Poland from 1918 to 2015*. Both books were published by the University Centre for Religious Freedom Research which operates at the Cardinal Stefan Wyszyński University in Warsaw.

Before reading this book, I would suggest for readers to stop for a brief reflection based on the words of Christ from the Gospel: “If you remain in my word, you will truly be my disciples, and you will know the truth, and the truth will set you free” (John 8:31–32). In Christianity, the only source of Truth, and consequently also of freedom, is God. Recognising this certainty, or axiom, one must focus on the person of man who will experience freedom only as long as he delves into the truth. This is not a Sisyphean task, because according to Revelation and ecclesiastical dogma man is created in the image and likeness of God, and this also means that in every human person there are germs of truth and freedom. However, a teacher is needed to help find, bring out and develop them.

The role of religion teachers in this respect cannot be overestimated, because, while one can agree with this thesis or not, there is a lot of truth in the statement that today “many children are orphans

with parents” (Alexander Mitscherlich). Therefore, the teacher, any teacher who acknowledges at the same time that he/she is an educator, should consider this good advice: “The important thing is not so much that every child should be taught, as that every child should be given the wish to learn” (John Lubbock).

Ms. Paulina Jabłońska, PhD, a specialist in legal sciences (secular law and canon law), has prepared research material that is ready to be used in practice, while simultaneously maintaining scientific rigour with regard to the content and methodology of research and the development of its results. It involves good theory, but also synthesis and properly targeted actionable conclusions.

The reader will not find models for teachers of religion in this book, but in the introduction one can recall figures that played the important role of authorities in the recent history of Poland. One such person is Blessed Father Jerzy Popiełuszko, whose teaching also contains the following message: “Life must be lived with dignity, for we only get one. To preserve the dignity of the human person is to remain free, even in external enslavement. To remain yourself – to live in truth – this is the minimum so as not to blur within oneself the image of a child of God”.

I hope that after carefully reading this book, each reader will join the congratulations due to its author. Through her research, Paulina Jabłońska, PhD provides a scientific commentary, made from the Polish perspective, on the Convention on the Rights of the Child adopted by the United Nations on 20 November 1989, in which we read that every human being is a child until reaching adulthood. Therefore, “humanity should give each child the best it has to offer” and provide them with “a happy childhood and the ability to exercise their rights and freedoms, both in their interest and in the interest of society”.

Pope Francis, a loving Educator of the young generation in the modern world, teaches that “education is an act of love, it is the act of giving life. And love is demanding – it requires the commitment

of the best abilities, awakening of the passion of patiently following one's own path together with young people". Freedom is one of the most important rights of the human person, and everyone who undertakes the effort of educating and teaching others to enjoy freedom deserves eternal gratitude. This group of people certainly includes Paulina Jabłońska, PhD, who is able to convey "difficult" legal topics in the "understandable" language of "pedagogy" and can formulate "easy" practical indications. This book inspires hope, because its content breathes the spirit of freedom whose source is the Truth, and which therefore cannot be decreed by law. True freedom is the privilege of people who acknowledge the truth, believe in it, live according to it, and are capable of spiritual and intellectual-volitional responsibility and self-discipline.

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

INTRODUCTION

Until recently, Poland was a country where religion, unlike politics, united the nation, thus allowing it to survive even the greatest historical turmoil.

Meanwhile, today's reality forces the Catholic Church to increasingly defend religious freedom. We should realise that today's world is immersed in globalism. People have become incredibly mobile, and because of open borders people of different faiths now live alongside each other. It is the task of the Church to care for peace and unity of societies. For this reason, the Church conducts a dialogue with various faiths and religions which is not, however, an expression of relativism or religious syncretism. The Church proclaims belief in Christ, seeking the Truth together with others, according to the teaching of St. Thomas Aquinas, because Truth always comes from the Holy Spirit, regardless of who preaches it.

Over and above this, yet another force opposing religious freedom is growing in importance – i.e. secularism, which is characterised by hostility towards religion, limiting the role of believers in public life. Secularism combats religion, seeks to introduce freedom from religion, which consists, for example, in the denial of history and religious symbols that are an expression of the identity and culture of a given nation.

From the point of view of an individual, freedom of conscience and religion is among the fundamental and most important values. It is also the most personal sphere of functioning of human beings, because it refers to intimate, internal aspects of human life. Identification with a particular religion or world-view is an expression of one of the primary needs of human beings, that is the need

to know, to explain to oneself the structure of the world and the way the world works, as well as the desire to know the meaning of one's own existence.

Interest in the issue of freedom of conscience and confession is currently very high. This can be seen, for example, in the number of studies that have been pursued in various fields of legal sciences, such as religious law, canon law, constitutional law, and the history of the state system and law. The subject of the present compendium stems from my personal interests. Due to the fact that the issue of religious instruction and the freedom of conscience and confession of minors is an interdisciplinary problem, my work mainly combines the achievements of pedagogical sciences and legal sciences, which in turn corresponds to my education obtained during my law studies and postgraduate pedagogical studies.

Religion has always played a significant role in the history of the Polish people, which is why many families placed an emphasis on the Catholic upbringing of children and youth. For this reason, parents served as the first teachers of their own children, introducing them to the basic tenets of the faith. The Church then joined in this process, entrusting religious education to nuns, priests as well as lay people.

The issue of providing religious instruction to minors in public schools and the guarantee of freedom in the choice of one's beliefs is of vital importance, because during childhood these persons – who naturally do not have a fully developed personality and world-view – are particularly susceptible to external influences, which can interfere not only with their inner freedom of conscience, but above all with its external manifestation. The issue of providing minors with the possibility of having and pursuing religious teaching, as well as the possibility of having and exercising freedom of belief, is still relevant.

What is more, observation of political and social events taking place in Europe leads to the assertion that the issue of religious

instruction and freedom of conscience and confession of minors is actually becoming increasingly important.

The dynamics of population changes, caused by the influx of immigrants from Africa and from the Arab world, leads to changes in the religious structure of individual countries, thus far primarily in Western Europe. We should consider the possibility that due to Poland's membership in the European Union, in the future some immigrants will end up in the territory of the Republic of Poland. In light of the reluctance to assimilate and accept European norms, which is evident in some countries (where problems with immigration have already occurred), it is important to create and maintain institutions guaranteeing, on the one hand, freedom of beliefs and, on the other hand, protection against forced proselytism.

The subject of the study is an analysis of solutions aimed at the implementation of religious instruction in Polish public schools and the implementation of guarantees of freedom of conscience and confession of minors, contained in both secular law and canon law.

The subject of the conducted research covers the entirety of legal regulations concerning the issue of religious instruction and the freedom of conscience and confession of minors in Polish law, as well as the regulations of canon law concerning this matter.

In turn, the object of research are persons defined as minors. This term is understood to mean human beings who, due to the insufficient degree of ability to perceive the legal effects of their behaviour resulting from a lack of knowledge or life experience, cannot function independently in the sphere of legal transactions.

This book consists of five chapters. The first chapter of the work is devoted to introductory considerations, defining the scope of concepts related to freedom of conscience, freedom of confession, religion, as well as the evolution of the perception of minors in various legal systems. In the second chapter I present the prevailing legal situation in Poland, which provides the basis for religious teaching in public schools. In the third chapter of the work, I discuss the legal

regulations regarding the teaching of religion in the light of canon law. Meanwhile, the fourth chapter presents the jurisprudence of the European Court of Human Rights, which clearly shows that the presence of religion in Polish public schools is permissible under certain conditions. In the last chapter I present the case law of the Constitutional Tribunal in the field of freedom of conscience and confession, both in the individual and institutional sense, before the adoption of the current constitution, and after the entry into force of the Constitution of the Republic of Poland of 2 April 1997.

I based my research mainly on the analysis of available sources in the form of literature of the subject and legal acts. I also used digitised resources available on websites. The collected material was examined using dogmatic and legal analysis, which is a basic tool in the case of research works in the field of legal sciences. The literature of the subject included both cross-sectional publications as well as monographs. In addition to the literature of the subject, the research also included an analysis and assessment of the legal status established on the basis of legislative acts.

FREEDOM OF CONSCIENCE AND CONFESSION OF MINORS

In present times, freedom of conscience and confession is undoubtedly one of the foundations of a democratic society. The seriousness with which freedom of conscience and confession is currently treated is confirmed by the fact that this freedom is recognised, regulated and guaranteed by currently applicable acts of constitutional rank.

Freedom of conscience and confession belongs to subjective rights. In a mature form, it is granted to every human being regardless of their nationality, place of residence, stay, sex, race, education and, in principle, age (in practice, the scope of independent exercise by non-adults is limited and takes place through the intermediation of guardians). Freedom of conscience and confession is therefore a personal right belonging to all human beings. This freedom protects, on the one hand, the social spheres of existence of individuals, and on the other hand, the functioning of churches and religious associations as communities of believers.

1. Teaching of religion in Polish public schools

After Poland regained its independence, freedom of conscience and confession was guaranteed first by ministerial regulations, and then by the Constitution of the Republic of Poland of 17 March 1921. From the very beginning, religious instruction at schools was conducted by the Catholic Church and other faiths. The multi-religious character of the country was strengthened by successive

school reforms (1918–1939) through an efficiently reconstructed network of schooling institutions and the professional training of teachers. School curricula for teaching of the Catholic religion were prepared by the Conference of Polish Bishops and approved by the Ministry of Education. It was a very fruitful period in the development of legislation, curricula and textbooks in the field of religious instruction¹.

The time of World War II (1939–1945) was a period of terror, a struggle for survival, where any open activity of Polish schools was out of the question. At that time, so-called underground education was organised, which in addition to basic lessons were often supplemented with prayer. In the Polish People's Republic, which was a non-sovereign state dominated by the USSR, with an entire apparatus of repression against the activities of the Catholic Church, the situation with regard to teaching of religion was different but also very difficult. In the years 1945–1961, teaching at school still took place, but its extent was gradually reduced, which did not promote thinking about the comprehensive development of students, including religious development, because the only “correct” point of view had to be aligned with Marxism². The legal basis for teaching religion in public schools after 1945 was provided by Article 120 of the March Constitution, which was kept in force pursuant to Circular No 50 of the Minister of Education Czesław Wypych of 13 September 1945. This document changed the status of teaching of religion, which ceased to be a compulsory subject³.

In the years 1961–1989, the teaching of religion took place in churches and catechetical points. The nature of catechesis was similar to that of a school subject. The division into schools and classes

¹ A. Kiciński, *Tra parrocchia e scuola. L'evoluzione della catechesi in Polonia negli anni 1918–2001* (I parte), “Salesianum”, 67(2005), No. 2, pp. 331–357.

² *Ibid.*, p. 358–366.

³ https://opoka.org.pl/biblioteka/T/TA/TAK/historia_katechezy.html [accessed 31.07.2022].

was preserved, there were notebooks and textbooks. At each diocesan curia there were catechetical faculties, conducting pedagogical supervision modelled on state boards of education. In 1979, there were 12,389 catechetical points established in church buildings, and 8,592 in private homes. In 1982, there were already 13,840 catechetical rooms at churches, 7,249 in private houses and 129 in other locations. In 1987, catechesis was taught in 15,809 rooms at churches and 6,398 rooms organised in private homes. In 1971, a new catechetical curriculum was issued⁴, which was to introduce the kerygmatic approach, while the neo-scholastic style of Deharbe's catechisms generally prevailed. Attempts to modernise the method by prominent catechists, such as W. Gadowski, were accepted more as issues of formal catechesis⁵ than ones creating communities of living faith⁶.

The renewal of socio-political life, which took place after the transformation of 1989, enabled the return of catechesis to public schools and kindergartens. As emphasised in the instruction of the Ministry of Education of 3 August 1990, the basis of this decision was the appreciation of the role of Christian ethical values in the process of education and the affirmation of the right of parents to educate their children in accordance with their own religious beliefs.

The teaching of religion returned to schools in 1990 and the Catholic Church had to tackle the task of adapting catechesis to the new educational reality in a very short time. A report of the Commission for Education of the Polish Bishops' Conference (i.e. Polish Episcopal Conference) stated that in the 2004/2005 school year, 98.1% of children participated in religious classes in

⁴ Konferencja Episkopatu Polski, *Ramowy program katechizacji*, Warszawa 1971.

⁵ B. Bednarczyk, *Ksiądz Walenty Gadowski w walce o lepszą metodę nauczania religii*, "Katecheta", 2(1958), No. 2, pp. 110–119.

⁶ A. Kiciński, *Tra parrocchia e scuola. L'evoluzione della catechesi in Polonia negli anni 1918–2001* (II parte), "Salesianum", 67(2005), No. 2, pp. 479–505.

primary schools, 97.2% in lower secondary schools, 93.3% in general education upper secondary schools, and 92.7% in technical and vocational upper secondary schools⁷.

The Centre for Public Opinion Research (Centrum Badań Opinii Społecznej – CBOS) has been studying participation in religion classes since 2010, based on the statements of the respondents. CBOS emphasises that “the analysis of the data indicates that participation in religious lessons is not a simple consequence of belonging to a particular religious community, but is conditioned by both religious, social and environmental factors”⁸. CBOS states that “religious education at school to some extent sustains students” religiosity instilled within their families but does little to attract those who were not brought up with religion at home”. This report shows that around 92% of respondents declared participation in catechetical rooms, and about 81% after religious instruction returned to schools. Subsequently, there was an upward trend, which lasted until 2010, with the exception of 1996. A reversal of the trend happened in 2010, and the following years indicate a consolidation and strengthening of the downward trend. In 2016, about 75% of the students surveyed declared that they participated in religious classes⁹. In 2018, this percentage fell to 70% and in 2022 to 54%. In Lublin in 2021, 91% of students attended religious classes in primary schools. At the same time the percentage in Katowice was 86%, while in Łódź it amounted to 71.5% of students. According to government data, in the 2019/2020 school year there were 732 posts for ethics teachers and 34,119 posts for teachers of religion¹⁰.

⁷ S. Łabendowicz, *Sprawozdanie z działalności Komisji Wychowania Katolickiego Konferencji Episkopatu Polski w latach 1999–2004*, <http://katecheza.episkopat.pl/sprawozd.htm> [accessed 31.07.2022].

⁸ M. Gwiazda, *Religia w szkole – uczestnictwo i ocena*, in: Krajowe Biuro Ds. Przeciwdziałania Narkomanii, *Młodzież 2016*, Warszawa 2016, p. 143.

⁹ *Ibid.*, pp. 141–142.

¹⁰ <https://oko.press/masowy-odplyw-uczniow-z-lekcji-religii-nowe-badanie-cbos/> [accessed 31.07.2022].

Contemporary media are critical of the presence of religious education in Polish schools. However, it is important to remember that arguments against religious instruction in schools mostly focus on false or inaccurate information¹¹. Information appearing in the media that a teacher of the Catholic religion does not have the appropriate qualifications to teach this subject is false, because such a teacher has the same pedagogical preparation as any other teacher in Poland. The demand presented in media outlets, that the teaching of the Catholic religion should be transformed into religious studies, is one of the most difficult and complex issues. However, it should be remembered that in Poland it is the parents who have the right to raise their children in accordance with their own beliefs, and the fact that Poland, although predominantly Roman Catholic, is open to other religions and beliefs. Therefore, teaching of religion in schools is a great achievement of European culture in the field of respect for freedom of conscience and religion. Cultural studies had already been taught at school during the rule of the communist regime and were geared towards ridiculing believers, in accordance with the idea – attributed to Karl Marx – that “religion is the opium of the people”. And despite the fact that it is presently one of the fields of study, the Catholic Church in Poland was a promoter of the confessional nature of religious instruction at schools which, however, is not exclusively Catholic, but respects the free choice of parents or young people. The other Churches in Europe have chosen different paths – from religious studies to multi-denominationalism. Today, however, they are beginning to learn about the assumptions and implementation of religious teaching in Poland.

The Catholic Church has put in a tremendous amount of organisational work to adapt to the new educational conditions during the period of democracy. It prepared the necessary catechetical

¹¹ <https://www.polityka.pl/tygodnikpolityka/kraj/1649200,1,wszystko-czego-nie-wiemy-o-lekcjach-religii-kto-i-za-co-wlasciwi-placi.read> [accessed 31.07.2022].

documents meeting the highest educational standards. It published complete educational packages for all types of schools and kindergartens. It educated a whole host of professional teachers of religion who treat the teaching of religion at schools as a specific form of catechesis. The integration of religion into the modern system does not yet have its own proper image, because the efforts in teaching, schooling and upbringing that constitute the essence of the education process are not yet coherent. For this to happen, it is necessary to appreciate the educational activities carried out between the school, the family, the Church and other institutions. It is worth adding that continuous educational reforms consume most of the energy of educational institutions, including the Catholic Church, when the focus should be on creating the right climate for educational efforts¹².

The results of sociological research carried out with the support of the European Bishops' Conference showed the unique position of Poland compared to almost all countries of our continent. Our country turns out to be the most religious country in Europe, one could even say the religious leader of the continent. It is in Poland that the highest percentage of people believe in God and trust the Church and where the most people want to raise their children religiously. It constitutes a great asset and a source of hope for the future¹³.

However, there is no guarantee that this will always be the case, which is why it is especially important right now to deepen our religiosity. A special role is played by catechisation in schools, which today must help students in developing their own identity, strengthening their personality, and resisting threats. It should help students so that they themselves can develop the skills they need in order to exercise freedom responsibly in this increasingly complex world. This task can be realised when the school transforms from an

¹² <http://dx.do.org/10.18290/rt.2018.65.11-2> [accessed 31.07.2022].

¹³ P. Zulehner, H. Denz, *Wie Europa lebt Und glaubt. Europäische Wertestudie*, Düsseldorf 1993, pp. 17–47.

institution of knowledge transfer into a space that educates young people, enabling them to achieve mature humanity, which should also involve a contribution of the Church¹⁴.

Every time has its own threats and saying things like “nothing can be done” or “such are children, such is youth, such are the times, and such is life” does not change anything and only causes discouragement. New forms should be tried, without treating the existing ones as unquestionable dogma. It is necessary to discuss, exchange experiences and imitate those who have achievements¹⁵.

2. Etymology of the terms “religion”, “confession”, “freedom of confession”, “freedom of conscience and confession”, “conscience”, and “freedom of conscience”

Religion is a very complex phenomenon, so it is difficult to provide a single definition, containing all the essential elements. Dictionaries of the Polish language describe the phenomenon of religion very similarly, as they indicate that religion is: “faith in God and worship rendered to Him, divine cult, way of praising God, faith, confession, church, rite, principles of faith and morals, a set of beliefs regarding the existence of God or gods, the origin and purpose of life, as well as moral principles and rites related to these beliefs, a set of beliefs regarding the genesis, structure and purpose of the existence of man, humanity and the world, faith in God, deities and immortality of the soul and associated behaviours and organisational forms”. The term “religion” is derived from the Latin language, in which the noun *religio* means “fear” or “fear of God”¹⁶.

¹⁴ D.A. Muskus, *Szkoła środowiskiem katechetycznym. Katechetyczne studium interdyscyplinarne*, Kałwaria Zebrzydowska 1999, pp. 57–72.

¹⁵ D. Oko, *Przełom – wyzwanie i szansa*, Kraków 1998, pp. 188–189.

¹⁶ *Religia*, in: *Słownik języka polskiego*, vol. 5, edited by J. Karłowicz, A. Kryński, W. Niedźwiedzki, Warszawa 1900, p. 510; *Religia*, in: *Inny słownik języka polskiego*, vol. 2, edited by M. Bańko, Warszawa 2000, p. 432; *Religia*, in: *Uniwersalny słownik języka polskiego*, vol. 4, edited by S. Dubisz, Warszawa 2003, p. 63; *Religia*,

While discussing the attempts of sociologists to define religion, W. Piwowarski notes that “none of the sociologists has formulated such a definition of religion that could obtain universal approval”. On this occasion, he cites the opinion of I.M. Yinger, who claims that “hundreds of definitions of religion can be found in one hour”, as well as that of C.Y. Glock, who believes that “there are as many definitions of religion as there are people who formulate them”¹⁷.

One of the frequently cited ancient interpretations of this term was presented by Cicero, according to whom the term comes from the Latin *relegare* – “to read again”. Another origin of this term was indicated by Lactantius, according to whom the term “religion” comes from the verb *religare* (to bind again, to bind together). In turn, St. Augustine, a representative of Christian philosophy, derived this term from the Latin verb *reeligare*, meaning “to choose again” and related this activity to choosing God as the object of worship¹⁸.

Philosophical and theological reflections on what we currently define by the term “religion” can be found in the works of St. Thomas Aquinas. The structure of Aquinas’s work *Summa Theologiae* shows that it concerns the interpersonal relationship between man and God, how man seeks God through his actions, performed through divine virtues, natural virtues and bestowed moral virtues, as well as the gifts of the Holy Spirit. Aquinas defines religion as “man’s relationship with God”, and provides reasons for such a relationship: “Only God can we worship as a perfect principle, to which our renewed choice should refer as the supreme (ultimate) goal”¹⁹.

in: *Nowy słownik języka polskiego*, edited by E. Sobol, Warszawa 2002, p. 836; *Słownik języka polskiego*, <http://sjp.pwn.pl/> [accessed 12.10.2014].

¹⁷ Cf. W. Piwowarski, *Socjologiczna definicja religii*, in: *Socjologia religii. Wybór tekstów*, edited by F. Adamski, Kraków 1984, p. 53.

¹⁸ Z. Zdybicka, *Czym jest i dlaczego istnieje religia?*, in: *Religia w świecie współczesnym. Zarys problematyki religijologicznej*, edited by H. Zimoń, Lublin 2000, p. 56; Z. Drozdowicz, *Religia*, in: *Zarys encyklopedyczny religii*, edited by: idem, Poznań 1992, p. 299.

¹⁹ Cf. St. Thomas Aquinas, II-II 81, 1.

This definition of religion contains the most important elements of the religious relationship, i.e. the recognition of God as the source of one's existence and the conscious choice of Him as the highest value that gives meaning to human life. There are certain issues with the meaning of the term *religio*. In the writings of St. Thomas Aquinas, this word means a potential part of the virtue of justice²⁰.

The term *religio* means the state of monastic life²¹, it is also an expression of faith, hope and love²². In contemporary literature, there are many proposals for defining religion. According to E. Durkheim, "Religion is a system of interrelated beliefs and practices relating to sacred things, that is, the separated and forbidden things, the beliefs and practices that unite all believers into a single moral community referred to as the church"²³. The French sociologist emphasises that the idea of religion is inseparable from the idea of the church and therefore religion is collective in nature. A differing opinion was expressed by J. Wach and G. Mensching, for whom what is important in religion is the objective element of religious experience, which is the experience of the *sacred*, and which does not have a subjective, i.e. illusory nature²⁴. The English philosopher and sociologist H. Spencer saw the essence of religion in the recognition that the world is a mystery, along with everything that surrounds it. A mystery that requires an explanation²⁵. This mystery expresses all that is supernatural and is a characteristic feature of all religions; in this concept, it is a feature of both religion and science. The differences are evident in the peculiarities of religious beliefs, their development in different communities independently of each other, and their immense vitality despite destructive phenomena. This concept also introduces the existence of

²⁰ See: *ibid.*, q. 80–100.

²¹ See, e.g. *ibid.*, q. 186–189.

²² See: *ibid.*, q. 101 a. 3 ad 1.

²³ E. Durkheim, *Elementarne formy życia religijnego. System totemiczny w Australii*, Warszawa 1990, pp. 41–42.

²⁴ G. Kehrer, *Wprowadzenie do socjologii religii*, Kraków 2006, pp. 22–23.

²⁵ K. Kaczmarek, *Herbert Spencer a problemy socjologii religii*, Poznań 2007, p. 16.

some real basis for religion, because no human institution could exist if it was based on complete falsehood²⁶. P.L. Berger, on the other hand, linked religion with man more closely, because he understood it as the totality of man's efforts to establish a sacred order of things – the cosmos²⁷.

One researcher questioning the value and usefulness of the term and the concept (of religion) is W.C. Smith, who claims that the word religion is “misleading, superfluous and deforming”²⁸. Another researcher criticising the category of religion as a *cross-cultural analytical concept*²⁹ is T. Fitzgerald. He believes that the category of religion adopts its theological understanding, according to which the paradigmatic or ideal type of religion is a given form of Christianity, and that any attempt to construct and apply the idea of religion, which permanently rejects this theological assumption, is doomed to failure.

J.M. Bocheński was of the opinion that “religion [...] it is a name that cannot be defined analytically in general. There are simply too many different phenomena signified by this word”³⁰. U. Dierse observed that there is no overarching concept dedicated to all the religions of humanity, nor is there a concept that encompasses all that is now signified by the term “religion”, and that all the existing concepts of religion taken together do not include everything that is understood as religion³¹.

One characteristic feature of religion, which is indicated by most definitions – outside of a purely sociological perspective – is its transcendence³². According to most views, religion must refer to God,

²⁶ Ibid., pp. 18–19.

²⁷ Kehrer, *Wprowadzenie*, p. 25.

²⁸ W.C. Smith, *The Meaning and End of Religion. A New Approach to the Religious Traditions of Mankind*, New York 1964, p. 50.

²⁹ See: T. Fitzgerald, *The ideology of Religious Studies*, New York – Oxford 2000.

³⁰ J.M. Bocheński, *Logika religii*, in: idem, *Dzieła zebrane*, vol. 6: *Religia*, Kraków 1995, p. 40.

³¹ See: U. Dierse, *Religion*, Basel 1992, k. 633.

³² M. Pietrzak, *Prawo wyznaniowe*, Warszawa 2005, p. 11; Z.J. Zdybicka, *Religia a wspieranie człowieka*, in: *Religia a sens bycia człowiekiem*, edited by idem,

deity or deities, or an otherwise understood higher power, located beyond the human mind, the possibilities of sensory cognition, and often also beyond human understanding. It is associated with supernatural forces, which are more powerful than man and are not bound by human limitations that arise from nature, and it is placed on a level other than natural³³.

In this context, it is worth paying attention to the views of judicial jurisprudence. In its 1961 and 1965 rulings, the U.S. Supreme Court³⁴ introduced a broad definition of religion as a phenomenon that is based on belief in God and on other beliefs, and which includes Buddhism, Taoism, ethical culture, and even secular humanism³⁵. This position referred to the thought of the Protestant theologian P. Tillich, who believed that the essence of religious experience is that which constitutes for man the depth of life, the highest value, something that is taken most seriously, and accepted as given, without any conditions³⁶. 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 ECHR³⁷. It was determined that the practice of the country in which the problem arose should always be referred to.

The term “confession” also poses certain problems. Some thinkers believe that the terms “religion” and “confession” have similar meaning. In turn, there are opinions among legal scholars and commentators

Lublin 1994, p. 5.

³³ Kehler, *Wprowadzenie*, p. 26.

³⁴ U.S. Supreme Court ruling of 19 June 1961, *Torcaso v. Watkins*, 367 U. S. 488; U.S. Supreme Court ruling of 8 March 1965, *United States v. Seeger*, 380 U. S. 163, <https://supreme.justia.com/cases/federal/us/367/488> [accessed 20.10.2016].

³⁵ M. Potz, *Granice wolności religijnej. Kwestie wolności sumienia i wyznania oraz stosunku państwa do religii w Stanach Zjednoczonych Ameryki*, Wrocław 2008, pp. 68–69.

³⁶ *Ibid.*, p. 70.

³⁷ Judgment in the case of *Kimlya and Others v. Russia*, No. 76836/01 and 32782/03 of 1 October 2009, HUDOC: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-119363> [accessed 20.10.2016].

that the term “confession” also refers to other beliefs based on a non-religious worldview, such as atheism³⁸. It should also be noted that the literal definition points to the treatment of the concepts of “religion” and “confession” as synonymous expressions³⁹.

The term “confession” is difficult to define, but it has a certain established and generally accepted meaning. A definition of the term “confession” is given by Wikipedia: “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’, and in religious studies and the law of Anglo-Saxon countries also as a ‘religious denomination’. Sometimes, although imprecisely, a religious association is referred to as a confession”⁴⁰.

In Polish legislation, the term “confession” was defined in the Act of 4 March 2010 on the national census of population and housing in 2011, in Article 2 point 12, which stipulates that whenever the Act refers to “confession – religious affiliation – it is understood as formal participation or emotional connection of a person with a particular religious confession, church or religious association”⁴¹.

The term “confession” has its place in religious studies, where the term is used interchangeably with such concepts as “denomination”. In general, these terms mean a specific religious option and mainly refer to Christian Churches as well as ecclesial communities that were established as independent communities following the division of the Church after 1517⁴². In the Polish legal language,

³⁸ Cf. J. Szymanek, *Wolność sumienia i wyznania w Konstytucji RP*, “Przegląd Sejmowy”, 14(2006), No. 2(73), pp. 49–54.

³⁹ *Mały słownik języka polskiego*, edited by S. Skorupka, H. Auderska, Z. Łempicka, Warszawa 1968, p. 952.

⁴⁰ <https://pl.wikipedia.org/wiki/Wyznanie> [accessed 15.05.2020].

⁴¹ P. Kroczyński, *Prawo wewnętrzne związków wyznaniowych w perspektywie organów władzy publicznej: Klauzule generalne*, Kraków 2017, pp. 17–18.

⁴² See: *Konfesja*, in: H. Vorgrimler, *Nowy leksykon teologiczny*, edited by T. Mieszkowski, P. Pachciarek, Warszawa 2005, p. 152 and *Denominacja*, in: *ibid.*, p. 62.

the term “confession” has become the equivalent of the term “religion”⁴³. In Polish legislation, the term is collective but also individual in scope, which is contrary to the approach to religion found in religious studies. The term “freedom of confession” is defined as “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”⁴⁴. The most important guarantee of freedom of conscience and religion is found in Article 25(2) of the Constitution of the Republic of Poland of 2 April 1997, which reads as follows: “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”⁴⁵.

The Constitution of the Republic of Poland contains two expressions: “freedom of conscience and confession”, as referred to in Article 48(1), as well as “freedom of conscience and religion” in Article 53. In each of these terms, the word “freedom” occurs (in the singular).

The term “freedom of conscience and confession” has a longer tradition in Poland, and is mostly found in ratified international agreements. The introduction of the term “freedom of religion” alongside “freedom of confession” into the Constitution is evaluated and explained in various ways in the literature of the subject⁴⁶. P. Tuleja and M. Kasiński are of the opinion that wherever the Constitution, international agreement or a law applies the formula of freedom of confession,

⁴³ See: Article 67 (2), Article 81 (1) and (2), Article 95 of the Constitution of 1952; Article 53 (7), Article 233 (2) of the Constitution of the Republic of Poland of 1997.

⁴⁴ Pietrzak, *Prawo wyznaniowe*, p. 20.

⁴⁵ Constitution of the Republic of Poland of 2 April 1997, *Journal of Laws of 1997*, No. 78, Item 483.

⁴⁶ Cf. H. Misztal, *Konstytucyjne gwarancje wolności sumienia i wyznania*, in: A. Mezglewski, H. Misztal, P. Stanisławski, *Prawo wyznaniowe*, Warszawa 2011, p. 67; J. Krukowski, *Polskie prawo wyznaniowe*, Warszawa 2005, p. 73.

it is equivalent to freedom of religion⁴⁷. Father J. Krukowski believes that the terms described above are identical in terms of content, although according to him the concept inscribed in the Constitution of the Republic of Poland takes precedence. The term “freedom of conscience and religion” is used by L. Garlicki in his considerations, who does not get into terminological issues, writing “freedom of conscience and religion, i.e. confession”. A similar position is taken by J. Boć, who in his commentary on the Constitution of the Republic of Poland, omits the terminological nuances of the concept in question. M. Pietrzak states that the concept of “freedom of conscience and religion” is less comprehensive than the term “freedom of conscience and confession”. He claims that the term “freedom of conscience and religion” was used in order to obtain the support of the Catholic Church for the Constitution. F. Mazurek argues that “religious freedom” is a narrower concept than “freedom of conscience and confession”. J. Osuchowski, on the other hand, believes that religious freedom “is a higher level of achievement of freedom of conscience and confession”. K. Pyclik, in turn, argues that the most appropriate term is “freedom of conscience and confession”. He also notes that the term “freedom of conscience” appeared as a result of efforts of atheistic communities, who proposed the introduction of this term⁴⁸.

On the basis of the presented positions of authors considering the essence of the above-described concepts, it should be considered that some of them assume that such terms as “religious freedom” and “freedom of conscience and confession” can be treated as synonyms and can therefore be used interchangeably. Freedom of conscience and confession has been recognised as a right requiring legal protection by both international law and national law. Polish law,

⁴⁷ P. Tuleja, *Wolność sumienia i religii*, in: *Prawo konstytucyjne RP*, edited by P. Sarnecki, Warszawa 2002, p. 82.

⁴⁸ J. Sobczak, M. Gołda-Sobczak, *Wolność sumienia i wyznania jako prawo człowieka*, “*Annales Universitatis Mariae-Curie Skłodowska, sectio K – Politologia*”, 19(2012), No. 1, pp. 27–65.

that is, the Constitution of 1997, civil law, criminal law, and administrative law, contains solutions that properly protect the freedom of conscience and religion, both in terms of form and substance. It is worth mentioning that Polish legal regulations in this area meet European and universal standards.

It is difficult to find a definition of the concept of "conscience" that would satisfy both theologians and lawyers. Conscience is to some extent shaped by the totality of views, thoughts and beliefs held. Man has a natural ability to distinguish between what is good and what is evil, he has a sense of good and evil in him. This is a role, equated to innate physical abilities, such as sight or hearing, which works properly in some people, while in others it may be impaired⁴⁹. From the beginning of human existence, conscience has been seen as a factor indicating what to do and what to avoid. This understanding of conscience is reflected in the terms bestowed upon it by thinkers in each of the periods of human history. In the works of philosophers such as Cicero, St. Thomas Aquinas or Immanuel Kant, conscience is referred to as "the divine spirit", "the voice of God", "the mysterious voice", or "a signpost". In the mythology of Hellenic culture, conscience was presented in an external form, as flying creatures referred to as Erinyes. The Erinyes persecuted those who violated the moral and social order⁵⁰.

The beginning of the search for an explanation of what directs the actions of human beings so that these actions remain in conformity with the law of nature is to be seen in the considerations of the Stoics and the Pythagoreans. The former used the concepts of *synesis* and *syneides*, indicating the way of acting in accordance with the natural law, as derived from the order of the universe. Subsequent reflections on the issues of conscience were pursued by Socrates, Plato and Aristotle. In the deliberations of

⁴⁹ M. Nowacka, J. Kopania, *Czym jest sumienie, a czym być powinna klauzula sumienia?*, "Kwartalnik Filozoficzny", 42(2014), vol. 5, pp. 63–79.

⁵⁰ A. Kokoszka, *Teologia moralna fundamentalna*, Tarnów 1998, p. 106.

the aforementioned philosophers, there are attempts to define conscience as “the self”, “the inner man” or “the rational self”. The next stage in the development of the concept of conscience came with the works of Neostoic philosophers – Seneca, Marcus Aurelius or Epictetus – in which the concept of the possibility of shaping and working on one’s conscience appeared.

In the Middle Ages, the most important reflections on the essence of conscience were presented by St. Thomas Aquinas. According to Aquinas, conscience, or *coscientia*, is entangled in the dualism of good and evil. God has written down a moral law in the hearts of men, so that those who are naturally inclined to evil may attain salvation. Conscience in the works of St. Thomas Aquinas is divided into *synthesis* and *scientia*, i.e. a properly universal pattern of good behaviour and the way it is implemented in given circumstances⁵¹.

According to the definition formulated by the German philosopher G. Hegel, conscience must be defined as “the process of subjective, internal – because it takes place in the mind of the individual – determining of what is good”⁵². Importantly, according to Hegel, conscience is based on the subjective intentions and views of the protagonist, so any external factors affecting conscience lead to the annihilation of morality and goodness. Hegel included among such external forces the institutions of grace and confession introduced by the Catholic Church which, in his opinion, led to the enslavement of believers and “trampled” on their morality⁵³.

The history of philosophy also provides examples of other attempts to define the phenomenon of conscience. The concept of the moral sense, understood as the ability to distinguish between good and evil, the ability to discover the spiritual order of the world

⁵¹ See: W. Giertych, *Conscience and the Liberum Arbitrium*, in: *Crisis of Conscience*, edited by J.M. Haas, New York 1996, pp. 51–78; idem, *Jak żyć łaską. Płodność Boża w czynach ludzkich*, Kraków 2006, pp. 63–97.

⁵² G.W.F. Hegel, *Zasady filozofii prawa*, Warszawa 1969, p. 133.

⁵³ Idem, *Wykłady z filozofii dziejów*, vol. 1, Warszawa 1958, p. 249.

and the essence of being, should be mentioned here (A. Shaftsbury, M. Scheller). Other concepts include ones presenting conscience as a specific feeling, a discursive power to distinguish good from evil (R. Price, S. Clarence), as well as integrative concepts (J. Butler)⁵⁴.

It is not just the explanation of the term conscience that is debatable. The attempt to determine whether or not conscience is intrinsically linked to religious experiences is also a source of controversy. Unlike in the case of the thinkers of Antiquity and especially the Middle Ages, in later eras it was increasingly pointed out that the ability to distinguish good from evil is not related to religion. The thinkers pointed to the moral strength of man, his innate goodness resulting from nature (F. Bacon, H. Grotius), the formation of conscience by way of a social contract (T. Hobbes, J. Locke, D. Hume). In later periods the concept of erroneous conscience also appears (Z. Freud, F. Nietzsche)⁵⁵.

The dictionary of the Polish language defines the term "conscience" as "a mental property, the ability to properly assess one's own behaviour as consistent or inconsistent with accepted norms"⁵⁶. Another contemporary definition of conscience was developed by the Constitutional Court of the Federal Republic of Germany, which stated that "conscience is a truly experienced spiritual phenomenon, which sets before man a set of requirements and warnings which are for the individual a direct and evident imperative of unconditional duty"⁵⁷.

The term "freedom of conscience" is defined in religious law as the right of the individual to "freely choose to form and change views and beliefs in matters of religion"⁵⁸. In the aforementioned definition,

⁵⁴ A. Ziółkowska, *Hermeneutyczna wykładnia sumienia (Heidegger – Ricoeur)*, "Diametros", 2007, No. 13, pp. 58–90.

⁵⁵ Ibid.

⁵⁶ *Mały słownik języka polskiego*, p. 788.

⁵⁷ E. Schwierskott-Matheson, *Wolność sumienia i wyznania w wybranych państwach demokratycznych*, Regensburg 2012, p. 176.

⁵⁸ Pietrzak, *Prawo wyznaniowe*, p. 20.

there is no element of value judgement, which is characteristic of a person guided by conscience. For such a man, conscience becomes a hidden determinant of individual behaviour performed in an unrestrained way. A person who exercises freedom of conscience not only chooses his relationship to the *sacred*, but also expresses it through individual or community worship. Through freedom of conscience, man also makes choices related to everyday activities. K. Pyclik argues that “freedom of conscience is the right of an individual to freely choose, shape and change views and beliefs in matters of religion”⁵⁹. This author emphasises that freedom of conscience concerns the free formation of the worldview, which must also be understood as ideas, non-religious and atheistic concepts. According to K. Pyclik, freedom of confession is an extension or complementation of the freedom of conscience, which gives the opportunity to express one’s views. Opponents of the position proclaimed by K. Pyclik are of the opinion that freedom of conscience comes down solely to internal religious activity, while freedom of confession is the possibility of manifesting and revealing one’s beliefs and thoughts that concern this sphere of life and acting in accordance with them⁶⁰.

3. The concept of conscience in the law

It seems important to distinguish both the multitude of matters that are subject to conscience and the actions of conscience, but what is also important is the set of issues provided for by the legislator. It is therefore necessary to draw attention to several prototypes that influence the codification of guarantees concerning conscience, and then to the applicable law.

In the article entitled *Statutory Lawlessness and Suprastatutory Law* published in 1946, G. Radbruch assumed that within the law

⁵⁹ K. Pyclik, *Wolność sumienia i wyznania w Rzeczypospolitej Polskiej (założenia filozoficznoprawne)*, in: *Prawa i wolności obywatelskie w Konstytucji RP*, edited by B. Banaszak, A. Preisner, Warszawa 2002, p. 458.

⁶⁰ Sobczak, Gołda-Sobczak, *Wolność sumienia*, pp. 27–65.

there may be such a conflict that forces one to put aside the letter of the law and be guided by the spirit of justice. In this context, conscience can be used as the culmination and ultimate source of quality control of the work of government officials. This situation may occur when something that is formally presented as the law does not in fact deserve to be called a law, or when lawyers are absolutely obedient to the authorities. The above formula, called the Radbruch formula, was used in the Nuremberg trials.

Article 2 of the Resolution of the Senate of the Republic of Poland of 23 November 1990 – Rules and Regulations of the Senate, established that “Senators in their activities are guided by the good of the Nation and their own conscience”⁶¹. Therefore, for the members of the upper house of Parliament, conscience is the reason for their conduct and its ultimate guiding norm. It is worth noting that until 22 March 1993, the provision had the following wording: “The Senate exercises its duties and rights, bearing in mind the good of the Homeland and the principles of the legal order”⁶². Conscience has a similar function in Article 66 of the Act of 27 July 2001: Law on the organisation of common courts. This provision contains the following text of the oath: “I solemnly swear as a judge of the common court to faithfully serve the Republic of Poland, to uphold the law, to fulfil the duties of a judge conscientiously, to administer justice in accordance with the provisions of law, impartially, according to my conscience, to observe legally protected secrecy, and to be guided by the principles of dignity and honesty in the proceedings”⁶³. At this point, it is worth adding that when issuing a judgement, the judge is bound by the established law, which provides for certain

⁶¹ Monitor Polski (Official Gazette of the Republic of Poland) of 2014, Item 529, as amended.

⁶² Resolution of the Senate of the Republic of Poland of 19 March 1993 on the amendment of the Rules and Regulations of the Senate (Monitor Polski of 1993, No. 16, Item 128).

⁶³ A. Łazarska, *Gwarancje swobody sumienia sędziego w procesie cywilnym*, “Studia Prawnicze”, 2008, vol. 3, p. 42.

decision-making freedom, wherein the latter is in practice also decided by the judge's conscience⁶⁴. When interpreting the law, the judge is obliged to do so in accordance with his/her own conscience. "The words of the oath referring to conscience indicate the judge as the person who bears the ultimate burden of responsibility for the law applied. The last word belongs to the man, not the code. It is the man, not the code, which puts his signature under the decision"⁶⁵.

The basis of what is today called the conscience clause was the British Abortion Act of 1967, which included a provision allowing the doctor to refuse to participate in the act of abortion and the right to raise conscientious objections to abortion and sterilisation, established by the United States Congress in 1973. The right to resistance was enshrined, among others, in the German (1949), Greek (1975) and Portuguese (1976) constitutions. In today's understanding, its essence is the defence of the constitutional order, which the government violates, especially in the field of civil rights and freedoms.

The concept of conscience occurs both in Polish and EU law. The Constitution of the Republic of Poland contains the following provisions concerning conscience:

- In a sense of responsibility before God or before our own conscience, we establish the Constitution of the Republic of Poland (Preamble);
- 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 their freedom of conscience and confession and also their beliefs (Article 48(1));

⁶⁴ P. Kroczek, *Sumienie jako pozaprawna gwarancja niezależności organu władzy publicznej – postulat de lege ferenda na kanwie homilii Jana Pawła II wygłoszonej w Skoczowie dnia 22 maja 1995 r.*, in: *Beskidzkie Dziedzictwo*, vol. 4, Łodygowice 2015, p. 11.

⁶⁵ M. Najda, T. Romer, *Etyka dla sędziów. Rozważania*, Warszawa 2007, p. 10.

- Freedom of conscience and religion shall be ensured to everyone (Article 53(1));
- 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 (Article 53(4));
- 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 53 (conscience and religion) (Article 233(1)).

In addition, Article 85(3) of the Constitution of the Republic of Poland [...] proclaims the right of a citizen to perform substitute service on the terms laid down by statute, if their religious beliefs or moral principles do not allow them to perform military service. This regulation is an important complement to Article 53 of the Constitution of the Republic of Poland.

The Criminal Code in Chapter XXIV *Crime against Freedom of Conscience and Confession* provides for a fine, a penalty of restriction of liberty or imprisonment of up to two years for limiting anyone's rights due to their religious affiliation or lack thereof (Article 194 of the Criminal Code), interfering with religious acts (Article 195 of the Criminal Code), as well as insulting religious feelings (Article 196 of the Criminal Code).

In the laws concerning various Churches operating in Poland, we mainly find references to the Act of 17 May 1989 on guarantees of Freedom of Conscience and Confession. In Article 1 (1) and (2), this law provides to every citizen the freedom of conscience and confession (freedom to choose religion or belief and to express them individually and collectively, privately and publicly), which is also ensured by the Constitution. In addition, in Article 2 it specifies how citizens may act within the framework of freedom of conscience

and confession, i.e. form religious communities with their own internal constitutions; participate in rituals, duties, religious holidays; belong to churches and other religious associations; proclaim their religion or beliefs; raise children in accordance with their beliefs in matters of religion; maintain silence in matters of their religion or beliefs; maintain contacts with fellow believers; use sources of information about religion; produce and acquire items and articles needed for the purposes of worship and religious practices and use them; become priests or monks; associate in secular organisations in order to carry out tasks resulting from the religion or beliefs in matters of religion; receive a burial in accordance with the religious principles or beliefs in matters of religion.

Attention should also be paid to the provision contained in Article 3 (2) of the Law on guarantees of Freedom of Conscience and Confession, according to which the exercise of freedom of conscience and confession may not lead to evasion of the performance of public duties imposed by statutes. The oaths of the Mufti, the Members of the Supreme Muslim College, their deputies, and the Muezzin, also contain a reference to conscience: “I promise and swear to Almighty God, on the Holy Book of the Koran, that in the office which I assume, I will, according to my best understanding and in accordance with my conscience, perform my duties faithfully, while observing the provisions of the Koran and the laws of the Republic of Poland, taking care of the good of the Polish State and working diligently with the Mufti for the benefit and flourishing of the Muslim Religious Union in the Republic of Poland”. Articles 9, 11, and 19 of the Act of 21 April 1936 on the relationship of the State to the Muslim Religious Union in the Republic of Poland (Journal of Laws of 1936, No. 30, Item 240).

Pursuant to Article 7(1) of the Law on guarantees of Freedom of Conscience and Confession foreigners residing in the territory of the Republic of Poland enjoy freedom of conscience and confession on an equal basis with Polish citizens. In addition, this law provides in

Article 9 that: “1. In the Republic of Poland, the relation of the state to all churches and other religious unions is based on observance of freedom of conscience and confession. 2) The guarantees of freedom of conscience and confession in the relations of the state with churches and other religious associations include: a) the separation of churches and other religious associations from the state; b) the freedom of churches and other religious associations to perform religious functions; c) the equality of all churches and other religious associations, regardless of the form of regulation of their legal situation”.

Article 39 of the Act of 5 December 1996 on the professions of physician and dentist indicates that “a doctor may refrain from performing health services inconsistent with their conscience”. The aforementioned provision, in conjunction with Article 30 of the Act, sets the framework for a physician’s right to act in accordance with their conscience, as a result of which in the Polish legal system their conscience is both an ethical and a legal category⁶⁶. It should be added, however, that the physician is obliged to direct the patient to a real possibility for obtaining the sought health services from another doctor or health care entity, as well as to justify and record such a case in the medical records. This provision provides the grounds for the so-called conscience clause, which was the subject of the judgment of the Constitutional Tribunal of 2015, in which it was noted that “in international terminology freedom of conscience and confession is a binding, established and accepted concept, although it is understood in various ways”⁶⁷. The above-mentioned judgement also refers to the detailed genesis and content of freedom of conscience and confession, citing the ancient term “freedom of conscience” (*libertas conscientiae*) used by Boethius, the concepts of Paweł Włodkowic, the acts of the Warsaw

⁶⁶ E. Zielińska, Art. 39, in: *Ustawa o zawodach lekarza i lekarza dentystry. Komentarz*, Warszawa 2022.

⁶⁷ Judgement of the Constitutional Tribunal of 7 October 2015, file ref. No. K 12/14.

Confederation, the General State Laws for the Prussian States, as well as the liberal doctrine of the 19th century.

The statutory privilege of a conscience clause is also awarded to nurses and midwives. Article 12(2) of the Act on the professions of Nurse and Midwife provides that: “A nurse and a midwife may refuse to perform a medical order and to perform another health service inconsistent with their conscience or with the scope of their qualifications”⁶⁸. The case law of the European Court of Human Rights assumes that freedom of conscience and confession is one of the “foundations of a pluralistic democratic state”⁶⁹. Importantly, “it is, in its religious dimension, one of the most important elements that make up the identity of believers and their concept of life, but it is also a value for atheists, agnostics, sceptics and people who are indifferent faith”⁷⁰. Provisions on conflict of conscience are also found in the older case law of the Court concerning military service⁷¹. It is worth noting that European countries are also obliged to respect the right of the child “to freedom of thought, conscience and confession”⁷², as indicated by the Convention on the Rights of the Child, as well as international agreements guaranteeing the right of parents to raise children in accordance with their own beliefs⁷³.

The importance of the discussed issue is emphasised by the above-mentioned legal acts, as well as its use by the legislator

⁶⁸ Act of 15 July 2011 on the professions of nurse and midwife (Journal of Laws of 2014, No. 174, Item 1039).

⁶⁹ Judgment of the European Court of Human Rights of 13 December 2001, *Metropolitan Church of Bessarabia and Others v. Moldova*, application No. 45701/99.

⁷⁰ *Ibid.*, cited after: Judgement of the Constitutional Tribunal of 7 October 2015, file ref. No. K 12/14.

⁷¹ Judgment of the European Court of Human Rights of 6 December 1991, application No. 17089/90.

⁷² Article 14(1) of the Convention on the Rights of the Child adopted by the General Assembly of the United Nations on 20 November 1989 (Journal of Laws of 1991, No. 120, Item 526).

⁷³ Constitution of the Republic of Poland of 2 April 1997, Journal of Laws of 1997, No. 78, Item 483, Article 48.

and legal entities. Conscience and statutory law have the same normative and control dimension, but the consequences of behaviour deviating from that established in the paradigm of law or conscience are usually different. A rational legislator should use in his/her work both sources of normativity and control⁷⁴.

4. Minors in Polish law

A minor (child) is a person who, after being born, is for a long period of time unable to live independently. The immaturity of a young person during as many as the first 20 years of life is visible in all aspects of life, i.e. biological, psychological, mental and socio-moral. It is this general immaturity of the child that is the basic premise obliging the adult society to care for the child and create conditions for children to live, develop and prepare for life in the adult society. Colloquially, by the term “child” we mean a person from birth to adulthood, i.e. until the young person enters an independent life. The determination of the moment in which a child became able to direct their own conduct varies in different legal systems⁷⁵.

In contemporary Polish law, the definition of the term “child” is contained in the Act of 6 January 2000 on the Commissioner for Child Rights. According to Article 2 (1) thereof, “every human being, from conception to adulthood, is a child”⁷⁶. However, this is an internal definition of a legal act and there are no grounds to extend its application to the entire Polish legal system. Civil law has its own definition of a minor, and from the point of view of all definitions in individual branches of law, a person stays a minor the longest in civil law. Pursuant to Article 10 § 1 of the Civil

⁷⁴ P. Kroczek, *Sumienie w prawie polskim*, in: *Sumienie ujęcie interdyscyplinarne*, edited by B. Gulla, M. Cholewa, Kraków 2015, p. 36.

⁷⁵ H. Muszyński, *Wstęp do metodologii pedagogiki*, Warszawa 1971, p. 41.

⁷⁶ Act of 6 January 2000 on the Commissioner for Child Rights (Journal of Laws of 2000 No. 6, Item 69 as amended).

Code, “an adult is one who has attained the age of eighteen”⁷⁷. Therefore, we can say that the period between birth and reaching adulthood is the period when a person is a minor within the meaning of civil law. 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”. 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 sixteen. If there are important reasons, and it is found that the marriage will be compatible with the welfare of the newly created family, the guardianship court may allow the minor to marry⁷⁸. In such a situation, pursuant to Article 10 § 2 of the Civil Code, the minor reaches the age of majority.

According to the provisions of the Civil Code, a person’s legal capacity depends on age. This ability is the ability to acquire rights and obligations in the field of civil law through one’s own actions. A person who has the capacity to perform legal acts may acquire and lose rights as well as incur obligations through their own actions. According to Article 11 of the Civil Code “full legal capacity is acquired when the age of majority is reached”⁷⁹. The Code distinguishes between two categories of minors, i.e. those before the age of 13 and those between the age of 13 and 18. 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”⁸⁰. With regards to a person without legal capacity, i.e. the capacity to carry out acts binding under the law, such activities may only be performed by their statutory representative. Statutory representatives of

⁷⁷ Act of 23 April 1964 – Civil Code (Journal of Laws of 1964 No. 16, Item 93 as amended).

⁷⁸ Act of 25 February 1964 – Family and Guardianship Code (Journal of Laws of 1964, No. 9, Item 59, as amended).

⁷⁹ See: Civil Code, Article 11.

⁸⁰ Ibid.

a minor are the minor's parents or one of them. According to Article 15 of the Civil Code "Minors over thirteen years of age and partially incapacitated persons have limited legal capacity"⁸¹. A person limited in their legal capacity may, without the consent of the statutory representative, conclude contracts belonging to contracts commonly concluded in minor current matters of everyday life. Moreover, such a minor may dispose of their earnings without the consent of the statutory representative. For other legal acts, the consent of the statutory representative of the minor is required⁸².

When referring to criminal law provisions it is first necessary to define who is a minor and distinguish them from such entities as "under-age person" and "juvenile person". Although the Criminal Code often uses the term "minor", it does not indicate how this phrase should be understood. A minor is a person who at the time of committing a prohibited act was more than 17 years old but less than 18 years old.

The concept of an "under-age person" only occurs on the basis of criminal law; its definition is regulated by the Act of 26 October 1982 on Procedure in Juvenile Cases (Journal of Laws of 2016, Item 1654, as amended). It is a legal act that regulates liability for criminal acts committed by persons who, due to their age, cannot and should not be punished under the Criminal Code. The main task of the state in relation to under-age persons is to educate and prevent demoralisation, and not to apply repression and rehabilitation. The term "under-age person" is defined through enumeration. In Article 1 § 1 in conjunction with § 2 point 1 of the Act, we read that a minor is a person who:

- is under the age of 18 and is subject to measures aimed at preventing and combating amoralisation;

⁸¹ Ibid.

⁸² A. Zieliński, *Stanowisko prawne opiekuna jako przedstawiciela ustawowego na tle zdolności do czynności prawnych pupila*, "Palestra", 25(1981), No. 1(277), pp. 14–26.

- committed a criminal act (a crime or one of the listed offences) between the ages of 13 and 17;
- is under the age of 21 if enforcement and corrective measures are being applied to them (first applied before the age of 18)⁸³.

In these three age groups defined through a common category of “under-age persons”, the upper age limits depend on the under-age person’s procedural situation, determined by their amoralisation or the commission of a criminal act or the under-age person undergoing a period of consequences associated with their behaviour⁸⁴. Pursuant to the provisions of the Act on Procedure in Juvenile Cases, an under-age person after the age of 13 is responsible for committing a criminal act, while an act with the features of a crime or offence committed by an under-age person under the age of 13 may be treated only as a manifestation of amoralisation⁸⁵.

The lower age limit in Polish law, from which criminal liability is imposed, is 17 years of age at the time of commission of a prohibited act. Under-age persons may be punished already after the age of 15 in the case of commission of serious crimes, which are listed in Article 10 § 2 of the Criminal Code. This involves the most serious acts, such as:

- assassination attempt against the President of the Republic of Poland;
- basic homicide or qualified homicide;
- deliberately causing serious bodily injury, including qualified consequences;
- deliberately bringing about an event of general danger;
- terrorist attack on a ship or aircraft;

⁸³ Act of 26 October 1982 on Procedure in Juvenile Cases (Journal of Laws of 2016, Item 1654, as amended).

⁸⁴ B. Stańdo-Kawecka, *Podstawy prawne resocjalizacji*, Kraków 2000, p. 237.

⁸⁵ *Ibid.*

- intentionally causing a disaster;
- qualified rape;
- robbery;
- terrorist hostage-taking⁸⁶.

In the case of these extremely serious crimes, the judiciary may punish an under-age person as an adult, i.e. not only with a placement in a juvenile detention institution, but also with a prison sentence. However, the penalty imposed against an under-age person may not exceed 2/3 of the upper limit of the statutory sentence provided for the crime attributed to the perpetrator. In addition, the court may also apply extraordinary leniency (see Article 10 § 3 of the Criminal Code). Pursuant to Article 10 § 4 of the Criminal Code, “in relation to an offender who committed an offence after the age of 17, but before the age of 18, instead of punishment the court applies the educational, therapeutic or corrective measures provided for under-age persons, if this is supported by the circumstances of the case and the degree of development of the offender, their characteristics and personal conditions”⁸⁷. When punishing an under-age person or a juvenile, the court is primarily concerned with the intention of educating the perpetrator. A perpetrator who is under 18 years of age at the time of committing a crime shall not be sentenced to life imprisonment (Article 54 of the Criminal Code).

Summing up the above argument, it can be seen that the Polish system for under-age offenders is based on pedagogy and rehabilitation included in the Act on Procedure in Juvenile Cases, as well as on the regulation of the Criminal Code, which provides for special liability of minors as adults⁸⁸.

⁸⁶ A. Marek, *Kodeks karny. Komentarz*, Warszawa 2007, pp. 40–41.

⁸⁷ Criminal Code, Article 10 § 4.

⁸⁸ G. Grabarczyk, *Odpowiedzialność nieletnich w polskim prawie karnym*, “Studia z Zakresu Nauk Prawnoustrojowych. Miscellanea”, 1(2008), pp. 79–86.

In addition to the above-described concepts of a minor and an under-age person, there is a concept of a juvenile known in the provisions of the Criminal Code and the Labour Code. In these two legal acts, the concept of a juvenile is defined differently and refers to different groups of people. The Criminal Code contains a definition of a juvenile, which can be found in Article 115 § 10. The Act reads as follows: “A juvenile is a perpetrator who is under 21 years of age at the time of commission of a prohibited act and under 24 years of age at the time of adjudication at a court of first instance”⁸⁹. The juvenile perpetrator is responsible for the committed crime, however the legislator obliges the Court to be guided by educational considerations when imposing a penalty on the juvenile perpetrator (Article 54 § 1 of the Criminal Code). Moreover, according to Article 54(2) of the Criminal Code, the legislator provided as follows: “A perpetrator who is under 18 years of age at the time of committing a crime shall not be sentenced to life imprisonment”⁹⁰. A criminal classified in this way can hope for a lower penalty, because the court may apply extraordinary leniency towards them (Article 60 § 1 of the Criminal Code). On the other hand, in accordance with Article 70 § 2 of the Criminal Code, stricter probation conditions are provided for the juvenile offender, in the event of a conditional suspension of a sentence; this period may be longer than in the case of a “normal” offender (from 2 to 5 years, instead of from 1 to 3 years). During this time, the court must necessarily apply the supervision of a probation officer. Extending the probation period for juvenile offenders is aimed at the implementation of the educational function.

The term “juvenile” is understood differently on the basis of labour law. Article 190 § 1 of the Labour Code states that a juvenile is one who has reached the age of 15 but has not exceeded 18 years.

⁸⁹ See: Criminal Code, Article 115 § 10.

⁹⁰ Ibid.

An entire section of the Act was devoted to juveniles. It was decided that such persons would be subject to special protection. One example of this is the fact that each of them must undergo a more extensive medical examination before starting work than in the case of “normal” employees. In addition, a juvenile may perform only light work, i.e. one that does not pose a threat to their health and psychophysical development (Article 200¹ of the Labour Code). In addition, the legislator imposed an obligation on the employer to release a juvenile worker from work for the time necessary to receive education (Articles 198 and 200² of the Labour Code). And, finally, the limits of working time of such a young employee are more restrictive (no more than 8 hours a day and they may never work at night or overtime; Article 203 of the Labour Code)⁹¹.

In conclusion, certain rights are acquired already on the day one turns 13. Moreover, from that moment on, one is responsible for crimes, as well as wrongful acts under tort law. Subsequent changes arrive upon one’s 15th birthday, because from that day a person can start legal work. Meanwhile, a 17-year-old will be criminally liable for all the crimes contained in the law. If a juvenile commits a prohibited act before the age of 21, they have a chance of getting a much lower penalty.

5. Freedom of conscience and confession in the teaching of the Catholic Church

Christianity, as a monotheistic religion, preached the thesis of the exclusive truth of its faith, which led to an intolerant attitude toward all who did 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. Believers of other religious and philosophical

⁹¹ Act of 26 June 1976 – Labour Code (Journal of Laws of 1974, No. 24, Item 141, as amended).

beliefs, as well as other religious communities, both Christian and non-Christian, should merely be tolerated⁹².

Fundamental changes in the Church's position with regard to freedom of conscience and confession were only made by the Second Vatican Council. In the Declaration on Religious Freedom *Dignitatis Humanae*, adopted by the Council in 1965, one can find words of self-criticism regarding the old practices of intolerance and the Church's use of coercion in the question of faith. The principle of religious freedom was based on the dignity of the human being. The declaration states that "the human person has a right to religious freedom. This freedom means that all men are to be immune from coercion on the part of individuals or of social groups and of any human power, in such wise that no one is to be forced to act in a manner contrary to his own beliefs (*in re religiosa*), whether privately or publicly, whether alone or in association with others, within due limits no one is forced to act against their conscience [...]. It is in accordance with their dignity as persons – that is, beings endowed with reason and free will and therefore privileged to bear personal responsibility – that all men should be at once impelled by nature and also bound by a moral obligation to seek the truth, especially religious truth [...]. The right to this immunity continues to exist even in those who do not live up to their obligation of seeking the truth and adhering to it"⁹³. This right applies to believers and non-believers, as well as atheists. The declaration calls for the state to grant wide freedom to religious communities, designating a sphere in which state authorities should not interfere. It does not demand full equality for all religious organisations, because it allows the privilege of a single community. For the protection of public order and for the defence

⁹² J. Krukowski, *Kościół i Państwo. Podstawy relacji prawnych*, Lublin 1993, p. 87.

⁹³ Pietrzak, *Prawo wyznaniowe*, p. 53.

against abuses of religious freedom, it allows the state to impose its just and legitimate boundaries⁹⁴.

The Declaration advocates a secular state which takes a neutral position toward all religions, but nevertheless expresses the view that the state should create good conditions for the development of religious life. Moreover, it is opposed to a system which “imposes a single only system of education from which religious formation has been completely removed”, that is, one in which only a secular school exists. According to M. Pietrzak, the Declaration meant a re-valuation of the previous position of the Catholic Church in the field of religious freedom. On the other hand, changes in the understanding of religious freedom in the teaching of the Catholic Church were initiated by Pope John XXIII in the encyclical *Pacem in terris* (1963), which included the right to “worship God according to the requirements of one’s rightful conscience and to profess religion privately and publicly” among the basic rights of the human person, resulting from human dignity (No. 14). Regarding the basis for respecting the right to religious freedom, Pope John XXIII placed at the forefront the criterion of a righteous conscience, and not the criterion of objective truth. The concept of freedom of conscience and confession, as well as the principle of its protection in private and public life, was defined by the Second Vatican Council. Pope John Paul II was a creative continuator of the conciliar doctrine. He stated that freedom of conscience and religion is “the first and indispensable right of the human person; and even more, it can be said that, in so far as it touches upon the most intimate sphere of the spirit, it upholds the reason for the existence of other freedoms, which is deeply anchored in each person”⁹⁵.

J. Krukowski distinguishes the internal and external aspects of religious freedom. In the first aspect, it is the freedom of conscience

⁹⁴ Ibid.

⁹⁵ Krukowski, *Kościół i Państwo. Podstawy relacji prawnych*, pp. 87–91.

that is inherent in man, that is the capacity of the human person to make a moral choice according to the dictates of conscience. The starting point for respect for this freedom is the dignity of the human person, who feels the inner necessity of free action according to the dictates of conscience. Meanwhile, religious freedom in the second aspect includes the freedom to manifest one's beliefs in private and public life, and freedom from external coercion in manifesting one's religious beliefs. It is worth noting here that religious freedom in this dimension is subject to legal protection. Additionally, H. Hello emphasises that freedom of conscience and confession has two meanings: a Catholic one and a revolutionary one⁹⁶. Some scholars, such as L. Janssens, believe that religious freedom is the application of freedom of conscience. On the one hand, it is the freedom of individuals to profess their religious faith in accordance with the conviction of their conscience, and on the other hand, it is the freedom for religious communities to put their beliefs into practice and use the means necessary to do so. Here, as with all expressions of freedom of conscience, the decisive element is the dignity of the moral subject, which is the human person, and his condition as a social being⁹⁷.

N. Koshy observed that “sometimes the terms freedom of conscience and freedom of religion are used interchangeably. Freedom of conscience is combined with a strong conviction that people should be allowed to act in accordance with their religious views and not forced to change those beliefs”⁹⁸. According to J. Dudziak, “Religious freedom consists in the fact that any person, taken individually or collectively, cannot be forced or restricted in religious matters so that they have to

⁹⁶ H. Hello, *Nowoczesne wolności w oświeceniu Encyklik. Wolność sumienia – wolność wyznania. Wolność prasy – wolność nauczania*, Warszawa 2020, p. 16 et seq.

⁹⁷ L. Janssens, *Wolność sumienia i wolność religijna*, Kraków 1998, pp. 44–45.

⁹⁸ N. Koshy, *Wolność religijna w zmieniającym się świecie*, Kraków 1998, pp. 44–45.

act against their conscience”⁹⁹. Meanwhile, I. Tokarczuk believes that “religious freedom consists in the fact that all men should be free from coercion on the part of either individual men, social groups, and 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, privately and publicly, individually or in association with others, as far as is reasonable”¹⁰⁰.

The analysis presented above shows that religious freedom, often referred to as the freedom of conscience and confession, is at the forefront of all human freedom rights, whose source is the dignity of the human person¹⁰¹. Undoubtedly, religious freedom in the teaching of the Catholic Church is closely linked to the acceptance of the truth about man as a person capable of knowing objective truth, including religious truth, and at the same time the truth about man as a being capable of making a choice consisting in the voluntary acceptance of the known truth as a good, or its rejection¹⁰². This freedom has its source in human nature itself and is not granted by the State or the Church; both the State and the Church have a duty to recognise this freedom and to ensure its protection. Moreover, the right to religious freedom is rooted in the very dignity of the human person, which man can explore through reason alone, and also through the revealed word of God. Christian dogma, which affirms the free and supernatural character of the act of faith, is therefore the best guarantee of respect for religious freedom. For this reason, an attitude that rejects all absolute truth and maintains that respect for the freedom of others is possible when relativism

⁹⁹ J. Dudziak, *Granice wolności religijnej w Konkordacie zawartym między Stolicą Apostolską a Rzeczpospolitą w 1993 roku*, Tarnów 2002, p. 15.

¹⁰⁰ I. Tokarczuk, *Wytrwać i zwyciężyć*, Kraków – Lublin – Warszawa 1987, p. 173.

¹⁰¹ J. Kupny, *Godność człowieka a wymogi życia gospodarczego: przeciwieństwo czy komplementarność?*, in: *Jan Paweł II promotorem godności człowieka*, edited by A. Bałabuch, Świdnica 2007, p. 97.

¹⁰² Krukowski, *Kościół i Państwo. Podstawy relacji prawnych*, p. 88.

is accepted, is felt by Catholics as the highest form of intolerance. The basis of tolerance is therefore revealed science – a dogma that affirms in absolute terms the free and supernatural nature of the act of faith – and requires an attitude of respect and modesty in the area of religious freedom¹⁰³.

6. Minors in light of canon law

From the point of view of age, which is one of the factors determining the canonical position of natural persons in the Church, the Church legislator distinguishes three categories of persons, i.e.: adults, minors and children (canon 97 of the Code of Canon Law of 1983).

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 (canon 97 § 1 of the Code of Canon Law of 1983 and canon 909 § 1 of the Code of Canons of the Eastern Churches). A minor, before the age of seven, is called a child (Latin: *infans*) and is considered not to have reason. After the age of seven, it is presumed (Latin: *praesumitur*) that they have the use of reason (canon 97 § 2 of the Code of Canon Law of 1983 and canon 909 § 2 of the Code of Canons of the Eastern Churches). Children are not obliged to respect purely ecclesiastical laws, despite their baptism, nor do they have legal obligations in the Church, provided that no law provides otherwise (canon 11 of the Code of Canon Law of 1983). One of the main rights of a child in the Church is the right to baptism. It is the duty of parents to ensure that their children are baptised as soon as possible after birth and immediately in cases of danger of death (canon 867 § 1 and 2 of the Code of Canon Law of 1983; canon 681 and 686 § 1 of the Code of Canons of the Eastern Churches). If a child dies without being baptised and their parents

¹⁰³ P. Kroczeek, *Religious freedom in the context of education in Poland. Relationship between Polish State and the Catholic Church*, “Analecta Cracoviensia”, 47(2015), pp. 197–215.

intended to baptise them, they have the right to an ecclesiastical funeral (canon 1183 § 2 of the Code of Canon Law of 1983 and canon 875 of the Code of Canons of the Eastern Churches). According to the previous Code of Canon Law of 1917, the exercise of rights depended on reaching an age threshold assigned by law. An adult (Latin: *maior*) is one who has reached the age of 21 years, before this date is deemed a minor (Latin: *minor*¹⁰⁴).

With regard to reaching the age of majority, the Church legislator has considered it appropriate to adapt Canon law to the requirement of reaching the age of 18, which is generally accepted in modern civil law systems. As far as the relationship between parents and children is concerned, in key matters they are treated in the same way in the Code of Canon Law of 1983 as in the Code of Canon Law of 1917. In this regard, the code mentions parental responsibility, which sometimes means the lack or limitation of judicial capacity of minor children – they are represented before the courts by their parents, carers or court-appointed guardians. Such a restriction on the part of the law does not imply some privilege of the parents in this area, but above all the protection of the child’s interests¹⁰⁵. In canon 98 § 1 of the Code of Canon Law of 1983 (CPK83), it is stated that an adult person “has the right to exercise his or her rights fully”. In § 2 of said Canon, the legislator states that “in the exercise of his or her powers, a minor shall be subject to the authority of his or her parents or carers, except in those matters in which the minor, pursuant to divine or canonical law, is excluded from their authority. As regards the appointment of carers and their authority over children, the provisions of civil law must be observed”. Minors shall be subject to the authority of their parents or to the authority of legal guardians, with the exception of matters mentioned in the above-mentioned canon. Therefore, it can be said that under

¹⁰⁴ Code of Canon Law of 1917, canon 88 § 1.

¹⁰⁵ J. Sokołowski, *Instytucja rodziny w prawie kanonicznym*, “Studia nad Rodziną”, 17(2013), No. 1(32), pp. 291–313.

the law of God, minors can choose their own life status, decide on receiving baptism, entering into marriage, and joining the clergy.

Meanwhile, according to Canon law, a minor can acquire his or her own temporary residence after the age of 7¹⁰⁶, and, having obtained independence – in accordance with civil law – also his or her own permanent residence. Minors who have attained the use of reason, provided they have reached the age of 14, may perform certain acts of law independently, even without the knowledge of their parents or against their opposition, e.g. they may marry (canon 1071 § 1 No. 6 of the Code of Canon Law of 1983; canon 789 No. 4 of the Code of Canons of the Eastern Churches), appear personally in an ecclesiastical court, and answer without the permission of parents, carers and court-appointed guardians (canon 1478 § 3 of the Code of Canon Law of 1983; canon 1136 § 3 of the Code of Canons of the Eastern Churches). Moreover, minors, after reaching 14 years of age, can freely decide to receive baptism in the rite of the Latin Church or another Catholic Church (canon 111 § 2 of the Code of Canon Law of 1983; canon 34 of the Code of Canons of the Eastern Churches). Meanwhile, minors who have reached the age of 17 may be admitted to a novitiate on the basis of their own decision (canon 643 § 1 No. 1 of the Code of Canon Law of 1983; canon 450 No. 4, canon 517 § 1 and canon 559 § 1 of the Code of Canons of the Eastern Churches)¹⁰⁷.

Minors who have not reached the age of sixteen are not subject to any canonical penalties (canon 1323 No. 1 of the Code of Canon Law of 1983). On the other hand, a minor who has reached the age of sixteen and has committed an ecclesiastical offence, is not exempt from punishment, and the penalty prescribed by law or by an ordinance is to be mitigated or substituted with penance (canon 1324 § 1 No. 4 of the Code of Canon Law of 1983). Nor is he/she

¹⁰⁶ Cf. J. Krukowski, R. Sobański, *Komentarz do Kodeksu prawa kanonicznego*, vol. 1, Poznań 2003, p. 175.

¹⁰⁷ F. Lempa, *Kompetencje, uprawnienia i obowiązki w Kościele katolickim*, Białystok 2013, p. 77.

bound by any penalty binding pursuant to law itself, provided for by canon law, for the commission of certain ecclesiastical offences for which the perpetrator is liable to be punished with excommunication, e.g. termination of pregnancy with fatal consequences for the conceived child (canon 1398)¹⁰⁸.

The Pio-Benedictine Code of Canon Law of 1917 raised the age limit for marriage. This Code addressed the age impediment issue in one canon 1067, consisting of two sections¹⁰⁹, where it raised the age limit needed for marriage. It required the age of fourteen for a woman, and the age of sixteen for a man¹¹⁰. This change was introduced at the request of Franz Wernz, who served as the Commission's consultant¹¹¹. In older commentaries the age impediment was specified as an obstacle of juvenile age¹¹². Canon law requires that at the time of marriage, the spouses are of mental maturity and does not require the spouses to be physically capable of procreation, since the marriage contract consists in consent, and not sexual intercourse¹¹³. The current Code of John Paul II of 1983 addresses the issue of age impediment in canon 1083: “§ 1. A man may not enter into a valid marriage before the age of sixteen and a woman before the age of fourteen. § 2. The Episcopal Conference has the right to establish a higher age for a legitimate marriage”. This Code in canon 1072 states that “pastors should dissuade young people from marrying before they reach the age at which, according to local custom, marriage is entered into; it also instructs pastors not to marry minors without

¹⁰⁸ Idem, *Kanoniczna ochrona karna małoletnich przed nadużyciami seksualnymi*, Białystok 2013, p. 33.

¹⁰⁹ Cf. Code of Canon Law of 1917, canon 1067.

¹¹⁰ Cf. T. Pawluk, *Prawo kanoniczne według Kodeksu Jana Pawła II*, vol. 3: *Prawo małżeńskie*, Olsztyn 2002, p. 125.

¹¹¹ Cf. S. Biskupski, *Prawo małżeńskie Kościoła Rzymskokatolickiego*, Warszawa 1956, p. 165.

¹¹² Cf. F. Bączkiewicz, *Prawo kanoniczne – podręcznik dla duchowieństwa*, Opole 1958, vol. 2, p. 215; E. Szafrowski, *Prawo kanoniczne w okresie odnowy soborowej*, vol. 2, pp. 239–240.

¹¹³ Cf. W. Szmyd, *Podręcznik prawa małżeńskiego*, Kraków 1929, pp. 54–55.

serious cause. [...] pastors are instructed to try to dissuade from marriage young people who have not reached the age required by local custom to marry”¹¹⁴.

It must be noted that the norm of the previous code is repeated in the first section of canon 1083, while the second section of the new Code is completely new. According to it, the Bishops’ Conference of a given country can set a higher age for the purpose of a legitimate marriage. The Polish Bishops’ Conference, on the occasion of the amendment of the Family and Guardianship Code in 1998, determined that spouses must be over 18 years old¹¹⁵. Unlike under-age women, under-age men can marry in the Catholic Church only in very exceptional situations. “The granted consent should necessarily be combined with the granting of a permit only for assisting in the conclusion of a marriage without civil consequences, because Polish family law does not provide for the possibility of marriage by a man under the age of 18”¹¹⁶. The age impediment in the understanding of the Code of Canons of the Eastern Churches and the earlier normative document (the Marriage Code for the Eastern Church, canon 57)¹¹⁷ does not differ from that which is enshrined in the Code of Canon Law. Canon 800 of the Code of Canons of the Eastern Churches: “§ 1. A man may not enter into a valid marriage before the age of sixteen and a woman before the age of fourteen. § 2. The particular law of the Church *sui iuris* can establish a higher age for a legitimate marriage”.

One difference between the two Codes is a provision in which the institution of the Conference of Bishops is replaced by a particular law of the Church – *sui iuris*.

¹¹⁴ Pawluk, *Prawo kanoniczne według Kodeksu Jana Pawła II*, vol. 3, p. 125; Cf. A.M. Czaja, *Podstawy kanonicznej wiedzy o małżeństwie i rodzinie*, Lublin 2008, p. 119.

¹¹⁵ W. Góralski, *Małżeństwo kanoniczne*, Warszawa 2011, p. 111.

¹¹⁶ W. Wenz, *Kancelaria parafialna jako przestrzeń kościelnego postępowania. Studium kanoniczno-pastoralne*, Wrocław 2008, p. 383.

¹¹⁷ Biskupski, *Prawo małżeńskie*, p. 166.

* * *

The first chapter is devoted to introductory considerations, defining the scope of concepts related to freedom of confession, freedom of conscience and the evolution of the perception of minors in various legal systems. The subject of the research are legal regulations covering the issue of freedom of conscience and confession of minors in Polish law and the regulations of Canon law concerning this matter. In turn, the object of research activities are persons defined as minors. In the current legal status, in the overwhelming majority of cases, minors are persons who are under the age of eighteen. This age limit is currently present in acts of international law, European law, Polish law, as well as in canon law. At the same time, it should be noted that in some legal systems the term “minor” is used interchangeably with the term “child” (in the field of civil law). This chapter also examines the norms of other branches of law in which the issue of protection of the freedom of conscience and confession of minors is reflected.

POLISH LEGAL REGULATIONS CONCERNING THE TEACHING OF RELIGION

In the second chapter, we will deal with the legal regulations concerning the teaching of religion. In this chapter we will discuss legal documents in the following order: The Constitution of the Republic of Poland of 1997, the Concordat between the Holy See and the Republic of Poland of 1993, the Act on the Education System of 1991, and the Regulation of the Minister of National Education on the conditions and manner of organising religious education in public kindergartens and schools of 1992. Sources of law coming from the legislative authorities and the highest executive authorities will be analysed. Under the Polish law system, there is no single act that would contain the norms of religious law. Each country has its own system of sources of law, i.e. a properly structured set of sources of law in the formal sense. Each source of law has an established position in its system. All normative acts that form part of it have the same binding force, differing in legal force, subject, object and mode of introduction. The subject establishing a normative act is the state and, more precisely, certain organs of authority competent to adopt legislation.

1. Constitution of the Republic of Poland of 1997

The most important legal act in force in Poland is the Constitution of the Republic of Poland. It was adopted on 2 April 1997 by the National Assembly, and its text was published in the Journal of Laws on

16 July 1997¹. The Constitution of the Republic of Poland defines the basic principles of relations between the state and the Church in Poland. These principles are the result of a complex, long-standing, and controversial debate concerning the model of a secular state that should be included in the Constitution of the Republic of Poland. The debate included the participation of representatives of political parties, the Catholic Church and other religious associations².

The constitution defines the foundations of the socio-economic and political system, the organisation and manner of appointment of the most important state bodies, and encapsulates in basic norms the rights and obligations of citizens. The constitution regulates matters related to the organisation of government administration, public finances, as well as exceptional situations. By its nature, it sets out the main principles and directions, as it does not contain detailed decisions. Therefore, the provisions of the discussed document concerning the issue of teaching religion in the public education system should be interpreted in such a general way³.

The preamble to the Constitution of the Republic of Poland contains content important for the discussed issue. This solemn introduction emphasises that the entire Polish nation, presented as a community of citizens of the Republic of Poland, is equal before the law, maintaining the same obligations toward the state, which is referred to as the common good. An important issue is the appeal to the nation's Christian heritage, while the issue of religious beliefs is presented as a private matter of each citizen. The document highlights that believers in God, as well as those who do not share this faith, are equal before the state⁴. During the works on

¹ Text of the Constitution of the Republic of Poland, Journal of Laws of 1997, No. 78, Item 483.

² J. Krukowski, *Polskie prawo wyznaniowe*, Warszawa 2005, p. 52.

³ P. Mąkosa, *Trwałe miejsce nauczania religii w polskim systemie oświaty*, "Katecheta", 49(2005), No. 1, pp. 63–69.

⁴ Cf. Preamble. Constitution of the Republic of Poland.

the constitution, the most fervent disputes were caused by passages that concerned references to religious issues. With reference to God, the dispute concerning *invocatio Dei* was closed, which testifies to the recognition of the rights of believers who treat God as the source of truth, goodness, justice and beauty, as well as respect for the beliefs of those who derive these values from other sources. The text that has been adopted unites – not divides – society by referring to common values and goals for citizens⁵.

In the first chapter in Article 1 of the Constitution, the common good is to be sought on the basis of civil law, which does not exclude certain inspirations derived from the social doctrine of the Catholic Church. It must therefore be recognised that the principle of the common good prohibits the unjustified preference of certain social groups at the expense of others. Regulations should be created with respect for the principle that the Republic of Poland is a “common good of all citizens”. On the basis of this issue, the conclusion of Article 2 is drawn, which can be presented with the following statement: “Poland is supposed to be a democratic state governed by law, so it is to safeguard the influence of citizens on state authorities and their participation in state decision-making. This also provides the foundation for the principle of respect for the freedom and rights of the individual and the obligation of jurisdictional of rights in the applicable law. Juridicisation is supposed to prevent the arbitrary conduct of state bodies and to facilitate an individual or a religious or world view group to assert the rights violated. In a democratic state ruled by law, not only the rights of the majority are to be safeguarded, but the voice and will of the minority of the population must also be recognised. After all, it is supposed to be a democratic state of law that implements the principles of social justice”⁶.

⁵ W. Skrzydło, *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, Zakamycze 2002, p. 2.

⁶ *Ibid.*, p. 2 et seq.

It is also worth mentioning Article 4 of the Constitution, which states that: “1) The supreme authority in the Republic of Poland is vested in the Nation. 2) The Nation shall exercise power through its representatives or directly”⁷. The provisions of this article concern a very important matter, i.e. the determination of the sovereign, i.e. the subject of state power and indicating who this power belongs to⁸. In this way, paragraph 1 expresses one of the basic constitutional principles of the Republic of Poland, i.e. the principle of the sovereignty (supreme authority) of the nation. When the supreme authority belongs to the nation, it is only the nation as a whole, and not another subject, social group or political party, which exercises power that is primal and independent of anyone. At present, the understanding of the principle of national sovereignty means that the nation as a subject of sovereign power is constituted by all citizens of the Republic of Poland, regardless of their ethnic affiliation, social position, education, financial status, religion or worldview. Article 5 of the Constitution of the Republic of Poland defines the function of the state, that is the objectives of its actions and the basic directions. The key function is to safeguard the independence and inviolability of the territory of the Republic of Poland because its implementation allows the performance of functions, such as ensuring freedom and rights of man and citizen, as well as their security, protection of national heritage, and protection of the environment.

Article 25(1) of the Constitution states that “Churches and other religious associations shall have equal rights”. In a democratic state, the relationship between the state and the Church is based on the guarantees of individual freedom of conscience and religion⁹. In Article 25(2) the most important legal act of the Republic of Poland

⁷ Constitution of 1997.

⁸ Ibid.

⁹ J. Krukowski, *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, pp. 95–119.

states that “public authorities in the Republic of Poland shall be impartial in matters of personal conviction, whether religious or philosophical, or in relation to outlooks on life, and shall ensure freedom of their expression within public life”, which indicates 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 concept of impartiality also concerns the problem which arises from the relation of the state and the established law to the elementary ethical values that are rooted in national culture and have the character of Christian values. Thus, it can be said that a democratic secular state should be based on universal ethical values, which have arisen on the basis of theological values such as the dignity of the human person and human rights, adopted by the international community in agreements concerning the protection of human rights¹⁰.

Article 25(3) provides as follows: “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 respective sphere”. The recognition of the autonomy of the Church by the State means that the State does not grant the Church its proper autonomy, but expresses its will to respect it. By exercising religious freedom in the institutional dimension, the Catholic Church and religious associations have the power to create internal legislation for themselves, to be followed in their internal relations. The principle of cooperation obliges the State and the Church to establish a dialogue in order to agree on the sectors of social life where there is a need to recognise in the system of Polish law the effectiveness of actions carried out on the basis of the norms of canon law. This is currently the case in the fields of education, charity and humanitarian activities¹¹, e.g. the need to

¹⁰ *Idem, Konkordat polski. Znaczenie i realizacja*, Lublin 1999, p. 65.

¹¹ *Ibid.*, p. 72.

inform the competent state authorities about the content of the curricula of religious instruction in public schools.

Article 25(4) and (5) of the Constitution states that “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, while 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”. These provisions refer to the model of statutory regulation of relations between the state and the churches and other religious associations. This principle should be considered on the basis of other religious clauses, which are included in Article 25 of the Constitution, especially on the basis of the principle of autonomy and independence and the principle of cooperation. The principle of bilateralism understood in this way expresses the idea that “the rules concerning relations between the state and religious associations should be based on bilateral (i.e. two-sided) agreements of their respective representatives”¹². The principle of bilateralism understood in this way is the basis for guaranteeing freedom of religion in the institutional dimension¹³ and also refers to the legal norms established by the state regarding the teaching of religion in public schools.

The Constitution of the Republic of Poland recognises that the source of human rights and freedoms is the dignity of the human person¹⁴. Article 30 of the Constitution provides: “The inherent and inalienable dignity of the human being is a source of freedom and rights of persons and citizens. It shall be inviolable. The respect

¹² P. Stanisławski, *Zasada bilateralności*, in: A. Mezglewski, H. Misztal, P. Stanisławski, *Prawo wyznaniowe*, Warszawa 2008, p. 80.

¹³ P.A. Leszczyński, *Implementacja art. 25 ust. 5 Konstytucji RP – przegląd wybranych problemów*, in: *Pro bono Reipublicae. Księga jubileuszowa Profesora Michała Pietrzaka*, edited by P. Borecki, A. Czochara, T.J. Zieliński, Warszawa 2009, p. 442.

¹⁴ F. Prusak, M. Sitarz, *Propedeutyka prawa*, Warszawa 2000, pp. 96–100.

and protection thereof shall be the obligation of public authorities”. The constitutional concept 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 bodies¹⁵.

Article 48(1) of the Constitution states that: “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/her freedom of conscience and belief and also his/her convictions”. Freedom of conscience and religion is a personal freedom of every person, including children, i.e. minors. The Constitution does not establish a declaration of freedom of conscience and religion, but merely contains it. The source of this freedom is the inherent and inalienable dignity of the human person; it does not result from being granted by the State or any public authority¹⁶. This provision gives parents the right to decide in which direction to raise their children, also in terms of world-view and religious education¹⁷. At the same time, this article guarantees parents the right to have their own convictions and to be guided by them in life, also in the exercise of the educational function of the family. The right of parents to bring up their children according to their own beliefs does not deprive their children of their right to exercise freedom of conscience and religion, including their political and philosophical beliefs, taking into account the degree of their maturity. It is this right that constitutes the limit of the educational rights of parents, who are obliged to take these beliefs into account.

¹⁵ Skrzydło, *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, pp. 10–11.

¹⁶ P. Borecki, *Wolność sumienia i wyznania*, in: *Wolność myśli, sumienia i wyznania. Poradnik prawny*, edited by M. Nowicki, Warszawa 2003, p. 10.

¹⁷ Mąkosa, *Trwałe miejsce nauczania religii*, pp. 63–69.

The right to freedom of conscience and religion was clearly emphasised in the Constitution of the Republic of Poland of 1997, and to be specific in Article 53 of the document, which states in paragraph 1 that “freedom of conscience and religion is guaranteed to everyone”. The Constitution guarantees this right to every person who resides within the territory of the Republic of Poland. As far as freedom of conscience is concerned, it appears primarily in the possibility of expressing one’s political, philosophical or mental views, the disclosure of which leads to the verification of the individual as a separate personality. If we consider the internal sphere in the correlation of freedom of conscience and confession, it is mainly expressed in the possibility of freely expressing the world-view which we have accepted, both in relation to conscience and religion, that is in choosing whether we want to participate in religious classes or not. However, if we do not yet have the authority to make the choice, the decision on our behalf regarding the teaching of religion or withdrawing from this right is made by our parents¹⁸.

Article 53(2) indicates that, “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”. It is clear from the article quoted that the Constitution does not contain a definition of the concept of religion. In order to determine the scope of the concept, reference should be made to non-constitutional as well as extra-legal regulations, taking into account areas such as philosophy, theology or culture¹⁹. On the other hand, paragraph 3 of the cited Article states that: “parents shall have the right to ensure their children a moral and religious upbringing and teaching in accordance with their

¹⁸B. Banaszak, *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, Warszawa 2012, pp. 256–344.

¹⁹P. Winczorek, *Komentarz do Konstytucji Rzeczypospolitej Polskiej z 02.04.1997 r.*, Warszawa 2000, p. 73.

convictions”. Thus, it guarantees parents the right to education and religious instruction of their children in accordance with their own beliefs. According to this provision, it should be assumed that in a situation where there is a conflict between the will of the children and the decision of the parents regarding religious practice, and above all the participation of children in the teaching of religion at school, the parents shall have priority. It is evident that in matters as sensitive as moral and religious education, parents should act with the power of their authority, taking into account the degree of maturity of their children, without resorting to coercion. Children are granted full independence in the sphere of freedom of conscience and religion when they reach the age of 18, that is when they reach the age of majority. In the event that parents are deprived of the exercise of parental rights by a court judgement, decisions on the religious upbringing of children are the responsibility of their legal guardians²⁰.

The most appropriate paragraph of Article 53 of the Constitution of the Republic of Poland, which deals with the indicated subject, is paragraph 4, which reads as follows: “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”. This provision allows for religion to be taught at school, and such teaching is clearly in line with the current Constitution²¹. It clearly states that religion can be a subject taught at school. The right to teach religion in both public and private schools is granted by the Constitution to any religious association which has a regulated legal situation, i.e. one which has a separate law defining its relations with the state or which is entered in the register

²⁰ Krukowski, *Polskie prawo wyznaniowe*, p. 76.

²¹ Responding to a complaint of the Commissioner for Citizens’ Rights, the Constitutional Tribunal twice recognized the compatibility of religious instruction in public schools with the applicable legal order (30 January 1991 and 20 April 1993), despite the fact that the old Constitution of the Polish People’s Republic was still in force. See: J. Krukowski, *Kościół i państwo. Podstawy relacji prawnych*, Lublin 1993, pp. 240–242.

of Churches and other religious associations²². If religious instruction is the subject of teaching, it is the same subject as any other subject. A different interpretation of this provision would constitute unlawful discrimination.

It is not that religious freedom is not subject to any restrictions, i.e. it is not an absolute right. Its limitations are determined by concern for the common good, as well as respect for the rights of others. Article 53(5) of the Constitution provides for the possibility of restrictions on the manifestation of religion, while at the same time imposing requirements that this may occur only pursuant to statute and only for important reasons. Therefore, the possibility of restriction of religious freedom by means of normative acts or regulations or by administrative organs of state and local government is excluded. The reasons for the restriction of freedom of religion enumerated by the Constitution include: the obligation to protect the security of the state, public order, morality and health, and freedom and rights of others. It is also worth emphasising that according to Article 53(6) of the Constitution “no one shall be forced to participate or not to participate in religious practices”, which also includes children.

Article 53(7) of the Constitution states that: “No one may be compelled by organs of public authority to disclose his/her world view, religious convictions or belief”. This is a very important issue in terms of respect for the freedom of the rights and feelings of believers, regardless of their affiliation to a particular religious association, as well as of non-believers, whose rights are described in the Constitution in a more restrained way²³. In the literature allegations are formulated, according to which specific provisions concerning the teaching of religion in public schools, and relating to the submission of statements concerning attendance at religious classes and the inclusion of religious grades on school certificates,

²² P. Borecki, *Jak zorganizować naukę w szkole, jak założyć punkt katechetyczny?*, in: *Wolność myśli, sumienia i wyznania. Poradnik prawny*, p. 38.

²³ Skrzydło, *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, pp. 16–17.

constitute a violation of the right to silence. Regarding these views, it is worth noting that the right not to disclose one's views is not analogous to an obligation to remain silent in matters of world view and religious beliefs²⁴. The requirement to submit statements about attending religious classes has nothing to do with the constitutional right to remain silent. The contents of the declarations referred to in Article 53(7) of the Constitution and the contents of the declarations on attendance at religious classes are different. Therefore, attending or not attending religious lessons is not identical in substance with the statement referred to in the analysed provision. A person may have a religious worldview and at the same time not attend religion classes or vice versa²⁵.

Article 70 of the Constitution of the Republic of Poland defines the right to education. This provision reads as follows:

1. "Everyone has the right to education. Education up to the age of 18 is compulsory. The way in which compulsory schooling is exercised is determined by law.
2. Education in public schools is free of charge. Paid provision of certain educational services by public universities may be allowed by way of statute.
3. Parents have the freedom to choose non-public schools for their children. Citizens and institutions have the right to set up primary, secondary and tertiary schools, and educational establishments. The conditions for the establishment and operation of non-public schools and the participation of public authorities in their financing, as well as the rules for pedagogical supervision of schools and educational establishments, shall be laid down by statute.
4. Public authorities ensure universal and equal access to education for citizens. To this end, they create and

²⁴ A. Mezglewski, *Polski model edukacji religijnej w szkołach publicznych*, Lublin 2009, p. 118.

²⁵ Ibid.

support systems of individual financial and organisational assistance for pupils and students. The conditions for providing assistance shall be laid down by statute.

5. The autonomy of higher education institutions shall be ensured in accordance with the rules laid down by statute.”

The outline of the process of constitutionalisation of the right to education in Poland, as well as the transformation of this right to a public subjective law, presented in the above article, is not only of theoretical significance. First of all, the nature of the right to education is expressed in the fact that it determines to a large extent the shape of the education system and the higher education system and, consequently, the position of the individual who as a party to the administrative-legal relationship is much more subordinated than is the case in other types of administrative-legal relations²⁶. Currently, with regard to the impact of the constitutional right to education on the structure of the education system, there is a lot of content controversial from the point of view of constitutional regulations²⁷. As a result, the development of constitutional regulations that concern the sphere of education is important for the issues mentioned above and the way of interpreting the provisions of the education law as well as the higher education law. For example, it can be pointed out that in the scope of only one issue in the field of education, i.e. the school-leaving examination, there are doubts that concern as many as three of the elements that are included in Article 70 of the Constitution of the Republic of Poland, i.e. the principle of free education in public schools, the principle of universal and equal access to education, as well as the principle

²⁶P. Przybysz, *Sytuacja prawna jednostki w zakładzie oświatowym*, in: *Jednostka wobec działań administracji publicznej. Międzynarodowa Konferencja Naukowa Olszanica 21–23 maja 2001 r.*, edited by E. Ura, Rzeszów 2001, pp. 371–377.

²⁷Ł. Kierznowski, *Egzamin maturalny w Polsce. Analiza prawna*, Białystok 2016, pp. 299–325.

of autonomy of universities and its limits in determining the conditions of recruitment for studies. Secondly, the concept of the right to education, which was developed in Poland and finally applied in the Constitution of the Republic of Poland of 1997, contains elements pertaining to freedom, based mainly on the realisation of the private interest of the individual, not the public interest²⁸.

The current constitutional regulation of the right to education and the schooling obligation corresponds to international standards, and in some cases definitely exceeds these standards, e.g. on the issue of payment for education at public universities, as well as the determination of the schooling obligation age limit.

Article 233 of the Constitution of the Republic of Poland states that even during a state of war or a state of emergency, a certain group of freedoms and rights cannot be limited, e.g. Article 53 referring to freedom of conscience and religion. This provision highlights the importance of the fundamental rights and freedoms within which the discussed topic is situated.

Freedom of conscience and religion is considered one of the basic human rights because its source lies in the dignity of the human person. This principle was recognised in the Constitution of 2 April 1997. The legislator guarantees a wide subject scope of freedom of conscience and religion concerning both individuals and communities, i.e. churches and religious associations²⁹. After the entry into force of the current Constitution, it is possible to speak with conviction about the existence of the principle of equal treatment of religion as a school subject³⁰. The Constitution of the Republic of Poland also states that freedom of religion belongs to every person, parents, children, churches and other religious associations.

²⁸ M. Kozak, *Prawo dziecka do edukacji. Założenia pedagogiczno-prawne i bariery realizacyjne*, Warszawa 2013, pp. 106–108.

²⁹ M. Makarska, *Przestępstwa przeciwko wolności sumienia i wyznania*, Lublin 2005, p. 196.

³⁰ Mezgłowski, *Polski model edukacji*, p. 229.

At the same time, it protects the exercise of this freedom by these entities, granting them legal protection measures, which include criminal protection³¹. Polish regulations in the scope of ensuring the freedom of conscience and confession to minors should be assessed positively. These regulations meet international standards, but are obviously not perfect, like any regulation. There are cases of actions violating freedom of conscience and confession, however they result from reasons other than improper legal regulation³².

2. Concordat between the Holy See and the Republic of Poland

A concordat is an international agreement between the Holy See and a given state, regulating the legal status of the Catholic Church in a given country and constituting the source of particular ecclesiastical law within its territory³³. The concordat addresses guarantees of religious freedom in the individual, communal and institutional dimensions and serves in a specific way to guarantee religious freedom³⁴. What is particularly important is that a concordat has the rank of an international agreement. Such a concordat was concluded on 28 July 1993 at the seat of the Council of Ministers by Archbishop Józef Kowalczyk, then-apostolic Nuncio in Poland, and Krzysztof Skubiszewski, then-Minister of Foreign Affairs of the Republic of Poland in the government led by Hanna Suchocka. It was signed by the President of the Republic of Poland Aleksander Kwaśniewski on 23 February 1998. It was also ratified on the same day by Pope John Paul II. The agreement entered into force on 25 April 1998

³¹ Makarska, *Przestępstwa przeciwko*, p. 48.

³² P. Jabłońska, *Wolność sumienia i wyznania osoby małoletniej w Polsce w latach 1918–2015* [Freedom of conscience and confession of minors in Poland from 1918 to 2015], Pelpin 2022, p. 336.

³³ J. Krukowski, *Konkordat*, in: *Encyklopedia katolicka*, vol. 9, Lublin 2002, col. 638.

³⁴ K. Warchałowski, *Nauczanie religii i szkolnictwo katolickie w konkordatach współczesnych*, Lublin 1998, p. 35.

(Journal of Laws, No. 51, Item 319). The discussed document addresses, in addition to many different issues, the teaching of religion within the national education system. The main arrangements in this respect are contained in Article 12(1), which reads as follows: “Recognising parental rights with regard to the religious education of their children, as well as the principles of tolerance, the State shall guarantee that public elementary and secondary schools, and also preschools, managed by state and local government administration bodies, shall arrange, in conformity with the will of interested parties, the teaching of religion within the framework of an appropriate school or preschool curriculum”. The concordat guarantees the teaching of religion, starting from kindergarten all the way through secondary schools, which means a total of a dozen or so years. It is important that the Concordat, through its ranks as an international agreement, guarantees the presence of religious instruction in the public education system. Pursuant to Article 12(1) of the Concordat, parents sending children to a public kindergarten have the right to bring a court action in case the headmaster/headmistress of a kindergarten refuses to provide religious instruction to their children³⁵.

According to Article 12(1) of the Concordat, the teaching of religion in kindergartens and schools seems inevitable and is guaranteed by international agreements as one of the strongest legal bases. The cited provision gives rise to the principle of elective or optional participation in religious instruction. A written declaration of the will of parents (legal guardians) of the pupils serves as a confirmation of their participation in religion classes at school³⁶. Students who do not participate in religion classes “are not required to attend any substitute classes, and a negative assessment from the subject of religion does not affect the student’s promotion to

³⁵ J. Krukowski, *Prawo wyznaniowe*, Warszawa 2006, p. 92.

³⁶ J. Krukowski, K. Warchałowski, *Polskie prawo wyznaniowe*, Warszawa 2000, p. 165.

the next grade”³⁷. The inclusion of religion classes in the schedule of school and kindergarten classes is a testimony to the treatment of these lessons as an equal subject, which is placed within the regular class timetable in accordance with the Regulation of the Minister of Education of 14 April 1992 on the conditions and manner of organising religious education in public kindergartens and schools³⁸.

Regarding the status of teachers of religion in relation to the state authorities, the Concordat states that teachers of religion “in other matters shall be subject to the rules of the state” (Article 12(1)). This upholds the principle pursuant to which state authorities must provide teachers of religion with rights equal to those of teachers of other subjects in matters contained in the Teacher’s Charter of 26 January 1982 and in the Act on the Education System of 7 September 1991³⁹.

The Catholic Church obtained considerable guarantees of autonomy in the scope of the right to establish school curricula and textbooks. Pursuant to Article 12(2) of the Concordat, “the curriculum of the Catholic religion and textbooks are prepared by the ecclesiastical authority and communicated to the competent state authority”. In this case, there is no direct discussion of autonomy of individual religious associations in determining the content of catechetical teaching. The guarantee provided here relates only to the autonomy of determining school curricula and textbooks. Autonomy in the scope of teaching content is fundamental in nature and guarantees in the scope of curricula and textbooks are more technical, procedural in nature, and are more relevant to the way content is conveyed than the content itself⁴⁰. Interference of state authorities regarding the content of religious teaching would be a negation

³⁷ A. Mezglewski, *Nauczanie religii*, in: *Prawo wyznaniowe*, edited by H. Misztal, Lublin 2000, p. 313.

³⁸ Warchałowski, *Nauczanie religii i szkolnictwo*, p. 115.

³⁹ Krukowski, *Prawo wyznaniowe*, p. 154.

⁴⁰ Mezglewski, *Polski model edukacji*, p. 174.

of the constitutional principle of respect for the independence of the Church within its own respective sphere. Since religious instruction is carried out in public schools and kindergartens, the curriculum and the textbooks are to be communicated to the competent state authority⁴¹.

The Concordat states in Article 12(3) that a person who applies for the position of catechist is obliged to hold a special authorisation, the so-called *missio canonica*, granted by the diocesan bishop. This bishop can revoke a previously issued authorisation, which is equivalent to the loss of the right to teach religion. Article 12(3) uses the Polish term “upoważnienie” (English: “authorisation”), as well as the Latin *missio canonica*, which is a legal-canonical term, with roots in the doctrine of the Catholic Church, used to describe an external act granted by a party to a competent ecclesiastical authority, which expresses its approval for the performance of a specific function, task, office. The formal requirements for the proper administration of the canonical mission are determined by specific laws and customs. The concept of “referral” emphasises to a greater extent the fact that this document is an individual act of designation to a strictly defined school institution⁴².

The Concordat also states that the state and the Polish Bishops’ Conference will jointly develop “criteria of educational training and the form and means of supplementing such training”, required from a person wishing to become a teacher of religion. This is a necessary requirement, because the task of a teacher of religion is to communicate the truths of faith and Catholic morality. “The canonical mission is [...] the guarantor of their fidelity to the doctrine of the Church”⁴³. The ecclesiastical authority exercises

⁴¹ Krukowski, *Prawo wyznaniowe*, pp. 153–154.

⁴² Mezglewski, *Polski model edukacji*, p. 183.

⁴³ Krukowski, *Konkordat polski*, p. 139.

control over the content of religious teaching and education, while the rest is supervised by the state authority⁴⁴.

The provisions of the Concordat contain rules that allow for the separation of powers of ecclesiastical authorities and state authorities in the matter of teaching of religion in kindergartens and public schools⁴⁵. The guiding principle is set out in Article 12(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”.

Article 12(5) of the Concordat provides for free catechesis among adults, including academic pastoral activities (religious instruction does not cover youth outside of school or the area of higher education)⁴⁶. The catechisation of adults also includes people who are “in penitentiary, educational, rehabilitation, health, and social care institutions, as well as in other such institutions. These people should be given the opportunity to participate in Holy Mass. on Sundays and holidays, enjoy individual religious services, as well as the possibility of participation in catechesis and Lenten church retreats”⁴⁷. In such facilities, catechisation is conducted by chaplains directed by diocesan bishops, after the conclusion of a suitable agreement with the institution. National minorities may also be covered by pastoral care, as decided by the diocesan bishop⁴⁸.

⁴⁴ See: Concordat between the Holy See and the Republic of Poland, signed in Warsaw on 28 July 1993, Journal of Laws of 1998, No. 51, Item 318, Article 12 (3) and (4).

⁴⁵ Krukowski, *Prawo wyznaniowe*, p. 155.

⁴⁶ Krukowski, Warchałowski, *Polskie prawo wyznaniowe*, p. 171.

⁴⁷ Concordat between the Holy See and the Republic of Poland, signed in Warsaw on 28 July 1993, Journal of Laws of 1998, No. 51, Item 318, Article 17 (1) and (2).

⁴⁸ *Ibid.*, Article 18.

In the People's Republic of Poland, the state authorities prohibited children and young people from participating in religious practices at summer holiday camps. The Polish Episcopate has often opposed these prohibitions and called them a violation of the human right to religious freedom, which also applies to children and young people in places of rest. In order to avoid these problems, the following principle was entered into the Concordat in Article 13: "For Catholic children and young people who take part in summer holiday camps, young people's camps and other forms of collective vacationing, religious practice shall be guaranteed and, in particular, participating in Holy Mass on Sundays and other holy days".

The religious practices referred to in the Concordat include various forms of expressing one's beliefs, such as hanging a crucifix and other religious symbols, the recitation of daily prayer, the study of religious texts, and in particular participation in the Holy Mass on Sundays and holidays. The entity authorised to perform these practices are children and young people of the Catholic faith who, like their parents (legal guardians), also want to engage in religious practices during summer holidays, winter holidays, etc. at organised holiday camps. The organisers are to provide children with care during religious practices, at the place of their stay, enable them to have religious and educational meetings with laymen or clergy, and also enable participation in Lenten retreats or similar practices⁴⁹.

The Concordat provides the Catholic Church with the right to establish and maintain "schooling and educational institutions, including kindergartens and schools of all kinds, in accordance with the provisions of canon law, on the basis of the relevant laws" (Article 14(1)). This right covers schooling institutions, as well as educational institutions, such as boarding houses, facilities for the disabled, orphanages, and especially kindergartens and schools of all

⁴⁹ Krukowski, *Prawo wyznaniowe*, p. 157.

kinds. The establishment and management of the above-mentioned ecclesiastical schooling and educational institutions is carried out in accordance with the norms belonging to two systems of law: canon law and Polish law. The application of the provisions of canon law is a necessary requirement for obtaining the status of Catholic institutions. However, compliance with the requirements established by Polish law is necessary to obtain rights of any kind⁵⁰.

Teachers of religion, in addition to the requirements imposed by ecclesiastical law, which include, among others, “high moral values, life testimony and extensive professional competence”, have the same rights and obligations as teachers at state schools⁵¹. The statutory regulations are confirmed by Article 14(3) of the Concordat, which grants the same rights to persons employed in Catholic schools as to persons employed in the public sector⁵².

Detailed guarantees of freedom of conscience and religion on an individual basis have been laid down in the Concordat with regard to faithful belonging to the Catholic Church⁵³. The concordat proved to be a useful instrument directly, in the process of normalising relations between the state and the Catholic Church, and indirectly also in the relations between the state and other religious associations. The experiences from the implementation of the document show that its ratification has created much greater chances for normalising social relations in Poland in the field of respect for freedom of conscience and religion in the individual and institutional dimension. The guarantees that were included in

⁵⁰ Cf. Concordat between the Holy See and the Republic of Poland, signed in Warsaw on 28 July 1993, Journal of Laws of 1998, No. 51, Item 318, Article 20 (2).

⁵¹ J. Dyduch, *Posługa nauczania w świetle postanowień Konkordatu 1993*, in: *Konkordat 1993. Dar i zadanie dla Kościoła i Polski*, edited by J. Dyduch, Kraków 1998, p. 77.

⁵² Ibid. “The rights and obligations of teachers of religion are the same as the rights and obligations of other teachers, and are derived from the Teacher’s Charter”.

⁵³ Makarska, *Przestępstwa przeciwko*, p. 30.

the document were mostly already in force at the time of ratification of the Concordat, as they were previously included in ordinary laws. However, through confirmation in the Concordat, they gained a stronger position in the Polish legal order.

3. The Act on the Education System of 1991

The Act on the Education System of 7 September 1991, in Article 12(1), specifies a constitutional provision, stating that “while recognising the right of parents to religious education of children, primary public schools organise religious education at the request of parents, secondary public schools – at the request of either parents or students themselves; after reaching the age of majority, the students themselves decide on their study of religion”. The main duty of the principals of schools and kindergartens, which results from the disposition contained in the above article, is to employ teachers of religion of religious associations, indicated in the statements on participation in school catechisation. Headmasters/Headmistresses of public schools and kindergartens not only employ teachers of religion, but also undertake other organisational and technical activities, which are aimed at creating conditions for the provision of religious classes, using the premises and material and financial resources that are in their possession. The scope of the obligation to organise religious classes also includes activities that are related to the school’s management of religious teaching, e.g. placing religious classes in the schedule of classes, distribution of branches among individual catechists, etc.⁵⁴ Today’s wording of Article 12(1) is identical to that of the Act of 25 July 1998, because it has not been amended in recent years⁵⁵.

As regards the determination of specific issues relating to the conditions and manner of implementation by individual schools of the obligation to organise religious lessons, in Article 12(2)

⁵⁴ Mezglewski, *Polski model edukacji*, p. 149.

⁵⁵ Mąkosa, *Trwałe miejsce nauczania religii*, p. 67.

a statutory delegation was granted to the Minister of National Education, who determines the above-mentioned issues by way of a regulation, in cooperation with the competent authorities of individual religious associations: “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 Act on the Education System in Article 13 states that the duty of a public school – i.e. generally open to the public, is to support religious traditions. This Article also recalls the obligation to respect the principle of world-view impartiality, stressing that this principle does not result in any limitations on the form and content of the catechetical teaching. During a religious lesson, not only knowledge of a particular religious doctrine can be transmitted, but also appropriate educational content⁵⁶.

The discussed document deals with the issue of teaching religion quite superficially. Many of its provisions require a closer and more detailed discussion, which can be found in the Regulation of the Minister of National Education on the conditions and manner of organising religious education in public kindergartens and schools.

4. Regulation of the Minister of National Education on the conditions and manner of organising religious education in public kindergartens and schools of 1992

The regulation of the Ministry of Education of 14 April 1992 highlighted two rights, i.e. the right to organise meetings with the parents of pupils outside the general meetings designated by the school, as well as the right to run on the premises of the school organisations of a socio-religious and ecumenical character, which

⁵⁶ Mezgłowski, *Polski model edukacji*, p. 109.

are not parties or political organisations. According to this act, the school has the right and duty to organise religious instruction concerning a particular religion for a group of no less than seven students within a given class or division. Meanwhile, for a smaller number of students religious classes at the school should be organised in an inter-division or inter-class group, in an inter-school group of at least three students, or at an out-of-school catechetical point. The above limits have been set illegally and are incompatible with the constitutional principles of equal treatment of all pupils by public authorities, as well as equality of religious associations. They constitute exceptional facilitation for the teaching of religion in public schools by the Church dominating in terms of the number of adherents. They also mean that the individual's right to receive religious instruction of their religion at school may prove to be fictional, and that this right in practice only applies to sufficiently large groups of students who have decided on a specific option for religious instruction. In light of the current regulations, religious education is an extra-curricular subject, which applies general rules for student assessment. The literature also pointed out that the basis for grades from religion should be the student's knowledge, their diligence and activity, while the student's participation in religious practices should not be taken into account⁵⁷.

The principles of student grading in the subjects of religion and ethics are included in § 9 of the regulation of the Ministry of Education of 14 April 1992. The arrangements contained in it solely refer to the grading scale used in religious instruction and only contain the short statement that "the grade from religion (ethics) is issued according to the grading scale adopted in the given class". Thus, neither the scale of current grades nor the scale of annual (semester) grades were specified in that regulation. Furthermore,

⁵⁷ Idem, *Nauczanie religii w publicznych przedszkolach i szkołach*, in: Mezglewski, Misztal, Stanisław, *Prawo wyznaniowe*, p. 186.

no rules were establishing for the assessment of students with mental disabilities, nor are there any clear definitions of the elements to be assessed. In cases where religion classes are conducted at out-of-school catechetical points, the religion grade is issued on the school certificate issued by the school to which the student attends, based on a certificate issued by the teacher of religion⁵⁸. In certificates issued for the first educational stage (grades 1–3), no descriptive grading of religion/ethics is used. If a student did not take part in religious classes and also in ethics classes, a crossed-out line (dash) should be inserted on the certificate in the place reserved for the subject grade, without any additional annotations. If a student has declared participation in classes for both subjects, one grade is included in the average of the grades obtained as a result of the annual classification, determined as the average of the annual classification grades obtained in those classes. If the assessment thus determined is not an integer (i.e. whole number), it shall be rounded up to an integer⁵⁹.

In accordance with the provisions of the Regulation of the Minister of National Education of 14 April 1992, the religion grade is placed on the school certificate immediately after the grade for student conduct. According to the norm contained in § 9(1) of the Regulation, the school certificate specifies which religious lessons the student participated in (which religious association organised religious lessons), and whether they attended any religious lessons at all. The adopted solution was dictated by the intention to eliminate all possible manifestations of intolerance (§ 9(1)). One important issue related to the implementation of the principle of equal treatment of religion as a school subject is the issue of including annual grades from religion in the so-called grade averages⁶⁰. The situation changed in 2002, because start-

⁵⁸ *Idem*, *Polski model edukacji*, p. 80.

⁵⁹ <https://men.gov.pl/ministerstwo/informacje/organizowanie-nauki-religii-i-etyki-w-roku-szkolnym-20152016.html> [accessed 15.02.2016].

⁶⁰ *Mezglewski*, *Polski model edukacji*, pp. 81–82.

ing in the school year 2002/2003, the grade from religion could not be included in the average grade. During this time, no new laws were issued that directly related to the teaching of religion. The change in practice came from regulations of a general nature, namely from the Regulation of the Minister of National Education and Sport of 12 February 2002 on the Framework Plans for Teaching in Public Schools⁶¹. The new solution was introduced on the basis of the Regulation of the Minister of National Education of 13 July 2007 amending the Regulation on the conditions and methods of assessing, classifying and promoting pupils and students, as well as conducting examinations and tests in public schools⁶². The legal basis for these changes was Article 22(2) point 4 of the Act of 7 September 1991 on the Education System. The Regulation entered into force on 1 September 2007. The amendment consisted in the fact that in the regulation of the Minister of National Education of 30 April 2007, paragraph 4a was added to section 20, reading as follows: “For students who have attended additional educational activities or religion or ethics classes, the annual grades obtained from those activities shall be included in the average grades referred to in paragraph 4”. In section 22 of the Regulation, paragraph 2a was added, reading as follows: “For students who have attended additional educational activities or religion or ethics classes, the annual grades obtained from those activities shall be included in the average grades referred to in paragraph 2”.

In his address to the Minister of National Education of 4 September 2007, the Commissioner for Human Rights argued that in order for the implementation of the principle of equal rights to be complete

⁶¹ Regulation of the Minister of National Education and Sport of 12 February 2002 on the Framework Plans for Teaching in Public Schools (Journal of Laws of 2002, No. 15, Item 142).

⁶² Regulation of the Minister of National Education of 13 July 2007 amending the Regulation on the conditions and methods of assessing, classifying and promoting pupils and students as well as conducting examinations and tests in public schools (Journal of Laws of 2007, No. 130, Item 906).

in terms of calculation of the average grade, all students would have to be given the opportunity to participate in ethics classes, “so that for all students, an average of the same number of subjects can be calculated on an equal basis”⁶³. In its judgement of 2 December 2009 (U10/07; OTK-A2009, No. 11, Item 1630), the Constitutional Tribunal concluded that the provisions which constitute the basis for inclusion of the grade from religion in the average grade are in compliance with the Constitution and are not inconsistent with the Law on guarantees of Freedom of Conscience and Confession. In the regulation of the Ministry of Education of 1992, students who attended religious classes were granted the opportunity to obtain three consecutive days of exemption from school activities in order to participate in Lenten retreats. The act also regulated the possibility of placing crucifixes in school rooms, as well as praying before classes and after classes, on the condition that tactful and gentle behaviour is ensured.

Pursuant to § 1 (1) and (2) 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 (Journal of Laws of 1992, No. 36, Item 155, as amended) “at the request of parents, religious education is organised as part of the school schedule. The wish is expressed in the form of a statement, which does not have to be repeated in the next school year, but can be changed”. In the first place, the parent (legal guardian), or an adult student, submits a declaration to the school headmaster/headmistress with information about participation in religious or ethical classes, in accordance with the given school document template. Students who do not attend religion classes may participate in ethics classes. A student has the right not to participate in any of the above-mentioned classes after submitting the relevant

⁶³ K.H. Jabłoński, *Rzecznik Praw Obywatelskich wobec problemu nauczania religii w szkołach publicznych*, in: *Pro bono Reipublicae*, p. 302.

statement/declaration, and in exceptional cases where these classes are scheduled as the first or last classes on a given day, the student may be released from this obligation on the basis of a written statement of the parent (legal guardian), or their own statement in the case of adult students, submitted to the school secretariat, as well as after obtaining the consent of the school headmaster/headmistress. This event is also reported to the class teacher, who familiarises students and parents (legal guardians) with this procedure. Such a declaration is valid throughout the entire period of education at the school from the moment of its submission. In the event of withdrawal from the declaration, a written statement must be submitted in this regard.

Teachers of religion are employed pursuant to the Teacher's Charter in accordance with the regulation of the Ministry of Education (§ 5(4)). In addition to the obligation of having a canonical mission, a candidate for a teacher of religion must meet the general requirements that are prescribed for all teachers⁶⁴. The school principal may employ a catechist who has full legal capacity, who has no pending criminal or disciplinary proceedings against him, or proceedings for incapacitation, who has not been punished for a crime committed intentionally, and who has the qualifications required to assume a given position⁶⁵. Pedagogical supervision over religious teaching is the responsibility of school headmasters/headmistresses, as well as employees of the Ministry of Education and is carried out in the field of teaching methodology and compliance with the curriculum (§ 11(2) of the regulation of the Ministry of Education of 14 April 1992). The development of curricula is the responsibility of the authorities of individual churches and religious associations. According to

⁶⁴W. Janiga, A. Mezglewski, *Nauczanie religii w szkołach publicznych*, "Rocznik Nauk Prawnych", 11(2001), vol. 1, p. 136.

⁶⁵ See: Act of 26 January 1982 – Teacher's Charter (Journal of Laws of 1982, No. 3, Item 19), Article 10.

§ 4 of the regulation of the Ministry of Education of 14 April 1992, the religious associations' authorities are solely obliged to submit the approved curricula to the Ministry of Education. These principles also apply to the existing textbooks for religious teaching.

* * *

The teaching of the Catholic religion has become a permanent fixture in the Polish education system. Individual critical voices are raised but, despite this fact, the presence of religion in public schools is seen positively by both children, young people and their parents. In light of the constant changes in the world, as well as the pressures of various groups, there have been demands to remove religion from schools. Such voices are few and far between, but they succeed in spreading unnecessary anxiety among catechists and those responsible for catechisation⁶⁶.

The analysis of the presented legal acts with respect to the stability of religious instruction's presence in Polish education has allowed us to conclude that religious education is carried out within the structures of the educational system, as indicated by Polish documents on the teaching of religion. It should be noted that religious education can be carried out by religious associations acting on their own. Another conclusion is that public authorities are characterised by impartiality in matters of religious beliefs, philosophical beliefs and beliefs concerning worldview. Another observation that arises from the analysis of the documents is the obligation of the state to create conditions for religious instruction in public schools. One key piece of information is the fact that religious education is organised by schools and kindergartens for students and pupils on behalf of whom the willingness to participate in the teaching of religion was expressed.

⁶⁶Mąkosa, *Trwale miejsce nauczania religii*, p. 63.

LEGAL REGULATIONS CONCERNING THE TEACHING OF RELIGION IN THE LIGHT OF CANON LAW

Reflections on the legal regulations concerning the teaching of religion took place in the case of the formation of norms of secular law and in the case of norms of Canon law. Considering the process of evolution of legal systems and the initial relationships of law, which regulates secular issues, with religious law, which lasted during the Enlightenment, the views on the issue of freedom of worldview presented from the perspective of secular and clerical power were analogous. In spite of such an important rapprochement between the systems of law as well as institutions of civil and clerical power, there has never been a state unifying secular and clerical power, and thus a recognition of canon law as equivalent to secular law. Consequently, canon law functioned alongside secular law, having its own legislative bodies.

1. Code of Canon Law of 1983

One of the most important tasks of the Catholic Church is the implementation of its teaching mission, which flows directly from the command of Jesus Christ himself. The teaching task of the Church is set out in the Code of Canon Law of 1983

The canons of the Code of 1983, promulgated by Pope John Paul II, emphasise the purpose of catechesis, which is to strengthen

the faith of the People of God, “so that the living faith of the faithful becomes manifest and active through doctrinal instruction and the experience of Christian life”¹. Religious values are inscribed in the national culture and therefore should be included in the curriculum².

The obligation to engage in catechesis, according to canon 774 of the Code of Canon Law, rests with all the members of the Church, first and foremost with the parents, those who take the place of parents, and the godparents (i.e. Baptismal sponsors). Catholic parents have the ability to choose various means and institutions that provide assistance and support in the upbringing of their children³. In canon 793 § 2 of the Code of Canon Law, it is indicated that state law aims to support families in the proper and Catholic upbringing of their children. This assistance is implemented in particular with respect to the principles that are aimed at eliminating the additional costs that parents would have to incur in connection with their children’s attendance to religious classes.

According to canon 796 of the Code of Canon Law, help in fulfilling the obligation of upbringing should be provided by schools, i.e. parents can decide to which school they will send their child. Nevertheless, canon law clearly indicates that in the case of Catholic families, the choice should be unambiguous, i.e. these should be schools promoting the Catholic faith⁴. In § 2 of the aforementioned canon, the obligation of mutual cooperation and urgent listening to each other, is imposed on both the parents whose children attend a Catholic school as well as the teachers.

¹ Code of Canon Law of 1983, canon 773.

² J. Krukowski, *Konkordat polski. Znaczenie i realizacja*, Lublin 1999, p. 135.

³ W. Góralski, *Nauczycielskie zadanie Kościoła*, in: P. Hemperek, W. Góralski, F. Przytuła, J. Bakalarz, *Komentarz do Kodeksu prawa kanonicznego*, vol. 3, Lublin 1986, p. 34.

⁴ K. Warchałowski, *Nauczanie religii i szkolnictwo katolickie w konkordatach współczesnych*, Lublin 1998, pp. 26–27.

A special responsibility lies with catechists, who are responsible for the education of children and young people. Therefore, the choice of a person for the position of a teacher of religion, according to canon 805 of the Code of Canon Law, was entrusted to the local ordinary in his own diocese. The commentary to this Code states that this Canon distinguishes between the authority to approve and the authority to appoint teachers of religion. In schools not subject to diocesan ecclesiastical legal persons, the local ordinary only has the authority to approve of teachers of religion. This Canon applies only to Catholic schools. The local ordinary may also demand the removal or remove a teacher of religion whenever reasons of religion or morals so require⁵.

Religious instruction, Catholic education and pastoral care in schools transmitted within the subject religion are subject to ecclesiastical authority also in non-Catholic schools. This also applies to educational programmes and religious education programmes implemented “in media independent of ecclesiastical legal entities”⁶.

One of the main principles of canon law is that all religious teaching and religious education provided in any schools, as well as educational institutions, is subject to the authority of the Church. This principle, among others, is contained in canon 804 § 1 of the Code of Canon Law. When it comes to the teaching of the Catholic religion, we can talk about three centres of authority. The norms for the proper conduct of catechetical formation on behalf of the Holy See are issued mainly by the Congregation for the Clergy (*Congregatio pro Clericis*). Canon law also empowers the Conferences of Bishops to issue general norms within their jurisdiction (canon 804 § 1 of the Code of Canon Law)⁷.

⁵ *Kodeks prawa kanonicznego. Komentarz*, edited by P. Majer, Kraków 2011, p. 617.

⁶ *Ibid.*

⁷ http://katecheza.diecezja.tarnow.pl/menu/artykuly/misja_kan_religia.pdf [accessed 10.02.2021].

According to § 2 of canon 804 the local ordinary in his own diocese “is to be concerned that those who are designated teachers of religious instruction in schools, even in non-Catholic ones, are outstanding in correct doctrine, the witness of a Christian life, and teaching skill”⁸.

The Code of Canon Law of 1983 states that the teaching of religion is one of the most important tasks of the Church, and the selection of candidates for the post of teacher of religion should be carried out in a very careful manner.

2. General Directory for Catechesis of 1997

In October 1977, the Fourth General Assembly of the Synod of Bishops was held. It was devoted to catechesis and resulted in the apostolic exhortation of John Paul II *Catechesi tradendae*. The Apostolic Exhortation and previous synodal deliberations revealed new tasks and horizons of catechesis, especially after the publication of the Catechism of the Catholic Church, which made it necessary to develop a new Directory for Catechesis.

The new General Directory for Catechesis of 1997 replaced the previous one, published in 1971. It distinguishes school teaching of religion from catechesis⁹. The reason for this approach to the matter is based, among other things, on the fact that three groups of students participate in religion classes:

- believers, for whom the person of Christ is a fundamental point of reference in life;
- students with a shaky or lukewarm faith, who acknowledge their Christianity but it does not constitute a life-organising principle for them;

⁸ T. Pawluk, *Prawo kanoniczne według Kodeksu Jana Pawła II*, vol. 2: *Lud Boży, jego nauczanie i uświęcanie*, Olsztyn 2010, p. 309.

⁹ P. Tomasiak, *Katecheza a szkolne lekcje religii*, “Homo Dei”, 69(1999), No. 1, p. 71.

- non-believing students who, for various reasons, found themselves in school religion classes¹⁰.

The same words are addressed to these three groups. If catechesis is an in-depth transmission of the message, it can be addressed only to the first group, the truly believing students.

The second argument that school religion lessons differ from catechesis stems from the fact that although in Poland school religion lessons are confessional in nature, which makes them dependent on the Church, at the same time they are also dependent on the school with whose curriculum they should be integrated. Religion is a school subject and in its classes we also pursue the goals of the school. The confusion between the concepts of catechesis and the school teaching of religion results in a certain reserve which some religious teachers exhibit toward the school. School teaching of religion is to be introduced as systematically as in the case of other subjects. At the same time, the Directory suggests that religion lessons become an element of the necessary interdisciplinary dialogue¹¹. This is tantamount to a call for religious teachers' formation to take into account to a greater extent the content of secular subjects¹². This issue is particularly important in the Polish school, which often seems unable to overcome the stereotype instilled in the times of communism, i.e. juxtaposing science and religion, or knowledge and faith¹³.

The Directory clearly stipulates that religion lessons are supposed to fulfil formative functions towards the previously mentioned groups of students. The teaching of religion at school is supposed to help believing students make a conscious choice of faith, counteracting religious immaturity or indifference¹⁴. For these students, learn-

¹⁰ General Directory for Catechesis, No. 75.

¹¹ Ibid., p. 73.

¹² Ibid., p. 249.

¹³ E. Majcher, *Wokół nauki religii w polskiej szkole*, Warszawa 1992, pp. 70–71.

¹⁴ E.J. Korherr, *Nauczanie religii w szkole służbę człowiekowi*, in: *W służbie człowiekowi*, edited by Z. Marek, Kraków 1991, p. 65.

ing religion will be a real catechesis, deepening or strengthening of their faith¹⁵.

Thanks to the teaching of religion at school, students with a wavering faith can get an opportunity to obtain the answers of the Church to the questions they may pose, as well as to engage in a deeper reflection on these problems¹⁶. Students who are still seeking or who are experiencing religious doubts will be able to discover in the teaching of religion at school what faith in Jesus Christ actually is, what answers the Church gives to their questions, and will take the opportunity to better examine their decision¹⁷.

Thanks to the teaching of religion at school, the Church allows non-believing students to revise their position in light of the views of others¹⁸. For non-believers, the teaching of religion at school takes on the characteristics of missionary proclamation of the Gospel, that is, being led towards faith, whose growth and maturity will be later promoted by catechesis in a community context¹⁹.

It is worth noting that both for students with a wavering faith and for students who are not believers, a discussion with a secular vision of the world can help in opening up to the grace of faith, while information about what Christianity actually is can show them the truth that what they rejected was not really Christianity, but only a set of superstitions that they mistakenly considered to be Christianity²⁰. Both of these groups need new evangelisation or pre-evangelisation²¹.

¹⁵ J. Skarpetowski, *Szkolna lekcja religii a katecheza parafialna w dokumentach Kościoła po Soborze Watykańskim II i w dokumentach Synodu Niemieckiego z 1974 r.*, "Katecheta", 35(1991), No. 3, p. 144.

¹⁶ D. Serralheiro, *Specyfika i cechy charakterystyczne szkolnej nauki religii*, "Communio", 11(1991), No. 2, p. 67.

¹⁷ General Directory for Catechesis, No. 75.

¹⁸ Korherr, *Nauczanie religii*, p. 65.

¹⁹ General Directory for Catechesis, No. 75.

²⁰ P. Tomasik, *Nauczanie religii w publicznym liceum ogólnokształcącym wobec założeń programowych polskiej szkoły*, Warszawa 1998, p. 158.

²¹ T. Panuś, *Formy współpracy katechetów z nauczycielami*, AK, 126(1996), vol. 3(523), p. 395.

The joint participation in the same religious classes of both groups of students makes the believers face the task of evangelising their lukewarm or non-believing friends and colleagues, which is of great positive significance for believing students of school religious instruction²².

The lack of separation between the concepts of catechesis and the school teaching of religion becomes the reason for unnecessary confrontation between school and catechesis. Moreover, this lack of separation of these concepts gives rise to the temptation to postpone systemic solutions, such as the development of a catechetical curriculum and a curriculum for religious instruction at schools, and to organise the work in parishes so that some priests can take up pastoral service for the school community, which is indirectly postulated in the General Directory for Catechesis²³. J.J. Degenhardt states that “the internal legitimacy of religious education at school is also inadvertently undermined if, in the Church itself, which bears responsibility for this teaching, criticism of its effectiveness overshadows the indispensability of the contribution of religious teaching in the entire process of transmission of faith, and the fact that religious education at school is a one-time opportunity for the Church to meet a significant part of the young generation is ignored”²⁴. It is a question of unity, not uniformity, in the catechetical treatment of the Church’s tasks²⁵. It is also about a vision that would integrally combine different approaches, needs and methods²⁶.

One expression of the distinctiveness of catechesis and school religion classes is also the issue of grades in these classes, especially

²² R. Murawski, *Ewangelizacyjny charakter katechezy*, AK, 118(1992), vol. 2(498), pp. 190–191.

²³ General Directory for Catechesis, No. 232.

²⁴ J.J. Degenhardt, *Ogólny problem zasadności nauczania religii w szkole*, “Katecheta”, 34(1990), No. 4, p. 205.

²⁵ A. Giuliani, R. Rezzaghi, *Jedność i pluralizm w katechezie. Symposium Włoskiego Stowarzyszenia Katechetycznego 1989*, “Katecheta”, 34(1990), No. 2, p. 86.

²⁶ R. Szewczyk, *Tożsamość katechety w świetle dokumentów Kościoła w latach 1965–1991*, Warszawa 1996, p. 67.

in the later years of study. It is certainly not acceptable to assess the faith of a pupil, nor can their grades be lowered due to lack of religious practice²⁷.

Following S. Kulpaczyński, it can be added that the assessment should also reflect the student's development and effort²⁸. It is also worth recalling that the distinction between school teaching of religion and parish-based catechesis is strictly related to the subject of both of these activities: for confessional, school teaching of religion, the subject will be the Church and the school, while for parish catechesis – the subject will be the Church which is realised through the parish community²⁹.

The Directory speaks both about the distinction, but also about the complementarity of catechesis and the teaching of religion at school. Teaching at school should be preceded by catechesis and should also lead to parish catechesis. It should also be emphasised that the fact that religious education returned to schools does not mean that the parish is relieved of responsibility for the religious formation of children and young people. This fact forces us to ask how to do it in new conditions. All catechetical efforts, both those in the parish and those that take place during school religion lessons, should lead to the fulfilment of the six tasks of catechesis listed by the Directory, i.e. developing knowledge of the faith, liturgical education, moral formation, teaching prayer, education for community life and introduction to the mission³⁰.

All these postulates towards the parish are related to the need to programme catechetical work and to correlate it with the teaching of religion at school. The point is that the undertaken catechetical

²⁷ J. Kasztelan, *ABC katechezy w szkole*, Kraków 1994, p. 27.

²⁸ S. Kulpaczyński, *Katecheza jako nauczanie*, "Horyzonty Wiary", 7(1996), No. 3, p. 34.

²⁹ P. Tomasik, *Nowe wyzwania dla katechezy i kształcenia religijnego w szkole*, "Warszawskie Studia Teologiczne", 12(1999), pp. 243–258.

³⁰ General Directory for Catechesis, No. 86–87.

work should be systematic, in order to achieve the planned goal, to be effective. The Directory places special responsibility in this regard on parish priests³¹.

One important element of the situation in which we are to read the message of the new General Directory for Catechesis is the initiated reform of education, which is very fundamental in nature. The creators of the reform set for themselves the goal of restoring the educational character of the school. The authors of the reform propose the renewal of education by means of three measures taken towards the teaching curricula, i.e. “slimming down”, pluralism and adaptation to local needs³².

The philosophy of education is supposed to change at different stages of teaching. In grades I–III of primary school, education will be integrated. In grades IV–VI, the integration of subjects will take the form of block teaching. Traditional subjects will appear only in lower secondary school, while high school and vocational school will be more specialised³³. One important *novelty* will also be the so-called modular educational paths, during which teachers of various subjects will present knowledge on a highly specific topic, which is important for pupils. In addition, the content of these paths would be implemented as part of various subjects. Religion cannot be excluded from this group, if it is to fulfil the task set in the General Directory for Catechesis, so that it is an element of the necessary interdisciplinary dialogue³⁴.

Paths suitable for integration with the religion curriculum include pro-health education, ecological education, reading-media education, and paths concerning European integration, as well as Polish culture against the background of the Mediterranean tradition³⁵.

³¹ *Ibid.*, p. 225.

³² Tomasik, *Nowe wyzwania*, pp. 254–255.

³³ *Idem*, *Nauka religii wobec reformy programów nauczania w polskiej szkole*, “Bobolanum”, 1999, No. 1, pp. 195–196.

³⁴ General Directory for Catechesis, No. 73.

³⁵ Tomasik, *Nauka religii*, pp. 206–208.

The education reform also introduces new subjects. It is worth emphasising the fact that philosophical education has been restored to the school. This is consistent with the postulates of many teachers' communities, as well as with the postulates contained in Church documents, especially the encyclical of John Paul II *Fides et ratio*³⁶. According to the Pope, philosophical education is useful in the search for one's own self-awareness. Nowadays, philosophy is a platform for dialogue between followers of different religions and worldviews³⁷.

The creation of a new school structure requires that religious education also find its own place within it. The reform of the curricula will be more decentralised than before. First, it is necessary to approve the core curriculum of religious education, which constitutes a starting point, presenting the canon of content that each newly created curriculum should contain. The curricula created on the basis of the core curriculum should present the tasks and objectives of education, the content scope, methodological solutions, as well as planned implementation measures³⁸.

The school reform represents a great and unique opportunity for improvement, which breaks down the old, stagnant structures of the totalitarian state. It is to transform schools from reservations of the Communist ideology into modern educational institutions, which is why it should be supported, because it was undertaken for the benefit of those to whom Christ and the Church send catechists to proclaim the Gospel³⁹.

3. General Directory for Catechesis of 2020

On 25 June 2020, a new General Directory for Catechesis was announced in the Vatican, which reminds that the catechist is to be

³⁶ Idem, Encyklika "*Fides et ratio*" jako inspiracja do wychowania katolickiego, "Katecheta", 43(1999), No. 2, p. 11.

³⁷ John Paul II, Encyclical *Fides et Ratio*, Tarnów 1998, p. 60.

³⁸ J. Szpet, *Tworzenie programu nauki religii*, "Katecheta", 43(1999), No. 3, pp. 7–8.

³⁹ Tomasiak, *Nowe wyzwania*, p. 257.

a witness of faith, and catechesis is to be an important element of evangelisation. This document updates the previous Directory, issued by the Holy See in 1997. The new Directory indicates that every Christian is a missionary and that the Church should seek new ways of communicating the faith in the face of challenges posed by the digital world and the globalisation of culture⁴⁰.

This new document was prepared by the Pontifical Council for New Evangelisation. Its chairman, Archbishop Rino Fisichella, said of the document: “The new Directory adapts to what Pope Francis says about catechesis in the Exhortation *Evangelii Gaudium*. The Pope wants kerygmatic catechesis. Therefore, our entire Directory is guided by this intuition. This means that evangelism and catechesis must form a single whole. Catechesis, in fact, is one of the stages of evangelisation; it is not an alternative to it. Catechesis is a great process that takes place in various areas, from the liturgy to the testimony of charity, from personal prayer to the moral dimension. However, we want its strongest element in this great process of catechesis to be the first proclamation of Jesus Christ”⁴¹.

The new Directory for Catechesis is divided into three parts. The first concerns the role of catechesis in the evangelising mission of the Church. It reminds, among others, of the proper preparation of catechists. The document emphasises that it is the catechists who are to be credible witnesses of the faith. They are not only to engage in catechising, but to actually be catechists.

The second part of the document shows in a special way the importance of the family, which actively participates in catechesis and is a natural place where faith is lived. The family not only teaches children the faith, but above all provides testimony of it itself. The Directory also recalls the basic duties of the Bishop in this regard. The President of the Pontifical Council for New Evangelisation

⁴⁰ <https://www.fronda.pl/a/nowe-dyrektorium-o-katechizacji-wiecej-ewangelizacji,146342.html> [accessed 25.06.2020].

⁴¹ Ibid.

said: “The Directory reminds the bishops what their task is. It is to them that this Directory is addressed in the first place. In order to realise the important role played by bishops in catechesis, it is enough to recall some of the most important historical figures. Let us mention the catecheses of Cyril of Alexandria, Ambrose, Augustine, and Rufus of Aquileia. Their example puts us to shame. These bishops knew that catechesis was their special task. In this light, the Directory gives bishops indications on the pedagogy of catechesis, as well as new content, situations that we find in contemporary globalised culture and which the Church must address”⁴².

Part three of the new Directory for Catechesis concerns catechesis in the particular Churches. It also speaks of Catholic schools, which should increasingly become “communities of faith”. Moreover, the importance of teaching religion in schools is emphasised because students have the right to receive a comprehensive education that also takes into account the spiritual aspect of the human being. The document also addresses the challenges posed by digital culture: “this document also constitutes an attempt to respond to this new phase of world culture. This primarily relates to digital culture, where time and place change very quickly. This requires us to have a better connection with the culture of our young people, who were born in the digital world. Our formation and pedagogy must take this into account”⁴³.

4. Catechetical Directory of the Catholic Church in Poland of 2001

The Catechetical Directory of the Catholic Church in Poland, describing the situation of catechesis, is addressed to the whole Church in Poland, in particular to those who are responsible for the work of catechesis. This document presents a theological and

⁴² https://kuria.pl/katecheza/aktualnosci/Nowe-dyrektorium-o-katechizacji-wiecej-ewangelizacji_4134 [accessed 26.06.2020].

⁴³ <https://www.vacitannews.va/pl.html> [accessed 25.06.2020].

pastoral reflection on catechetical activity. The objective is to specify sometimes very general indications given in the documents of the universal Church to the catechetical situation in Poland. According to Cardinal K. Nycz, “the Polish catechetical directorate attempts to face the new catechetical reality of the Church in Poland after 1990. Its determinant is the presence of catechesis of children and young people in school. Starting from the theological assumption that the subject of catechesis is the whole Church, the Polish Directory describes all places of catechesis, from the family through the parish to the school. Analysing the situation of catechesis in Poland, the Directory draws on the experiences of the universal Church and the experiences of countries where religious instruction is present in schools. However, it does not want to copy foreign solutions, because the situations in the individual Churches differ significantly⁴⁴.

This document highlights the importance of a two-way approach to catechesis, both in the natural and supernatural aspects. This stems from the fact that catechesis is at the same time the work of God and of man. It should therefore be understood, on the one hand, in the context of God’s gift to man, and on the other hand, in the context of the free response that the catechised person is to give. At the same time, it was emphasised that this approach stems from the understanding of catechesis both in the dimension of a gift and of a task that the Church receives⁴⁵. The result of catechesis understood in this way is to respect the twofold principle of fidelity, i.e. fidelity to God and fidelity to man. This principle stems directly from the primary goal of catechesis, that is, to bring us to communion with Jesus. It should also be taken into account during the implementation of the individual tasks of catechesis, as

⁴⁴ K. Nycz, *Wstęp*, in: Konferencja Episkopatu Polski, *Dyrektorium katechetyczne Kościoła katolickiego w Polsce*, Kraków 2001, p. 10.

⁴⁵ Polish Directory for Catechesis, No. 31.

well as permeate all the content and methodological elements of catechesis⁴⁶.

In the context of the assumptions underlying the creation of the Catechetical Directory of the Catholic Church in Poland, Father R. Murawski writes that “the Directory pays special attention to three issues: The situation of the Polish family, the influence of the media and the world of culture. The need to seek and create new forms of adult catechesis, which is the central form of the Church’s catechesis, is emphasised. All other forms of catechesis should be directed toward it. One of the signs of the time, that cannot be ignored but must be taken into account in the catechetical ministry, are the ecclesial groups, associations and movements. They constitute an important place of catechesis and a significant complement to religious teaching at school. The Directory also draws attention to the continuing significant place of the parish in the catechetical ministry of the Church”⁴⁷. The emphasis on the need for revealing to the catechised persons the actuality of the salvific message both in the liturgy and in the sacraments administered by the Church should be considered a catechetically important element. These actions are intended to lead the recipients of catechesis to understand that God’s salvific message acquires its full meaning when the listener asks him-/herself about the effects that the message of salvation has on their life⁴⁸.

Another issue highlighted in the Catechetical Directory of the Catholic Church in Poland is the participation of the whole Church in the catechetical proclamation of the salvific message. It is also pointed out that responsibility for this work is assumed

⁴⁶ A. Rayzacher-Majewska, *Dyrektorium katechetyczne Kościoła katolickiego w Polsce z roku 2001*, “Studia Katechetyczne”, 2017, No. 13, pp. 51–64.

⁴⁷ R. Murawski, *Dyrektorium katechetyczne Kościoła katolickiego w Polsce*, in: *Katecheza wobec wyzwań współczesności*, edited by R. Czekalski, Płock 2001, pp. 74–75.

⁴⁸ Z. Marek, *Chrystocentryzm katechezy. Do czego zmierzamy?*, in: *W poszukiwaniu kształtu katechezy*, edited by B. Klaus, Tarnów 2000, pp. 74–78.

by the communities in which the catechised persons live. Natural catechetical environments are most often the family, the parish and the school. Therefore, there is a need to take actions leading to the widest possible cooperation in the management of the processes of education of all these communities⁴⁹. It is also widely accepted that – although the family carries the primary responsibility to guide processes of education and upbringing, including upbringing in the faith – in fact, in many cases parents are too weak to fully cope with the task of serving as catechists for their children⁵⁰. That is why there is much talk about the need to support the family by other communities, especially schools and parishes⁵¹.

For these reasons, the Church has high hopes for its presence in the school, which it considers to be one of the most important places in which it carries out its catechetical ministry. This fact poses new challenges to school catechesis, which should be considered in several categories as the difficulties that the Church faces in bringing the Gospel to the school environment. Among these difficulties, technical obstacles are most often mentioned, such as: discipline in the classroom and the low interest of some students in matters of faith. In view of these difficulties, it is also necessary to speak of the opportunities offered by school catechesis⁵². In addition, in the teaching of religion at school, one must see the possibilities of confronting one's own experiences with the message of salvation proclaimed by the Church, as well as with the experiences and reflections of others⁵³.

⁴⁹ S. Dziekoński, *Współpraca środowisk katechetycznych*, AK, 142(2004), 3(571), pp. 490–513.

⁵⁰ J. Szpet, *Podstawa programowa katechezy*, in: *Przesłanie dokumentów katechetycznych Kościoła w Polsce*, edited by S. Dziekoński, Warszawa 2003, pp. 35–37.

⁵¹ R. Murawski, *Polskie Dyrektorium katechetyczne o nauczaniu religii w szkole*, AK, 142(2004), vol. 3(571), pp. 480–489.

⁵² K. Nycz, *Szkoła miejscem katechezy*, in: *Przesłanie dokumentów katechetycznych Kościoła w Polsce*, pp. 14–15.

⁵³ A. Exeler, *Katechese in unserer Zeit. Themen und Ergebnisse der 4. Bischofssynode*, München 1979, p. 53.

Despite so many advantages of teaching religion at school, it has been observed that this teaching usually does not fulfil all the tasks that the Church sets for catechesis⁵⁴. In the understanding of the Church, the teaching of religion at school is one of many ways of conveying the message of salvation. Therefore, the school is considered one of the many environments that transmits the good news of salvation, which means that catechesis in the school fulfils only a part of all the tasks facing catechesis. Based on the understanding of the importance of this problem, the Polish Catechetical Directory introduced the postulate of supplementing and continuing the school teaching of religion with other directions of catechetical pastoral care for children, young people and adults⁵⁵. The parish has also been considered a special place of such activity, as it remains the fundamental place for catechesis, especially that of Christian initiation closely linked to the sacraments of Christian initiation, and participation in the life and activity of the Christian community⁵⁶.

The Christian community, i.e. the Church itself, is the first catechist, as well as a condition, a natural place, and the addressee and purpose of catechesis. It is associated with the sacraments celebrated by the Church and the processes of Christian initiation. Catechesis understood in this way is to enable the catechised persons to identify with the community of believers, as well as to join in the acts of love performed by it⁵⁷.

Participation in the processes of upbringing in the faith itself cannot consist in correcting or repeating or duplicating all that the catechised person encounters in school during catechesis. Rather, it is

⁵⁴ General Directory for Catechesis, No. 73.

⁵⁵ Polish Directory for Catechesis, p. 8.

⁵⁶ *Ibid.*, p. 13.

⁵⁷ K. Misiaszek, *Katecheza parafialna*, in: *Wokół katechezy posoborowej. Księga pamiątkowa dedykowana ks. Biskupowi Gerardowi Kuszowi, wykładowcy Wydziału Teologicznego Uniwersytetu Opolskiego z okazji 65. rocznicy urodzin*, edited by R. Chałupniak et al., Opole 2004, pp. 202–203.

about taking complementary actions, that is, doing everything that catechesis at school is not able to do. These activities are described both in the Core Curriculum and in the Curriculum of Religious Instruction of the Commission for Education of the Polish Bishops' Conference⁵⁸.

5. The core curriculum of the catechesis of the Catholic Church in Poland of 2010

One of the three basic documents for catechetical activity, published in 2001, is the Core curriculum of the catechesis of the Catholic Church in Poland. This document was redrafted and republished in 2010, in accordance with the new core curriculum for teaching of children and adolescents. It is derived from the catechetical documents of the universal Church.

Changes in the core curriculum of general education required modification of the core curriculum of catechesis. The amendment to the catechetical document concerns the task of writing the content in the language of the student's requirements, as well as adapting the content of teaching to changes in particular subjects, mainly at the third and fourth educational stages. This is a consequence of the assumed assumptions that catechetical documents should be written in a language that is understandable for educational structures and analogous to that of the core curriculum of general education. The requirement to correlate religion lessons with the entire school education was also taken into account⁵⁹. The second motive justifying the amendment of the Core Curriculum of Catechesis is the need to correct the noted shortcomings in the previous Core Curriculum of Catechesis of the Catholic Church of 2001. Nine years

⁵⁸ A. Rayzacher-Majewska, *Dyrektorium katechetyczne*, pp. 51–64.

⁵⁹ P. Tomasiak, *Informacja na temat przewidywanych zmian w programach i podręcznikach katechetycznych*, "Katecheta",

⁵³(2009), No. 6, p. 72.

of functioning of the catechesis programme documents revealed some of their shortcomings or weaknesses⁶⁰.

As a result of changes related to the reform of education, the need arose to adapt programmes and textbooks to the personal development of students. This became necessary in the face of the education reform, which introduced a lowering of the age of compulsory education. The reduction of the age of compulsory education was introduced pursuant to the Act of 19 March 2009 amending the Act on the education system and certain other acts, which introduced the popularisation of pre-school education⁶¹. As a result of this provision, starting from 2011 all five-year-old children were obliged to enrol in one-year pre-school preparation. As a consequence of that, children started going to school a year earlier.

If we were to accept the assumption that according to the core curriculum of the general education, a child is only supposed to start studying writing and reading in the first grade, the existing textbooks proved inadequate. They required modifications so that they could be understandable and feasible for students starting to learn to write and read. One visible sign of adaptation to new challenges is the postponement of the time when the child receives the First Holy Communion from 2nd grade to 3rd grade. The change in the time of the child's First Holy Communion required a reformulation of programmes and textbooks for the first and second educational stages⁶².

The core curriculum of the catechesis draws attention to the diverse level of religiosity of students. The document states that many students have not reached the maturity appropriate for their age.

⁶⁰ Ibid.

⁶¹ Amendment of the Education System Act of 22 February 2009, adopted by the Sejm on 19 March 2009 (Journal of Laws of 2009, No. 56, Item 458).

⁶² Z. Marciniak, *O potrzebie reformy programowej kształcenia ogólnego*, in: *Podstawa programowa z komentarzami*, vol. 1: *Edukacja przedszkolna i wczesnoszkolna*, Warszawa 2009, p. 11.

This is a very important statement, encouraging the creation of programmes and textbooks appropriate to the level of students' religiosity⁶³. According to the core curriculum of catechesis, during the lower secondary school period, students experience religious doubts, giving rise to religious instability; they reject authority and are critical of the Church and the clergy. One example of a good response to these challenges to evangelisation are textbooks edited by a team under the direction of Fr. Piotr Tomasiak – for the 1st grade of lower secondary school *Twoje Słowo światłem na mojej drodze* (Your Word is a light on my path) and for the 2nd grade *Ty ścieżkę życia mi ukazesz* (You will show me the path of life)⁶⁴.

A significant change in the new core curriculum of catechesis is the expression of the goals and content of teaching in the language of the student's requirements, which results from the need to write the document in a language analogous to the language of the core curriculum of general education. According to A. Zellma, "It should be said that the educational requirements in the teaching of religion are determined by changes in the knowledge and skills of students, as described from the point of view of the catechist. They constitute a specification of the content, which is why they are referred to as 'specific requirements'. Educational requirements understood in this way are an essential element of the planning of education (including religious education), with a clear consideration of the projected results. As such, they should serve the teaching and learning of the catechised persons in the course of religion classes and at home, as well as the testing and evaluation of acquired knowledge and skills. Therefore, they should be formulated in curriculum documents, and described as expected, measurable achievements

⁶³ E. Osewska, J. Stala, *Podstawa programowa katechezy Kościoła katolickiego w Polsce z dnia 8 marca 2010 roku – kontekst i przyczyny*, Kraków 2010, pp. 58–60.

⁶⁴ P. Tomasiak, *Konieczność zmian programowych w nauczaniu religii?*, "Katecheta", 53(2009), No. 12, pp. 42–43.

of the student, along with a determination of the type and degree of mastery of knowledge and skills”⁶⁵.

Two advantages of formulating content in the form of student requirements, which increase the effectiveness of teaching, should be emphasised. This is due to the fact that the subject of teaching becomes the specific contents and skills that are to be required. Content written in the form of requirements is measurable, which facilitates the process of verification and evaluation of the level of their mastery and acquisition, having an impact on the learning outcomes. Specific requirements for the student expressed in the form of goals of the lesson units help both the teacher and the student. The teacher can better control the teaching activities, and it is easier for the student to learn when they know what is required of them. Clearly stating the requirements to students is an expression of respect for their subjectivity in teaching and motivates the student to make more effort⁶⁶. It is worth noting that in the amended core curriculum of catechesis, the authors define the content to be memorised. This is a novel element of the document in comparison with the core curriculum of catechesis of 2001. This kind of recommendation occurs in the first stage of education in grades I-III, where concrete prayers or truths of Catholic teaching to be learned by heart are clearly indicated. Such a solution helps in preparing the child for the first Holy Communion⁶⁷.

One important direction of the revision of textbooks is the area of correlation of religion classes with other school subjects. With the amendment of the core curriculum of general education, there

⁶⁵ A. Zellma, *Nowa jakość planowania wymagań edukacyjnych w szkolnym nauczaniu religii – szanse i bariery. Analizy w świetle znowelizowanej Podstawy programowej katechezy Kościoła katolickiego w Polsce*, “Katecheta”, 54(2010), No. 9, p. 9.

⁶⁶ M. Gogolik, *Istotne zmiany w podstawie programowej katechezy Kościoła katolickiego w Polsce*, “Katecheta”, 55(2011), No. 6, p. 6.

⁶⁷ <http://wodnskierniewice.eu/images/pliki/wmo/36/2.3.pdf> [accessed 10.02.2021].

were changes in the teaching of subjects, especially at the third and fourth educational stages. The reform involved the introduction of the majority of general education subjects in lower secondary school and in the first grade of high school, while in the higher grades there was specialisation related to the preparation for the school-leaving examination. Students in high school and technical upper secondary schools take one type of compulsory subjects, while the remaining knowledge is acquired by choosing supplementary subjects. The changes introduced in the teaching curricula forced appropriate modifications in the core curriculum of catechesis and, consequently, in the programmes and textbooks. The content of school subjects according to their new distribution should be taken into account in religious teaching. Therefore, the core curriculum of catechesis referenced the content of school subjects at the upper secondary school level with the following division: correlation of religious instruction with school education in high school and technical upper secondary schools in the basic and extended scope, as well as in supplementary subjects and correlation of religious instruction with school education in the basic vocational school. Correlation with educational paths, which were removed from school teaching as a result of the reform, was abandoned⁶⁸.

In view of the aforementioned significant changes in the third and fourth educational stages, the correlation of religion classes with other subjects should assume both an integrating and a complementary function. Issues related to the amendment of the core curriculum of catechesis of the Catholic Church in Poland show important areas of change in the curricula and textbooks for teaching religion at school. This is an expression of the Church's constant concern for the quality and effectiveness of teaching and religious education in schools. This concern is reflected in the fact that during the functioning of the last core curriculum of catechesis of

⁶⁸ Tomasik, *Konieczność zmian*, pp. 42–43.

2001, as many as 6 curricula, 94 textbooks and almost 5,400 catechises were developed⁶⁹.

6. The core curriculum of the catechesis of the Catholic Church in Poland of 2018

In 2015, the Ministry of National Education announced plans of reform of the education system, which also led to changes in the curriculum. On 30 January 2018, the Minister of National Education Anna Zalewska signed a regulation on a new core curriculum of general education for a four-year high school, a five-year upper secondary technical school, and a two-year second degree sectoral vocational school. The new core curriculum for secondary schools has been in effect in first grades since the 2019/2020 school year⁷⁰. As a result of the new educational reform, primary school returned to its eight-year cycle, while teaching in general secondary schools to a four-year cycle, and in technical schools – to a five-year cycle. In addition, vocational education was restored in the form of second-degree vocational schools. The compulsory schooling age is set at 7 years old. P. Tomasik notes that “[...] the school reform demands [...] a slightly different approach to the work of teachers and schools. The postulate of restoring the axiological dimension of education remains valid. It is necessary to break with political correctness, which imposes increasingly constricting norms on the teacher, parents and students. There is also a need for more common sense in assessing the various anti-discrimination measures, often damaging the rights of parents and religious institutions. Finally, and perhaps most importantly, we need a calm

⁶⁹ T. Panuś, *Nowe dokumenty katechetyczne – nowe szanse, nowe obawy*, in: *20 lat minęło. Materiały z IX spotkania dyrektorów wydziałów katechetycznych*, Kraków 2010, p. 69.

⁷⁰ Regulation of the Minister of National Education of 30 January 2018 on the core curriculum of general education for high school, technical upper secondary school and second degree sectoral vocational schools (Journal of Laws of 2018, Item 467), <http://www.dziennikustaw.gov.pl/DU/2018/467> [accessed 8.07.2018].

conversation about school, about education, setting aside the emotions that accompany any attempts at change in Poland⁷¹.

The works of Polish catechists, who took steps to prepare a new curriculum of catechesis of the Catholic Church in Poland, fit in with the context of the creation of a new core curriculum of general education. Bishop M. Mendyk appointed a team tasked with designing the core curriculum of catechesis. It consisted of 22 people divided into five working groups: for pre-school, for grades I–IV of primary school, and for grades V–VIII. On 8 June 2018 in Janów Podlaski, during the celebrations of the 200th anniversary of the Diocese of Siedlce and of the 379th plenary meeting of the Polish Bishops' Conference, which was held on the occasion, the bishops approved the new core curriculum of catechesis of the Catholic Church in Poland⁷².

The new core curriculum adopts a new educational division: three stages of four grades each. Grades I–IV are the preparatory cycle for First Communion and the sacrament of Penance and Reconciliation, as well as the post-Communion stage. The second stage is grades V–VIII and includes at first more remote, and then closer preparation for confirmation. Secondary school, on the other hand, involves education for Christian adulthood, deepening of knowledge of the Bible and Church tradition, and shaping of the ecclesial identity combined with undertaking of preparation for apostolic activities.

The development of the idea of Polish catechetical curricula is an ongoing process. The subjects of this process are students, teachers, experts, as well as entire communities for whom education is a mission of sorts. The Polish catechetical community, which has always participated in educational transformations, is a part of this trend⁷³.

⁷¹ A. Wołkiewicz, *Główne idee polskich programów katechetycznych*, Kraków 2018, p. 214.

⁷² Konferencja Episkopatu Polski, *Podstawa programowa katechezy Kościoła katolickiego w Polsce* (Polish Bishops' Conference, Core curriculum of catechesis of the Catholic Church in Poland), Częstochowa 2018.

⁷³ Wołkiewicz, *Główne idee*, pp. 215–216.

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The Code of Canon Law of 1983 provides guarantees of religious freedom in the individual and communal dimension. It states that the teaching of religion is one of the most important tasks of the Church⁷⁴. The Catholic Church is internally governed by canon law. The system of these norms comprehensively regulates all spheres of the life of the Church. However, under state law, canonical norms do not apply automatically, but may have legal effect if a competent state authority so decides. One example of the application of Canon law under Polish law are some regulations in the field of teaching of religion in public schools, such as: preparation of teaching content, qualifications of teachers of religion, as well as supervision of the church authorities over its implementation.

To sum up, the teaching of religion in public schools is one of the areas which, by their very nature, are of interest to both state and ecclesiastical authorities. The settlement of such cases should in all circumstances be subject to agreement between the State and churches and religious associations.

⁷⁴ Krukowski, *Konkordat polski*, p. 14.

FREEDOM OF CONSCIENCE AND CONFESSION AND THE TEACHING OF RELIGION IN THE LIGHT OF JURISPRUDENCE OF THE EUROPEAN COURT OF HUMAN RIGHTS

Freedom of conscience and religion is guaranteed in Article 9 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter also: “ECHR” or “the Convention”), a document drawn up within the Council of Europe and signed by all the countries belonging to this organisation. The body set up under the Convention is the European Court of Human Rights (hereinafter also: “ECtHR” or “the Court”), which has jurisdiction to hear complaints for violations of the Convention guarantees by States-Parties¹. The judgments of the European Court of Human Rights are binding on the States that are party to the given proceedings. If a violation of rights under the Convention is established, a compensation is awarded, but the State which violated the given right is also obliged to remove the reason for the infringement, e.g. by changing its law. It is worth adding that the judgments of the ECtHR are indirectly binding on each State Party, based on the presumption that in a similar case the position of the Court would be identical².

¹ J. Hołda, Z. Hołda, D. Ostrowska, J.A. Rybczyńska, *Prawa człowieka. Zarys wykładu*, Warszawa 2008, pp. 59–61.

² *Ibid.*, p. 64.

From the perspective of the school, Article 9 of the Convention means that “programmes of study of religion may not express an axiological preference for the religion which is dominant in a given country, which emphasises the superiority of that religion and which may influence the minds of children, who are by their very nature trusting in the message presented by the teacher”³. In accordance with the views of the ECtHR, religious education at school should provide the opportunity to get acquainted with the dogmatics and cultural heritage of a given religion (i.e. that it does not have to be equivalent to religious studies), but should also prepare for life in an open, pluralistic society, which is diverse in many respects, including in terms of religion and worldview.

1. Article 2 of Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms

The European Court of Human Rights in a number of judgments that related to human rights violations in connection with the functioning of the education system, in addition to Article 9 of the Convention for the Protection of Human Rights and Fundamental Freedoms⁴, also invoked Article 2 of Protocol No. 1 to the said Convention. The referenced article provides as follows: “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”. This article constitutes a *lex*

³L. Garlicki, *Religia a szkoła publiczna (na tle aktualnego orzecznictwa strasburskiego)*, in: *Pro bono Reipublicae. Księga jubileuszowa Profesora Michała Pietrzaka*, edited by P. Borecki, A. Czohara, T.J. Zieliński, Warszawa 2009, pp. 247-248.

⁴Convention for the Protection of Human Rights and Fundamental Freedoms, done at Rome on 4 November 1950, subsequently amended by Protocols Nos. 3, 5 and 8 and supplemented by Protocol No 2 (Journal of Laws of 1993, No. 61, Item 284).

specialis in relation to Article 9 of the Convention, according to which freedom of thought, conscience and religion includes, inter alia, freedom of teaching⁵. The ECtHR has repeatedly stressed the importance of the right of parents to educate and teach their children according to their own beliefs. In its Judgment in *Kjeldsen, Busk, Madsen and Pedersen v. Denmark*, the Court held that “it is in the discharge of a natural duty towards their children – parents being primarily responsible for the ‘education and teaching’ of their children – that parents may require the State to respect their religious and philosophical convictions”⁶. It also noted that parents have the right to “advise their children and perform their natural parental function as educators in order to guide them along a path consistent with their own religious beliefs”⁷.

Bearing in mind the importance of the emphasised right of parents, it should be remembered that according to the wording of Article 9 of the Convention, freedom of conscience and religion is enjoyed by everyone, including minors. However, it must not be forgotten that the second sentence of Article 2 cannot be interpreted in isolation from the first sentence, which concerns the right to education. In the Judgment in the case of *Cambell and Cosans v. the United Kingdom*, the ECtHR stated that the interpretation of the entire article is significantly influenced by its first sentence, where the right to education was expressed. Therefore, the right of parents to raise their children on the basis of their beliefs cannot contradict it⁸. The right of parents to educate and teach their children according to their own convictions, referred to in the second

⁵ K. Warchałowski, *Prawo do wolności myśli, sumienia i religii w Europejskiej Konwencji Praw Człowieka i Podstawowych wolności*, Lublin 2004, p. 187.

⁶ Judgment of the European Court of Human Rights of 7 December 1976 in the case of *Kjeldsen, Busk, Madsen and Pedersen v Denmark* (applications nos. 5095/71; 5920/72; 5926/ 72), § 52.

⁷ *Ibid.*, § 54.

⁸ Judgment in the case of *Lautsi v. Italy* of 3 November 2009 (application No. 30814/06).

sentence of Article 2 of the Protocol, is not absolute, and the rights vested in the child, according to Article 9 of the Convention and the first sentence of Article 2 of the Protocol, set the limits for its implementation. K. Warchałowski, referring to Article 2, stated that: “the state is obliged both to respect the rights of parents in the field of education and to protect the interests of the child [...]. The child therefore has the right to freedom of thought, conscience and religion, and parents have the right to direct the child and to provide care over their exercise of their freedom”⁹.

2. The case of *Lautsi v. Italy*

When considering the content of Article 9 of the European Convention on Human Rights – which guarantees the right to freedom of thought, conscience and religion – reference should be made to the case law of the Court. One case widely commented on within academic writings dedicated to the Court’s judgments was *Lautsi v. Italy*¹⁰. In her application to the Court, Soile Lautsi complained, on behalf of herself and her children, that the presence of a crucifix in a public school class violated, in her view, the freedom of belief and religion protected by Article 9 of the Convention and Article 2 of the additional protocol¹¹.

After a negative decision of the school’s management the case was dealt with by the Supreme Administrative Court. In the course of the proceedings, Ms Lautsi demanded the removal of the crucifixes, arguing that the presence of religious symbols in a public school is incompatible with the principle of secularism and the impartiality of the ideological state authority. The applicant referred to

⁹ Warchałowski, *Prawo do wolności*, p. 95.

¹⁰ <http://bip.ms.gov.pl/pl/prawa-czlowieka/europejski-trybunal-praw-czlowieka/orzecznictwo-europejskiego-trybunalu-praw-czlowieka-orzeczenia-europejskiego-trybunalu-praw-czlowieka-w-prawach-dotyczacych-innych-panstw/> [accessed 8.07.2022].

¹¹ Convention for the Protection of Human Rights and Fundamental Freedoms.

the provisions of the Italian Constitution, which refer to the principle of state secularity and impartiality of the state administration, Article 9 of the Constitution and Articles 3 and 19, as well as Article 19 of the European Convention on Human Rights. She also claimed that there had been a violation of religious freedom in the sense of not being subject to the influence of any religious system. On 17 March 2005, the court issued a ruling rejecting Lautsi's allegations. The adjudicating panel stated that "the cross is a symbol of Italian history and culture [...], identity, as well as a symbol of the principles of equality, freedom and tolerance and the secularity of the state"¹².

In her complaint to the Court, the applicant raised an objection to infringement of Article 9 of the Convention in conjunction with Article 2 of Additional Protocol to the Convention, which states that "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"¹³.

The Court agreed with the applicant, stating that the suspension of the symbol of the Christian religion in schools violates the right of parents to raise their children in accordance with their own beliefs, violating the religious freedom of students of a non-religious school. Moreover, it stated that the cross hanged in the classrooms, which was impossible not to notice, could be perceived by the students as a religious symbol and could induce them to believe that education is conducted in an environment with a clear religious character. This, in turn, could interfere with those students who profess other religions or non-denominational persons (especially if they are in a minority)¹⁴.

¹² Judgment of the Administrative Court for Veneto of 11 March 2005, Gazz. Uff.1110.

¹³ https://www.echr.coe.int/documents/convention_pol.pdf [accessed 12.07.2022].

¹⁴ T. Szczech, *Czy wolność religijna jest wolnością od religii? Sprawa Lautsi przeciwko Włochom a kryzys wolności religijnej w Europie*, Wrocław 2011, p. 400.

As part of the appeal procedure, the Italian government submitted a request to refer the case to the Grand Chamber, which was supported by as many as twenty member states of the Council of Europe. The Grand Chamber began its analysis of the problem by pointing out that in those countries where the organisation of the school environment is a matter for public authorities, this task must be seen as a function of the State in the field of education and teaching within the meaning of the second sentence of Article 2 of Protocol No. 1. Consequently, the decision to place or not to place crosses in the classrooms of public schools is a manifestation of the State's exercise of its functions in the field of education and teaching¹⁵. In addition, the Court noted that although the cross is mainly a religious symbol, no evidence has been submitted indicating that the display of religious symbols on the walls of classrooms in any way affects students, and therefore the existence of their impact on young people whose beliefs are not yet fully formed cannot be reasonably invoked¹⁶.

It is worth noting that States Parties to the Convention have a margin of freedom in the assessment of the scope of their efforts to combine their functions in the field of education and teaching with the need to respect the right of parents to ensure that their children are educated in accordance with their own religious and philosophical convictions. Therefore, the decision whether or not crosses should be placed in public school classrooms is also within the margin of discretion of the respondent State. The correctness of the Court's position is confirmed by the lack of consensus among European states on the issue of displaying religious symbols¹⁷. Furthermore, the Court

¹⁵ M. Piechowiak, *Negatywna wolność religijna i przekonania sekularystyczne w świetle sprawy Lautsi przeciwko Włochom*, "Przegląd Sejmowy. Dwumiesięcznik", 19(2011), No. 5(106), p. 37.

¹⁶ Cf. Judgment in the case of *Lautsi v. Italy*, para. 48.

¹⁷ A. Kuna, *Wolność sumienia i wyznania w świetle orzecznictwa Europejskiego Trybunału Praw Człowieka i polskiego Trybunału Konstytucyjnego*, in: *Ochrona praw człowieka w wymiarze regionalnym*, edited by M. Marcinko, Kraków 2012, pp. 122–126.

noted that the effects of the visibility of Christianity resulting from the placement of crosses in classrooms must be considered from an appropriate perspective. Firstly, the presence of the cross is not associated with mandatory teaching about Christianity and, secondly, Italy opens the school environment to other religions as well. In schools it is not forbidden for students to wear Islamic headscarves or other items of clothing with religious connotations. Alternative solutions are being introduced that make it possible to adapt the teaching system to the practices of religious minorities, e.g. the beginning and end of Ramadan are celebrated.

In the judgment of 18 March 2011, the Grand Chamber overturned its earlier position, finding that the suspension of the cross in public schools ultimately did not constitute a violation of the European Convention on Human Rights and Fundamental Freedoms. In the light of the foregoing, the Court found that neither Article 9 nor Article 2 of Protocol No. 1 has been infringed in respect of the applicant, Soila Lautsi¹⁸.

3. The case of *Grzelak v. Poland*

Among the complaints handled by the ECtHR and submitted against Poland, particular attention should be paid to the ones concerning Article 9 of the Convention due to the fact that they had the greatest impact on changes in Poland. The applicant, Mateusz Grzelak, as well as his parents, who are agnostics, accused the Polish state of not organising ethics lessons. Religion lessons are scheduled for the middle of the day, between compulsory classes. The applicant parents unsuccessfully reported their son's willingness to participate in ethics classes in all school facilities where the boy attended at individual stages of education, as well as in educational institutions¹⁹. The applicants further argued that the son had been discriminated against, as well as

¹⁸ Cf. Judgment in the case of *Lautsi v Italy*, Grand Chamber, paras. 76–77.

¹⁹ Judgment of the ECtHR of 15 June 2010 in the case of *Grzelak v. Poland* (application No. 7710/02), § 7.

physically and mentally harassed by other students, on account of not attending religious classes²⁰. Mateusz Grzelak also alleged that Article 9 of the Convention had been violated with regard to him due to the lack of an assessment grade in the religion/ethics section²¹.

The lack of positive actions on the part of the educational authorities, aimed at providing the applicant with the opportunity to participate in ethics classes, was dictated by the wording of § 3 (2) in connection with § 2 (1–3) of the Regulation of the Minister of National Education of 14 April 1992 on the conditions and manner of organising religious education in public schools²². According to this regulation, alternative ethics classes may be conducted if at least seven students of a given class or school or at least three students of different schools located in a given locality express interest in them²³. In the case of a smaller number of volunteers, they would take place in an inter-class or inter-branch group. In the case of groups of less than seven students, these lessons should be organised in an inter-school group or at a catechetical point, with the reservation that the number of students should not be less than three. As far as the issue of the presence of an assessment grade from the subject of religion on the school certificate is concerned, § 9 (1) of the cited regulation states that it is placed after the grade assigned for student conduct and that it should not be indicated whether the student participated in classes from a specific religion or in ethics classes to prevent any manifestations of intolerance. It was also emphasised that the assessment from religion and ethics did not impact promotion to the next grade (para. 2). Compliance of the above norms with Article 82 (2) of the then applicable Constitution of 22 July 1952, establishing

²⁰ *Ibid.*, § 8.

²¹ *Ibid.*, § 63.

²² Regulation of the Minister of National Education of 14 April 1992 on the conditions and manner of organising religious education in public schools (Journal of Laws of 1992, No. 36, Item 155).

²³ *Ibid.*, § 1.

the principle of separation of the Church from the state, as well as with Article 10 (1) of the Act of 17 May 1989 on guarantees of Freedom of Conscience and Confession, which expressed the principle of secularity and neutrality of the state, was challenged by the Commissioner for Human Rights in an application of 19 August 1992 addressed to the Constitutional Court. This conclusion also concerned the compliance with the Constitution of other provisions that relate to the state's relations with churches and religious associations²⁴.

The Tribunal, in its judgment, found that § 9(1–3) of the Regulation of the Minister of National Education of 14 April 1992 complied with the said provisions: Placing grades from religion on school certificates is a consequence of organisation of the teaching of religion by public schools [...]. The school certificate covers all school activities – both compulsory and non-compulsory – and therefore there are no grounds for compulsory exclusion of religion. With regard to the concerns of intolerance, the Tribunal further stated that the assessment grade on the school certificate may concern not only the subject of religion or ethics itself, but that if a student attends both subjects, they may receive a joint assessment grade from both of them. The contested provision therefore contains a double safeguard. Firstly, the degree shown on the certificate does not indicate a specific religion and, secondly, it is not even known whether this degree can be related to the teaching of religion at all, or to ethics, or to both of these subjects combined²⁵.

Pursuant to regulation of the Ministry of Education of 13 July 2007²⁶, two changes were introduced in the Regulation of the Minister of National Education of 30 April 2007 on the conditions

²⁴ K.H. Jabłoński, *Rzecznik praw obywatelskich wobec problemu nauczania religii w szkołach publicznych*, in: *Pro bono Reipublicae*, pp. 296–299.

²⁵ Judgment of the Constitutional Tribunal.

²⁶ Regulation of the Minister of National Education of 13 July 2007 amending the Regulation on the conditions and methods of assessing, classifying and promoting pupils and students as well as conducting examinations and tests in public schools (Journal of Laws of 2007, No. 130, Item 906).

and methods of assessing, classifying and promoting pupils and students, as well as conducting examinations and tests in public schools²⁷. In § 20 paragraph 4a was added, and in § 22 paragraph 2a was added. On the basis of these provisions, the average grade obtained at the end of the school year includes the grade obtained from religion or ethics. The Constitutional Tribunal, which assessed the compatibility of these regulations with the Constitution, declared that they are a consequence of introducing religion into schools, placing grades from these subjects on the school certificate, as well as constitutional guarantees of freedom of religion, and not an expression of support for a theistic worldview. The Tribunal further stated that the student (their parents, legal guardians) has, on the basis of the applicable regulations, the possibility of choosing between the study of a specific religion and ethics as a subject for those who do not have a religious worldview²⁸.

In the discussed case, the ECtHR did not accept the allegations made by the parents that their right to bring up and teach their children in accordance with their own convictions, as expressed in Article 2 of Protocol No. 1 to the Convention, as well as the right not to disclose their convictions derived from Article 9 of the Convention, had been violated. The Court stated that the Polish model of teaching religion in public schools falls within the margin of freedom left to the states, while students and parents have the option of choosing between religion and ethics classes. Moreover, it was emphasised that the law in force in Poland does not require parents to submit declarations of resignation from religious or ethics classes²⁹.

²⁷ Regulation of the Minister of National Education of 30 April 2007 on the conditions and methods of assessing, classifying and promoting pupils and students as well as conducting examinations and tests in public schools (Journal of Laws of 2007, No. 83, Item 562).

²⁸ Judgment of the Constitutional Tribunal of 2 December 2009, U10/07 (OTK-A2009, No. 11, Item 1630).

²⁹ Judgment of the ECtHR of 15 June 2010 in the case of *Grzelak v. Poland* (application No. 7710/02), § 102–107.

On the other hand, the application by Mateusz Grzelak was recognised. In this case the Court found an infringement of Article 14 in conjunction with Article 9 of the Convention, constituting unjustified stigmatisation of the applicant. The ECtHR associated the violation of the indicated provisions with the fact that the applicant's school certificate did not include any assessment grade in the place designated for the grades from religion or ethics classes. According to the Court, the lack of a grade could be perceived as an expression of the student's non-identification with a religious worldview³⁰.

Bearing in mind the religious structure in Poland, the Court noted that in Polish conditions, where most public schools conduct religion classes (especially Catholic religion classes), and ethics classes take place only in a small percentage of schools in Poland, the lack of a grade in the designated place may suggest to outsiders that the student is a non-believer. The Court saw as unambiguous the message resulting from the primary school certificate, where a line was marked in the space where the grade should be given, and the word "ethics" was crossed out³¹. The ECtHR also questioned the inclusion of grades from religion in the average of grades. The Court considered that this may mean that persons in a similar situation to the applicant, who want to participate in religion or ethics classes but do not have such an opportunity, will not be able to increase their average grades in this way. On the other hand, students who want to get a higher average may feel compelled to attend religious classes against their convictions³².

As regards the changes in the legal status after this judgment, it should be noted that apart from the information published on 22 June 2012 on the websites of the Ministry of National Education, no changes have been made to the generally applicable law in Poland regarding the issues raised in the above-mentioned judgment. The Ministry

³⁰ Ibid., § 88.

³¹ Ibid., § 95, 97.

³² Ibid., § 96.

of National Education explained that the religion/ethics grade, without any indication which of these subjects it concerns, as well without deleting one of these subjects in a situation where a student did not attend such classes, should be placed on school certificates under the grade for student conduct. Moreover, certificates issued in grades 1–3 should not include a descriptive grading for both subjects³³.

* * *

It can therefore be said that Polish law essentially guarantees the protection of freedom of thought, speech and confession but, nonetheless, sensitive issues are left to be resolved in practice, which sometimes seems to be inappropriate. The number of cases in which people assert their own rights guaranteed by Article 9 of the Convention will certainly increase, which is why it is necessary to stop treating the will of an individual in the scope of exercising their rights as being difficult or problematic. It is clear from the case law of the ECtHR that the presence of religion in a public school of a secular state is permissible, but it must meet certain conditions³⁴.

The regulations governing religious education in schools, in the context of ensuring freedom of conscience and confession, may in principle be considered appropriate. Above all, the freedom to participate in religious lessons was ensured based on positive statements from parents or adult students. Moreover, the principle of creating class groups was rationalised by requiring a minimum of seven students to attend classes.

³³ www.men.gov.pl – Informacja MEN w sprawie warunków i sposobu organizowania nauki etyki w szkołach publicznych (Information of the Ministry of Education on the conditions and manner of organising the teaching of ethics in public schools).

³⁴ Warchałowski, *Prawo do wolności*, p. 115.

ORGANISATION OF RELIGION CLASSES AT SCHOOL IN THE LIGHT OF JUDGMENTS OF THE CONSTITUTIONAL TRIBUNAL

The jurisprudence of the Polish Constitutional Tribunal in the context of religious freedom emerged only during the period of political transformation. It originally concerned issues such as the physicians' conscience clause in the context of abortion, the return of religious instruction to public schools, and the clause of respect for the Christian value system in the Broadcasting Act¹. As in the case of the European Court of Human Rights, Polish jurisprudence on religious freedom is stable, which is not necessarily met with appreciation on the part of legal scholars and commentators, who recognise a need for change².

While conducting a comparative analysis of the achievements of the ECHR and the Constitutional Tribunal, it should be noted that the former is both a court of law and of facts, and the latter is only a court of law, which is reflected, for example, in the difference of positions of both bodies in connection with the teaching of religion in Polish public schools.

¹ Ł. Mirocha, *Wolność a równość w orzeczeniach Europejskiego Trybunału Praw Człowieka i polskiego Trybunału Konstytucyjnego dotyczących wolności religijnej*, in: *Prawo i polityka w sferze publicznej perspektywa zewnętrzna*, edited by P. Jabłoński, J. Kaczor, M. Pichlak, Wrocław 2018, p. 113.

² A. Rogowska, *Wolność sumienia i wyznania w orzecznictwie polskiego Trybunału Konstytucyjnego*, Warszawa 2015, p. 217.

1. Jurisprudence of the Constitutional Tribunal in the period prior to the adoption of the Constitution of 2 April 1997. Teaching of religion at school

The need to address this issue in the case law of the Constitutional Tribunal appeared at the time when religious instruction returned to schools in the school year 1990/91, pursuant to the instruction of the Ministry of Education concerning the return of religious education to schools in the school year 1990/91, and also pursuant to the instruction of the Ministry of Education of 24 August 1990 concerning the return of religious instruction to schools in the school year 1990/91, defining the principles of cooperation with churches and religious associations, which became the basis of the first of the decisions of the Constitutional Tribunal referring to this issue³.

The ruling with the case reference number K 11/90⁴ was issued in connection with the application of the Commissioner for Human Rights to examine the compatibility of the above-mentioned instructions with the Constitution, with the Act on the Development of the Education System of 15 July 1961, with the Act of 17 May 1989 on the relation of the State to the Catholic Church⁵, with the Act of 17 May 1989 on guarantees of Freedom of Conscience and Confession⁶, as well as with the Act of 23 January 1982 – Teacher’s Charter⁷.

The main problem that the Constitutional Tribunal was to consider, in the scope of individually understood freedom of conscience and confession, was the right to remain silent about one’s

³ Act of 15 July 1961 on the development of the education system (Journal of Laws of 1961 No. 32, Item 160).

⁴ Judgment of 30 January 1991, K 11/90, OTK1986-1995/t3/1991/2.

⁵ Act of 17 May 1989 on the relationship of the State to the Catholic Church in the Republic of Poland (Journal of Laws of 1989, No. 29, Item 154).

⁶ Act of 17 May 1989 on guarantees of Freedom of Conscience and Confession (Journal of Laws of 1989, No. 29, Item 155).

⁷ Act of 26 January 1982 – Teacher’s Charter (Journal of Laws of 1982, No. 3, Item 19).

religion or beliefs, but also the right of parents to raise their children in accordance with their own beliefs in matters of religion. The above-mentioned instructions provided for the possibility for parents or students of secondary schools to submit declarations of will regarding participation in religion classes.

In the judgment, the Tribunal indicated that the expression of will in the form of the aforementioned declarations is optional, and thus cannot be considered as a form of forcing anyone to disclose their religion or worldview. In addition, it is not possible to interpret the applicable provisions of law in the same way as the applicant did, i.e. to claim that the statutory right to remain silent in the matter of one's religion and worldview is the same as an obligation to remain silent also in this respect. The justification also pointed out the fact that the mere submission of a declaration of willingness to participate in religion classes is not tantamount to revealing one's religion or worldview because – as emphasised – it is possible for an unbeliever to send their child to study religion, and for a believer not to send their child to study religion⁸.

It is worth adding that in the Judgment in question, the Constitutional Tribunal drew attention to the fact that the elimination of religious education from schools by the Act of 1961 was reprehensible and inconsistent with the Constitution because it limited the freedom of conscience and confession guaranteed in it, and that it was the cause of great difficulties associated with participation in such education, and in many cases forced children and parents to abandon such education⁹. Moreover, the Tribunal pointed out that prohibiting or ordering the teaching of religion in schools by any statutory act is contrary to the international obligations assumed by Poland.

⁸ Judgment of 30 January 1991, K 11/90, OTK1986-1995/t3/1991/2.

⁹ A. Mączyński, *Freedom of conscience and religious Liberty In the jurisdiction of the Polish Constitutional Tribunal*, in: *Constitutional Jurisprudence In the Area of Freedom of Religion and Beliefs. XIth Conference of the European Constitutional Courts*, Warszawa 2000, pp. 538–539.

In the application, the Commissioner for Human Rights questioned the manner and principles of introducing voluntary religious education in schools, arguing that the introduction of religious education in schools is contrary to the principle of the neutrality of the state's worldview, as well as the idea of a democratic state governed by the rule of law.

In the justification of the judgment, the Constitutional Tribunal declared that the allegations of the Commissioner for Human Rights were unfounded, stressing that it is the introduction of voluntary religious lessons to schools that is a determinant of the neutrality of the state's worldview. As the Tribunal argued, it is precisely this secularity and neutrality that not only cannot be the basis for introducing obligatory religious instruction in state schools, but neither can it mean prohibiting such teaching if the citizens concerned so wish. This is what the secularity and neutrality of the state is all about. A different understanding of these concepts would not mean state neutrality, but state interference in the freedom of conscience and the confession of citizens¹⁰.

Concluding the discussion of the Judgment in question, it is worth adding that it was in certain ways supplemented by the decision of 13 February 1991 with the case reference number S 1/91, in which the Constitutional Tribunal signalled to the Sejm that the Act on the development of the education system of 15 July 1961 was inconsistent with the legal system of the Republic of Poland, thus suggesting that it should take up legislative initiative in order to amend the said act by replacing it with a new act¹¹.

Another Judgment of the Constitutional Tribunal relating to the teaching of religion in schools was the Judgment with the case reference number U 12/92, which referred, among other things, to the issue of introduction of ethics classes as an alternative

¹⁰ Judgment of 30 January 1991, K 11/90, OTK1986-1995/t3/1991/2, p. 34.

¹¹ Signalling decision to the Sejm of the Republic of Poland of 13 February 1991, S 1/91, OTK 1986–1995/t3/1991/29.

to religion classes. In this case, the Constitutional Tribunal was to determine, at the request of the Commissioner for Human Rights, the compliance of individual provisions of the Regulation of the Minister of National Education of 14 April 1992¹² with the Constitution and applicable laws.

The applicant alleged that when the regulation was issued, first of all the Minister went beyond their statutory delegation by introducing an alternative subject to religion – ethics. Secondly, the Commissioner for Human Rights requested that the Regulation be examined in terms of its compliance with Article 2(5) of the act on guarantees of freedom of conscience and confession, to the extent that it requires parents, legal guardians, or secondary school students themselves to submit a declaration that they study religion outside the school or that they resign from religious instruction¹³, on the grounds that this provision violates the right to silence. The third allegation brought by the applicant was the issue of placing of grade assessments from religion or ethics on school certificates which, according to the Commissioner for Human Rights, poses the risk of intolerance¹⁴, and also introduces the possibility of a situation where an official document includes a grade assessment which does not belong to the sphere of education, but remains an internal matter of the Church¹⁵. The final allegation concerned the possibility of placing religious symbols also in premises not intended for religious instruction and of saying prayers before and after school classes¹⁶.

In the ruling, the Constitutional Tribunal addressed each of the allegations presented in the application of the Commissioner

¹² Regulation of the Minister of National Education of 14 April 1992 on the conditions and manner of organising religious education in public schools (Journal of Laws of 1992, No. 36, Item 155).

¹³ *Ibid.*, § 3 (3).

¹⁴ Judgment of 20 April 1993, U12/92, OTK 1986–1995/t4/1993/cz1/9.

¹⁵ *Ibid.*

¹⁶ *Ibid.*

for Human Rights, finding most of them to be unfounded. The Tribunal found that the Act on the education system grants the Minister of National Education the right to introduce optional subjects, such as ethics, into the framework curricula. In the justification, we read that the introduction of ethics in § 1 (1) of the contested regulation is a simple consequence of the voluntary nature of participation in religion classes and, in particular, that it is one of the conditions facilitating compliance with the principles resulting from the Act of 17 May 1989 on guarantees of freedom of conscience and confession [...]. In this situation, ethics classes are closely related to the organisation of religious education in public schools. Therefore, it cannot be considered that the Minister of National Education went beyond his statutory delegation here¹⁷.

As regards the second allegation concerning the right to remain silent, the Tribunal agreed in part with the applicant that § 3 (3) of the Regulation is incompatible with the Law on the education system because it does not fall within the scope of the statutory delegation, as it does not concern the expression of the will to participate in religious instruction¹⁸.

Responding to another allegation in the discussed case, i.e. the issue of inclusion of grades from religion and ethics classes on school certificates, the Constitutional Tribunal took the position that the inclusion of these grades on certificates is a consequence of the organisation of religion classes by public schools, and that the mere presence of such a grade on a certificate does not determine which religious classes the student attended. In addition, students have the right to attend both of the concerned subjects and receive a joint grade from them. For the above reasons, the Constitutional Tribunal considered that the contested regulations comply with Article 22(2)(4) and (5) of the Education System Act, but also stated that

¹⁷ Ibid.

¹⁸ Ibid.

the challenged provision contains [...] double protection¹⁹ against the possibility of any intolerance.

Another important Judgment in which the Constitutional Tribunal ruled on the freedom of conscience and confession in schools – in the scope in which it concerns the right of parents to raise their children in accordance with their own religious and moral convictions – was the ruling with the case reference number K 26/96²⁰. The Tribunal Court considered this case at the request of a group of senators who questioned, among other things, whether this right of parents was compatible with the introduction – pursuant to Article 1 (4) (b) and (c) of the Act of 30 August 1996 amending the Act on family planning, protection of the human embryo, and the conditions for the admissibility of abortion and amending certain other acts²¹ – into the curriculum of a compulsory subject “Knowledge of Human Sexual Life”.

The Constitutional Tribunal did not find a violation of constitutional principles here. It stated that the Ministry of Education has the competence to determine curricula taking into account all the principles that flow from the Act on the education system. Therefore, the Minister’s authority to introduce a subject called “Knowledge of Human Sexual Life” cannot be considered unconstitutional. According to the Tribunal, only the exercise of this competence by the Minister may possibly violate the constitutional right of parents to raise their children in accordance with their moral and religious beliefs. The Constitutional Tribunal stressed in the justification of its ruling that “the transmission of knowledge about human sexual life touches on axiological issues, which can in no case be reduced to purely empirical knowledge, not subject

¹⁹ Ibid.

²⁰ Judgment of 28 May 1997, K26/96, OTK ZU 1997/2/19.

²¹ Act of 30 August 1996 amending the Act on family planning, protection of the human embryo and the conditions for the admissibility of abortion, and amending certain other acts (Journal of Laws of 1996, No. 139, Item 646).

to moral evaluation, but this does not mean that the teaching of such a subject must necessarily lead to a violation of certain constitutional principles”²².

The question of the introduction of religious instruction into schools, the way of organising classes, as well as all elements related to it became the foundation of a long-standing dispute between supporters and opponents of the introduced solutions. The Constitutional Tribunal was once again placed in a situation where it had to resolve legal issues that raised great doubts, both in the area of science and in the sphere of public opinion, and which in a way were a source of philosophical conflicts.

2. Relations between the state and churches and other religious associations in jurisprudence of the Constitutional Tribunal in the period prior to the adoption of the Constitution of 2 April 1997

The issue of the return of religious education to schools at the beginning of the 1990s caused controversy, not only in the field of individually understood freedom of conscience and confession. The presence of religion classes also required a regulation of relations between state bodies and individual churches and religious associations, mainly in the organisation of such teaching, which was not an easy and obvious task.

For the first time these issues were addressed by the Constitutional Tribunal in the Judgment of 30 January 1991 (case ref. No. K 11/90). In his application to the Constitutional Tribunal, the Commissioner for Human Rights drew attention to the fact that the instructions of the Ministry of National Education regarding the return of religious education to schools are incompatible with Article 2 of the Act of 15 July 1961 on the development of the education system, insofar as it provides for the secular nature of schools and other educational

²² Judgment of 28 May 1997, K26/96, OTK ZU 1997/2/19.

institutions, as well as with Articles 18 and 19 of the Act of 17 May 1989 on the relationship of the State to the Catholic Church to the extent that they provide the possibility for schools to make premises available for the conducting of religious instruction. In addition, the application of the Commissioner for Human Rights contained allegations that the instructions violated the prohibition of the state subsidising churches and religious associations which, according to the applicant, will take place at the time of payment of salaries to teachers of religion. The next complaint related to the issue of the qualifications of people teaching religion in schools.

The Constitutional Tribunal did not agree with the allegations made in the application of the Commissioner for Human Rights. The Tribunal did not find a violation of the principle of secularity of the state (including schools and educational institutions), arguing that since religion lessons are conducted by representatives of individual churches and religious associations, and the curriculum is an internal matter of these organisations, and state curricula are not saturated with religious content, one cannot speak of a violation of the principle of secularity of the school and the state²³. In the cited judgment, the Constitutional Tribunal also referred to the interpretation of Articles 18 and 19 of the Act on the relationship of the state to the Catholic Church made by the Joint Commission of the representatives of the government and the Polish Bishops' Conference, where it was recognised that both provisions must be understood literally, i.e. that the teaching of religion can take place not only in catechetical points, but also in school premises with the consent of the administrator, i.e. the Minister of National Education²⁴. The Tribunal fully agreed with this interpretation.

Another issue was the possibility of introducing a religion taught by churches and religious associations other than that

²³ Judgment of 30 January 1991, K 11/90, OTK1986-1995/t3/1991/2.

²⁴ Ibid.

of the Roman Catholic Church, which were covered by the second of the discussed instructions of the Minister of National Education since the provisions of the cited act do not apply to them. In this case, the Constitutional Tribunal also found no incompatibility with the second sentence of Article 2 of the Act of 15 July 1961 on the development of the education system, which was justified by the wording of the provisions of the Act of 17 May 1989 on guarantees of Freedom of Conscience and Confession, and in particular of Article 20(2), in which there is also a provision on the possibility of making premises rooms available for the study of religion in consultation with administrators²⁵.

The Constitutional Tribunal did not side with the applicant's position regarding the qualifications of catechists, where the latter challenged the qualifications of catechists, stating that they did not meet the requirements of Article 9(1) and (2) of the Teacher's Charter Act. The Constitutional Tribunal determined that the qualifications of teachers of religion are often higher than those of other teachers, and moreover, "since the issue of teaching religion is an internal matter of the Churches, decisions concerning catechists and their qualifications are the responsibility of the authorities of these churches"²⁶. The Court also did not share the applicant's position on the violation of the prohibition on subsidising churches and religious associations, stating that "the payment of remuneration to teachers of religion cannot be equated with subsidising churches or other religious associations"²⁷.

Another judgment of the Constitutional Tribunal, which addressed the issue of relations between the state and churches and religious associations, in so far as they concerned the presence of religion at school, was the decision of 20 April 1993, with the case reference number U 12/92. The ruling concerned the examination

²⁵ Ibid.

²⁶ Ibid.

²⁷ Ibid.

of constitutionality of the Regulation of the Ministry of National Education on the conditions and manner of organising religious education in public schools²⁸. In this case, as in the previous one, there were allegations concerning the employment of teachers of religion by schools, and thus the incurring of expenses funded by the state budget without a statutory authorisation.

Furthermore, the applicant alleged that § 5(2) of the Regulation, concerning the withdrawal of an appointment for a teacher of religion to a school by an authorised body (the relevant authorities of individual churches and religious associations), simultaneously meant the termination or modification of an employment relationship, thereby creating new provisions in the scope of labour law²⁹. The Commissioner for Human Rights also pointed out that “since the teaching of religion is an internal matter of churches and religious associations [...] there is also no basis for them to be a part of the pedagogical boards [...], nor for them to be obliged to fill in the school gradebooks”³⁰. The Commissioner for Human Rights later supplemented his application with another allegation: failure to comply with the duty, established in the present regulation, for the Minister to act in agreement with the authorities of churches and religious associations that are interested in conducting religion classes in schools³¹.

The Constitutional Tribunal issued a relevant ruling after analysing the application, as well as the opinions of the Minister of National Education and the Prosecutor General, and after analysing the interpretation of the individual provisions of the Act on the relation of the State to the Catholic Church, which it requested

²⁸ Regulation of the Minister of National Education of 14 April 1992 on the conditions and manner of organising religious education in public schools (Journal of Laws of 1992, No. 36, Item 155).

²⁹ Judgment of 20 April 1993, U12/92, OTK 1986–1995/t4/1993/cz1/9.

³⁰ Ibid.

³¹ Ibid.

from the Joint Commission of the representatives of the government and the Polish Bishops' Conference. With regard to the allegation concerning the mode of issuing a regulation without agreement with all concerned stakeholders, the Constitutional Tribunal determined that the phrase "in agreement" used in Article 12(2) of the Act on the Education System does not imply the requirement of obtaining consent of all churches and religious associations, because due to their number and the degree of diversity, it would be impossible to reach a full agreement on the matters governed by the regulation³². The Tribunal also pointed out in the justification of its ruling that many churches and religious associations were not interested for various reasons in participating in the work on the aforementioned regulation, and that the representatives of those who had notified their participation jointly agreed on the content of the regulation, which was confirmed by their signatures under the act. For these reasons, the Tribunal considered this allegation of the Commissioner for Human Rights to be unfounded and stated that the procedure for issuing the regulation was consistent with Article 12(2) of the Act on the Education System of 7 September 1991³³.

The Tribunal also rejected the allegations brought by the Commissioner for Human Rights concerning the employment of teachers of religion in schools. The Tribunal argued that paying salaries to teachers of religion is not the same as subsidising churches and religious associations. As the Constitutional Tribunal pointed out, "a teacher of religion receiving remuneration for work cannot be treated as a Church or another religious association"³⁴. The Constitutional Tribunal also referred to another issue raised by the Commissioner for Human Rights, that is, of public funds being spent for the remuneration of catechists without

³² Ibid.

³³ Ibid.

³⁴ Ibid.

being officially recognised in the state budget act. The Tribunal pointed out in the justification that the budget law includes these funds in the part of the budget available to the Minister of National Education for all personal expenses, and thus the application of the Commissioner for Human Rights is unfounded.

In so far as the discussed ruling referred to the Commissioner for Human Rights's allegation that the Regulation violated the provisions of the Labour Code and the Teacher's Charter, the Tribunal found that the consequences of a withdrawal by the authorities of individual churches and religious associations of an appointment for a teacher of religion to a school, i.e. the termination or change of the employment relationship, were not compliant with labour law. The reason for this non-compliance is the fact that it is clear from the provisions of the Labour Code and from the Teacher's Charter that any termination or change of an employment relationship is effected by the parties to that relationship³⁵.

The Tribunal rejected the applicant's allegation concerning religion teachers' participation in the pedagogical boards and the obligation for them to fill in the school gradebooks. In this regard, it argued that since religious lessons are held at the school and are organised by the school, it is therefore necessary for catechists to participate in the pedagogical boards, and to document the activities by filling in the school gradebooks.

On the basis of the above-mentioned judgments, it can be concluded that on the issue of the organisation of religious teaching in schools, insofar as these issues concerned freedom of conscience and confession in the institutional sense, i.e. relations between the state and churches and religious associations, the Constitutional Tribunal, through its jurisprudence, created a certain model of religious teaching in state schools, which continues operating up to the present day with minor modifications. The referenced judgments show that

³⁵ Ibid.

despite the above-mentioned ambiguous legal status – similarly as in the case of freedom of conscience and confession understood on the individual level – the Constitutional Tribunal had to deal with redefining certain concepts such as the secular or neutral character of the state or subsidisation of churches and religious associations. Although they also functioned in the previous political system, they were usually defined in a manner inconsistent with the principles of democracy and the purpose they were intended to serve. On this basis, it can be concluded that the Constitutional Tribunal's actions in this area were of a law-making nature, because by creating their own definitions of certain concepts, as well as interpreting selected provisions of statutes and other acts, they caused them to remain a part of the applicable law.

3. The jurisprudence of the Constitutional Tribunal in the scope of freedom of conscience and confession after the entry into force of the Constitution of 2 April 1997. Religion and school

After the adoption of the Constitution of 2 April 1997, the issue of the presence of religion in public schools once again emerged in the case law of the Constitutional Tribunal. Although the cases examined by the Constitutional Tribunal no longer concerned the mere presence of religion in schools, but rather to the effects caused by the conduct of religion or ethics classes in the dimension of individual freedom of conscience and confession.

The first such decision was the ruling of the Constitutional Tribunal of 21 November 2007, with the case reference number U 7/07, issued on the basis of an application of a group of members of the Sejm of the fifth term. The above-mentioned application did not specify the basis for a substantive resolution of the case, however, because after the term of office of the Sejm was cut short, the Constitutional Tribunal discontinued the proceedings due to the lack of an entity authorised to submit applications

to the Tribunal³⁶. However, for the aforementioned considerations, it seems appropriate to present the reasons why the applicants applied to the Court to examine the compatibility of the regulation of the Ministry of Education of 13 July 2007³⁷ with Articles 25(2), 32(1) and (2), 53(1) in conjunction with Article 48(1) of the Constitution, as well as with Article 6(2), Article 10(1), Article 20(2) and (3) of the Act of 17 May 1989 on guarantees of Freedom of Conscience and Confession³⁸, among other things, because these arguments to some extent coincided with those presented in a subsequent application, which was directed to the Tribunal in this matter and which was resolved with a substantive decision.

The referenced regulation introduced the principle of including the grades from additional subjects, including religion and ethics, to the grade average from all subjects obtained by pupils in a given school year. On the basis of this Regulation, the applicants drew attention to several important issues. First of all, they alleged that the regulation violates the principle of equality. Secondly, they alleged a violation of the right of parents to raise their children according to their religious and moral convictions. Thirdly, they alleged that the regulation under review violated the prohibition of forcing anyone to participate or not to participate in religious activities and rites. Fourthly, they alleged that it was unacceptable to determine the issue of the inclusion of grades from supplementary subjects in the grade average by way of an act in the rank of a ministerial regulation. With regard to the first allegation, the Tribunal pointed out that the regulation, by introducing the obligation to include grades in religion and ethics in the grade average, differentiates the position

³⁶ Judgment of 21 November 2007, U7/07, OTK ZU 2007 2007/ 10A/147.

³⁷ Regulation of the Minister of National Education of 13 July 2007 amending the Regulation on the conditions and methods of assessing, classifying and promoting pupils and students as well as conducting examinations and tests in public schools (Journal of Laws of 2007, No. 130, Item 906).

³⁸ Act of 17 May 1989 on guarantees of Freedom of Conscience and Confession (Journal of Laws of 1989, No. 29, Item 155).

of students who attend religious classes and are assessed, among other things, based on their involvement in religious practices, from those students who attend ethics classes and are assessed for their knowledge, and ultimately from those students who do not attend either religion or ethics³⁹.

Another allegation related to the applicant's concern that the regulation might create a discrepancy between the will of parents, who might put pressure on the student to attend the classes because of the possibility of obtaining a higher grade average, and the freedom of conscience and confession of the students themselves⁴⁰. Another allegation was that students attending religion classes would also be assessed for their activity and behaviour during the lesson, as well as the attitude during the prayer that would start and end the class, which could put pressure on them in terms of religious practice⁴¹. Finally, the last of the allegations was based on the claim that the law on guarantees of freedom of conscience and religion requires a further specification – through a separate statute – of the rules for teaching religion in schools and public pre-schools, to which the applicant also includes the calculation of the grade average. For the applicant, this provision made it clear that it was not possible to determine the matter of inclusion of religion and ethics grades in the grade average through an act in the rank of a regulation⁴².

On 9 November 2007, an application was submitted to the Constitutional Tribunal in which the above allegations were repeated. It became the basis for the issuance on 2 December 2009 of a Judgment indicating that the Regulation of the Minister of National Education complied with the provisions of the Constitution, as well as the Act on guarantees of Freedom of Conscience and Confession, which had been previously referenced in the earlier,

³⁹ Judgment of 21 November 2007, U7/07, OTK ZU 2007 2007/ 10A/147.

⁴⁰ Ibid.

⁴¹ Ibid.

⁴² Ibid.

discontinued case⁴³. Pursuant to a letter dated 24 June 2009, the discussed application was extended to also include the examination of the compatibility of the normative act (i.e. Regulation of the Minister of National Education) also with Article 92(1) of the Constitution. The applicants stated that this act (i.e. Regulation) was issued on the basis of Article 22(2)(4) of the Act on the Education System, whose compliance with the Constitution was deemed questionable by the Constitutional Tribunal in its Signalling Decision of 31 January 2007⁴⁴. Nevertheless, the proceedings in this regard were discontinued on the grounds that the application contained in the letter of 24 June was not supported by a group of at least 50 Members of the Sejm, and thus did not meet the procedural requirements. Moreover, it did not present any allegations or evidence other than those contained in the justification of the judgment in case S 1/07⁴⁵. After consulting the opinions of the Minister of National Education, as well as the Prosecutor General, the Constitutional Tribunal responded to the allegations contained in the application of 9 November 2007. They stated that, to the extent that the legislator considers that the regulation violates the principle of equality, the criteria for assessing students attending religion or ethics classes do not have to be different. Students should therefore be assessed from both subjects based on their knowledge, and with regard to the balance between the right of parents to raise children in accordance with their religious and moral convictions and the freedom of conscience and confession of the pupils themselves, there are no violations of the Constitution by the provisions of the Regulation, because everyone (adult student or their parents) may in this respect decide on their own whether or not they want to attend

⁴³ Judgment of 2 December 2009, U 10/07, OTK-A2009.

⁴⁴ Signalling decision of 31 January 2007, S 1/07 (OTK ZU No. 1/a/ 2007, Item 8).

⁴⁵ Ibid.

religion/ethics classes or not to participate in any of these subjects. Moreover, the Prosecutor General pointed out that there is no connection between the regulation under consideration and the applicant's allegations in so far as the case concerns Article 53(3) in conjunction with Article 48(1) of the Constitution, because the provisions of other normative acts regulate the very principles of conduct of religion and ethics classes in public schools⁴⁶.

When considering the discussed case, the Constitutional Tribunal determined that the regulation in question was not incompatible with the individual provisions of the Constitution mentioned in the application. In the justification of this judgment, the Tribunal presented an in-depth analysis of the constitutional freedom of conscience and confession, citing the views of scholars and its own previous case law. Furthermore, it stated that the inclusion of grades from religion and ethics in the annual average of all grades obtained by a student is a natural consequence of the presence of religion and ethics in schools, as well as the inclusion of grades from these subjects in school certificates. As a natural consequence of these two facts, considered to be in conformity with the Constitution in the Tribunal's earlier case law, the Tribunal also failed to find any incompatibility of the regulation in question with the Constitution in this matter. The Constitutional Tribunal addressed all the applicant's allegations in the same way, concluding that – for various reasons – the evidence presented in support of the applicant's allegations falls outside the scope of the contested regulation and that “in specific cases where external pressure would have been created, thereby undermining free choice, this would have been the result of a low level of democratic culture. However, this important issue, which is recognised by the Tribunal, lies beyond its jurisdiction”⁴⁷. The Constitutional Tribunal also

⁴⁶ Ibid.

⁴⁷ Ibid.

ruled that teaching of religion is a right derived from religious freedom, but is not an obligation.

4. Jurisprudence in the scope of relations between the state and churches and other religious associations

Issues related to the presence of subjects such as religion and ethics in schools were addressed in the jurisprudence of the Constitutional Tribunal both in the scope of the individual freedom of conscience and confession, as well as in the scope relating to relations between the state and churches and religious associations. In the period following the adoption of the Constitution of 1997, these issues were the subject of two judgments of the Constitutional Tribunal. The first one was the aforementioned Judgment with the case reference number K 35/97, and the second one – which was also discussed earlier, but in terms of freedom of conscience and religion in the individual dimension – was the Judgment with case reference number U 10/07.

The first of the judgments resulted from the preventive control of the constitutionality of legislation which was initiated by the President of the Republic of Poland. This concerned Article 6(3), Article 7(4), Article 8(2), Article 9(2), Article 10(2), Article 11, Article 12(2), and Article 13(2) of the Act of 26 June 1997 amending the Act on guarantees of Freedom of Conscience and Confession, as well as amending certain acts with Article 67(2) of the constitutional provisions maintained in force by Article 77 of the Constitutional Act of 17 October 1992 on mutual relations between the legislative and executive authorities of the Republic of Poland, as well as on local self-government. The applicant alleged that as a result of the entry into force of the listed provisions, some churches and religious associations would be deprived of the right to issue grades from religion on school certificates, which would violate the principle of equality. According to the applicant, this problem concerns several churches and religious associations, including the Catholic

Church, the Evangelical-Reformed Church, the Evangelical Church of the Augsburg Confession, and the Polish Autocephalous Orthodox Church⁴⁸.

The General Prosecutor also presented his position in this matter, and did not see a violation of Article 25(1) and Article 32(1) of the Constitution because, in addition to the laws regulating relations between the state and individual churches and religious associations, there are other legal bases that guarantee these rights. The Prosecutor General indicated in particular Article 12(2) of the Act of 7 September 1991 on the Education System, as well as § 9 of the Regulation of the Minister of National Education of 14 April 1992 on the conditions and manner of organising religious education in public schools⁴⁹. At the same time, he expressed doubts as to whether these powers granted through an act in the rank of a regulation are sufficient, as compared to the state before the amendment, when these issues were regulated by acts of parliament⁵⁰.

Referring to the application in question, the Constitutional Tribunal found that the contested provisions were not inconsistent with Articles 25(1) and 32(1) of the Constitution, arguing that the purpose of the law was not to deprive certain churches and religious associations of the right to place religious grades on school certificates, but only to unify the legal regulation in this respect. The Constitutional Tribunal stated that churches and religious associations were not deprived of the right to place these grades on certificates, and the issues related to this will are specified in the regulation issued on the basis of this Act. According to the Constitutional Tribunal, this situation in practice “does not transfer to the level of an executive act any matters constitutionally reserved for regulation by way of statute, nor does it violate the principle of equal rights of churches. This is due to the fact that the discussed legal act,

⁴⁸ Judgment of 5 May 1998, K 35/97, OTK ZU 1998/3/32.

⁴⁹ Ibid.

⁵⁰ Ibid.

i.e. the Act on the education system, applies to all churches and religious associations whose relations with the state are regulated pursuant to acts of parliament”⁵¹. The Tribunal also took into account whether the formal conditions required for legislative work were met during the work on the act in question, whether the draft act was consulted with representatives of individual churches and religious associations, and came to the conclusion that this condition was met. The Constitutional Tribunal admitted that the majority of the consulted entities expressed their criticism of the amendment which, however, was not binding on the Parliament⁵².

The second of the judgments was issued in connection with an application by a group of Members of the Sejm to examine the compatibility of the Regulation of the Minister of National Education of 13 July 2007 amending the Regulation on the conditions and methods of assessing, classifying and promoting pupils and students as well as conducting examinations and tests in public schools (Journal of Laws No. 130, Item 906), among others, with Article 25(1) and (2) of the Constitution, as well as with Article 10(1) and 20(2) and (3) of the Act on guarantees of Freedom of Conscience and Confession⁵³.

The applicants alleged that, as a result of the issuance of the questioned regulation, the public authorities – disregarding the provisions of Article 25(2) of the Constitution – fail to maintain a neutral attitude towards religious or philosophical beliefs and worldviews, and even encourage the teaching of religion. According to the applicant, this situation is caused by the fact that grades from religion and ethics are included in the annual grade average, thereby encouraging students to study religion/ethics because of the possibility of obtaining good grades from these subjects. According to the applicant,

⁵¹ Ibid.

⁵² Ibid.

⁵³ Act of 17 May 1989 on guarantees of Freedom of Conscience and Confession; see: Journal of Laws, No. 231, Item 1965 and No. 98, Item 817.

taking these grades into account when calculating the grade average is also a form of supporting a particular worldview and treating religion like other compulsory school subjects. In addition, the desire to obtain good grades from religion is associated with various forms of religious activity outside the school⁵⁴. The applicant also alleged that the regulation violated the principle of the secular nature of the state by introducing “criteria of a religious nature into the sphere of action of public authorities...”⁵⁵. In addition, the inclusion of grades from subjects such as religion or ethics in the grade average is associated with the state’s interference in the rules of assessing students attending these classes and, as a consequence, with the entry of public authorities into the sphere of internal activities of churches and religious associations, which includes, among others, teaching of religion⁵⁶. The applicant stated that, in accordance with Article 20 (3) of the Act on Guarantees of Freedom of Conscience and Confession, issues concerning the principles of teaching religion in public educational institutions, which also covers the inclusion of grades from religion in the grade average, should be regulated by a legal act in the rank of a statute (i.e. an act of parliament), and not by a ministerial regulation⁵⁷. Supplementing its application, the applicant further alleged that the regulation violated the principle of equal rights of churches and religious associations, and also stated that the regulation was issued in violation of Article 92(1) of the Constitution⁵⁸.

Referring to the applicant’s allegations, the Constitutional Tribunal pointed out that the constitutional provisions – which constitute models of control in the present case – cannot be seen in isolation from other provisions of the Constitution relating to the issue

⁵⁴ Judgment of 2 December 2009, U 10/07, OTK-A2009.

⁵⁵ Ibid.

⁵⁶ Ibid.

⁵⁷ Ibid.

⁵⁸ Ibid.

of relations between the state and churches and religious associations. The Constitutional Tribunal pointed to the proper understanding of the term “equality of churches and religious associations”, which is used in constitutional provisions. It emphasised that its source is the dignity of each individual, which constitutes the basis for ensuring that adherents of each religion enjoy the same rights and their protection in the field of individual freedom of conscience and confession, a consequence of which is precisely the “institutional equality of churches”⁵⁹. The Tribunal indicated that the term “equality” cannot be understood in an absolute way, which means that equal treatment of churches and religious associations is dependent on their having a certain common and relevant feature. The possession of this common feature is therefore a condition for equal treatment of churches, which means that the Constitution allows for certain differences in the treatment of these entities, resulting in a differentiation of their legal situation⁶⁰.

In addition, the Constitutional Tribunal took the view that due to the model of separation of the Church and the state adopted in the Republic of Poland, public authorities cannot interfere in the existing differences of individual churches and religious associations and attempt to equalise their situation, because it would mean the state’s interference in matters of religion and the worldview of individuals⁶¹. The Tribunal also took the view that an exceptional role in interpreting and determining the normative content of the challenged provisions is played by the concordat, the provisions of which, according to the Constitutional Tribunal, were incorporated into the constitutional matter, thus causing the Catholic Church to obtain a special institutional and legal position among other equal churches and religious associations⁶².

⁵⁹ Ibid.

⁶⁰ Ibid.

⁶¹ Ibid.

⁶² Ibid.

The Tribunal also referred in an exhaustive way to the distinction of two basic models shaping relations between the state and churches and religious associations, adopted in different countries. It indicated that Poland chose in this respect a model of separation of the state from the Church, which cannot be misinterpreted as an anti-confessional nature of a secular state⁶³. The Tribunal explained, in an extensive manner, and in accordance with the currently prevailing views of legal scholars, the principles of equality of churches and religious associations, their actual differentiation and the related dominant position of the Catholic Church, as well as the principles of secularity of the state and the model of the so-called friendly separation resulting from it.

The judgments discussed above upheld the unified line of jurisprudence presented so far by the Constitutional Tribunal in the field of the discussed issues. This body once again relied on the justification of the disputed issues by resorting to interpretations of the terms “equality” as well as “impartiality of worldview” prevailing among scholars and academics.

* * *

The analysis of the above judgments and the comments of the representatives of science in the above cases leave no room for doubt that any decision adopted by the adjudicating panels would be unsatisfactory for a part of the society, which is characteristic of all cases where feelings, religious views or the chosen worldview are at stake. In this respect, the prevailing view was that freedom of conscience and religion is one of the most avoided and thus essential freedoms enshrined in the Constitution. However, it is worth considering how the adopted solutions influenced the introduction and organisation of religion lessons, and later also ethics lessons

⁶³ Ibid.

in schools, and what was the role of the Tribunal in this. The analysis of the case law in this area indicates that the Court's rulings on this subject were of a law-making nature. In terms of the discussed freedom, it is difficult to find ideal solutions, which is why it is necessary to proceed with extreme caution, trying to find a golden mean that takes into account the needs of all citizens, something that the Constitutional Tribunal certainly tried to achieve in this matter.

Freedom of conscience and religion is reflected in both international and national law, occupying a special place in these legal systems, as it is considered one of the most important personal freedoms of the individual. One important element of the interpretation and application of constitutional provisions relating to it is the case law of the Constitutional Tribunal, which in many cases allows for a uniform interpretation of the provisions of the Constitution. An important aspect to be noted is that the Constitutional Tribunal issued its first ruling on freedom of conscience and confession five years after its appointment, that is, only in 1991. It is also worth emphasising that the initiator of the proceedings in this case was the Commissioner for Human Rights, which was a relatively new body, since it was established in 1987. The events described above undoubtedly opened the way for the Constitutional Tribunal after 1989 to initiate its jurisprudence in the field of freedom of conscience and confession, and also led to a situation where this jurisprudence – especially in the period before the adoption of the Constitution of 1997 – played an extensive role in the establishment of broadly understood religious relations in Poland, and was of a law-making nature, because it consolidated the model of state-Church relations prevailing in Poland.

CONCLUSION

The aim of this work was to present religion itself as a social phenomenon, as well as its meaning, modifications and foreseeable future. Moreover, the objective was also to present the teaching of religion in public schools, which is an expression of freedom of conscience and religion guaranteed under national law in Article 53 of the Constitution of the Republic of Poland, as well as the right of parents to raise a child in accordance with their beliefs (Article 53(3) and Article 48(1) of the Constitution of the Republic of Poland). Another objective was to assess the provisions of international law and internal Polish law with regard to the protection of the freedom of conscience and confession. Freedom of conscience and confession has not been explicitly granted to children in acts of international law; the Constitution also does not grant it to children. There is a dispute among legal scholars and commentators as to whether Article 53 of the Constitution also applies to children, but regardless of its outcome, it is obvious that it is in fact the parents who participate in the exercise of the child's right to freedom of conscience and confession in the first years of their life. The right to raise children in a religious way is granted to parents by the Constitution and this is because children need support, as well as being properly directed in their actions, before becoming mature citizens. However, this does not mean that parents can freely direct their children or demand obedience from them. The scope of power vested in parents is determined by Polish civil law and by canon law, which protect the child from its possible abuse. The main assumption was therefore to focus on the case law of the European Court of Human Rights, showing

the practical application of internal and international legal regulations. The jurisprudence of the Polish Constitutional Tribunal has also become a source of knowledge in this regard.

On the basis of these documents, it has been proven that the presence of religion in the legal system is permanent and not subject to discussion, and that the voices of some opponents of religious instruction in schools, who are calling for its removal, should be regarded as unfounded and deprived of any chance of success. The content of Polish legal documents, such as the Constitution of the Republic of Poland, the Concordat between the Holy See and the Republic of Poland, the Act on the Education System, as well as the Regulation of the Minister of National Education on the conditions and manner of organising religious education in public kindergartens and schools, is certainly consistent with international regulations. In the light of the above-mentioned legal acts, the study of religion is an optional subject, the teachers of religion are full-fledged members of the pedagogical boards, employed on the basis of the canonical mission issued by the competent bishop of the given locality.

From the legal point of view, it can be said that after years of subjugation, the teaching of religion has gained a proper place in the school, as well as social acceptance. One can therefore say that the place of religious instruction in the Polish education system is stable. It should also be noted that from the entry into force of the Constitution of 2 April 1997 until the present time, neither the representatives of the scientific community nor the political groupings sought the introduction of amendments to Article 53 of the Constitution, which was often the case with other provisions of the Constitution. For these reasons, the issue I am discussing seems to be properly regulated. In addition, it may be seen as a source of satisfaction that thanks to such regulations, Poland has confirmed its traditions of respect for religious freedom.

After a fairly thorough analysis of legal acts in terms of the stability of the presence of religious teaching in the education system, one

can conclude that religious education is carried out within the structures of the educational system, which results from Polish legal documents on the teaching of religion. An analysis of the documents leads to the conclusion that the state is obliged to create conditions for teaching of religion in public schools. One key piece of information is the fact that religious education is organised by schools for students on behalf of whom the willingness to participate in school catechesis was expressed.

It is worth emphasising that the Constitutional Tribunal issued its first Judgment concerning freedom of conscience and confession five years after its establishment, that is, only in 1991, and the proceedings in question were initiated by the Commissioner for Human Rights. We can infer, that the Tribunal did not address this issue for such a long time because the authorities at that time did not fully accept the role of that institution. This was despite the fact that the provisions of the Constitution of the Polish People's Republic of 1952 provided a wide scope for interpretation.

The jurisprudence of the Constitutional Tribunal concerning freedom of conscience and confession, especially before the adoption of the Constitution of 1997, played a large role in the shaping of religious relations in Poland both at a given moment in time, and in the future. In addition, it strengthened the model of state-Church relations existing in Poland and influenced further legislative work, mainly affecting the practice of applying these provisions. It can also be concluded that the case law of the Tribunal has been reflected in the scientific literature and in the views of legal scholars and commentators in the field of constitutional and religious law. It is invoked and usually accepted – although it also faces criticism – most often in the area of freedom of conscience and confession in the institutional dimension and the related principles of impartiality of the state's worldview or the principle of equality of churches and religious associations, as well as the presence of religion in schools.

The analysis of the provisions of both national and international law shows that the jurisprudence of the Constitutional Tribunal in the field of freedom of conscience and confession has remained unchanged in the period under examination and is uniform and well-established. This statement is illustrated by the fact that justifications of individual judgments frequently reference earlier judgments, especially from the years 1991-1997, and the fact that there is a decrease in the number of applications, and thus judgments of the Constitutional Tribunal on issues related to freedom of conscience and confession.

In conclusion, it should be stated that the legal aspect of religious education in the Polish educational system in the light of the applicable law, which is currently being discussed, and with regard to which there is ongoing speculation, requires constant updating, clarification of the problem and subsequent publications. Legal issues related to the teaching of religion should be systematically monitored, as significant amendments to legal acts are often made, which are subject to revisions. For this reason, teachers of religion should be made aware of the current legal status so that they can fully exercise their rights.

In this study, I have shown that the child is a sovereign subject of rights and freedoms, and their source is the inherent dignity of the human person. In the light of the current legislation, it should be assumed that the child has become a subject of religious freedom, but the scope of exercise is subject to restrictions. An element that affects the freedom of conscience and confession of the child is the correlation of the rights of parents with regard to the child. The former rights greatly limit the child's exercise of their own rights. Providing a child with moral and religious education and instruction in accordance with one's own beliefs is not an easy task because it requires effort on the part of parents, as well as support on the part of the state. It should be emphasised, however, that it is the parents who bear the primary responsibility for the process

of raising their children. The state can and should support parents in the implementation of the resulting obligations, but it cannot replace them. It should be interested in the fate of children who will soon take responsibility for the fate of the nation and the state, as they will ultimately shape their own future as well as the future of those who were responsible for the process of their upbringing.

BIBLIOGRAPHY¹

I. Sources of law

1. Polish legal acts

1.1. Constitutions

Constitution of the Polish People's Republic of 22 July 1952 (Journal of Laws of 1952, No. 33, Item 232, as amended).

Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws of 1997, No. 78, Item 483).

1.2. International legal acts

Convention for the Protection of Human Rights and Fundamental Freedoms, drawn up at Rome on 4 November 1950, subsequently amended by Protocols Nos. 3, 5 and 8 and supplemented by Protocol No. 2 (Journal of Laws of 1993, No. 61, Item 284).

Convention on the Rights of the Child adopted by the General Assembly of the United Nations on 20 November 1989 (Journal of Laws of 1991, No. 120, Item 526).

Concordat between the Holy See and the Republic of Poland, signed in Warsaw on 28 July 1993 (Journal of Laws of 1998, No. 51, Item 318).

1.3. Acts of Parliament

Act of 15 July 1961 on the development of the education system (Journal of Laws of 1961 No. 32, Item 160).

¹ The bibliography uses the following method of arrangement: Sources and collections of case law (jurisprudence) in a given group are arranged chronologically, while studies and websites are arranged alphabetically.

- Act of 25 February 1964 – Family and Guardianship Code (Journal of Laws of 1964, No. 9, Item 59, as amended).
- Act of 23 April 1964 – Civil Code (Journal of Laws of 1964, No. 16, Item 93, as amended).
- Act of 26 June 1976 – Labour Code (Journal of Laws of 1974, No. 24, Item 141, as amended).
- Act of 26 January 1982 – Teacher’s Charter (Journal of Laws of 1982, No. 3, Item 19).
- Act of 26 October 1982 on Procedure in Juvenile Cases (Journal of Laws of 2016, Item 1654 as amended).
- Act of 17 May 1989 on the relationship of the State to the Catholic Church in the Republic of Poland (Journal of Laws of 1989, No. 29, Item 154).
- Act of 17 May 1989 on guarantees of Freedom of Conscience and Confession (Journal of Laws of 1989, No. 29, Item 155).
- Education System Act of 7 September 1991 (Journal of Laws of 1991, No. 95, Item 425).
- Act of 30 August 1996 amending the Act on family planning, protection of the human embryo and the conditions for the admissibility of abortion, and amending certain other acts (Journal of Laws of 1996, No. 139, Item 646).
- Act of 6 June 1997– Criminal Code (Journal of Laws of 1997, No. 88, Item 553, as amended).
- Act of 6 January 2000 on the Commissioner for Child Rights (Journal of Laws of 2000, No. 6, Item 69, as amended).
- Amendment of the Education System Act of 22 February 2009, adopted by the Sejm on 19 March 2009 (Journal of Laws of 2009, No. 56, Item 458).
- Act of 15 July 2011 on the professions of nurse and midwife (Journal of Laws of 2011, No. 174, Item 1039).

1.4. Regulations

- Regulation of the Minister of National Education of 14 April 1992 on the conditions and manner of organising religious education in public schools (Journal of Laws of 1992, No. 36, Item 155).

- Regulation of the Minister of National Education and Sport of 12 February 2002 on the Framework Plans for Teaching in Public Schools (Journal of Laws of 2002, No. 15, Item 142).
- Regulation of the Minister of National Education of 30 April 2007 on the conditions and methods of assessing, classifying and promoting pupils and students as well as conducting examinations and tests in public schools (Journal of Laws of 2007, No. 83, Item 562).
- Regulation of the Minister of National Education of 13 July 2007 amending the Regulation on the conditions and methods of assessing, classifying and promoting pupils and students as well as conducting examinations and tests in public schools (Journal of Laws of 2007, No. 130, Item 906).
- Regulation of the Minister of National Education of 30 January 2018 on the core curriculum of general education for general secondary school, technical upper secondary school and second degree sectoral vocational schools (Journal of Laws of 2018, Item 467).

2. Canon Law and Catholic Church documents

2.1. Universal law

- Codex Iuris Canonici*, Pii X Pontificis Maximi iussu digestus, Benedicti Papae XV auctoritate promulgatus 19 V 1917, AAS, 9(1917), II, pp. 3-521, <http://www.vatican.va/archive/aas/documents/AAS-09-II-1917-ocr.pdf> [accessed 20.06.2015].
- Codex Iuris Canonici* auctoritate Joannis Pauli PP. II promulgatus 25 I 1983, AAS, 75(1983), II, pp. 1-317, <http://www.vatican.va/archive/aas/documents/AAS-75-1983-II-ocr.pdf> [accessed 25.06.2015].
- Kodeks kanonów Kościołów wschodnich* promulgowany 18 X 1990 roku przez papieża Jana Pawła II (*Code of Canons of Eastern Churches* promulgated on 18 October 1990 by Pope John Paul II), Lublin, 2002.
- Katechizm Kościoła katolickiego* (8 XII 1992), Poznań 1994.
- Kongregacja ds. Duchowieństwa, *Dyrektorium ogólne o katechizacji* (15 VIII 1997), Poznań 1998.
- John Paul II, Encyclical *Fides et Ratio* (14 IX 1998), Tarnów 1998.

2.2. Particular law

Konferencja Episkopatu Polski, *Ramowy program katechizacji*, Warszawa 1971.

Konferencja Episkopatu Polski, *Dyrektorium katechetyczne Kościoła katolickiego w Polsce* (20 VI 2001), Kraków 2001.

Konferencja Episkopatu Polski, *Podstawa programowa katechezy Kościoła katolickiego* (8 III 2010), Kraków 2010.

Konferencja Episkopatu Polski, *Podstawa programowa katechezy Kościoła katolickiego w Polsce* (8 VI 2018), Częstochowa 2018.

II. Jurisprudence

1. Jurisprudence of the Constitutional Tribunal

Ruling of 30 January 1991, K 11/90, OTK 1986–1995/t3/1991/cz1/2.

Signalling decision to the Sejm of the Republic of Poland of 13 February 1991, S 1/91, OTK 1986–1995/t3/1991/29.

Ruling of 20 April 1993, U12/92, OTK 1986–1995/t4/1993/cz1/9.

Ruling of 28 May 1997, K 26/96, OTK ZU 1997/2/19.

Judgment of 5 May 1998, K 35/97, OTK ZU 1998/3/32.

Signalling decision to the Sejm of the Republic of Poland of 31 January 2007, S 1/07, OTK ZU No. 1/A/2007.

Decision of 21 November 2007, U7/07, OTK ZU 2007/ 10A/147.

Judgment of 2 December 2009, U 10/07, OTK-A2009.

Ruling of 7 October 2015, file ref. No. K 12/14.

2. Rulings of the European Court of Human Rights

Judgment of the European Court of Human Rights of 7 December 1976 in the case of *Kjeldsen, Busk, Madsen and Pedersen v Denmark* (applications nos. 5095/71; 5920/72; 5926/ 72).

Judgment of the European Court of Human Rights of 6 December 1991, application No. 17089/90.

Judgment of the European Court of Human Rights of 13 December 2001, *Metropolitan Church of Bessarabia and Others v. Moldova*, application No. 45701/99.

Ruling in the case of *Kimlya and Others v. Russia*, No. 76836/01 and 32782/03 of 1 October 2009, <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-119363> [accessed 20.10.2016].

Judgment in the case of *Lautsi v. Italy* of 3 November 2009 (application No. 30814/06).

Judgment of the ECtHR of 15 June 2010 in the case of *Grzelak v. Poland* (application No. 7710/02).

3. Other

U.S. Supreme Court ruling of 19 June 1961, *Torcaso v. Watkins*, 367 U. S. 488 <https://supreme.justia.com/cases/federal/us/367/488/> [accessed 20.10.2016].

U.S. Supreme Court ruling of 8 March 1965, *United States v. Seeger*, 380 U. S. 163, <https://supreme.justia.com/cases/federal/us/367/488/> [accessed 20.10.2016].

Judgment of the Administrative Court for Veneto of 11 March 2005, Gazz.Uff.1110.

III. Studies

Banaszak B., *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, Warszawa 2012.

Bączkiewicz F., *Prawo kanoniczne – podręcznik dla duchowieństwa*, vol. 2, Opole 1958.

Bednarczyk B., *Ksiądz Walenty Gadowski w walce o lepszą metodę nauczania religii*, “Katecheta”, 2(1958), No. 2, pp. 110–119.

Biskupski S., *Prawo małżeńskie Kościoła Rzymskokatolickiego*, Warszawa 1956.

Bocheński J.M., *Logika religii*, in: J.M. Bocheński, *Dzieła zebrane*, vol. 6: *Religia*, Kraków 1995, pp. 32–123.

- Borecki P., *Wolność sumienia i wyznania*, in: *Wolność myśli, sumienia i wyznania. Poradnik prawny*, edited by M. Nowicki, Warszawa 2003, pp. 2–21.
- Czaja A.M., *Podstawy kanonicznej wiedzy o małżeństwie i rodzinie*, Lublin 2008.
- Degenhardt J.J., *Ogólny problem zasadności nauczania religii w szkole*, “Katecheta”, 34(1990), No. 4, pp. 179–209.
- Denominacja*, in: H. Vorgrimler, *Nowy leksykon teologiczny*, prepared by T. Mieszkowski, P. Pachciarek, Warszawa 2005, p. 62.
- Dierse U., *Religion*, Basel 1992.
- Drozdowicz Z., *Religia*, in: *Zarys encyklopedyczny religii*, edited by Z. Drozdowicz, Poznań 1992, p. 299.
- Dudziak J., *Granice wolności religijnej w Konkordacie zawartym między Stolicą Apostolską a Rzeczpospolitą w 1993 roku*, Tarnów 2002.
- Durkheim E., *Elementarne formy życia religijnego. System totemiczny w Australii*, Warszawa, 1990.
- Dyduch J., *Posługa nauczania w świetle postanowień Konkordatu 1993*, in: *Konkordat 1993. Dar i zadanie dla Kościoła i Polski*, edited by J. Dyduch, Kraków 1998, pp. 64–79.
- Dziekoński S., *Współpraca środowisk katechetycznych*, AK, 142(2004), 3(571), pp. 490–513.
- Exeler A., *Katechese in unserer Zeit. Themen und Ergebnisse der 4 Bischofssynode*, München 1979.
- Fitzgerald T., *The ideology of Religious Studies*, New York – Oxford 2000.
- Garlicki L., *Religia a szkoła publiczna (na tle aktualnego orzecznictwa strasburskiego)*, in: *Pro bono Reipublicae. Księga jubileuszowa Profesora Michała Pietrzaka*, edited by P. Borecki, A. Czohara, T.J. Zieliński, Warszawa 2009, pp. 244–254.
- Giertych W., *Conscience and the Liberum Arbitrium*, in: *Crisis of Conscience*, edited by J.M. Haas, New York 1996, pp. 51–78.
- Giertych W., *Jak żyć łaską. Płodność Boża w czynach ludzkich*, Kraków 2006.

- Giuliani A., Rezzaghi R., *Jedność i pluralizm w katechezie. Sympozjum Włoskiego Stowarzyszenia Katechetycznego 1989*, "Katecheta", 34(1990), No. 2, pp. 79–87.
- Gogolik M., *Istotne zmiany w podstawie programowej katechezy Kościoła katolickiego w Polsce*, "Katecheta", 55(2011), No. 6, pp. 2–18.
- Góralski W., *Małżeństwo kanoniczne*, Warszawa 2011.
- Góralski W., *Nauczycielskie zadanie Kościoła*, in: P. Hemperek, W. Góralski, F. Przytuła, J. Bakalarz, *Komentarz do Kodeksu prawa kanonicznego*, vol. 3, Lublin 1986, pp. 9–51.
- Grabarczyk G., *Odpowiedzialność nieletnich w polskim prawie karnym*, "Studia z Zakresu Nauk Prawnoustrojowych. Miscellanea", 1(2008), pp. 79–86.
- Gwiazda M., *Religia w szkole – uczestnictwo i ocena*, in: Krajowe Biuro Ds. Przeciwdziałania Narkomanii, *Młodzież 2016*, Warszawa 2016, pp. 141–152.
- Hegel G.W.F., *Wykłady z filozofii dziejów*, vol. 1, Warszawa 1958.
- Hegel G.W.F., *Zasady filozofii prawa*, Warszawa 1969.
- Hello H., *Nowoczesne wolności w oświeceniu encyklik. Wolność sumienia – wolność wyznania. Wolność prasy – wolność nauczania*, Warszawa 2020.
- Hołda J., Hołda Z., Ostrowska D., Rybczyńska J.A., *Prawa człowieka. Zarys wykładu*, Warszawa 2008.
- Jabłońska P., *Wolność sumienia i wyznania osoby małoletniej w Polsce w latach 1918–2015*, Pelpin 2022.
- Jabłoński K.H., *Rzecznik Praw Obywatelskich wobec problemu nauczania religii w szkołach publicznych*, in: *Pro bono Reipublicae. Księga jubileuszowa profesora Michała Pietrzaka*, edited by P. Borecki, A. Czochara, T.J. Zieliński, Warszawa 2009, pp. 291–304.
- Janiga W., Mezglewski A., *Nauczanie religii w szkołach publicznych*, "Rocznik Nauk Prawnych", 11(2001), vol. 1, pp. 131–160.
- Janssens L., *Wolność sumienia i wolność religijna*, Kraków 1998.
- Kaczmarek K., *Herbert Spencer a problemy socjologii religii*, Poznań 2007.
- Kasztelan J., *ABC katechezy w szkole*, Kraków 1994.
- Kehrer G., *Wprowadzenie do socjologii religii*, Kraków 2006.

- Kiciński A., *Tra parrocchia e scuola. L'evoluzione della catechesi in Polonia negli anni 1918–2001* (I parte), "Salesianum", 67(2005), No. 2, pp. 331–357; (II parte), "Salesianum", 67(2005), No. 2, pp. 479–505.
- Kierznowski Ł., *Egzamin maturalny w Polsce. Analiza prawna*, Białystok 2016.
- Kodeks prawa kanonicznego. Komentarz*, edited by P. Majer, Kraków 2011.
- Kokoszka A., *Teologia moralna fundamentalna*, Tarnów, 1998.
- Konfesja*, in: H. Vorgrimler, *Nowy leksykon teologiczny*, prepared by T. Mieszkowski, P. Pachciarek, Warszawa 2005, p. 152.
- Korherr E.J., *Nauczanie religii w szkole służbą człowiekowi*, in: *W służbie człowiekowi*, edited by Z. Marek, Kraków 1991, pp. 59–83.
- Koshy N., *Wolność religijna w zmieniającym się świecie*, Kraków 1998.
- Kozak M., *Prawo dziecka do edukacji. Założenia pedagogiczno-prawne i bariery realizacyjne*, Warszawa 2013.
- Kroczek P., *Prawo wewnętrzne związków wyznaniowych w perspektywie organów władzy publicznej: Klauzule generalne*, Kraków 2017.
- Kroczek P., *Religious freedom in the context of education in Poland. Relationship between Polish State and the Catholic Church*, "Analecta Cracoviensia", 47(2015), pp. 197–215.
- Kroczek P., *Sumienie jako pozaprawna gwarancja niezależności organu władzy publicznej – postulat de lege ferenda na kanwie homilii Jana Pawła II wygłoszonej w Skoczowie dnia 22 maja 1995 r.*, in: *Beskidzkie Dziedzictwo*, vol. 4, Łodygowice 2015, pp. 7–17.
- Kroczek P., *Sumienie w prawie polskim*, in: *Sumienie. Ujęcie interdyscyplinarne*, edited by B. Gulla, M. Cholewa, Kraków 2015, pp. 21–38.
- Krukowski J., *Konkordat polski. Znaczenie i realizacja*, Lublin 1999.
- Krukowski J., *Konkordat*, in: *Encyklopedia katolicka*, vol. 9, Lublin 2002, col. 638
- 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, pp. 95–119.
- Krukowski J., *Kościół i państwo. Podstawy relacji prawnych*, Lublin 1993.

- Krukowski J., *Polskie prawo wyznaniowe*, Warszawa 2005.
- Krukowski J., *Prawo wyznaniowe*, Warszawa 2006.
- Krukowski J., Sobański R., *Komentarz do Kodeksu prawa kanonicznego*, vol. 1, Poznań 2003.
- Krukowski J., Warchałowski K., *Polskie prawo wyznaniowe*, Warszawa 2000.
- Kulpaczyński S., *Katecheza jako nauczanie*, "Horyzonty Wiary", 7(1996), No. 3, pp. 21–37.
- Kuna A., *Wolność sumienia i wyznania w świetle orzecznictwa Europejskiego Trybunału Praw Człowieka i polskiego Trybunału Konstytucyjnego*, in: *Ochrona praw człowieka w wymiarze regionalnym*, edited by M. Marcinko, Kraków 2012, pp. 120–132.
- Kupny J., *Godność człowieka a wymogi życia gospodarczego: przeciwieństwo czy komplementarność?*, in: *Jan Paweł II promotorem godności człowieka*, edited by A. Bałabuch, Świdnica 2007, pp. 97–110.
- Lempa F., *Kanoniczna ochrona karna małoletnich przed nadużyciami seksualnymi*, Białystok 2013.
- Lempa F., *Kompetencje, uprawnienia i obowiązki w Kościele katolickim*, Białystok 2013.
- Leszczyński P.A., *Implementacja art. 25 ust. 5 Konstytucji RP – przegląd wybranych problemów*, in: *Pro bono Reipublicae. Księga jubileuszowa Profesora Michała Pietrzaka*, edited by P. Borecki, A. Czochara, T.J. Zieliński, Warszawa 2009, pp. 427–449.
- Łabendowicz S., *Sprawozdanie z działalności Komisji Wychowania Katolickiego Konferencji Episkopatu Polski w latach 1999–2004*, <http://katecheza.episkopat.pl/sprawozd.htm> [accessed 31.07.2022].
- Łazarska A., *Gwarancje swobody sumienia sędziego w procesie cywilnym*, "Studia Prawnicze", 2008, vol. 3, pp. 41–57.
- Majcher E., *Wokół nauki religii w polskiej szkole*, Warszawa 1992.
- Makarska M., *Przestępstwa przeciwko wolności sumienia i wyznania*, Lublin 2005.
- Mały słownik języka polskiego*, edited by S. Skorupka, H. Auderska, Z. Łempicka, Warszawa 1968.

- Marciniak Z., *O potrzebie reformy programowej kształcenia ogólnego*, in: *Podstawa programowa z komentarzami*, vol. 1: *Edukacja przedszkolna i wczesnoszkolna*, Warszawa 2009, pp. 7–16.
- Marek A., *Kodeks karny. Komentarz*, Warszawa 2007.
- Marek Z., *Chrystocentryzm katechezy. Do czego zmierzamy?*, in: *W poszukiwaniu kształtu katechezy*, edited by B. Klaus, Tarnów 2000, pp. 74–78.
- Mączyński A., *Freedom of conscience and religious Liberty In the jurisdiction of the polish Constitutional Tribunal*, in: *Constitutional Jurisprudence In the Area of Freedom of Religion and Beliefs. XIth Conference of the European Constitutional Courts*, Warszawa 2000, pp. 535–541.
- Mąkosza P., *Trwałe miejsce nauczania religii w polskim systemie oświaty*, “Katecheta”, 49(2005), No. 1, pp. 63–69.
- Mezglewski A., *Nauczanie religii w publicznych przedszkolach i szkołach*, in: A. Mezglewski, H. Misztal, P. Stanisław, *Prawo wyznaniowe*, Warszawa 2008, pp. 175–193.
- Mezglewski A., *Nauczanie religii*, in: *Prawo wyznaniowe*, ed. H. Misztal, Lublin 2000, pp. 303–324.
- Mezglewski A., *Polski model edukacji religijnej w szkołach publicznych*, Lublin 2009.
- Mirocha Ł., *Wolność a równość w orzeczeniach Europejskiego Trybunału Praw Człowieka i polskiego Trybunału Konstytucyjnego dotyczących wolności religijnej*, in: *Prawo i polityka w sferze publicznej perspektywa zewnętrzna*, edited by P. Jabłoński, J. Kaczor, M. Pichlak, Wrocław 2018, pp. 111–123.
- Misiaszek K., *Katecheza parafialna*, in: *Wokół katechezy posoborowej. Księga pamiątkowa dedykowana ks. biskupowi Gerardowi Kuszowi, wykładowcy Wydziału Teologicznego Uniwersytetu Opolskiego z okazji 65. rocznicy urodzin*, edited by R. Chałupniak et al., Opole 2004, pp. 201–204.
- Misztal H., *Konstytucyjne gwarancje wolności sumienia i wyznania*, in: A. Mezglewski, H. Misztal, P. Stanisław, *Prawo wyznaniowe*, Warszawa 2011, pp. 55–67.

- Murawski R., *Dyrektorium katechetyczne Kościoła katolickiego w Polsce*, in: *Katecheza wobec wyzwań współczesności*, edited by R. Czekalski, Płock 2001, pp. 57–78.
- Murawski R., *Ewangelizacyjny charakter katechezy*, AK, 118(1992), vol. 2(498), pp. 181–193.
- Murawski R., *Polskie Dyrektorium katechetyczne o nauczaniu religii w szkole*, AK, 142(2004), vol. 3(571), pp. 480–489.
- Muskus D.A., *Szkoła środowiskiem katechetycznym. Katechetyczne studium interdyscyplinarne*, Kalwaria Zebrzydowska 1999.
- Muszyński H., *Wstęp do metodologii pedagogiki*, Warszawa 1971.
- Najda M., Romer T., *Etyka dla sędziów. Rozważania*, Warszawa 2007.
- Nowacka M., Kopania J., *Czym jest sumienie, a czym być powinna klauzula sumienia?*, “Kwartalnik Filozoficzny”, 42(2014), vol. 5, pp. 63–79.
- Nycz K., *Szkoła miejscem katechezy*, in: *Przesłanie dokumentów katechetycznych Kościoła w Polsce*, edited by S. Dziekoński, Warszawa 2003, pp. 13–22.
- Nycz K., *Wstęp*, in: Konferencja Episkopatu Polski, *Dyrektorium katechetyczne Kościoła katolickiego w Polsce*, Kraków 2001, pp. 3–10.
- Oko D., *Przełom – wyzwanie i szansa*, Kraków 1998, pp. 188–189.
- Osewska E., Stala J., *Podstawa programowa katechezy Kościoła katolickiego w Polsce z dnia 8 marca 2010 roku – kontekst i przyczyny*, Kraków 2010.
- Panuś T., *Formy współpracy katechetów z nauczycielami*, AK, 126(1996), vol. 3(523), pp. 395–400.
- Panuś T., *Nowe dokumenty katechetyczne – nowe szanse, nowe obawy*, in: *20 lat minęło. Materiały z IX spotkania dyrektorów wydziałów katechetycznych*, Kraków 2010, pp. 39–70.
- Pawluk T., *Prawo kanoniczne według Kodeksu Jana Pawła II*, vol. 2: *Lud Boży, jego nauczanie i uświęcanie*, Olsztyn 2010.
- Pawluk T., *Prawo kanoniczne według Kodeksu Jana Pawła II*, vol. 3: *Prawo małżeńskie*, Olsztyn 2002.
- Piechowiak M., *Negatywna wolność religijna i przekonania sekularystyczne w świetle sprawy Lautsi przeciwko Włochom*, “Przegląd Sejmowy. Dwumiesięcznik”, 19(2011), No. 5(106), pp. 37–68.

- Pietrzak M., *Prawo wyznaniowe*, Warszawa 2005.
- Piwowarski W., *Socjologiczna definicja religii*, in: *Socjologia religii. Wybór tekstów*, prepared by F. Adamski, Kraków 1984, pp. 51–67.
- Potz M., *Granice wolności religijnej. Kwestie wolności sumienia i wyznania oraz stosunku państwa do religii w Stanach Zjednoczonych Ameryki*, Wrocław 2008.
- Prusak F., Sitarz M., *Propedeutyka prawa*, Warszawa 2000.
- Przybysz P., *Sytuacja prawna jednostki w zakładzie oświatowym*, in: *Jednostka wobec działań administracji publicznej. Międzynarodowa Konferencja Naukowa Olszanica 21–23 maja 2001 r.*, edited by E. Ura, Rzeszów 2001, pp. 371–377.
- Pyclik K., *Wolność sumienia i wyznania w Rzeczypospolitej Polski (założenia filozoficzno prawne)*, in: *Prawa i wolności obywatelskie w Konstytucji RP*, edited by B. Banaszak, A. Preisner, Warszawa 2002, pp. 432–459.
- Rayzacher-Majewska A., *Dyrektorium katechetyczne Kościoła katolickiego w Polsce z roku 2001*, “*Studia Katechetyczne*”, 2017, No. 13, pp. 51–64.
- Religia*, in: *Inny słownik języka polskiego*, vol. 2, edited by M. Bańko, Warszawa 2000, p. 432.
- Religia*, in: *Nowy słownik języka polskiego*, edited by E. Sobol, Warszawa 2002, p. 836.
- Religia*, w: *Słownik języka polskiego*, vol. 5, edited by J. Karłowicz, A. Kryński, W. Niedźwiedzki, Warszawa 1900, p. 510.
- Religia*, w: *Uniwersalny słownik języka polskiego*, vol. 4, edited by S. Dubisz, Warszawa 2003, p. 63.
- Rogowska A., *Wolność sumienia i wyznania w orzecznictwie polskiego Trybunału Konstytucyjnego*, Warszawa 2015.
- Schwierskott-Matheson E., *Wolność sumienia i wyznania w wybranych państwach demokratycznych*, Regensburg 2012.
- Serralheiro D., *Specyfika i cechy charakterystyczne szkolnej nauki religii*, “*Communio*”, 11(1991), No. 2, pp. 61–79.

- Skarpetowski J., *Szkolna lekcja religii a katecheza parafialna w dokumentach Kościoła po Soborze Watykańskim II i w dokumentach Synodu Niemieckiego z 1974 r.*, "Katecheta", 35(1991), No. 3, pp. 120–146.
- Skrzydło W., *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, Zakamycze 2002.
- Smith W.C., *The Meaning and End of Religion. A New Approach to the Religious Traditions of Mankind*, New York 1964.
- Sobczak J., Gołda-Sobczak M., *Wolność sumienia i wyznania jako prawo człowieka*, "Annales Universitatis Mariae-Curie Skłodowska, sectio K – Politologia", 19(2012), No. 1, pp. 27–65.
- Sokołowski J., *Instytucja rodziny w prawie kanonicznym*, "Studia nad Rodziną", 17(2013), No. 1(32), pp. 291–313.
- Stanisz P., *Zasada bilateralności*, in: A. Mezglewski, H. Misztal, P. Stanisz, *Prawo wyznaniowe*, Warszawa 2008, pp. 66–81.
- Stańdo-Kawecka B., *Podstawy prawne resocjalizacji*, Kraków 2000.
- Szczech T., *Czy wolność religijna jest wolnością od religii? Sprawa Lautsi przeciwko Włochom a kryzys wolności religijnej w Europie*, Wrocław 2011.
- Szewczyk R., *Tożsamość katechety w świetle dokumentów Kościoła w latach 1965–1991*, Warszawa 1996.
- Szymd W., *Podręcznik prawa małżeńskiego*, Kraków 1929.
- Szpet J., *Podstawa programowa katechezy*, in: *Przesłanie dokumentów katechetycznych Kościoła w Polsce*, edited by S. Dziekoński, Warszawa 2003, pp. 35–48.
- Szpet J., *Tworzenie programu nauki religii*, "Katecheta", 43(1999), No. 3, pp. 2–11.
- Sztafrowski E., *Prawo kanoniczne w okresie odnowy soborowej*, vol. 2, Warszawa 1979.
- Szymanek J., *Wolność sumienia i wyznania w Konstytucji RP*, "Przegląd Sejmowy", 14(2006), No. 2(73), pp. 49–54.
- Tokarczuk I., *Wytrwać i zwyciężyć*, Kraków – Lublin – Warszawa 1987.
- Tomasik P., *Encyklika "Fides et ratio" jako inspiracja do wychowania katolickiego*, "Katecheta", 43(1999), No. 2, pp. 2–15.

- Tomasik P., *Informacja na temat przewidywanych zmian w programach i podręcznikach katechetycznych*, "Katecheta", 53(2009), No. 6, pp. 66–84.
- Tomasik P., *Katecheza a szkolne lekcje religii*, "Homo Dei", 69(1999), No. 1, pp. 60–76.
- Tomasik P., *Konieczność zmian programowych w nauczaniu religii?*, "Katecheta", 53(2009), No. 12, pp. 41–54.
- Tomasik P., *Nauczanie religii w publicznym liceum ogólnokształcącym wobec założeń programowych polskiej szkoły*, Warszawa 1998.
- Tomasik P., *Nauka religii wobec reformy programów nauczania w polskiej szkole*, "Bobolanum", 1999, No. 1, pp. 193–217.
- Tomasik P., *Nowe wyzwania dla katechezy i kształcenia religijnego w szkole*, "Warszawskie Studia Teologiczne", 12(1999), pp. 243–258.
- Tomasz z Akwinu, *Suma teologiczna*, London 1975.
- Tuleja P., *Wolność sumienia i religii*, in: *Prawo konstytucyjne RP*, edited by P. Sarnecki, Warszawa 2002, pp. 69–92.
- Warchałowski K., *Nauczanie religii i szkolnictwo katolickie w konkordatach współczesnych*, Lublin 1998.
- Warchałowski K., *Prawo do wolności myśli, sumienia i religii w Europejskiej Konwencji Praw Człowieka i Podstawowych wolności*, Lublin 2004.
- Wenz W., *Kancelaria parafialna jako przestrzeń kościelnego posługiwania. Studium kanoniczno-pastoralne*, Wrocław 2008.
- Winczorek P., *Komentarz do Konstytucji Rzeczypospolitej Polskiej z 02.04.1997 r.*, Warszawa 2000.
- Wołkiewicz A., *Główne idee polskich programów katechetycznych*, Kraków 2018.
- Zdybicka Z.J., *Religia a wspieranie człowieka*, in: *Religia a sens bycia człowiekiem*, edited by Z.J. Zdybicka, Lublin 1994, pp. 2–27.
- Zdybicka Z., *Czym jest i dlaczego istnieje religia?*, in: *Religia w świecie współczesnym. Zarys problematyki religiologicznej*, edited by H. Zimoń, Lublin 2000, pp. 37–62.
- Zellma A., *Nowa jakość planowania wymagań edukacyjnych w szkolnym nauczaniu religii – szanse i bariery. Analizy w świetle znowelizowanej*

- Podstawy programowej katechezy Kościoła katolickiego w Polsce*, “Katecheta”, 54(2010), No. 9, pp. 2–17.
- Zieliński A., *Stanowisko prawne opiekuna jako przedstawiciela ustawowego na tle zdolności do czynności prawnych pupila*, “Palestra”, 25(1981), No. 1(277), pp. 14–26.
- Ziółkowska A., *Hermeneutyczna wykładnia sumienia (Heidegger – Ricoeur)*, “Diametros”, 2007, No. 13, pp. 58–90.
- Zulehner P., Denz H., *Wie Europa lebt Und glaubt. Europäische Wertestudie*, Düsseldorf 1993.

IV. Websites

- <https://pl.wikipedia.org/wiki/Wyznanie> [accessed 15.05.2020].
- <http://sjp.pwn.pl> [accessed 12.10.2014].
- <https://men.gov.pl/ministerstwo/informacje/organizowanie-nauki-religii-i-etyki-w-roku-szkolnym-20152016.html> [accessed 15.02.2016].
- http://katecheza.diecezja.tarnow.pl/menu/artykuly/misja_kan_religia.pdf [accessed 10.02.2021].
- <https://www.fronda.pl/a/nowe-dyktorium-o-katechizacji-wiecej-ewangelizacji,146342.html> [accessed 25.06.2020]
- https://kuria.pl/katecheza/aktualnosci/Nowe-dyktorium-o-katechizacji-wiecej-ewangelizacji_4134 [accessed 26.06.2020].
- <https://www.vacitannews.va/pl.html> [accessed 25.06.2020].
- <http://wodnskierniewice.eu/images/pliki/wmo/36/2.3.pdf> [accessed 10.02.2021].
- <http://www.dziennikustaw.gov.pl/DU/2018/467> [accessed 8.07.2018].
- https://opoka.org.pl/biblioteka/T/TA/TAK/historia_katechezy.html [accessed 31.07.2022].
- <https://oko.press/masowy-odplyw-uczniow-z-lekcji-religii-nowe-badanie-cbos/> [accessed 31.07.2022].
- <https://www.polityka.pl/tygodnikpolityka/kraj/1649200,1,wszystko-czego-nie-wiemy-o-lekcjach-religii-kto-i-za-co-wlasciwie-placi.read> [accessed 31.07.2022].

- <http://dx.do.org/10.18290/rt.2018.65.11-2> [accessed 31.07.2022].
- <http://bip.ms.gov.pl/pl/prawa-czlowieka/europejski-trybunal-praw-czlowieka/orzecznictwo-europejskiego-trybunalu-praw-czlowieka-orzeczenia-europejskiego-trybunalu-praw-czlowieka-w-prawach-dotyczacych-innych-panstw/> [accessed 8.07.2022].
- https://www.echr.coe.int/documents/convention_pol.pdf [accessed 12.07.2022].
- www.men.gov.pl – Informacja MEN w sprawie warunków i sposobu organizowania nauki etyki w szkołach publicznych [accessed 12.07.2022].