„Anglojęzyczny Suplement Przeglądu Religioznawczego", 2012, no. 1

PAWEŁ BORECKI
University of Warsaw
Chair of Denominational Law

The Autonomy of Churches and other Denominations in Contemporary Polish Law

Denominational autonomy, or the capacity to create internal laws (canon law) and pursue them in self–governance, is an important manifestation of collective freedom of conscience and religion[1]. It is also one of the underlying principles of the system of separating state and religion[2].

Contrary to the legal system prevailing in the People's Republic of Poland[3], the Constitution of the Republic of Poland, adopted April 2, 1997, guarantees a broad autonomy of religious communities. The art. 25 sec. 3 stipulates that the relationship between the State and churches and other religious organizations shall be based on the principle of respect for their autonomy and the mutual independence of each in its own sphere, as well as on the principle of cooperation for the individual and the common good. Historically, this ambiguous provision was taken to mean that autonomy is attributed to religious organisations, but not to the state[4]. Contrary to solutions adopted in some European countries, framers of the Polish constitution resolved not to include an explicit phrase that religious communities can freely create their internal law and pursue it in self-

[1] On autonomy of religious communities (the Church) or nature of their internal law, see particularly J. Krukowski, *Kościół i państwa. Podstawy relacji prawnych*, Lublin 2000, p. 108-116; M. Pietrzak, *Prawo kanoniczne w polskim systemie prawnym*, „Państwo i Prawo", 2006, no. 8, p. 16-19; R. Sobański, *Prawo kanoniczne a krajowy porządek prawny*, „Państwo i Prawo", 1999, no. 6, p. 7-10.

[2] On the status of denominations in a separation system, see M. Pietrzak, *Prawo wyznaniowe*, Warszawa 2010, p. 101-107.

[3] For a broader inquiry into the restrictions of autonomy of religious communities in the People's Republic of Poland: E. Goryczko, *Autonomia i samorządność związków wyznaniowych w Polsce Ludowej*, Tarnów 2005, p. 42-139.

[4] See P. Borecki, *Geneza modelu relacji państwo-kościół w konstytucji RP*, Warszawa 2008, p. 326. Apart from art. 25 sec. 3, the Constitution employs the concept of autonomy once more, in relation to institutions of higher education (art. 70 sec. 5) . However, the Constitutional Tribunal has recently ruled (5.10.2005, ref. No. SK 39/05) that the autonomy of those institutions is of a different nature, such a conclusion being supported by the Constitution itself.

-governance[5]. Moreover, constitution provides no direct link between the autonomy of religious communities and the freedom of conscience and religion (art. 53, sec.1). It does not clarify in detail its scope, using only the phrase "in its own sphere." Also, it does not contain any direct references to acts or international agreements that would further specify the content of autonomy. The lawmakers do it indirectly in art. 25, where they determine relations between the Republic of Poland and the Roman Catholic Church (sec. 4), and other churches and religious organizations (sec. 5). Vague treatment of the denominational autonomy on the constitutional plane came as a result of concerns expressed by the Church's representative in the Constitutional Committee of the National Assembly who feared that a precise delineation of the autonomy and independence of Churches and other religious organizations could possibly empower the state to impose restrictions on their activity[6]. It may be also attributed to the efforts of the Polish Episcopate and members of parliament closely linked to the Catholic Church who exerted pressure to frame the denominational part of the future Constitution possibly in line with the relevant provisions of the Concordat of July 28 1993, particularly its art. 1. One may notice that art. 25 sec. 3 of the Constitution employs language which is very much similar to and at times identical with the one used in essential documents of Catholic social teaching, where the Church outlined a preferred model of its relationship with the state[7]. As things stand, the Church exerts a major influence on Polish public life, not least its political aspect, which invites ecclesiastical structures to push for a specific interpretation of terms used within the constitutional clause at hand. This is especially true for autonomy, which tends to be construed along the lines of the Catholic doctrine. With this, one risks an undesired extension of autonomy that may eventually compromise the state's legislative powers in the spheres that may be of interest to the majoritarian Church (*res mixtae*)[8].

To construe the principle of the autonomy of religious organizations "in their own sphere" it is necessary to consult a legal doctrine as well as individual and general denominational legislation, the latter being, most notably, the Freedom of Conscience and Religion Act, dated May 17, 1989[9]. In order to determine the scope of autonomy of the Church, one should examine the Concordat between the Republic of Poland and the Holy See, signed July 28, 1993[10].

---

[5] The Lithuanian constitution (1992) states that churches and religious organizations should conduct their affairs freely according to their canons and statutes. Similar provisions are contained in the constitutions of Albania (1998) and Moldova (1994).

[6] P. Borecki, *Geneza modelu relacji państwo-kościół w konstytucji RP*, ibidem, pp. 275-276.

[7] See *Gaudium et spes*, 76, www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_cons_19651207_gaudium-et-spes_en.html [access: 20 I 2013].

[8] For a critical examination of art. 25 sec. 3 of the Constitution: R. M. Małajny, *Regulacja kwestii konfesyjnych w Konstytucji III RP (refleksje krytyczne)*, in: *Ze sztandarem prawa przez świat. Księga dedykowana Profesorowi Wieńczysławowi von Igelgrund z okazji 85-lecia urodzin*, R. Tokarczyk, K. Motyka (ed.), Kraków 2002, p. 293-296.

[9] Consolidated text "Journal of Laws", 2005, no. 231, item 1965 with subsequent changes.

[10] "Journal of Laws", 1998, no. 51, item 318.

One may safely assume that the Constitution reasserts the right of Churches and other religious organisations to pass, without interference of the state, internal laws regulating matters inherently related to their activity[11]. In particular, these include: doctrinal matters, rules for the performance of rituals and religious services, criteria for accepting new members of the religious community, suspension of the right to participate in religious life, and expulsion from the religious community. Internal law also defines the rights and obligations of members, criteria for admission to the ministry and status of its members, rules for establishing a denomination's organizational units of various levels, and, lastly, their governance structure, powers of specific bodies and rules of appointment[12]. Restrictions imposed by the state on the scope of autonomy granted to religious communities, treated as a restriction of freedom to manifest religion, may be only enforced by means of a statute and must satisfy criteria specified in art. 53 sec. 5 and art. 31 sec. 3 of the Constitution. In particular, they may effectuate only when necessary for the defence of state security, public order, health, morals, or the freedoms and rights of others; also, restrictions may be introduced only if necessary in a democratic state and cannot infringe the essence of denominational autonomy, construed as an aspect of freedom to manifest religion. Art. 25 sec. 1 of the Constitution requires that if the state wishes to impose on legal autonomy certain limitations, all officially active religious organizations must be treated equally. The Constitution introduced special safeguards of a procedural character designed to constrain the state's powers in the area of denominational autonomy. Namely, relations between the state and each religious community are subject to and individual bilateral agreement (art. 25 sec. 4 and 5), and the right to file applications to the Constitutional Tribunal regarding the constitutionality or legality of normative acts regulating the activity of Churches and religious organizations (art. 191 sec. 1 and 2 in relation to art. 188).

It seems seems legitimate to suggest that constitutional provisions endorse a pre-constitutional character of denominational autonomy. It is not conferred by the state, nor does the state grant it to religious communities as a privilege. The state only acknowledges autonomy in its legal system, most significantly in the Constitution, and limits it in a number of ways. The source of autonomy itself lies in the freedom of religion that springs from the constitutional principle asserting the inalienable dignity of a person (art. 30). Also, this primary character of denominational autonomy seems to be well grounded in historical developments. Some of the religious communities, like Catholics, members of the Orthodox Church, or Jews, have inhabited Polish lands long enough to see the origins of the Polish state. The Church is arguably the single public institution in Poland

[11] See P. Winczorek, *Komentarz do Konstytucji Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 roku*, Warszawa 2008, p. 68; see L. Garlicki, Chapter I: *„Rzeczpospolita"*, artykuł 25, in: *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, L. Garlicki (ed.), vol. V, Warszawa2 007, p. 15-18. Garlicki's interpretation of autonomy and independence enshrined in art. 25 sec. 3 of the Constitution is largely different and remains under clear influence of opinions expressed by experts of denominational law sympathizing with the Catholic Church. In my analysis, I examine those two concepts jointly, referring both to religious organizations and the state.

[12] See E. Goryczko, *Autonomia i samorządność związków wyznaniowych*..., ibidem, p. 16.

that has maintained organizational integrity since the second half of the tenth century. The general rule stating that the state and religious organizations are mutually independent in their own spheres justifies the view that Polish framers favour mutual independence and the ineffectiveness of state and ecclesiastical laws[13].

Public authorities, therefore, should not interfere with the internal legislative process of religious organizations by, for example, exerting influence on the composition of legislative bodies. Nor are they allowed to approve, acknowledge or accept internal law, if such measures were to be designed as its validity criteria. Clearly, the Constitution prohibits any form of *ius placeti*. Pursuant to the mutual independence rule, public bodies cannot enforce norms prescribed by ecclesiastical law, nor make binding interpretation or issue rulings regarding validity thereof. In a Polish legal framework, the internal law of denominations is positioned as a *sui generis* foreign law[14].

The impartiality of public authorities in matters of religious, personal, and philosophical convictions, expressed in art. 25 sec. 2 of the Constitution, should be construed – following historical, but also, it seems, grammatical interpretation, – as a directive prescribing a worldview neutrality of the state[15]. This constrains the legislative powers of public authorities, banning their entanglement in religious and worldview matters. In particular, they are not allowed to regulate matters of a religious nature: dogmas, rituals and other religious practices, ecclesiastical holidays, rules governing the ministry, or the status specific groups enjoy within religious communities. All these are left for the consideration of the ecclesiastical lawmaker.

Constitutional provisions on sources of law – especially art. 87 and art. 234 which exhaustingly enumerate the sources of generally applicable laws – allow drawing the *contrario* conclusion that ecclesiastical laws are excluded from this catalogue[16]. On the principle that they only apply within the given denomination. They may only take effect in the state's legal system if the state explicitly expresses such a desire in a statute or international agreement[17].

Unfortunately, the Constitution never explicitly instructs how to resolve possible conflicts between norms belonging to those two legal orders, or, in other words, which norms shall be given preference should such a situation arise. In parts devoted to relations

---

[13] In the light of art. 25 sec. 3 of the Constitution, it is untenable to hold that the rule of mutual ineffectiveness holds only for relations between the state law and canon law of the Catholic Church – see W. Brodziński, *Stosunki między państwem a kościołami i innymi związkami wyznaniowymi*, in: *Konstytucja Rzeczypospolitej Polskiej. Komentarz encyklopedyczny*, W. Skrzydło, S. Grabowska, R. Grabowski (ed.), Warszawa 2009, p. 567.

[14] A. Mezglewski, *Opinia prawna dotycząca problem obowiązywania prawa wewnętrznego związków wyznaniowych w obrocie prawnym*, „Przegląd Prawa Wyznaniowego", 2011, vol. 3, p. 252.

[15] See P. Borecki, *Geneza modelu relacji państwo-kościół w konstytucji RP*, ibidem, p. 289; see W. Brzozowski, *Bezstronność światopoglądowa władz publicznych w Konstytucji RP*, Warszawa 2011, p. 29-47.

[16] See W. Brzozowski, *Glosa do wyroku* [NSA] *z dnia 8 stycznia 2008 r. (II GSK 286/07)*, „Przegląd Sądowy", 2010, No. 1, pp. 152-159.

[17] Broad treatment of the subject: A. Mezglewski, H. Misztal, P. Stanisz, *Prawo wyznaniowe*, Warszawa 2011, p. 65-66.

between the state and religious organizations, the Constitution does not stress sovereignty of the former. This probably came as a reaction to tense relations between the Church and the state experienced under the first totalitarian, and later authoritarian regimes spanning the 1944-1989 period. The Constitution presently in force lacks provisions incorporated in the March Constitution (1921). Art. 113 or art. 112 of the said act of the state, respectively, that "no religious organization can contradict the laws of the State", and "freedom of religion cannot be exercised in a manner contradictory to statutes. No one can abstain from one's public duties on the premise of one's religious convictions". The least doubt arises in connection with the status of constitutional norms. As stated in the document itself (art. 8 sec. 1), the Constitution shall be the supreme law of the Republic of Poland. Further, art. 83 of the same prescribe that everyone shall observe the law of the Republic of Poland. The lawmaker did not foresee any possible discharge from this responsibility. In general, one may observe that the Polish legal system introduces a rule typical to the state-denomination separation model: should a normative conflict between the state and a denominational regimes arise, priority shall be given to the former. One cannot refuse to obey state law due to the requirements of ecclesiastical law. This principle, although only implicitly, is confirmed by art. 85 sec. 3 of the Constitution that permits the refusal of military service, particularly on the grounds of religious convictions[18]. Denominations' right to enact and apply internal laws in self-governance is also secured by some acts of international law applicable in Poland. The Convention for the Protection of Human Rights and Fundamental Freedoms, adopted in 1950[19], provides safeguards for denominational autonomy in art. 9 which guarantees the freedom of thought, conscience and religion. Very similar language can be found in art. 18 of The International Covenant on Civil and Political Rights, adopted by the UN in 1966. The matter at hand has also been reviewed by the European Court of Human Rights (ECHR), which stands by the view that the freedom of religion entails the organizational freedom (autonomy) of denominations. ECHR conceives the notion of autonomy broadly, as something more than freedom to enact and conduct affairs pursuant to organizations' internal law. Denominational autonomy rests on independence in organizing one's operations and forms of believers' integration. Public authorities cannot interfere with this sphere as long as it is not "necessary in the democratic society"[20]. In *Hasan and Chaush v. Bulgaria* ruling, issued October 26, 2000, the court remarked that where the organisation of the religious community is at issue, Article 9 of the Convention must be interpreted in the light of Article 11 (freedom of assembly and association), which safeguards associative life against unjustified State interference. It further argued that seen in this perspective, the believers' right to freedom of religion encompasses the expectation that the community will be allowed to function

[18] See also: art. 3 sec. 3 of Freedom of Conscience and Religion Act and Alternative Service Act, dated November 28, 2003 ("Journal of Laws", no. 223, item 2217 with subsequent changes).

[19] "Journal of Laws", 1993, no. 61, item 284.

[20] *Konwencja o Ochronie Praw Człowieka i Podstawowych Wolności. Komentarz do art. 1-18. Tom I*, L. Garlicki (ed.), Warszawa 2010. p. 581.

peacefully, free from arbitrary State intervention. ECHR has ascribed great value to the autonomy of religious communities stating that the autonomous existence of religious communities is indispensable for pluralism in a democratic society and is thus an issue at the very heart of the protection which Article 9 affords. It directly concerns not only the organization of the community as such but also the effective enjoyment of the right to freedom of religion by all its active members. Were the organizational life of the community not protected by Article 9 of the Convention, all other aspects of the individual's freedom of religion would become vulnerable[21].

In the light of the Strasbourg decisions, the autonomy of religious communities extends to cover in particular: the right of the given denomination to shape its doctrine, determine its organizational structure, and acquire legal personhood; freedom to make arrangements regarding ecclesiastical appointments as well as transfer, discharge and removal of the ministers; freedom to determine its own composition; or freedom to enforce acts regarding the rights and status of the believers[22]. Autonomy, observes Leszek Garlicki, does not exclude a denomination's obligation to comply with general – religiously neutral – provisions of state law relating to public order. In such matters, states are entitled to exercise appropriate "evaluative discretion". States must, however, demonstrate flexibility in this regard, as one is required to preserve authentic denominational pluralism[23]. Strasbourg decisions, then, do not construe autonomy (independence) of confessions as absolute. They permit its limitations in line with the contemporary liberal doctrine of denominational and constitutional law. In general, contemporary Polish denominational legislation satisfies the standards set by ECHR in the sphere of the broadly conceived autonomy of religious organizations.

An examination of the 1989-1997 denominational statuses legitimizes the conclusion that the lawmaker violated the denomination equality rule enshrined in the Constitution by differentiating their legal statuses with regard to extent, to which the state may interfere with their autonomies. There are major differences between the communities conducting their affairs on the grounds of separate statues and those entered into the registry of Churches and other religious organizations.

The freedom of Conscience and Religion Act, dated May 17, 1989, has generally reasserted the autonomy of denominations in art. 19 sec. 2 pt. 4 providing that in fulfilling their religious functions, Churches and other religious organizations may conduct their affairs pursuant to their own laws. This effectively limited autonomy to religious functions. In the case of registered religious organizations, the lawmaker additionally specified what subject matter should be incorporated to the internal law (bylaws) of the community applying for entry in the register, and vested the registering body with the relevant supervisory powers.

---

[21] *Hasan and Chaush v. Bulgaria*, 62, www.minorityrights.org/download.php?id=382 [access: 20 I 2013].

[22] *Konwencja o Ochronie Praw Człowieka...*, ibidem, p. 582.

[23] Ibidem, p. 582.

As per art. 31 pt. 5 of the 1989 statute, bylaws must be enclosed to the registration application. According to the art. 31 sec. 2 of the same, bylaws specify in particular: name of the Church or other religious organization, distinguishable from the existing ones; area where it shall conduct its activities and seat of the organization's authorities; goals as well as forms and rules pursed to that end; its bodies and rules guiding their designation and discharge; scope of competences and rules followed in decision making; its representation and rules for incurring financial liabilities; acquisition and loss of membership, as well as the rights and obligations of members; appointment and discharge of ministers provided that the church or other religious organization foresees the existence of such; and, finally, its dissolution and allocation of the remaining property. Should the church or other religious organization intend to establish entities with a legal personhood, it is required to include in bylaws their names, area of activity, seats, scope of rights, and rules guiding their establishment, dissolution and rearrangement. Furthermore, bylaws have to specify the bodies of such entities; scope of competences; rules followed in decision making; rules guiding their designation and appointment; representation and rules for incurring financial liabilities (see art. 32 sec. 2). Provided religious organizations intend to establish organizational units devoid of legal personhood, bylaws must specify their names and rules for their establishment, dissolution and rearrangement (see art. 32 sec. 5). If the given community was formed as a part of an organization active internationally, bylaws should contain scope and forms of mutual relations (see art. 32 sec. 4). Those requirements indicate that the lawmaker set his sights primarily on securing the safety of legal transactions occurring between religious organizations and third parties. Also, he wished to furnish religious communities with some rules of corporate governance, which is clearly a protective measure designed to secure the interest of their own members. Considering that the legal awareness of applicants tends to vary, one may assert with a dose of certainty that assistance of the registering body in the bylaws-drafting process enhances its juridical character and legislative quality.

According to art. 33 sec. 1 of the Freedom of Conscience and Religion Act, the application process empowers the registering body to request the applicants to supply clarifications, particularly with regard to bylaws. It can also turn to relevant bodies to confirm the data enclosed therein. Should the registering body discover any omissions or defaults, especially in relation to bylaws and within the scope specified in art. 32 of the statute, it shall give a two-month notice for them to be remedied, and if such a deadline expires without appropriate follow-up action, it issues a decision rejecting the application (see art. 33 sec. 3). The registering body examines not only the formal compliance of bylaws, but is entitled to look into their subject matter. The registering body investigates whether the bylaws do not contain, *inter alia*, provisions that a conflict with statutes protecting public safety and order, health, morals, parental authority and freedoms and rights of others. Should such be discovered, the relevant body issues a decision rejecting the application (see art. 33 sec. 3). In general, the lawmaker does not require bylaws to accord with the applicable state law, but formulates a narrower prerequisite, namely

that they should not conflict with statutes as well as other normative acts positioned higher in the hierarchy, protecting objective freedoms enumerated in the aforementioned provision. Decision rejecting the application should be issued within three months from the initiation of the application process. Such decisions can be appealed in the administrative court (see art. 33 sec. 4). Here, it may be of note to remark that the premises to be satisfied in the decision rejecting the application are somewhat less strict than the criteria for the limitation of freedom to manifest religion prescribed in art. 53 sec. 5 and art. 31 sec. 3 of the Constitution of the Republic of Poland.

An amendment of the bylaws of the registered church or other religious organization follows the procedure applied in the registration process (art. 35 sec. 1). This means that the amendment should be executed by the relevant body designated in the existing bylaws, whereas the appropriate application should be filed by the body authorised for representation, unless the bylaws prescribe otherwise. These are not, however, statutory requirements. In 2008, the registering body discontinued a long-established practice of examination whether the amendment of bylaws followed the procedure defined in the internal law of the given religious community[24]. Nonetheless, the registering body may at anytime request an update of information that denominations must supply to retain their registered status. Such information is specified in art. 32 sec. 1 pts. 2-5, and relates predominantly to the update of bylaws (see art. 35 sec. 2).

Accordingly, the bylaws of an inter-ecclesiastical organization should satisfy the same requirements. A registering body possesses here the same supervisory powers. However, the lawmaker did not equip the registering body with the power to examine other acts of its internal law, such as regulations, instructions, labour guidebooks, or official interpretations of bylaws issued by the supreme bodies of religious organizations.

One should stress that the lawmaker intends that the religious organization comports with its own bylaws. To this end, he decided to introduce sanctions if members of the community happen to violate the said act. In such an event, the registering body or a prosecutor may request a circuit court to investigate irregularities occurring in activities of the Church or other religious organization, particularly if the alleged violation concerns bylaws, based on which registration was granted (art. 36a sec. 1). If the court rules in a binding decision that a religious organization is in a gross violation of the bylaws, the registering body issues a decision deleting it from the register (art. 35a sec. 2)[25].

There is a distinct difference between Churches and other religious organizations that were furnished with legal regimes by statutes passed between 1989 and 1997[26] and others

[24] M. Piszcz-Czapla, *Rejestr Kościołów i związków wyznaniowych*, in: *Prawo państwowe a prawo wewnętrzne związków wyznaniowych*, K. Krasowski, M. Materniak-Pawłowska, M. Stanulewicz (ed.), Poznań 2010, p. 159.

[25] For a broader inquiry into the premises, procedure and effects of the delegalization of a religious community, see J. Koredczuk, *Niezgodność działania Kościołów lub związków wyznaniowych z przepisami prawa*, in: *Prawo państwowe a prawo wewnętrzne związków wyznaniowych*, ibidem, pp. 57-65.

[26] See Act concerning the Relationship Between the State and Catholic Church in Poland, dated May 17, 1989 ("Journal of Laws", no. 29, item 154 with subsequent changes), Act concerning the Relationship Between the State

operating under statutes that came into force in the inter-war period. Normative acts issued in 1928[27] and 1936[28] were fitted into a substantially different constitutional model of a state-religion relationship, namely one of the state's superiority over confessions. By this virtue they must be regarded as anachronistic. Provisions vesting the supervisory body with a wide-ranging authority, particularly over the internal legislative process (including approval of bylaws (internal statutes) by ordinances of the Council of Ministers), must be deemed void in the light of art. 18 sec. 2 of the Freedom of Conscience and Religion Act. It stipulates that provisions of chapter 2 of the said statute – containing the rights of Churches and other religious organizations – are applicable to religious communities which had their legal statuses defined in separate statutes that lack such rights. Art. 19 sec. 2 pt. 4 of the said chapter 2 further reasserts that within their freedom to perform religious functions, religious organizations may apply internal law to conduct their affairs. Therefore, the Eastern Old-Rite Church (EORC), the Karaim Religious Union in Poland (KRU), and the Islamic Religious Union in Poland (IRU) are equipped with broad autonomy, unrestricted by any specific statutory provisions. In particular, pursuant to art. 18 sec. 1 of the Freedom of Conscience and Religion Act, as religious communities with legal statuses defined in separate statutes they are not subject to limitations of autonomy imposed on religious organizations entered or applying for entry in the register (contained in division III of the said statue). The denominations in question are not obliged to inform public authorities in the event of the amendment of their internal law, and the relevant

and the Polish Autocephalous Orthodox Church, dated July 4, 1991 ("Journal of Laws", no. 66, item 287, with subsequent changes), Act concerning the Relationship Between the State and Evangelical Church of the Augsburg Confession in Poland, dated May 13, 1994 ("Journal of Laws", no. 73, item 323, with subsequent changes), Act concerning the Relationship Between the State and Reformed Evangelical Church in Poland, dated May 13, 1994 ("Journal of Laws", no. 73, item 324 with subsequent changes), Act concerning the Relationship Between the State and Evangelical Methodist Church in Poland, dated June 30, 1995 ("Journal of Laws", no. 97, item 479, with subsequent changes), Act concerning the Relationship Between the State and the Polish Baptist Union, dated June 30, 1995 ("Journal of Laws", no. 97, item 480, with subsequent changes), Act concerning the Relationship Between the State and Seventh Day Adventist Church in Poland, dated June 30, 1995 ("Journal of Laws", no. 97, item 481, with subsequent changes), Act concerning the Relationship Between the State and Polish Catholic Church, dated June 30, 1995 ("Journal of Laws", no. 97, item 482, with subsequent changes), Act concerning the Relationship Between the State and the Catholic Mariavite Church in Poland, dated February 20, 1997 ("Journal of Laws", no. 41, item 252, with subsequent changes), Act concerning the Relationship Between the State and Old Catholic Mariavite Church in Poland, dated February 20, 1997 ("Journal of Laws", no. 41, item 253, with subsequent changes), Act concerning the Relationship Between the State and Jewish Religious Communities in Poland, dated February 20, 1997 ("Journal of Laws", no. 41, item 251, with subsequent changes), and Act concerning the Relationship Between the State and Pentecostal Church in Poland, dated February 20, 1997 ("Journal of Laws", no. 41, item 254, with subsequent changes).

[27] The Ordinance of the President of the Republic of Poland concerning the Relationship Between the State and Eastern Old-Rite Church in Poland, dated March 22, 1928 ("Journal of Laws", no. 38, item 363, with subsequent changes).

[28] Act concerning the Relationship Between the State and Islamic Religious Union in Poland, dated April 21, 1936 ("Journal of Laws", no. 30, item 240, with subsequent changes) and Act concerning the Relationship Between the State and the Karaim Religious Union in Poland, dated April 21, 1936 ("Journal of Laws", no. 30, item 241, with subsequent changes).

minister supervising religious organizations is not vested with powers to carry out its examination. As of today, the lawmaker has not made it mandatory for those confessions to promulgate their internal law (bylaws) that are currently in force. All things considered, the ensuing conclusion must be that with EORC, KRU and IRU, one encounters a certain area of deregulation, or unclear legal status. On a positive note, individual statutes adopted in 1928 and 1936 clearly define the limits of legal autonomy these denominations are entitled to exercise, this being the domain of state law.

In the normative acts passed between 1989 and 1997, the state has reasserted the broad autonomy of eleven Christian Churches and Jewish religious communities associated in the Union of Jewish Religious Communities in Poland (UIRCP). Special safeguards of international character have been granted to the Catholic Church with the adoption of the Concordat in July 28, 1997. In art. 1 of the agreement, parties reasserted that the State and the Catholic Church are, each in their own sphere, independent and autonomous, and have declared to hold this principle as paramount in their mutual relations and in co--operation for the individual and common good. It seems right to conceive this provision as generally reaffirming the principle that the Church is entitled to enact "in its own sphere" its own law (canon law), and that legal frameworks of the state and Church are mutually independent[29]. The state's protection for canon law, a normative framework of the Church, is afforded also in art. 5 of the Concordat. Therein, the state has provided the Catholic Church, regardless of the adopted rite, with the right to fulfil its mission freely and publicly, which includes exercising jurisdiction, governance and administration of its affairs pursuant to canon law. This is not tantamount to general acknowledgement of the canon law's effectiveness within the legal framework of the state. The language of art. 1 it seems to advance the view that the Concordat rather seeks to express the idea of equivalence of those systems. This understanding could be further supported by numerous references to both canon and state law made further in specific provisions of the Concordat[30]. It may be judged as an attempt to delineate the jurisdictions of canon law and state law in spheres of mutual interest, thus further clarifying the scope of the Church's autonomy. Explicit references to canon law appear, *inter alia*, with regard to recognition of the legal personhood granted to territorial and personal institutions of the Church (art. 4 sec. 2); appointment of members of ecclesiastical offices (art. 7 sec. 1); organization of a public cult (art. 8 sec. 2); civil effect of canon law marriage (art. 10 sec. 1 and 2); validation of canon law marriage (art. 10 sec. 3); subordination of teachers with regard to content conveyed in religious teachings and pedagogical undertakings (art. 12 sec. 4); establishment and running of educational and pedagogical institutions (art. 14 sec. 1); implementation of curriculum extending beyond mandatory subjects within

[29] For an extensive analysis of art. 1 of the Concordat see, *inter* alia, J. Krukowski, *Konkordat polski – znaczenie i realizacja*, Lublin 1998, pp. 68-72 and, idem, *Kościół i Państwo...*, ibidem, pp. 300-301, and W. Góralski, A. Pieńdyk, *Zasada niezależności i autonomii Państwa i Kościoła w Konkordacie Polskim z 1993 roku*, Warszawa 2000, p. 11-23.

[30] On references to canon law and Polish law in the Concordat of 1993, see B. Trzeciak, *Klauzule odsyłające w konkordatach z Hiszpanią i z Polską*, Lublin 2007, p. 105-150.

those institutions (art. 14 sec. 2); pastoral care carried out by a Military Bishop for soldiers of Catholic persuasion (art. 16 sec. 1); freedom of assembly of believers (art. 19); or possible new regulatory measures related to financial matters of institutions and property of the Church and ministry in Poland (art. 22 sec. 2).

Under the 1993 agreement, there are no rules establishing the superiority of state law over canon law should these collide. In arts. 27 and 28 of the treaty parties stipulate that possible conflicts should be remedied by reconciliation that may result in further agreements concluded between the Contracting Parties, or the Government of the Republic of Poland and Episcopal Conference duly authorised by the Holy See.

1989-1997 denominational laws vest respective Churches and the UIRC with similar powers to pass internal legislation. Statutes regulating the relationship of the State with the Polish Autocephalous Orthodox Church (PAOC), Evangelical Church of the Augsburg Confession, and Reformed Evangelical Church stipulate that they govern **their internal affairs** by means of their own law (Orthodox Church), or provisions of internal law (Evangelical churches). However, the lawmaker resolved not to specify bodies entitled to pass such acts. As for the remaining confessions operating under individual regimes furnished by 1989-1997 statutes, the matter at hand is regulated even more vaguely, as these churches and the UIRC govern **their affairs** with their own law (Catholic Church), own ecclesiastical law (Seventh Day Adventist Church in Poland), or own internal law (other confessions of the category). The term "own law" implies that those religious organizations enact their internal norm freely, without the interference of public authorities.

Apart from provisions of a general nature, 1989-1997 denominational statutes define the scope of autonomy, i.e. subject matter falling under internal law, only to a certain extent. Most notably, the lawmaker obliged non-Roman Catholic confessions and Jewish religious communities to specify their internal structure and organization. The respective statutes list groups of internal organizational units that are awarded legal personhood and their respective bodies. It must not necessarily mean that those will be instituted by the appropriate acts of internal law. However, should this be the case, internal law must also establish at least bodies named in the respective statutory provisions.

As regards ten Christian Churches operating under separate regimes introduced by the 1989-1997 statutes (except the Mariavite Catholic Church) and the Union of Jewish Religious Communities, the lawmaker decided that it shall remain for the consideration of internal legislation to designate members of the clergy who shall be authorized to accept a declaration, in which newlyweds state that marriage was concluded in the form prescribed by internal law and is intended to be effective in the light of Polish law. With this, statutes formulate an implicit requirement that the internal law of those confessions should determine the form, in which denominational marriage is to be concluded if it is intended to be effective in the light of Polish law. According to the 1995 statute providing the legal framework for the activity of the Polish Catholic Church, its internal law must regulate the rights and obligations of its members. As for the Jewish religious communities, it is obligatory for their internal law to specify rules for the establishment of new religious

communities as well as the dissolution and rearrangement of the existing ones. Under the 1989-1997 statutes, a public cult is left as a potential regulatory area of internal law, as it is either provided that the organization and performance of a public cult belongs to the scope of powers of the relevant ecclesiastical authorities or recognised that Churches organise and perform public cults freely. It is only in the statute furnishing regime for Jewish religious communities that one explicitly states that the organization and performance of a public cult, along with the delivery of religious services, shall effectuate as Jewish communities see fit and prescribe so in their internal law. This means that these matters are to be duly regulated therein. By introducing these provisions, the lawmaker precludes public authorities' interference with religious cults pursued by the confessions in question.

In the six denominational statutes regulating the activity of the Catholic Church, the Polish Autocephalous Orthodox Church, the Evangelical Methodist Church, the Polish Catholic Church, the Mariavite Catholic Church and the Old Mariavite Catholic Church, it is implicitly indicated that among matters to be obligatorily regulated by internal law are the so-called ecclesiastical organizations. Those pursue basically the same goals as churches under which they operate and focus primarily on religious education, public cult, or overcoming social pathologies and their repercussions. They are founded either by decisions or approval of the authorised central or local ecclesiastical bodies and do not operate under the legal setup provided in the Associations Act. As they are not subject to registration, they cannot acquire legal personhood in this way. Their structure and code of conduct is specified by the internal law of the given church[31].

Under the 1989-1997 denominational laws, Churches and religious organizations are subject to certain limitations of autonomy. As regards the Catholic Church, the Orthodox Church and the Evangelical Church of the Augsburg Confession, those extend to cover the sphere of pastoral care in the armed forces. This appears to be justified, as the sphere in question is an exception from the institutional separation of churches and state. The Catholic Military Ordinate of the Polish Armed Forces, Orthodox Military Ordinate of the PAF, and Evangelical Military Priesthood (EMP) are all part of the ministry of defence, with their chaplains being military officers, as it would seem inconceivable for the Minister of Defence (MoD) not to exercise authority over part of military administration. Art. 16 sec. 1 of the Concordat stipulates that bylaws of the Military Ordinate are approved by the Holy See in agreement with the relevant public authorities. This complements art. 26 sec. 3 of the Act concerning the Relationship between the State and the Catholic Church, which provides that bylaws of the military ordinate are passed by the Polish Episcopal Conference and further promulgated by the MoD[32]. Pursuant to art. 22 sec. 2 of the act

[31] For a broader view, see A. Mezglewski, H. Misztal, P. Stanisz, *Prawo wyznaniowe*, ibidem, pp. 105-107. Organizations of a similar nature may also be incorporated pursuant to art. 19 sec. 2 pt. 14 of the Freedom of Conscience and Religion Act. This statute does not grant legal personhood to organizations formed under this regime.

[32] Current Military Ordinate Bylaws, adopted January 21, 1991, were bestowed by Pope John Paul II ("Acta Apostolica Sedis", 1991, no. 83, pp. 155-157), in violation of the requirement that bylaws are passed by the Polish

concerning the Relationship of the State and POAC, bylaws of the Orthodox Ordinate are drafted by ecclesiastical officials in agreement with the MoD[33]. Similar rules were set for the Evangelical Military Priesthood (EMP). Art. 31 sec. 3 of the 1994 statute stipulates that EMP bylaws should, in particular, minutely describe the organizational setup of the Priesthood as well as rules for appointment and discharge of the Chief Military Chaplain and other military chaplains. It is passed by the Consistory of the Church in agreement with the MoD, and, as anywhere else, promulgated by the MoD[34]. Respective statutes prescribe that drafters of such bylaws should embrace the rule that depending on whether matters are of a military or pastoral nature, chaplains answer, respectively, to military or ecclesiastical authorities.

To secure the safety of legal transactions, the 1989-1997 statutes provide that if pursuant to internal law one resolves to change the names of groups of ecclesiastical legal persons defined in statutes, it is mandatory for Churches to apply to the minister supervising religious affairs for their promulgation in the "Polish Monitor". Only ecclesiastical bodies listed in the respective statutes may file the relevant applications. However, the promulgation itself is not a prerequisite for the validity of those internal acts.

It is difficult to establish why the majority of the 1989-1997 statutes explicitly name bodies empowered to enact internal law. Did the lawmaker intend to secure the democratic nature of the legislative process? In the case of the Evangelical Church of the Augsburg Confession, the Reformed Evangelical Church, the Old Catholic Mariavite Church and the Pentecostal Church, such legislative power is vested in their respective Synods. In the Polish Catholic Church this authority is delegated to the National Synod, in the Polish Baptist Union – the National Conference of the Church, in the Evangelical Methodist Church – the Annual Conference, in the Catholic Mariavite Church – the General Chapter. In the case of Jewish religious communities, its 1997 regulatory statute provides that internal law is enacted by the general meeting of the Union of Communities in agreement with the Religious Council of the Union of Communities (art. 3 sec. 2). The lawmaker did not explicitly identify the legislative body of the Seventh Day Adventist Church. However, art. 2 of the relevant 1995 statute recognises the General Conference of the Seventh Day Adventist Church as its supreme authority, with special emphasis on canonical matters. The provisions discussed in this paragraph entail that an act of internal law is ineffective if passed by another body than the one specified in the relevant statutes. Furthermore,

Episcopal Conference and promulgated by the Ministry of Defense; see also: decision No. 326/MON of the Minister of Defense concerning the organizational setup of the Military Ordinate within the ministry of defense and cooperation of military authorities with the Military Ordinate, dated August 28, 2006 ("Journal of Laws", no. 16, item 202 with subsequent changes). For a broader inquiry into the Catholic priesthood in the Polish Armed Forces, see T. Płoski, *Duszpasterstwo w Wojsku Polskim. Studium prawne z uwzględnieniem praw człowieka i prawa humanitarnego*, Olsztyn 2006.

[33] Bylaws of the Orthodox Ordinate of PAF were passed by the Holy Sobor of Bishops on December 28, 1992 (see http://www.prawoslawnyordynariat.wp.mil.pl/pl/10_5.html).

[34] See announcement of the Minister of Defense concerning the promulgation of the bylaws of the Evangelical Military Priesthood, dated November 13, 2002 (MoD "Journal of Laws", no. 23, item 210).

it is required that the internal law of the given confession must institute the appropriate body and vest it with legislatives powers. The fact that the lawmaker explicitly named the legislative bodies of those religious organizations seems to be unnecessary and excessive interference with their autonomy.

A systemic interpretation of denominational laws legitimises the conclusion that on principle the internal laws of Churches and other religious organizations is intended to regulate their *forum internum*. Statutes at hand do not offer explicit directives to follow in the case of possible collisions between internal and state law. The 1991 amendment to the act concerning the Relationship between the State and the Catholic Church has deleted the hitherto phrasing of its art. 1 stipulating that the Catholic Church operates under a regime furnished by the Constitution. This added to a negative overtone depreciating the Constitution as a superior regulatory framework for the state-Church relationship[35]. Art. 27 of the Freedom of Conscience and Religion Act provides that activity of Churches and other religious organizations, not least their legislative undertakings, cannot infringe generally applicable statutory provisions protecting public safety, order, health, morals, parental authority or the rights and freedoms of others. However, in the light of art. 18 sec. 1 of the said statue this is not applicable to Churches and other religious organizations operating under individual regimes. Notwithstanding, on the grounds of some provisions contained in those statutes, the applicability of the said art. 27 is not entirely excluded, as those stipulate that all and any matters of the given church or other religious organization remaining outside the regulatory scope of the said statutes are governed by the Freedom of Conscience and Religion Act (PAOC, the Evangelical Church of Augsburg Confession) or generally applicable by law (remaining non-Roman Catholic confessions). A singular solution was crafted for the Catholic Church. Art. 3 sec. 2 of the 1989 statute prescribes that matters falling outside its regulatory scope are governed by generally applicable laws, unless those conflict with the rules ensuing from the statute itself. The fact that the lawmaker does not intend such matters to be governed by internal law legitimises the interpretation that it is designed to regulate exclusively its internal sphere. Furthermore, references to the Freedom of Conscience and Religion Act or the generally applicable law present in the 1989-1997 statutes may be construed as the lawmaker's intent to stress superiority (priority) of generally applicable law over the internal law of Churches and other religious organizations should they be in conflict.

This interpretation is further underpinned by art. 39 sec. 1 of the Freedom of Conscience and Religion Act, which provides that the bylaws of Churches and other religious organizations remain in force unless they contradict with the provisions of the said statute. This provision is contained in division IV of the statute, and by this virtue relates to all religious communities. However, it features among transitional and final provisions, which means that it is applicable to bylaws that were in force at the moment the statute

[35] See: Act amending the Act concerning the Relationship between the State and the Catholic Church, dated October 11, 1991 ("Journal of Laws", no. 107, item 459).

was enacted. The view that state law is superior to ecclesiastical laws, including those passed by communities operating under the 1989-1997 statutes, finds support also in art. 3 sec. 2 of the Freedom of Conscience and Religion Act. By and large, it provides that while pursuing freedom of conscience and religion one cannot fail to fulfil public obligations levied by state laws. It follows that the statutory rules of such a kind enjoy priority over the internal laws of religious organizations implemented by their members while pursuing freedom of conscience and religion.

However, it must be noted that legislation currently in force failed to regulate matters of some importance. For example, public authorities are not entitled to alarm bodies of religious communities operating under individual regimes if their ecclesiastical laws conflict with state law. Moreover, denominations are not obliged to supply governmental bodies supervising religious affairs with essential acts of their internal law which are currently in force. This must be judged as a major negligence on the part of the lawmaker, one that cannot be justified by the respect for denominational autonomy. This omission jeopardizes the safety of legal transactions and undermines the stability of a legal framework, potentially compromising citizens' confidence in the state and its regulatory powers. Third parties willing to access the applicable internal law of Churches and religious organizations operating under individual regimes may only appeal to the good faith of their religious authorities. It seems to be a major blow to legal safety, as one cannot access credible public information regarding restrictions imposed by internal law on the representative powers of legal persons formed by religious organizations[36]. One should therefore support demands for public registration of legal persons formed by denominations. Such a registry would collect all data related to the restrictions imposed by internal law on representative powers within the scope of legal transactions. A similar result would be achieved if some of the already existing public registries had their authority extended to cover the matter at issue. Judging from recent history, some of the confessions equipped with individual legal setups furnished by the 1989-1997 statues were credited with too much trust. Nonetheless, the lawmaker did not prescribe for those denominations any sanctions for grave and repeated violation of their internal law. The possible delegalization of denomination or other religious organizations on those grounds could only effectuate if the relevant statute (or ordinance of the President of the Republic of Poland) was repealed, rendering this scenario purely hypothetical.

[36] Immense criticism of the majority of experts notwithstanding, from 1997 on the Supreme Court has repeatedly upheld the validity of internal (canon law) provisions setting rules for the representation of legal persons formed by religious organizations. See SC rulings: March 12, 1997, II CKN 24/97 (Lex Polonica 390720); July 27, 2000, IV CKN 88/00 („Orzecznictwo Sądów Polskich" [Polish Courts' Judicial Decisions], 2003, No. 9, item 115); March 24, 2004, IV CK 108/03, („Orzecznictwo Sądu Najwyższego Izba Cywilna" [Supreme Court Judicial Decisions, Chamber of Civil Law], 2005, No. 4, item 65, pp. 48-60); February 2, 2005, IV CK480/04 (Lex Polonica 1633059); February 17, 2005, IV CK 582/04 (Lex Polonica 1633077) and resolution of the SC Chamber of Civil Law, dated December 19, 2008, III CZP 122/08 („Orzecznictwo Sądów Polskich" [Polish Courts' Judicial Decisions], 2010, no. 2, item 18, p. 114-120). M. Pietrzak, *Prawo wewnętrzne (kanoniczne) Kościołów i związków wyznaniowych w polskim systemie prawnym*, in: *Prawo państwowe a prawo wewnętrzne związków wyznaniowych*..., ibidem, p. 150.

All things considered, one feels compelled to concede that, on the whole, the Polish legal system, particularly on the grounds of individual regimes, fails to satisfy the requirement for the non-contradiction of ecclesiastical and state frameworks. Nor does it unambiguously assert the latter's superiority over the internal law of religious organizations in the event of collision. With the exception of religious organizations subject to registration, the lawmaker never came up with a precise definition of the subject matter falling under the authority of ecclesiastical law, thus failing to provide a clear-cut delineation of the legal autonomy enjoyed by religious communities. One was also mistaken not to oblige churches and other religious organizations to supply the central governmental body supervising religious affairs (as of today, Minister of the Interior) with at least the essential acts of their internal law currently in force. The autonomy of churches and other religious organizations seem to be fairly well secured in Polish law. This, however, begs the question whether the state's interests are equally well guarded against the possible claims of ecclesiastical lawmakers, including those operating under individual regimes. Such claims may manifest in the desire to declare certain clearly secular matters of potential importance for the public at large as belonging to a religious sphere protected by autonomy and hence excluded from the public authority; religious organizations may also feel tempted to impose on believers' obligations that conflict with statutory rules.