I. Social Facts

Throughout Europe, Poland is generally regarded as a Catholic State, a view which is still confirmed by the statistical data. Unlike in some other States the precise number of followers of the various confessions is not known in Poland, since adherence to a religion is not included in any official documents – not even in school reports which give the grades obtained in religious instruction. This situation is legally provided for by the Constitution.\(^1\) However, the 2011 Census included for the first time in 80 years a question about a membership in churches and religious communities. Interestingly, for a few Churches, data gathered on this occasion differed significantly from the data in official statistical annuals, which is provided by Churches themselves. For example, the numbers of Orthodox revealed in census is 30% of the data given by the Church. On the other hand, the Lutheran Church seems to be well informed about the number of its members. The figures in the table below come from the Statistical Annual, which are the official estimates for 2017:\(^2\)

(in brackets figures from 2003, i.e. from the 2\(^{nd}\) edition of this book)

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1. No one may be compelled by organs of public authority to disclose his philosophy of life, religious convictions or belief – Constitution, Art. 53(7).
2. Only churches and religious communities with a minimum of 5,000 baptised/members are included. Complete data can be found in: Rocznik statystyczny, Warszawa 2017, p. 194-196.
<table>
<thead>
<tr>
<th>Church or Religious Community</th>
<th>Number of parishes or respective entities</th>
<th>Number of clergy</th>
<th>Number of members</th>
</tr>
</thead>
<tbody>
<tr>
<td>Catholic Church/ Latin Rite³</td>
<td>10,248 (10,018)</td>
<td>30,930 (28,259)</td>
<td>33,022,904 (34,498,271)</td>
</tr>
<tr>
<td>Orthodox Church</td>
<td>243 (223)</td>
<td>479 (296)</td>
<td>504,400 (509,500)</td>
</tr>
<tr>
<td>Jehovah's Witnesses</td>
<td>1299 (1,769)</td>
<td></td>
<td>120,196 (123,034)</td>
</tr>
<tr>
<td>Catholic Church/ Byz.Ukr. Rite (known as Greek-Catholic)</td>
<td>128 (137)</td>
<td>82 (71)</td>
<td>55.000 (123,000)</td>
</tr>
<tr>
<td>Augsburg Confession (Lutheran) Church</td>
<td>133 (292)</td>
<td>184 (175)</td>
<td>61,582 (86,880)</td>
</tr>
<tr>
<td>Old Catholic Church of the Mariavites</td>
<td>36 (37)</td>
<td>23 (27)</td>
<td>22,900 (24,288)</td>
</tr>
<tr>
<td>Polish Catholic Church</td>
<td>72 (83)</td>
<td>62 (106)</td>
<td>18,112 (22,422)</td>
</tr>
<tr>
<td>Pentecostal Church</td>
<td>239 (186)</td>
<td>376 (324)</td>
<td>24,095 (20,027)</td>
</tr>
<tr>
<td>Seventh Day Adventist Church</td>
<td>147 (151)</td>
<td>61 (69)</td>
<td>9,565 (9,492)</td>
</tr>
<tr>
<td>Catholic Church/ Armenian Rite</td>
<td>3</td>
<td>3</td>
<td>670 (8,000)</td>
</tr>
<tr>
<td>New Apostolic Church</td>
<td>53 (52)</td>
<td>86 (50)</td>
<td>5,437 (5,433)</td>
</tr>
<tr>
<td>Islamic Assembly Ahl-ul Bayt</td>
<td>1</td>
<td>1</td>
<td>6,020</td>
</tr>
<tr>
<td>Islamic Religious Community in RP</td>
<td>7</td>
<td>18</td>
<td>773</td>
</tr>
</tbody>
</table>

The following should be noted with regard to this table:

1) The numbers given above represent the numbers of baptised/members, which are not the same as the number of a people attending religious ceremonies:
2) Remarkable is a significant decrease as regards the Greek-Catholic Church (in 12 years, from 123,000 to 55,000), and Armenian Catholic

³ Very detailed information provided by the Institute of the Statistics of the Catholic Church, www.issk.pl, in Polish only.
Church (from 8,000 to 670 members). Other Churches and communities more or less kept the number of their members.

3) The Catholic Church in Poland comprises four rites: Latin (usually called Roman Catholic), Armenian, Byzantine-Slavic (with only one parish Kostomłoty near Terespol) and Byzantine-Ukrainian (usually called Greek-Catholic). All these rites acknowledge the Pope as head of the Catholic Church. The Law of 1989 governing the relationship between the State and the Catholic Church applies to all four rites.

4) Contrary to that, the Polish Catholic Church was created in the USA in the 19th century; their members came to Poland only after 1918. This church is registered in the official register of churches and religious communities (see (4) below) separately from the Catholic Church. The Church is a member of the Union of Utrecht of the Old Catholic Churches and does not recognise the Pope as head of the Church.

5) The data of the first Census (1921) after the rebirth of Poland may be taken as a comparison: at that time 63.8% of the population declared themselves to be Roman Catholic, 11.2% Greek Catholic, 10.5% Orthodox, 10.5% were of Jewish belief, 3.7% Protestant, and 0.3% belonged to other faith communities.

II. Historical Background

The year 966, when Duke Mieszko was baptised on the occasion of his marriage with the Bohemian princess Dąbrówka (Dobrava), is regarded as the foundation year of the Polish State and the birth of Christianity on Polish soil. In 968 the first diocese was founded in Poznań; this was followed in the year 1000 by the Archbishopric of Gniezno and dioceses in Kraków, Kołobrzeg and Wrocław. From the beginning, Poland was part of Western Christianity. In 1385 Lithuania was christianised as a consequence of a spectacular marriage: Polish Saint Jadwiga (Hedwig from the House of Anjou), married the Lithuanian Grand Duke Jagello. A final union between the two States was established only in 1569 in Lublin. Thus was created a Republic of Both Nations (Rzeczpospolita Obojga Narodów): a multinational and multi-religious state, in which each noble had a passive and active right: either to elect the king or to be elected as king. This peri-

4 Historia Polski w liczbach (The History of Poland in data), GUS, Warszawa 2003, p. 385.
od, which lasted until the third partition of Poland in 1795, is known as the First Republic and existed as a republic of the nobles.

In the first half of the 16th century relatively large numbers of the richer strata of society followed Lutheranism, Calvinism, and the "Polish brothers" (the so-called Arians, who opposed the doctrine of the Trinity). During the course of the Counter-Reformation many returned to Catholicism, but in the 16th century Poland experienced relative religious freedom compared with other European States. In the time between the death of one king and the election of the next, the Primate, the Archbishop of Gniezno, was ex officio the Interrex. Of particular importance was the Confederation of Warsaw of 1573, which introduced the principle of the equal treatment of religions. In 1596 an agreement was concluded between the Catholics and that part of the Orthodox Church which had kept to their customs but which recognised the Pope as head of the church: this was the foundation of the Byzantine-Ukrainian rite, popularly known as Greek-Catholic. In 1668 a law was adopted according to which a change from Catholic belief to any other should incur the death penalty. However, in the Kingdom of Poland there was very little persecution of Protestants and only a limited number of witch trials took place. Only as late as 1716 was the building of Protestant churches prohibited. In 1768 religious tolerance was once again recognised in law. The Polish Constitution adopted on 3 May 1791 was the first modern constitution in Europe; it contained some provisions relevant to religion. Even in the Preamble it was stated: "In the name of God within the Trinity", and in Article 1 it was established that "The dominant national religion is and will be the Holy Roman Catholic faith with all its rights. The change from the ruling religion to any other confession will be punished as Apostasy. Yet, because our same belief orders us to love other brothers we shall offer all people of any confession religious peace and government protection, and we guarantee the freedom of all rites and religions in Polish territories according to the laws".

The Constitution was, however, not able to prevent the end of the First Republic, and so came the complete partition of Poland in the years 1772, 1793 and 1795. During this time the church played a special role in preserving Polish identity, culture, and language. Cardinal Mieczysław Ledóchowski, Archbishop of Gniezno, was for this reason imprisoned by the Prussian government.

The first constitution after the partitions, the Constitution of March 1921, contained only a short Invocatio Dei: "In the name of the almighty God", by way of a compromise in recognition of the Jewish and Muslim
communities. The first Concordat with the Holy See was concluded in the year 1925.5

The war and post-war periods were characterised by the great personalities of three cardinals: Adam Stefan Sapieha, Stefan Wyszyński, and Karol Wojtyła. The Archbishop of Kraków, Adam Stefan Sapieha, offered unprecedented resistance against the occupying powers of the First and Second World Wars. The two heroes of the second half of the 20th century – Cardinals Stefan Wyszyński and Karol Wojtyła (the latter elected as Pope John Paul II in 1978) successfully challenged the communist regime. Ostensibly favourable laws (such as that introducing the church fund which only existed on paper), violations of existing laws (expropriation of the property against the provisions of this law), and numerous mysterious deaths of clergy, always caused by "unknown delinquents", were permanent features of the anti-church policy of the communist regime.

The death of Pope John Paul II in 2005 led to a spontaneous national mourning, including closure on that day of many private establishments, like cinemas and restaurants. The government, led by L. Miller, declared that there is no need to adopt any measures, since “the Polish society knows anyway how to behave”. A few years later, in 2010, the death of the President of the Republic, L. Kaczyński in a plane crash near Smoleńsk and the following burial in the Cathedral in the royal castle of Wawel in Kraków showed very close links between the State and Church.

To certain extent symbolic is the question of the crucifix, hanging in the plenary room of the Sejm (lower chamber of the Parliament). It was placed during a night by two deputies in October 1997. In 2011, the deputies of the anti-clerical Palikot Movement requested the crucifix to be removed, as a sign of the neutrality of the state, expressed in Article 25 of the Constitution. The Speaker of the Sejm ordered four legal opinions and on their base came to a conclusion, that since there was no legal basis for the placement of this crucifix, there is no legal basis for the reversed action, i.e. the removal. The government of D. Tusk welcomed this approach. The crucifix remained in the room.

The majority of the statutes which are in force today were adopted shortly before or after the political changes that came about in 1989. An important change was brought about by the Law of 1989 guaranteeing the

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freedoms of conscience and confession, which was negotiated with the (Catholic) Bishops'Conference. Recent steps in the history of Polish civil ecclesiastical law are marked by the Concordat of 1993 and by the Constitution of 1997, which are discussed below.

III. Legal Sources

1. First, two important points about terminology: the Polish legislator uses the term "Kościół i inne związki wyznaniowe", which should be correctly translated as "Churches and other faith communities". In foreign publications they usually are called "Churches and religious communities". The predominantly German term "Staatskirchenrecht" (state church law), although known in Polish legal writing, is not used in relation to Poland. The field of law governing these questions is usually called "prawo wyznaniowe" (ecclesiastical law, although literally: confessional law). In the Constitution and in the laws generally the terms "wolność religii" (freedom of religion) or "wolność wyznania" (freedom of confession) are used. The predominant opinion holds that in practice no significance should be attributed to this difference in mere language.

The provisions of civil ecclesiastical law may be distinguished in two categories: those which relate to all churches and religious communities (general ecclesiastical law) and those relating to specific churches and religious communities (specific ecclesiastical law). In particular the Constitution of 1997 and the Law of 1989 on the guarantees of freedom of conscience and confession belong to the first group.

The most important source of Polish law on religion is the Constitution of the Republic of 2 April 1997. The Constitution – insofar it does not state otherwise – is directly applicable (Art. 8(2)), a fact relevant in relation to its provisions on religion. According to Article 87 the following categories of legal acts are general legal sources of the Republic: the Constitution, ratified international treaties, statutes and regulations. In all these categories of legal acts one can, to various degrees, find elements of the law on religion. Hence it is necessary to deal with them here.

7 All the handbooks in Poland bear such titles, see literature section below.
The Constitution itself contains some provisions relevant to religion: on the legal status of churches and other religious communities (Art. 25), the right of national and ethnical minorities to the preservation of their religious identity (Art. 35), religious instruction in schools (Art. 48), freedom of religion (Art. 53), and freedom of assembly (Art. 57). The Preamble to the Constitution is remarkable as it contains an Invocatio Dei that was the result of difficult negotiations: "...the Polish Nation all citizens of the Republic, both those who believe in God as the source of truth, justice, good and beauty, as well as those not sharing such faith but respecting those universal values as arising from other sources".

In relation to the legal status of churches and religious communities Article 25 is of fundamental significance. It reads as follows: 

1. Churches and other religious organizations shall have equal rights.
2. Public authorities in the Republic of Poland shall be impartial in matters of personal conviction, whether religious or philosophical, or in relation to outlooks on life, and shall ensure their freedom of expression within public life.
3. The relationship between the State and churches and other religious 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.
4. The relations between the Republic of Poland and the Roman Catholic Church shall be determined by international treaty concluded with the Holy See, and by statute.
5. The relations between the Republic of Poland and other churches and religious organizations shall be determined by statutes adopted pursuant to agreements concluded between their appropriate representatives and the Council of Ministers.

Sections 1 to 4 raise no specific controversies. In relation to Section 5, the agreements promised in the Constitution have not been concluded, except for an agreement with the Orthodox Church (5 June 2011), which however did not result in a new law. The current laws on the relationship of the State with the various churches and religious communities are unilateral acts of the State, not treaties or agreements comparable to treaties. From a legal point of view churches and religious communities have the same rights. In practice there are inequalities in view of the greater presence and

influence of Roman Catholic clergy compared with clergy of other denominations, which makes it difficult to avoid taking into account the overwhelming majority of Catholics.

Article 53 of the Constitution is also comprehensive, and it is made up of seven sections. According to its Section 1, freedom of conscience and religion is guaranteed to everybody. This freedom comprises (Sect. 2) various forms of the exercise of this right, among them the right of parents to secure the moral and religious education and teaching of their children. The limits to religious freedom in Section 5 are similar to the principles in the European Convention on Human Rights; limitations must be necessary for the protection of the security of the State, public order, health, morals, and freedoms and rights of others. According to Article 85(3) “alternative service” is a possible option, on the grounds of religious attitudes and moral convictions.

Alongside the Constitution, the Law on the guarantees of freedom of conscience and confession of 17 May 1989 (referred to below as the Law of 1989) is the basis of the whole system of civil ecclesiastical law in Poland. This law was introduced two weeks before the historic elections of 4 June 1989, that is before the change of the political system. It has the character of a *lex generalis*, from which a *lex specialis* can deviate. Article 7 of the Law states that foreigners in the territory of the republic enjoy the same freedom of confession as Polish citizens.

2. Commentaries and handbooks insist that the term or the idea of separation of state and church has been expressed only very rarely since 1989 for historical reasons. Article 10 of the Law of 1989 says that the Republic of Poland is a State which is secular and neutral in questions of religion and belief (more precisely, the latter term used corresponds to the German “Weltanschauung”). According to Article 16 of the same law the State cooperates with churches and religious communities in preserving peace, framing the terms of development of the State, and in fighting societal pathologies. This co-operation also exists in relation to the protection, restoration, and extension of monuments of architecture, arts, and religious literature that form part of Poland’s cultural heritage (Art. 17). Co-operation is a term also used in the Concordat and other statutes.

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IV. Basic Categories of the System

Poland is a unitary state, as underlined by the Constitution of 1997 in the Article 4. There are no significant local legal differences, as the competences of the regions (województwo) are quite limited, in particular as regards church-state relations.

There have been several cases, decided by various courts, whether the internal law of the Churches and religious communities, like the Catholic Code of Canon Law, should be treated as law or not. The judgments of the courts went in various directions, however the leading opinion of the Supreme Court of 2008 indicates that a (civil) legal transaction concluded without respecting the internal ecclesiastical law should be validated by a respective religious body according to the ecclesiastical law (negotium claudicans, see below, part X). This opinion of the Supreme Court has been heavily criticised by many scholars who underline that the internal law of churches is not mentioned in the Constitution as a source of law, that it is never published in the official state publishing instruments, and that all negative consequences of such a transaction are carried exclusively by the non-ecclesiastical contractor, never by the ecclesiastical contractor, who neglected its duty.

V. Legal Status of Churches and Religious Communities

1. The legal status of a corporation under public law is not recognised in relation to churches and religious communities in current Polish law.10 Today, such a status is given only to territorial entities of the State. The differences between churches and religious communities are marked by the method of registration, but all subjects lawfully registered enjoy the same rights from a legal perspective. Churches and faith communities can be distinguished as forming two groups according to their recognition or registration:

1) Those which function based on a specific law that governs the relations between a given church or religious community and the State, or
2) Those that function on the basis of the law on the guarantees of the freedom of conscience and confession of 1989 which created a general framework for all churches and religious communities in Poland.

10 Some churches and religious communities had enjoyed such a status to a certain extent before the Second World War.
Only 15 of more than 165 registered churches and religious communities belong to the first group, but this group comprises all of the largest and, at the same time oldest, religious communities (with the exception of Jehovah's Witnesses which, though being the third largest community, do not operate on the basis of a special law, but on the basis of the Law of 1989). To the first group belong following churches and religious communities, in chronological order (with the date of the relevant act in brackets): Eastern Old Rites Church (Ordinance of the President of the Republic, 22 March 1928), Islamic Religious Community (21 April 1936), Karaim Religious Community (21 April 1936), Catholic Church (17 May 1989), Polish Autocephalous Orthodox Church (4 July 1991), the Augsburg-Confession Church in the Republic of Poland (henceforth referred to as the Lutheran Church) (13 May 1994), Protestant Reformed Church (13 May 1994), Protestant Methodist Church (30 June 1995), Baptist Christians Church (30 June 1995), Seventh Day Adventists Church (30 June 1995) Polish Catholic Church (30 June 1995), Union of Jewish Confessional Communities (20 February 1997), Catholic Church of the Mariavites (20 February 1997), Old Catholic Church of the Mariavites (20 February 1997), Pentecostal Church (20 February 1997). After this series of the new laws (1991-1997), no new laws have been adopted since then. As mentioned above, except for the Orthodox Church, no agreements provided for by the Constitution in Art. 25.5, have been concluded. However between 2013-2017, the Speaker of the Lower Chamber (Marszałek Sejmu) published consolidated texts of the laws mentioned above.

The legal personality of the various confessional entities or institutions was granted in the above mentioned laws by recognising the different levels and kinds of church institutions as having legal capacity. The Concordat explicitly recognised the legal personality of the Catholic Church entities if they acquired this status according to canon law. In additional cases, legal personality is granted by way of a regulation of the Minister for the Interior and Administration.

Since 1998 it has been possible for a group of at least 100 Polish citizens with full legal capacity to apply for the registration of a church or religious community. In the first version of the Law of 1989, 15 persons were required as the minimum number of members; this led to some misuse of the right especially in relation to exemption from military service, taxation

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benefits, and (at the time) duty free imports. The Minister for the Interior and Administration is competent to enter communities in the register. According to the Law of 1989 and the regulation of 31 March 1999 on the registration of churches and religious communities, the application must contain the following: a list of members, information about the general aims, principles of doctrine and ritual practice, location and subordinate bodies, and internal statutes. For example, in the last 12 years, some 25 churches and religious communities have been registered, mainly representing religions of the Far East. Some applications were rejected; in relation to some churches and religious communities the application has been refused repeatedly because of formal criteria. The criteria are equivalent to those of Article 9(2) of the European Convention on Human Rights, and the Minister checks, inter alia, on whether the aims and the doctrines of a church or religious community are likely to endanger public order or security, or are contrary to the right to life, morals, or the rights of parents. As an example, the Raelians who were the first to claim the cloning of a human being in 2002 were not registered in the Polish register as early as 1998. The refusal by the Minister was upheld by the Chief Administrative Court (NSA) in a decision of 22 January 1999.

VI. Religious Communities within the Political System

With the statistically overwhelming strength of the Catholic Church, the other Churches and religious communities are hardly present (despite popularity of some individuals like Lutheran Prime Minister J. Buzek or Lutheran ski-jumper A. Małysz). While theoretically all the churches and religious communities have the same rights, Catholic clergy are present at the state events and the politicians (above all, of the currently ruling Law and Justice Party) participate in a very public way in the Holy Masses and other services, including more or less regular appearances of the politicians in Częstochowa, where the famous picture of the Black Madonna can be found.

The presence of other churches and religious communities remains almost unnoticed except for two occasions: some Churches issued statements in favour of the European integration, in the eve of the referendum of the accession to the EU in 2003. On the other hand, representatives (chaplaincies) of various denominations participate in the military-religious ceremonies. For example, in the famous plane crash near to Smoleńsk, on board of the Presidential aircraft were the Catholic (so-called: field) bishop, Orthodox and Lutheran Chaplaincies.
1. Churches and religious communities have the right to establish and operate schools, kindergartens, and other educational institutions (Art. 21, Law of 1989). The proportion of schools run by religious entities, however, is relatively small, and these schools educate only about 1-2% of the total number of pupils. Some non-Catholic educational institutions have also been established.

2. Religious instruction was abolished shortly after the Second World War in all schools. Since confessional schools had also been abolished, religious instruction took place in parish houses throughout Poland. Only in 1990, by way of a circular of a Minister, which was heavily criticised in legal circles, did religion return to the school curriculum. Later, this was settled by a regulation of the Minister for National Education in 1992. According to this regulation, the desire of the parents for their child to take part in religious instruction courses might be "declared in a most simple way". In practical terms, it was assumed that children take part in these courses. The regulation of 2014 changed slightly the wording: the request of parents should be expressed in writing, however there is no need to repeat it every school year (Regulation of 25 March 2014, OJ 2014, item 478). If the parents (and in secondary schools, the pupils themselves) want it, instruction in ethics may be offered as an alternative. If seven or more pupils, or their parents, of any given confession request it, religious instruction should be offered. If the number of children of a specific confession is between three and seven, religious instruction should be offered in co-operation between the school and the religious community. If the number of children is smaller, religious instruction is given in the respective church institutions. In all cases the teacher of religion must have a teaching qualification as stated in the Agreement between the Minister of National Education, the Bishops' Conference, and the Polish Ecumenical Council (see section XII, below).

The Grzelak case (appl. 7710/2002, judgment of 15 June 2010), concerning offer of ethics in a school, which reached the European Court of Human Rights in Strasbourg, demonstrates that the reality is somewhat more complicated than a text of a piece of legislation.

3. Theological faculties returned to State Universities in the 1990s, after over 40 years' prohibition. Only the Catholic University in Lublin (KUL) always had a theological faculty, but the KUL was a really special case in the whole Eastern bloc; between the war and 1989 it was maintained as a non-State university and run exclusively on private do-
nations. After the end of communist rule some changes took place: the KUL is now financed according to the Law of 14 June 1991 from the State budget; this is also the case for the pontifical theological faculty in Krakow (Law of 26 June 1997), and for the Kardynał Wyszyński [state] University in Warsaw which was founded in 1999 and which evolved from the Academy of Catholic Theology (Law of 3 September 1999). Currently, there are theological faculties in the State Universities in Katowice, Kraków, Toruń, Opole, Olsztyn, Poznań, Szczecin, Warsaw. In the two latter cases the faculties were established together with the creation of the universities in the 1990s. In the University of Białystok there is a faculty in which Catholic as well as Orthodox theology is taught. In Wrocław and Gdańsk the University Senates have voted against the establishment of theological faculties.

In addition to the Catholic institutions there is in Warsaw the "Christian Theological Academy", which provides the training of the non Roman Catholic clergy and theologians. It emerged from the Evangelical Theological Faculty of the University of Warsaw which was dissolved in 1954. The Christian Theological Academy has been in existence ever since – even between 1954 and 1989 – but only in the year 2000 was funding by the State budget secured by law.

4. Churches and religious communities are active in the field of the media in different ways. On public television they broadcast religious programmes explicitly provided for in the Concordat and laws. According to the agreement between the Polish Ecumenical Council and the public television providers there is an editorial committee responsible for ecumenical religious programmes. There are, however, no official representatives serving ex officio on supervisory or advisory councils. Some churches and religious communities also have their own broadcasting stations: there are both national and regional Catholic radio stations, and also a Radio "Orthodoxia". There is also a confessional television station: "Trwam", run by the director of the most famous (and controversial) Catholic Radio Station "Radio Maryja".

According to Article 25 of the Law of 1989, churches and religious communities may operate publishing houses and edit journals and books, provided that they observe the general law in this field.

VIII. Labour Law within the Religious Communities

A person's religious affiliation is not revealed in any official document and must not be inquired about for employment purposes.
The terms of work for clergy are laid out in the internal statutes of each respective church or religious community. This applies especially to the formal requirements, the hierarchy and routine of office, compensation for torts committed by clergy, and terms of responsibility. In the Lutheran Church, for example, "vocation" is the term for an agreement between the pastor and the parish. This agreement must meet certain standards relating to the salary within the group of clergymen (deacon, pastor, bishop, etc.) or to their rights after retirement. The same rules of employment law apply to laypeople employed in confessional institutions as to any other persons. A certain degree of loyalty is expected from the lay employees, however, according to the ethos of the religion.

Work-free holidays for the Catholics have been defined in Article 9 of the Concordat, making those days State holidays. In relation to other churches and religious communities the law has defined work-free days with the provision that the members of the respective confession have the right to a work-free day, which however is unpaid.

After a number of amendments in respective laws, the Polish labour law respects the conditions of the European non-discrimination framework, in particular as regards the Article 4 of the Directive 2000/78\textsuperscript{12}.

**IX. Legal Status of Clergy and Members of Religious Orders**

The clergy enjoy the same rights and have the same duties as all other citizens in all fields of state, political, economic, societal and cultural life. They are exempt from those duties that contradict the functions of a minister (Art. 12, Law of 1989). This applies especially to exemption from the conscription, which however was suspended in 2009. The internal statute of the religious community must explicitly state who is a minister of this given community, describe the method of their election or appointment, and the ministerial tasks. The necessary conditions for exemption from military service are stated by the Main Administrative Court in a judgment of 19 September 2000.\textsuperscript{13} The laws on election to the Sejm, to the Senate or to the organs of local administration do not provide for any restrictions on the clergy, but because of tradition or of internal church provisions (as for example in the Lutheran Church) clergy do not run for public office.

\textsuperscript{12} M. Rynkowski, in: M. Hill QC (ed.), Religion and discrimination law in the EU, Poland, p. 268.
\textsuperscript{13} NSA sygn. III S.A. 1411/00.
Shortly after 1989 clergy tried to bring political influence to bear on believers during the elections, but this turned out to be in vain; since then, clergy have stressed the civil obligation to participate in elections, without mentioning the names of parties or of their candidates. In recent years clergy have again tried to influence politics, and some bishops manifest openly their political convictions in the current rule-of-law conflict, arguing in favour of the ruling Law and Justice party.


X. Finances of Religious Communities

Article 10 of the Law of 1989 says that the State and its entities may not provide financial assistance to churches and other religious communities. Exceptions are provided for by law or by provisions passed on the basis of a law. The churches and religious communities exist and operate thanks to the voluntary donations of believers. There is no tradition of a church tax in Poland, and a system of 1% of the tax due, which may be transferred in favour of an organisation of public benefit (similar to Italian, Spanish or Hungarian solution) may not be compared with the German or Austria tax\(^\text{14}\). The most important financial sources for all churches and religious communities are: Sunday collections, donations (in most cases quasi fees) for baptism, marriage, and burial, and donations on the occasion of the annual "pastoral visit", usually called "kolęda", so literally: a Christmas carol. This takes place in the Catholic Church all over Poland at around Christmas time, usually in January: a priest or some other cleric pays home visits to all the inhabitants of the parish who so wish, and discusses with them any questions concerning their religious or societal life.

Church property and income are subject to general tax provisions, as stated by law. There are, however, many legal exemptions with the consequence that churches and religious communities pay hardly any tax for their non-economic activity. In the field of economic activities the confessional entities are liable to VAT and local taxes. They are liable to income tax for that part of their income which is not intended to be used for the

\(^{14}\) The Lutheran Church in Poland has introduced internally a kind of church tax (1% of the income), which is however not comparable with the German system. Above all, there is no provision for the levy of the tax through State authorities.
purposes of religious observances or the renovation of buildings. The clergy of all churches and religious communities are, according to the statute of 20 November 1998, liable to a quarterly overall tax based on the size of the parish for incumbents (head of parish) (between 420 PLN and 1505 PLN) and the size of the parish plus the size of the town for vicars.

The clergy do not receive payment from the State for carrying out their priestly duties. However, they do receive a remuneration if they work as teachers of religion in schools. In the school year 1990/1991 when religious instruction was re-introduced after many years, the church renounced the salaries of the teachers of religion in view of the crisis in State finances (immediately after the breakdown of the communist regime this applied especially to priests and nuns; in the following years the number of lay persons as teachers of religion has continued to increase). It has turned out, though, that this was inconsistent with the Polish labour law, because an employee cannot legally renounce his salary.

As far as social insurance is concerned, individual clergy are responsible for their own contributions; superiors of religious orders are responsible for the contributions of the members of that order. The clergy pay 20% of the sum themselves; the rest is paid from the Church Fund. The Church Fund was created in 1950 after the expropriation of the property of various churches and religious communities. For decades, it existed only on paper; it took up its proper function as recently as the 1990s. The amounts foreseen for the Church Fund grow significantly: while in 2015, last year of the Civic Platform (E. Kopacz) government, the planned budget for the Fund was 118m PLN, in 2018 planned budget is 156m PLN, thus basically 40m PLN (or 10m EUR) higher. The explanation for such an increase seems to be rather political (influence of the clergy on the PiS (Law and Justice) government.

For a number of years, the question of the restitution of church property, the so-called "regulation process", was of particular importance. The churches in Poland, among them the Catholic Church, were never big land-owners (in total they owned 150,000 hectares) but, nevertheless, the main part of their property was expropriated after the war. In the 90’s, in charge of the process were so-called "regulation committees", mixed committees made up of representatives of the Ministry of the Interior and of the churches and religious communities. They functioned as a kind of arbitration court; their decision had legal effects of a court decision. However, there was no higher instance and no appeal, which was a reason for bringing one of the cases to the European Court of Human Rights. The ECtHR confirmed that Poland violated Article 6 para. 1 of the ECHR (Case ZNP v. Poland, appl. 42049/98, judgment of 21 September 2004).
In total there were five assets/regulation committees: committees for specific religious communities (i.e. the Catholic Church, the Lutheran Church, the Orthodox Church and the Jewish Religious Communities), and a general committee, which was appointed on the basis of an amendment to the Law of 1989; the procedure of this general committee is laid down in an Ordinance of the Minister of the Interior and Administration of 9 February 2000. The committees finished their work in 2011: while figures may vary, most reliable sources indicate that 60,000 hectare have been returned. Due to obvious historical and statistical considerations, this process was particularly relevant to the Catholic Church and the Lutheran Church in West Poland. The claims of the Jewish religious communities were a special case, because their claims mostly refer to the restitution of property that had been confiscated by the German (Nazi) Reich between 1933 and 1945. It is remarkable that the settlement of the restitution of church property constitutes a special case in the Polish legal system, since up to now (2018), almost 30 years after a change of the system, no "law on re-privatisation" has been drafted.

One issue still not fully clarified is that of the sale of the ecclesiastical properties without respecting the internal law of Churches and religious communities, mainly the Code of Canon Law. A couple of (not very coherent) judgments were issued after 2000. Currently the leading judgment is the opinion issued by the Supreme Court on 19 December 2008 declaring such a transaction negotium claudicans.

Religious Assistance in Public Institutions

Pastoral care in the armed forces, the police, in hospitals, in medical, charitable, or care institutions, as well as in prisons, is governed by the Law of 1989, by further laws on the relationship of the State with various churches and religious communities, and regulations. Up to now, no specific controversies have emerged in this respect. There are three dioceses in the military forces: a Catholic, an Orthodox, and a Lutheran. The Catholic military bishop (more precisely, he is called: biskup polowy – "field bishop") is at the same time a two-star-general (general dywizji), the bishops of other denominations have the rank of Colonel up to one-star-General (general brygady). The state budget states very clearly how much money is transferred to the chaplaincies of various denominations: while the Catholic Church receives the biggest part, the amounts are not proportional to the number of believers.
A Regulation of the Minister of Justice of 19 February 2016 concerning the nutrition in prisons and similar institutions includes provisions concerning food respecting religious or cultural requirements of the persons (item 302 of 2016).

An interesting case was decided by the Supreme Court in 2013 (II CSK 1/13), when a man was given in the hospital the sacrament of the anointing of the sick, without his consent, as he was unconscious. After being told about this fact, the man got a shock and claimed compensation, as he was an atheist. Two instances judged that his rights were not violated, that there was no issue of physical integrity (as the physical contact during the sacrament is minimal) and that the applicant could not demonstrate any negative consequence linked to this sacrament, and for him, as for an atheist, the sacrament did not have any meaning or importance. The Supreme Court pointed lack of the consistency among the lower courts: on the one hand hospitals are not allowed to gather information about the religion of the patients, on the other hand they gather information about sacraments he/she received. The Supreme Court quashed the judgment of the Appeal Court and asked it to review the case once again.

XII. Matrimonial and Family Law

"From the time on when a canonical marriage is concluded it has the same effect as has a marriage concluded according to the Polish law" reads Article 10 of the Concordat. This provision was one of the reasons for the long delay in the ratification of the Concordat by Parliament (1993-1998): representatives of the left wing SLD-Party feared that the clergy would not fulfil their duty to notify the registrar's office in time or in the correct manner, which would lead to a serious legal chaos. The so-called "concordat marriages" have been possible since November 1998, that is since the ratification and coming into force of the Concordat and after the amendment of the Family Code by the Law of 24 July 1998. Marriages that have been solemnised according to the confessional provisions of the following churches and religious communities have effect in civil law: the Catholic Church, Orthodox Church, Lutheran Church, Reformed Church, Methodist Church, the Baptist Christians, Seventh Day Adventists, the Polish Catholic Church, the Union of the Jewish Confessional Communities, the Old Catholic Mariavites and the Pentecostal Church. Marriages conducted by the following religious communities whose relations with the State are governed by a special law are not recognised: the Catholic Church of the Mariavites, the Eastern Old Rites Church, the Islamic Reli-
gious Union and the Karaim Religious Union. According to commentators, the latter churches and religious communities declared no interest in the so-called concordat marriage.

The provisions in the field of marriage law were the basis for a statement by the Catholic Church that the Concordat also privileged other churches and religious communities because, following the Concordat, provisions were adopted which gave equal status to these bodies (or rather, to their members).

A confessional marriage may be concluded only after confirmation from the registrar's office that a marriage between the parties is legally possible (to avoid bigamy). According to Article 18 of the Polish Constitution a marriage "as a union of a man and a woman...shall be placed under the protection and care of the Republic of Poland".

An amendment to the Constitution would be necessary to introduce same-sex marriage, but it does not seem to be a priority, despite some voices being raised in political debate. Article 18 is part of Chapter I; this is relevant insofar as chapter XII of the Constitution provides for a more difficult amendment procedure for chapters I, II (Fundamental Rights), and XII. An important condition for a confessional marriage to have civil effect is that the minister has to notify the local registrar's office of the marriage within five days. In addition to that, a new legal option was introduced in 1999: for Separation, which in principle is equal to divorce; however, after separation, a subsequent marriage is not possible.

Divorce with civil effects (including a possibility of re-marriage) is possible by way of a court procedure before a State court. In order to protect the family, only the circuit court (sąd okręgowy, which is usually acting as 2nd instance) is competent in marriage cases, not the more local municipal court (sąd rejonowy). The judgments of the ecclesiastical courts in respect of marriage (or rather, its annulment), have no legal importance for the proceedings before the state court and cannot be taken into account as a sort of a preliminary ruling (V CKN, 1364/00, judgment of the Supreme Court of 17.11.2000).

The question of in vitro fertilisation remains unregulated. As the result of the very liberal positions of some parties and ultra-conservative positions of the other (including petitions to penalise persons participating in such programmes), no consensus could be reached.
XIII. Criminal Law and Religious Communities

A general prohibition on discrimination has been incorporated in Article 32 of the Constitution of the Republic. Further provisions can be found in the Criminal Code of 1997, Chapter XXIV, Articles 194-196. The Criminal Code provides in each case for three different kinds of possible sanctions: a fine, the restriction of liberty, and imprisonment for up to two years. Liable to punishment are all actions by which a person is restricted or impaired in his or her rights because of adherence or non-adherence to a belief; it is also an offence to disturb the public worship of a church or religious community that enjoys legally recognised status. It is to be noted that the term "public worship" can be interpreted extensively, and it is certainly not limited to Catholic Mass or other Christian services. The same punishment applies to a person who disturbs the ceremony of burial or marriage. A person also commits an offence by injuring the religious feelings of another person or who publicly shows disrespect for an object of religious cult or a place destined for the public exercise of religious rites.

One of the important cases, against a famous star of a Polish black/death metal band, clarified, that the offence may be committed not only on purpose, but also when the person in question was agreeing that he/she may commit such an offence (I KZP 12/12).

The Code on the execution of punishments provides in its Article 107 that a person who has committed a crime for political or religious reasons must not be imprisoned together with a 'regular' criminal; he or she has the right to own clothing and shoes, and is not obliged to work. These privileges do not apply when the crime has been committed by force.

XIV. Major Developments and Trends

Though the number those attending Mass (dominicantes) is not as high as the number of its baptised members (around 40% attend services), the Catholic Church with twoa cardinals (Archbishops of Warsaw and Cracow), over 100 bishops, and over 30,000 priests is without any doubt the most important and most influential religious community in Poland. Seven other big churches (Lutherans, Methodists, Baptists, Mariavites, Orthodox, Reformed and Polish Catholic) founded the Polish Ecumenical Council (Polska Rada Ekumeniczna) in 1989; although the Catholic Church is not a member, it works together with the PRE. A certain new spirit may be seen in the establishment of church buildings that are used by two denominations or that have even been consecrated by bishops of two differ-
ent denominations, as happened in Wroclaw in 2000. Caritas, Diaconic Work and the Orthodox Eleos sell candles together before Christmas; the proceeds are used for the support of children in need. The churches and religious communities make common statements in relation to draft laws and draft ordinances that relate to their social and charitable activities, and they organise joint conferences to discuss such questions.

The most important sign of ecumenical co-operation was the Common Declaration of seven churches (Catholic, Lutheran, Orthodox, Methodist, Polish Catholic and Old Catholic Church of the Mariavites) of 23 January 2000, in which they mutually recognised each others' baptisms. A special example can be found in Wroclaw, where bishops of five denominations have their seat: Roman Catholic, Greek Catholic, Polish Catholic, Lutheran, and Orthodox. Also in Wroclaw, there is a "quarter of mutual respect", in which within a range of about 1,000 metres there are Roman Catholic, Lutheran, and Orthodox churches, and a Jewish synagogue.

The financial issues still remain to be clarified: while a significant amount of church properties and real estates was returned to churches by the special (asset) regulation commissions (see point VIII), the Church Fund, which was created in 1950 in compensation for the confiscations, should have been abolished. Instead, the budget of the Church Fund has been doubled since 2011, while no inflation/devaluation could justify such a development.

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