

## *THE NEW LEGISLATION IN RELIGIOUS MATTERS*

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I. On May 17, 1989, the Polish parliament (Sejm) of the 9th term passed three momentous statutes regulating the sphere of the law on religious denominations : on the attitude of the State towards the Catholic Church in Polish People's Republic ; on the guaranties of freedom of conscience and religion ; and on social insurance of the clergy.<sup>1</sup> Thus the Sejm's decision crowned the many-years' process of legal normalization of religious relations in Poland towards their final stable and permanent form.\* <sup>1 2</sup>

The parliamentary debate concerned the three drafts jointly. The import of the problems discussed was added to by a pronouncement of the Prime Minister. Both in that pronouncement and during the debate, a number of important problems were taken up of which the following are particularly worthy of attention :

1. The submitted drafts express the new religious policy aimed at a departure from administrative and repressive actions that were not uncommon in the past and towards dialogue and cooperation between State and religious unions. The new draft statutes are based on the radical change in the political authorities' attitude towards religion and the Church in the 1970s and particularly 1980s which corresponded also with the evolution of the Catholic Church's attitude towards the Polish political reality.

2. The proposed statutes are to replace the former legislation : hetero-

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<sup>1</sup> *Journal of Laws*, No. 29/1989, items 154, 155, 156.

<sup>2</sup> For the course of that process, see the Rev. B. Fidelus, "Sytuacja prawna Kościoła Katolickiego w Polsce" [The Legal Situation of the Catholic Church in Poland], *Tygodnik Powszechny* of April 25, 1989, p. 1.

genous, fragmentary, inconsistent and often lacking the rank of statutes, which was also largely outdated or failed to take into account the specific nature of religious unions, and did not fit the new socio-religious situation.

3. The draft statutes comprise a complete, uniform, and largely harmonized system of legal regulation of religious relations in Poland of today. Due to the complexity of legislative works and the highly detailed legal regulation at the statutory level, permanent grounds and a possibly comprehensive catalogue has been created of legal provisions in the sphere of religious denominations which is a substantiation of constitutional provisions.

4. The draft statutes touch upon the basic matter from the sphere of human rights whose importance for the individual and for religious communities was underestimated and ignored for many decades in Poland. In order to prevent any possible future attempts at infringing upon those rights, the discussed drafts provide for material guaranties, both for individuals and for communities, in matters of religion and philosophy of life. Those guaranties have been contained in the statutes themselves, without transmission to executory provisions.

The present discussion of the statutes passed on May 17, 1989 will concern the general principles and main trends of the new legislation only ; the detailed questions will be left out of account.

II. What has to be considered to begin with is the question of the mutual relation of all the three statutes and their sphere of regulation with regard to the religious sphere in the broad sense. Although they all concern that very sphere, their subjects and normative functions are not identical. Together, they constitute a legislative complex of a kind, but the separate elements of that complex play different roles. The least doubtful in this respect is the Act on social insurance of the clergy. Its provisions state explicitly that obligatory insurance concerns "the clergy of the Catholic Church and of other churches and religious unions" (Art. 1 Part 2), and that "the formulations used herein concerning the functions of the clergy of the Catholic Church shall apply respectively to the functions of clergy in other churches and religious unions" (Art. 6). Moreover, it follows from the contents of some other provisions that they concern the clergy of the Catholic Church and of other religious unions.<sup>3</sup> A general reference to the regulation introduced by the discussed statute is made both in the act on the attitude of State towards the Catholic Church (Ar. 71), and in the act on the guaranties of freedom of conscience

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<sup>3</sup> Thus for example Articles 7 and 17 mention the clergy and members of their families, while Art. 29 distinguishes those of the clergy who are obliged to observe celibacy and others.

and religion (Art. 12 Part 3). This universal and uniform regulation of social insurance of the clergy of all religious unions in Poland is unlikely to give birth to any reservations or to present difficulties in the practice of both religious and social policy.<sup>45</sup>

From this point of view, the act on the attitude of State towards the Catholic Church is different in nature. It follows from its very name that the act applies to the Catholic Church only which is confirmed by one of the key provisions that states that the act defines the principles of State's attitude towards that very Church, including its legal and financial situation (Art. 3 Part 1). But if we read carefully the provisions of Section IV, Chapter 3 (Changes of Valid Provisions), we learn from Art. 74 that the act is more universal and settles also a number of questions regulated in other legal acts and concerning also matters not related to the Catholic faith and Church. By way of example, the important legislative changes may be mentioned here, made in favour of the Church and of other religious unions among others, that have been introduced into the following acts : of March 15, 1933 on public collections,<sup>5</sup> of January 18, 1951 on holidays,<sup>6</sup> of March 29, 1962 on public meetings, of November 21, 1967 on the general duty to defend the Polish People's Republic, the P.C. and the C.C.P. of April 19, 1969, and the regulations concerning registry of birth, deaths, and marriages of November 29, 1986. Therefore, the elements of a universal nature introduced in a statute that concerns a single religion in principle, if somewhat inconsistent, nevertheless evidence at the same time the fact that it is usually impossible, and often also inexpedient, strictly to delimit related subject matters in legislative works.

Without fail, the act which may arouse the greatest number of doubts and conflicting opinions is that on the guaranties of freedom of conscience and religion. Undoubtedly, it is not a typical statute providing but a general outline and applying to all denominations and religious unions, as those found in some other socialist countries (e.g. in the USSR, Bulgaria, or Romania). This is evidenced by the lack in that statute of a provision to that effect while there are other provisions from which it does not

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<sup>4</sup> Due to its single subject and specialistic nature, the Act is one from the sphere of social policy rather than the law on denominations which is why little attention will be given to it only in the further discussion.

<sup>5</sup> The relevant *Journals of Laws* have not been quoted for lack of space.

<sup>6</sup> Beside the introduction of a new church holiday of the 15th of August, the Act also creates, at the same opportunity, so to say, the National Independence Day on November 11.

follow that the act applies to all religious unions.<sup>7</sup> For at least the above reasons as well, it would be risky to refer it to the non-Roman Catholic religious unions only, despite the fact that this very opinion was voiced quite explicitly, on inspiration of the circles related to the Polish Ecumenical Council, during the preparation and passing of that act.<sup>8</sup> The act, however, undoubtedly has several addressees even if not all of them are willing to accept it. The contents have been clearly divided and differentiated as regards the subject matters. Part I of the act regulates and develops the constitutional principle of freedom of conscience and religion which applies to all individuals in the territory of the Polish People's Republic (Section I, Art. Art. 1—7), and the legislator's decision in this respect cannot possibly depend on any will or acceptance of an individual or any religious union whatever. A similarly universal formulation can be found also in the case of provisions that develop the Constitution, that is the basic principles of State's attitude towards Churches and other religious unions (Section II, Chapter I, Art. Art. 8—17). There are no reasons to believe that the part of provisions mentioned above do not apply to all persons irrespective of their denomination and religious beliefs, and also to all religious unions, the Roman Catholic Church included. The act infringes none of that Church's rights, nor does it impose other obligations than those regulated by the act that concerns that Church. On the other hand, provisions of that part equalize before the law the rights of all religious and philosophical orientations, and also standardize and integrate in a way the system of religious unions possessing equal rights.<sup>9</sup>

<sup>7</sup> A rather decided, though indirect, lack of interest in that act was shown by the Roman Catholic Church whose Episcopate at its 235th plenary conference on May 16 and 17, 1989 accepted with satisfaction "the passing by the Sejm on May 17, 1989 of the Act on the attitude of State towards the Catholic Church in the Polish People's Republic, and also of the Act on social insurance of the clergy" (from a communiqué published by the conference). See *Przegląd Katolicki* of July 2, 1989, p. 2. On the other hand, a commentary with respect to all three Acts can be found in a statement by Archbishop B. Dąbrowski for the Polish Press Agency PAP, see *Życie Warszawy* of June 3—4, 1989.

<sup>8</sup> The then Vice-President of the Council of State K. Barcikowski commented as follows on the discussed Act: "It was intended to give the feeling of safety to smaller denominations which actually did feel threatened by the authorities' agreement with the Catholic Church at their cost. Hence the additional Act which regulates the whole of religious relations," *Polityka* of May 6, 1989, p. 6. Deputy K. Barcikowski also made a statement in a similar spirit as the reporter of the Extraordinary Commission during the second reading of the bills, see *Rzeczpospolita* of May 18, 1989, p. 4.

<sup>9</sup> This interpretation of provisions of the Act was adopted in the Sejm by Prime Minister M. Rakowski, see *Rzeczpospolita* of April 27, 1989, p. 3.

Part II of the act, instead, loses its former universal character which is expressed by Art. 18, decisive in this respect. It follows clearly from that Article (Part 1) that the provisions of the discussed part (that is, Chapter 2, Section II and Section III) “regulate State’s attitude towards those churches and other religious unions only whose legal and financial situation is not regulated by separate statutes.” One may therefore well exclude from under the normative competence of the discussed part of the act the Roman Catholic Church, though theoretically there is a general provision (Part 2) that applies to that Church as well but is of practical importance for many other religious unions. It reads : “Provisions of Chapter 2 which define the rights of churches and other religious unions shall apply, however, also to the churches and other religious unions with a statutory regulated situation if the separate statutes mentioned in Part 1 do not provide such rights.” In other words, the provisions of the discussed second part of the statute a) do not apply to the Roman Catholic Church whose legal status with a complete catalogue of rights has been regulated by a separate statute of May 17, 1989 ; b) on the other hand, constitute a normative base in the nature of a statute providing a general outline for those religious unions which have failed so far to acquire statutory grounds for their existence<sup>10 11</sup> and which preserve their former legal status to the moment of passing separate statutes in that sphere (Art. 40) ; c) finally, those provisions regulate the general situation of a large group of religious unions whose legal status has so far been based on provisions of the law on associations (Art. 41).<sup>11</sup>

The objectivity and will to reach a full consensus when negotiating the drafts considered, also the implementation of the passed statutes may be expected to proceed in a similar spirit of agreement.<sup>12</sup>

III. Passing to the discussion of the main problems settled in the two acts, one should consider the features those acts have in common, and particularly the legal solutions that led to those acts becoming a complex

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<sup>10</sup>E.g. the Polish Catholic Church in the Polish People’s Republic, the Church of Adventists in the Polish People’s Republic whose legal status was regulated administratively. See W. Wysoczański, *Prawo wewnętrzne nierzymskokatolickich kościołów i wyznań w Polsce [The Internal Law of Non-Roman Catholic Churches and Denominations in Poland]*, Warsaw 1971, pp. 103, 180.

<sup>11</sup>The provision has been duly correlated with Art. 7, Part 1, point 2 of the Act of April 7, 1989 : The law on associations (*Journal of Laws*, No. 20, item 104) which states that provisions of that law do not apply to “churches and other religious unions and to their legal persons.”

<sup>12</sup>This conclusion seems to be justified by the provision that the Joint Commission of representatives of the Government and Conference of the Episcopate will deal among others with interpretation of the Act on the State’s attitude towards the Catholic Church and of its execution (See Art. 4 Part 1 of the Act).

and uniform set of legal norms. Obviously, the catalogue that follows is not complete.

1. The fact is worth stressing above all that both acts cite the principles included in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Final Act of the Conference on Security and Cooperation in Europe, and the UN Declaration on elimination of all forms of intolerance and discrimination for reasons of religion or beliefs.<sup>13</sup> This way, the legislator declares his will to adjust the Polish domestic law to the generally accepted international norms, particularly in the sphere of protection of the basic human rights. Postulates to this effect were submitted for many years by different circles, including also the Church<sup>14</sup> and the lawyers.<sup>15</sup>

2. Both acts clearly define the attitude of religious unions to the political principles and law of Polish People's Republic. That definition is contained in nearly identically formulated provisions that state that all churches and other religious unions in Poland operate "within the constitutional political framework of Polish People's Republic."<sup>16</sup> Moreover, the requirement has been established that the general legal provisions should apply to the Church in spheres not regulated by the act, provided that such provisions are not contradictory to its principles (Act I, Art. 3, Part 2). A further-reaching norm is the one that states that the activity of religious unions "shall not infringe the provisions of generally valid statutes protecting public safety and order, health or public morals, as well as the basic rights and liberties of others"<sup>17</sup> (Act II, Art. 27, Part 1).

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<sup>13</sup> The act concerning the Catholic Church also makes a mention of the Charter of the United Nations.

<sup>14</sup> See working document of the Papal Commission *Justitia et Pax* entitled "Kościół i prawa człowieka" [The Church and Human Rights], *Chrześcijanin w święcie*, 1977, No. 50, particularly pp. 51—54 ; "O pojmowaniu normalizacji stosunków między państwem i Kościołem" [On Normalization of the State—Church Relations], *Powściągliwość i Praca*, 1984, No. 7—8.

<sup>15</sup> See K. Skubiszewski, "Konstytucyjne ujęcie stosunku prawa polskiego do prawa międzynarodowego" [Polish Law's Relation in International Law : A Constitutional Approach], *Państwo i Prawo*, 1987, No. 10, pp. 143—146.

<sup>16</sup> Art. 1 of the Act on the State's attitude towards the Catholic Church (called Act I further on) and Art. 8 of the Act on the guaranties of the freedom of conscience and religion (Act II). The fact should also be stressed that a reference to the Constitution has been made in preambles to both Acts as well : in Act I, as fulfilment of the obligations specified in the basic statute, and in Act II, as execution of the Constitutional provisions on freedom of conscience and religion.

<sup>17</sup> In this case, there has been an adjustment of the domestic law to provisions of the international legislation, especially to Art. 18 Part 3 of the International Covenant on Civil and Political Rights of 1966 ; one should bear it in mind, however, that the discussed provision of the Covenant, as opposed to Art. 27 Part 1 of the Act,

3. Both acts grant to religious unions the freedom of performance of religious functions and the right to be governed by their own law, though in a different manner. The Catholic Church has used to some extent the ancient model of concordat, consenting to the formula that (that Church) "shall be governed in internal matters by its own law, and shall freely exercise its ecclesiastic authority and jurisdiction and manage its own affairs" (Act I, Art. 2). Similarly, religious unions enjoy the freedom of religious functions. It includes among others their government by their own law, a free exercise of ecclesiastic authority, and management of their own affairs (Act II, Art. 19, Part 1 and Part 2 point 4). It is also stated that the religious unions' freedom of performance of their religious functions is one of the guaranties of freedom of conscience and religion (Act II, Art. 9, Part 2 point 2). The religious unions' exercise, however, "of the freedom of operation shall take place in accordance with the generally valid provisions unless otherwise provided by statutes" (Act II, Art. 27, Part 2).

Organization and public performance of worship is contained in the freedom of performance of religious functions (Act II, Art. 19, Part 2, point 2). This question has been regulated in greater detail with respect to the Catholic Church. It is stated in this case that organization and performance of public worship is under the Church's authority, and does not require any notifications or licences if taking place at venues and in manners specified in provisions (Act I, Art. 15 Parts 1—3).<sup>18</sup> A significant novelty as compared to the former situation, one that is in favour of the Church but has a universal value as well, is the exclusion from under the provisions of the law on public meetings religious processions and pilgrimages on public roads, provided their route has been adjusted according to traffic regulations (Act I, Art. 74, Part 5 point 2).

4. Matters where a radical change has been introduced include the relinquishment, in principle, of State supervision of the Church administration, appointments to Church posts included. The former solutions were criticized for a long time as inconsistent with the principles of Vaticanum II<sup>19</sup> and with the new trends in the practice of relations

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concerns the activity of individuals and not of religious unions. See J. Machowski, *Prawa Człowieka [Human Rights]*, Warsaw 1968, p. 206 ; see also *Chrześcijanin w świecie*, 1984, No. 128, pp. 96—97.

<sup>18</sup> Thus a considerable extension has been introduced here of the possibilities of worship as compared to the former situation. This issue has been duly correlated with the new provisions added to the law on public meetings of March 29, 1962 (Art. 4 Part 1 point 8 of that law).

<sup>19</sup> Decree on the Pastoral Tasks of Bishops in the Church (thesis 20), see *The Documents of Vatican II*, New York 1966, p. 411.

between modern States and the Apostolic See.<sup>20</sup> The act quashes the decree of December 31, 1956 on organization of and appointment to church posts<sup>21</sup> which previously applied to all religious unions (Act I, Art. 76 point 1).

As regards this point, both acts adopt a uniform regulation in principle, though there are some differences according to the specific nature of the subject of regulation. The universal idea has been expressed most clearly in the provisions stating that, unless otherwise provided by a separate statute or a ratified international agreement, the authorities of a religious union have to but inform the competent agency of State administration of changes in the structure of Church organizational units and of appointment and recall of a person who performs senior executive functions in that union. Only in the case of appointment of a foreign subject to posts specified in the act, the authorities of a religious union should make certain if the Minister—Head of Denominations Office has no reservations to that appointment. The next provision defines the agencies of State administration that are competent in those matters (Act II, Art. Art. 14 and 15).

Similar principles have been adopted in relation to the Catholic Church, though their formulation is somewhat different. In this case, the clause “unless otherwise provided by ratified international agreements” acquires a special sense in view of the condition of regulation of that matter mainly on the plane of relations between Polish People’s Republic and the Apostolic See ; that will be fulfilled in a future convention between the two parties the draft of which is now being prepared for final negotiations. In the act itself, this question has been regulated not too distinctly, incidentally, so to say, and indirectly, on the occasion of defining the moment of acquirement by the above-mentioned church organizational units of the status of legal persons. If we extract the essence from the provision, that acquirement is effected with notification of a competent agency of State administration by the Church authority of the establishment of those units. Further provisions specify the agencies of State administration that are competent also to accept a notification from the church authorities as to organizational and administrative matters of

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<sup>20</sup> Such trends have been materialized in the new regulation of the relations between Spain and the Apostolic See in 1976, and in the course of revision of the Italian concordat in 1984. See T. Włodarczyk, *Konkordaty. Zarys historii ze szczególnym uwzględnieniem XX wieku [Concordats. Outline of History with Special Attention to the 20th Century]*, Warsaw 1986, pp. 203, 214, 382—385.

<sup>21</sup> *Journal of Laws*, No. 1/1957, item 6.



church legal persons (Act I, Art. 13, Part 1—4).<sup>22</sup> Similarly, nothing but a notification of a competent State agency by the church authorities is required in the case of appointment and recall of “a person who performs the functions of an agency of a legal person” (Act I, Art. 14).<sup>23</sup> Therefore, the new regulation allows the authorities of religious unions to decide freely in important internal matters related to administration and the staff. The law provides for no forms of State’s reaction to those decisions even if such decisions prove unfavourable for State administration.<sup>24</sup>

5. The new solutions tend towards a further liberalization of the system of regulation of some spheres of religious life. What should be mentioned here above all is the penalization of social relations connected with religion, rather awkward both for the faithful and for the Church. Thus the act quashes provisions concerning two important questions :

a) infringement of the freedom of conscience and religion through acts specified in Art. Art. 194 and 195 of the P.C. ;<sup>25</sup> and b) infringement of the provisions of the law on registry of births, deaths, and marriages which provide criminal responsibility of priests for marrying persons in church without a marriage certificate from the registrar (Act I, Art. 74, parts 8 and 12).<sup>26</sup> In the latter case, certain doubts may arise as to the grounds of such solution, and also as to the expected unfavourable effects for legal relations in the sphere of marriages. Admittedly, punishability is hardly the best possible way of introducing legal order here ; yet the problem remains unsolved of the order in which civil and church marriages should be contracted.

Let us now consider the discussed acts separately, giving their respective general characterizations and possibly also the specific features.

IV. The act on State’s attitude towards the Catholic Church in Polish People’s Republic does not formulate any general principles of the State’s religious policy : instead, it carries out the disposition of Art. 82, Part 2,

<sup>22</sup> The Act has adopted the conception according to which the notion of “Church legal persons” is largely identified with that of “organizational units of the Church” which is bound to arouse certain doubts. The problem, however, needs a separate discussion.

<sup>23</sup> Compared to the former regulation, the notion of an “ecclesiastic Church post” has been replaced with that of an “agency of a legal person.”

<sup>24</sup> The essence of the profound changes in this sphere has been commented upon with approval by a competent Catholic priest, see the Rev. B. Fidelus, op. cit., pp. 1, 5.

<sup>25</sup> The decision to delete those provisions was negotiated during the “round table” conference. See *Życie Warszawy* of February 28, 1989.

<sup>26</sup> This was effected by means of deleting Art. 63 and Chapter 10 of the law on registers of births, deaths, and marriages of October 29, 1986 (*Journal of Laws*, No. 36, item 180).

sentence 2 of the Constitution. For that reason, the act defines the Catholic Church's hierarchic and organizational structure but establishes no norms whatever to regulate directly the State's relations with the faithful. Instead, the Church administration acquired, by way of comprehensive negotiations, the legal guaranties for the practice of the Catholic faith by masses of the faithful and for the development of the Church itself in the spheres of religion and organization. Thus a complex regulation has been reached here of the principles of State's attitude towards the Church, its legal and financial situation included (Art. 3 Part 1). In other words, the legal status of the Church in Polish People's Republic has been regulated to the full.<sup>27</sup>

Apart from the important questions discussed above, Section I institutionalizes the Joint Commission of representatives of the Government of Polish People's Republic and of the Conference of the Episcopate of Poland which examines problems related to the development of State—Church relations and the interpretation of the act and its execution (Art. 4).

1. A problem that is central in the discussed section and also crucial in the act as a whole is the particularly difficult question of the Church's status of legal person, regulated but provisionally and partly for decades. Meeting half-way the Church's postulates, the act introduces far-reaching solutions in that sphere, of which the following are particularly worth noting :

a) The legal status is not acquired or held by the Catholic Church as a whole ;<sup>28</sup> instead, it is expressed by a system of legal persons, established and specified *in extenso* in the act. The catalogue of those persons is most extensive and could hardly be quoted in the present study.<sup>29</sup>

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<sup>27</sup> There are many misconceptions as regards the former legal status of the Church in pronouncements and literature representing the Catholic circles. Opinions should be treated as extreme according to which, in the light of the Polish law after the war, actually ceased to exist, and that only the discussed Act restores it to existence, first of all by granting it the status of a legal person. See J. Osuchowski, "Niektóre problemy dotyczące statusu prawnego Kościoła rzymskokatolickiego w PRL" [Some Problems of the Legal Status of the Roman Catholic Church in the Polish People's Republic], *Państwo i Prawo*, 1988, No. 3, pp. 105—106 ; the Rev. B. Fidelus, *op. cit.*, p. 1.

<sup>28</sup> This has to be stressed due to the fact that some non-Roman Catholic religious unions have the status of a legal person as a whole, e.g. the Polish Catholic Church in Polish People's Republic, the Old Catholic Mariavite Church in Polish People's Republic. See W. Wysoczański, *op. cit.*, pp. 158, 166.

<sup>29</sup> Also other organizational units of the Church may acquire the status of legal persons by force of a decree of the Minister—Head of the Denominations Office (Art. 10).

b) The legal persons mentioned in the act, as well as those to be created in the future, constitute the Church's organizational structure. The notion of Church authority should be understood to stand for an agency of a competent Church legal person (Art. 5). This is a radical change compared to the former solutions. The legal person, together with its agency, becomes the basic category, a creative element, so to say, of the Church's structure ; as a result, the weight of the Church's organizational units proper, lacking the traits of legal persons out of their very nature, recedes into the background. Therefore, the act explicitly adopts the conception of primacy of civil over administrative law, and seems to create the grounds for the State—Church relations mainly on the ground of civil law.<sup>30</sup>

c) The act specifies all agencies of the Church legal persons (Art. 6 Part 2, Art. 7 Part 3, Art. 8 Part 2).

d) The act does not provide the Catholic Church with the attribute of a public legal person which was still a discussed issue until recently but now seems to be settled decisively. This deserves to be stressed explicitly due to the fact that this problem is still misunderstood which could be noticed even during the legislative process of the discussed statutes.<sup>31</sup>

2. Section II of the act deals with "activity of the Church." A large number of provisions provide an extensive and detailed formulation of different forms of that activity and of the institutions, those already regulated before and others which the act regulates for the first time. They include : a) public worship, b) catechesis and education, c) army ministry and military service of priests, d) special ministry, e) Church and Catholic organizations and associations of Catholics, f) the Church's welfare work and patronage, g) sacral and church building, cemeteries, h) culture and the media.

<sup>30</sup> This interpretation implies the emergence of some new problems in the doctrine of the law on denominations and in the practice of relations between the State and religious unions.

<sup>31</sup> E.g. K. Barcikowski, with reference to the one-time ambitions of Cardinal S. Wyszyński, stated among other things that "the very idea of an act on the Church is a confirmation of that Church's public legal status," see *Polityka* of May 6, 1989, p. 6. Deputy J. Janowski shared this opinion and at the same time explained the essence of that status, during the second reading of the bills. See *Rzeczpospolita* of May 18, 1989, p. 4. One can hardly agree with those opinions in the light of the arguments contained in the doctrine : see e.g. H. Kołodziejek, "Sytuacja prawna nieruchomości kościelnych na Ziemiach Zachodnich i Północnych w latach 1945—1956" [The Legal Situation of the Church-Owned Real Estates in the Western and Northern Territories of Poland in the Years 1945—1956], *ZN UJ, Studia Religiologica*, 1986, No. 16, pp. 91—103 ; idem, "Osobowość prawna prawa publicznego Kościoła Katolickiego w Polsce" [The Legal Status under Public Law of the Catholic Church in Poland], *Państwo i Prawo*, 1988, No. 6, pp. 110—113.

3. Section III of the act deals with financial matters of the Church legal persons. It begins with a general but crucial provision stating that “the Church and its legal persons shall have the right to purchase, possess, and dispose of movable and immovable property, to acquire and dispose of other rights, and to administer their property” (Art. 52). Further provisions regulate various spheres of the Church’s financial situation and contain many solutions in favour of the Church ; they introduce explicit rules as the basis for permanency and safety of the conduct of civil law transactions with regard to the Church legal persons.

4. The “transitional and concluding provisions” of the act are most specific and highly differentiated in nature. The question that has been brought into prominence here is the regulation of the Church’s financial matters, the central issue of Section IV which provides for far-reaching effects as regards the Church’s property. Detailed provisions state that the specified categories of real property or parts thereof that find themselves at present in the possession of the Church legal persons shall become those persons’ property by force of law.

The provisions are indeed crucial which establish the grounds for the Church’s vindicative claims with respect to numerous real estates, taken away and nationalized after the war at various occasions and by various rights. The act specifies the categories of such real estates and defines the procedure of the so-called regulation proceedings (Art. 61) aimed at the satisfaction of the Church’s claims ensuing from property rights and the redress of the damages suffered by the Church in this sphere in the past. Such proceedings would result first and foremost in : a) restoration of the Church’s original property rights to the real estates once lost ; b) grant of an adequate substitute real estate if the restoration of property rights meets with obstacles that prove difficult to be surmounted ; c) grant of an adequate indemnity, should the solutions mentioned in points a) and b) prove impossible (Art. Art. 62—64). The act regulates also the legal situation of health service institutions originally owned by the Church legal persons (Art. 65), the question of Church premises allocated in the past to various State agencies and social organizations (Art. 66), and also the property rights to real estates of State organizational units that find themselves in the actual possession of the Church legal persons without a title deed (Art. 67). As shown by the whole of the discussed provisions, a radical change has been made in the sphere of the State—Church property relations, yet, as may be supposed, both parties face a tremendous deal of work in the nearest future to introduce those provisions in practice.

The final part of Section IV comprises provisions that amend the law in force. This has been effected mainly by way of corrections of the relevant fragments of different acts (Art. 74), and also of a statement

quashing other fragments (Art. 76). Those of the valid provisions concerning matters regulated by the act have been kept in force which require the passing of executory provisions : they will remain valid until such provisions can be passed. Moreover, other legal acts have been quashed totally which concerned matters regulated by the act (Art. 75).

V. The act on the guaranties of freedom of conscience and religion is more universal in nature and more explicitly related to the basic principles of the State's religious policy. It applies to over forty non-Roman Catholic religious unions that operate in Poland.

1. Section I of the act, Freedom of Conscience and Religion, concerns one of the crucial subjective personal rights (freedoms) of the individual, secured by Polish People's Republic to all its subjects and to foreigners who find themselves in the territory of Poland (Art. 1 Part 1, Art. 7).<sup>32</sup> Its provisions develop the relevant constitutional norms which due to their brief and general formulation many a time aroused doubts as to interpretation. The act explicitly interprets the freedom of conscience and religion as a free choice of religion or beliefs (Art. 1 Part 2), thus reverting to the international legislation concerning human rights : it means that the individual is free to adopt any orientation as regards philosophy of life. This is confirmed by a provision stating that equal rights in State, political, economic, social, and cultural life are guarantied to all citizens, believers and non-believers alike (Art. 1 Part 3), and also by another provision which bans discrimination or privilege of any person because of his or her religion or religious beliefs, and compulsion of any person to take or not to take part in religious activities or ceremonies (Art. 6).<sup>33</sup>

Of great importance is the statutory definition of the catalogue of rights which result for the individual from the freedom of conscience and religion. That catalogue (Art. Art. 2, 4, 5) is a legal confirmation and stabilization of the system of opinions about that matter, proclaimed so far by the doctrine of law on religious denominations. Instead of the former need to adduce a general and vague constitutional norm, the citizen has acquired concretely formulated rights realizing his or her subjective rights in the sphere of freedom of religion and religious beliefs. What is particularly important, especially in the context of the publicistic and political discussions of the recent past, is the inclusion of a provision that

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<sup>32</sup> It has been postulated in the doctrine for a long time that freedom of conscience and religion should be guarantied not only to Polish subjects. See e.g. M. Pietrzak, *Prawo wyznaniowe [The Law on Denominations]*, Warsaw 1987, p. 87.

<sup>33</sup> The discussed provisions in their large part reiterate or revert to the provisions of Art. 81 Part 1 and Art. 82 PaTt 1 sentences 3 and 4 of the Constitution.

defines the limits of manifestation of one's religion or beliefs.<sup>34</sup> Naturally, the applied formula is a generalization of specific social situations and as such cannot be fully accurate ; it is, however, a practical point of departure towards the practice of avoiding abuse of the freedom of conscience and religion in the public sphere. Moreover, an explicit provision introduces the principle that one cannot evade the performance of one's statutory public duties for reasons of freedom of conscience and religion. Guided by social reasons, however, the act has introduced a significant exception here.<sup>35</sup>

2. Part II of the act concerns the sphere of State's attitude towards religious unions as organizational and institutional communities that realize to a large extent the freedom of religion in relation to the faithful. That principle is to be realized through the right to set up religious unions (Art. 2 point 1), and it is on that principle that State's attitude towards all religious unions is based (Art. 9). This important sphere is supplemented by the specified guaranties of the discussed freedom : separation of religious unions from the State, their freedom to perform religious functions, and equal rights granted to all religious unions.<sup>36</sup>

Of the many matters regulated in the discussed Part, the following are particularly worthy of notice :

a) The provision that "Polish People's Republic is a secular State, neutral in matters of religion and beliefs" (Art. 10 Part 1) introduces an explicit change compared to the former official doctrine in Poland : declaring for a secular State, it nevertheless denied any possibility of that State's neutrality as regards the philosophy of life.<sup>37</sup> Instead, the now adopted formula provides a legal authorization for that very attitude of the State towards the philosophy of life, under the stipulation, however, that the notion of philosophy of life is strictly separated from ideology and \* 5 \* 3

<sup>34</sup> Art. 3 Part 1 of the act reads as follows : "Individual or group manifestation of religion or religious beliefs shall only be subject to statutory limitations required for reasons of protection of public safety, order, health or morals, or of the basic rights and liberties of others." Also in this provision, the reference to the international legislation on human rights is noticeable.

<sup>35</sup> Art. 3 Part 3 provides that citizens to whom the general compulsory military service applies may request to be sent to substitute service if that is grounded by the candidates' religious beliefs or the moral principles professed. In that case, a written statement concerning those beliefs or principles is required.

<sup>36</sup> The first two of those guaranties have been provided for by the Constitution ; instead, it contains no explicit formulation of the principle of equal rights of denominations.

<sup>37</sup> See J. Osuchowski, "Wolność sumienia i wyznania w przyszłej Konstytucji PRL" [The Freedom of Conscience and Religion in the Future Constitution of Polish People's Republic], *Państwo i Prawo*, 1989, No. 5, pp. 33—35.

restricted to the attitude towards religion and religious beliefs.<sup>38</sup> This interpretation prevailed during the parliamentary debate when representatives of various political trends expressed their opinions on that matter.<sup>39</sup> What is more, this trend was additionally consolidated by an important and grave amendment of the act of July 15, 1961 on the development of the educational system<sup>40</sup> from which phrases were deleted which spoke of the shaping of a scientific outlook on life and socialist morals and principles of social coexistence (Art. 43).<sup>41</sup>

b) The act establishes the framework of legal protection of religious unions and their activities, and provides for the possibility for those unions to submit motions to the Constitutional Tribunal (Art. 11) ; it also defines the grounds of the social and legal status of the clergy (Art. 12).

c) The act gives an extensive treatment to the religious unions' financial matters. In this sphere, it introduces a programmatic provision stating that, with some statutory exceptions, religious unions are not State-aided or subsidized by State organizational units (Art. 10 Part 2). Further provisions establish the right of religious unions to "purchase,

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<sup>38</sup> Admittedly, the act does not speak of "neutrality as to philosophy of life" but of "neutrality in matters of religion and beliefs" but what is concerned here are undoubtedly beliefs in religious matters and therefore also those areligious and anti-religious. Hence the logical conclusion that the Polish State cannot be atheistic in nature as in that case it would fail to meet the condition of neutrality in the discussed sphere.

<sup>39</sup> The most explicit standpoint with regard to this issue was taken by a representative of the parliamentary club of the Polish United Workers' Party, deputy J. Maciszewski, who quoted the resolutions of the 10th plenary assembly of the Party's Central Committee and its new attitude towards religion and the Church. He stated among other things that the Party declares for a secular nature and neutrality as to the philosophy of life of the State as guarantor of all civil rights and liberties. Also deputy R. Tomczewski (Democratic Party) declared just as positively for a State neutral as far as the philosophy of life is concerned. Other deputies, such as S. Mazur (United Peasant Party) and J. Ozdowski (non-party club) defined the Polish People's Republic as a secular State, neutral in religious matters. See *Rzeczpospolita* of April 27, 1989.

<sup>40</sup> *Journal of Laws*, No. 32, item 160, with subsequent changes.

<sup>41</sup> This is no doubt a departure from principles not only in the sphere of philosophy of life but also of ideology since the term "socialist" is relinquished. This is done but partially, one has to admit, as that term, although in a different context, has been preserved in the preamble of the Act of 1961. And yet it is rather striking that this change towards pluralism in the sphere of philosophy of life in education was made in an act on the guaranties of the freedom of conscience and religion, and not in the one concerning the Catholic Church which was after all the party that was always most interested in that very turn. This is also an argument that proves that also the Catholic Church will profit by the discussed act in a universal manner.

possess, and dispose of movable and immovable property, and also to administer that property” (Art. 19 Part 2 point 7), and regulate the matters of revenues, taxes, customs duties, and various reductions and exemptions in a way that is most advantageous for religious unions, etc. (Art. 13).

d) The act contains also the first formulation in the Polish law of the principle of State’s cooperation with religious unions “in preservation of peace, creation of conditions of the country’s development, and control of social pathology.” The act provides for a variety of forms of such cooperation (Art. 16), also in the sphere of “protection, preservation, making accessible, and propagation of the relics of religious architecture, art, and literature which are an integral part of the cultural heritage” (Art. 17).

e) The act provides an extensive regulation of the activity of religious unions. Declaring their equal rights and freedom of performance of religious functions, the act formulates an impressive catalogue of those functions which consists of 18 items but is by no means closed ; in it, the separate spheres of activity have been specified (Art. 19). Moreover, the act develops and specifies many of those items in its further provisions. This concerns such spheres of activity of religious unions as : religious instruction and education of children and young persons (Art. 20) ; setting up and running schools and other educational institutions (Art. 21) ; setting up and running church schools and seminaries, and also setting up religious scientific and scientific-educational institutes (Art. 22) ; charities and patronage, and setting up adequate institutions to that aim (Art. 24) ; publication of books, journals, and pamphlets, establishment and possession of publishing houses and printing establishments, and also broadcasting on radio and television of religious, ethical, and cultural programmes (Art. 25) ; organization and carrying out of cultural and artistic activities related to the performance by religious unions of their functions (Art. 26). The above provisions, duly extended, provide a detailed regulation of the religious unions’ exercise of their rights, and define the necessary competences of administrative agencies and the range of application of State law in those spheres.

3. Finally, Part III of the act, Establishment of Churches and Other Religious Unions, regulates the mode of establishment and liquidation of religious unions. It formulates uniform principles in that sphere, thus meeting half-way the marked trend of the recent years to create new religious unions<sup>42</sup> or to legalize the existing ones.<sup>43</sup> The provisions create

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<sup>42</sup> See on this subject e.g. K. Urban, “Nierzymoskokatolickie związki religijne w Polsce w 1987 roku” [The Non-Roman Catholic Religious Unions in Poland in 1987], *Problemy Wyznań i Laicyzacji*, 1988, No. 30, pp. XII—XIII.



liberal conditions for the creation of a new religious union where the only requirement is the submission of an appropriate declaration at the Denominations Office and enrolment in the register of churches and other religious unions (Art. 30). A refusal to enter a union into the register can be appealed against to the Chief Administrative Court according to the mode provided for in the code of administrative procedure (Art. 33).<sup>44</sup> At the moment of registration, a religious union acquires the status of a legal person as a whole, it enjoys all rights and is liable to all duties specified by statutes (Art. 34). The act does not provide for a restrictive mode of liquidation of a religious union by the State which also expresses the new spirit that now permeates the State—Church relations.

4. The act ends with Part IV which comprises the transitory and concluding provisions. Apart from those defining the act's attitude towards the existing regulations, the provision is worthy of attention which provides for the possibility of giving a day off from work or school to members of those of the religious unions the church holidays of which do not fall on legal holidays if the faithful wish to celebrate those holidays according to the principles of their faith (Art. 42).

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The above concludes the presentation of the basic principles and provisions of the new acts concerning religious matters. Obviously, due to the great variety of the problems regulated, it was possible to give many of them a general treatment only, aimed at nothing but informing the readers of their regulation. For that reason, the doctrine of the law on denominations now faces the task of undertaking a thorough scientific study, aimed among other things at assisting the official religious policy which tends towards an harmonious development of mutual relations between the State and religious unions.

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<sup>43</sup> As a matter of fact, the registration, long prepared and expected, of the fourth largest religious union in the Polish People's Republic, the sect of Witnesses of Jahve, took place before the passing of that Act. See S. Podemski, "Prawo do Kościołów" [The Right to Churches], *Polityka* of May 6, 1989, *Życie Warszawy* of August 7, 1989.

<sup>44</sup> This way, the new regulations eliminate the "discretionary nature of an administrative decision to enter churches and other religious unions into the register, and submit the procedure in such cases to review of administrative courts." Fragment of the pronouncement of Prime Minister M. Rakowski during the first reading of the bills in the Sejm. *Rzeczpospolita* of April 27, 1989.