

**THE POSSIBILITIES OF ASSOCIATION FOR RELIGIOUS PURPOSES IN  
POLAND AS A REFLECTION OF THE POSITIVISATION OF THE LAW IN THE  
FIELD OF THE FREEDOM OF CONSCIENCE AND RELIGION<sup>1</sup>**

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The inherent and inalienable dignity of the person is the foundation of all the rights and freedoms guaranteed under the Constitution of the Republic of Poland<sup>2</sup>. This concept, as assumed by the Polish legislator, is in full compliance with the provisions of numerous International Law statutes. The right of association, as well as the freedom of conscience and religion guaranteed under Polish law, should thus be viewed as libertarian rights which arise from the dignity of the person. Although the above concept assumes that such freedom exists, irrespective of the role of the state and of the laws enacted by the state, as well as permitting everything to be done which is not in violation of the law, both freedom of association and freedom of conscience and religion are not absolute. This concept of the libertarian status of the person constitutes the starting point for varied legal regulations which form the grounds for the functioning of various types of association for religious purposes. The demand for legal regulations, and also, therefore, for certain restrictions in enjoying these freedoms, may arise from the necessity to ensure the protection of other people and of equivalent freedoms,

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<sup>1</sup> *Positive Law in Contemporary Legal Systems. The Materials of the International scientific Conference (Brest, 15th -17th April, 2009)*, ed. B. Lepieszko, D. Walencik, Brest 2009, p. 57-60.

<sup>2</sup> The Constitution of the Republic of Poland of 2<sup>nd</sup> April, 1997, (Dz. U. Nr 78, poz. 483 ze zm.) Art. 30 provides that: "The inherent and inalienable dignity of the person shall constitute a source of freedoms and rights of persons and citizens. It shall be inviolable. The respect and protection thereof shall be the obligation of public authorities". (Translation taken from *The Constitution of the Republic of Poland*, transl. by Albert Paul, Andrew Caldwell, Warszawa 2007.) The doctrine of the Catholic Church also assumed the dignity of the person as the foundation of freedom of religion. See H. Misztal, *Kościelne pojęcie wolności religijnej a ustawa o gwarancjach wolności sumienia i wyznania*, "Kościół i Prawo" 1993, vol. 11, pp. 103-122; S. Jasionek, *Prawa człowieka*, Kraków 2005, pp.49-55.

as well as from safety and public order requirements<sup>3</sup>. The aim of this study is to clarify the legal guaranties stipulated by the Polish legislator, with a view to ensuring the possibility of association for religious purposes.

## 1. Religious denominations

In Poland, the right to freedom of conscience and religion, and the related right to establish religious denominations, have been stipulated in Art. 53 of the Constitution, which provides that: “Freedom of conscience and religion shall be ensured to everyone. Freedom of religion shall include the freedom to profess or to accept a religion by personal choice as well as to manifest such religion, either individually or collectively, publicly or privately, by worshipping, praying, participating in ceremonies, performing of rites or teaching. The freedom to publicly express religion may be limited only by means of statute and only where this is necessary for the defence of State security, public order, health, morals or the freedoms and rights of others”<sup>4</sup>. The particularisation of the constitutional guarantees can be found in the Statute of 17<sup>th</sup> May 1989 *o gwarancjach wolności sumienia i wyznania (on guarantees of*

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<sup>3</sup> See also: M. Chmaj, *Wolność zrzeszania się*, in: *Konstytucyjne wolności i prawa w Polsce*, vol. 3: *Wolności i prawa polityczne*, Kraków 2002, pp. 51-113; P. Sarnecki, *Wolność zrzeszania się*, Warszawa 1998, pp. 25-34; P. Suski, *Stowarzyszenia i fundacje*, Warszawa 2008, pp. 69-70.

<sup>4</sup> Art. 53, para. 1, 2 and 5. Similar legal regulations are found in international covenants ratified by Poland. Art. 18 of the International Covenant on Civil and Political Rights provides for the following guarantee: “Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching”. (The International Covenant on Civil and Political Rights adopted by the United Nations General Assembly on 16<sup>th</sup> December 1966, was ratified by Poland in 1977, Dz. U., 1977, Nr 38, poz. 167.) In addition, Art. 9, para. 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms provides for the following guarantee: “Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance”. Para. 2 states “Freedom to manifest one’s religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others”. (The Convention for the Protection of Human Rights and Fundamental Freedoms adopted by the Council of Europe on 4<sup>th</sup> November 1950, ratified by Poland in 1993, Dz. U., 1993, Nr 61, poz. 284, ze zm.)

*freedom of conscience and religion*)<sup>5</sup>. This Statute defines religious denominations as religious communities established for the purpose of confessing and spreading religious faith, which have their own system, doctrine and rites of worship (Art. 2, item 1)<sup>6</sup>. The provisions of Polish law stipulate a specific mode of legalisation for religious denominations, different to those for e.g. religious societies. It is applied to those religious communities which officially establish their activity as religious denominations. This is done by making the relevant entry in the register of churches and other religious denominations, kept by the Minister responsible for religious matters (currently the Minister of the Interior and Administration)<sup>7</sup>. Furthermore, the adoption of a separate statute concerning the attitude of the state towards religious denominations would be a special means of regulating the legal standing of religious denominations. The enactment of such a statute would entail the removal of the religious denomination from the register. There are currently 15 religious denominations operating on the basis of the provisions set forth in separate statutes<sup>8</sup>, and another 150 have been entered

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<sup>5</sup> The unified text: Dz. U., 2005, Nr 231, poz. 1965, ze zm.

<sup>6</sup> Polish law commonly uses the wording “churches and other religious denominations”. Distinguishing “churches” from other “religious denominations” does not entail any legal consequences. In accordance with the equality of rights principle, there are no regulations in Polish law which would confer any rights on churches, which are not conferred on any other religious denominations. See P. Stanisz, *The principles of the relationship between Church and State in the Constitution of the Republic of Poland of 2<sup>nd</sup> April, 1997*, “Soter” (Religijos mokslo žurnalas - Journal of Religious Science) 2007, No 22(50), pp. 129-140.

<sup>7</sup> A group of 100 Polish citizens, having the full legal capacity to legal transactions, is entitled to apply to enter into the register. For more about the terms and procedures of the registration of religious denominations, see A. Mezglewski, H. Misztal, P. Stanisz, *Prawo wyznaniowe*, 2<sup>nd</sup> edition, Warszawa 2008, pp. 250-256; M. Chmaj, *Wolność zrzeszania się...*, pp. 94-97; *Wolność zrzeszania się w Polsce*, ed. M. Chmaj, Warszawa 2008, pp. 116-120.

<sup>8</sup> Individual statutes stipulate the activities of: the Eastern Old-Believer Church (Regulation of the President of the Republic of Poland of 22<sup>nd</sup> March 1928, Dz. U. Nr 38, poz. 363, ze zm.), the Karaim Religious Association (statute of 21<sup>st</sup> April 1936, Dz. U. Nr 30, poz. 241, ze zm.), the Muslim Religious Association (statute of 21<sup>st</sup> April 1936, Dz. U. Nr 30, poz. 240, ze zm.), the Catholic Church (statute of 17<sup>th</sup> May 1989, Dz. U. Nr 29, poz. 154, ze zm.), the Polish Orthodox Church (statute of 4<sup>th</sup> July 1991, Dz. U. Nr 66, poz. 287, ze zm.), the Evangelical Church of the Augsburg Confession (statute of 13<sup>th</sup> May 1994, Dz. U. Nr 73, poz. 323, ze zm.), the Evangelical Reformed Church (statute of 13<sup>th</sup> May 1994, Dz. U. Nr 73, poz. 324, ze zm.), the Evangelical Methodist Church (statute of 30<sup>th</sup> June 1995, Dz. U. Nr 97, poz. 479, ze zm.), the Church of Christian Baptists (statute of 30<sup>th</sup> June 1995, Dz. U. Nr 97, poz. 480, ze zm.), the Seventh-day Adventist Church (statute of 30<sup>th</sup> June 1995, Dz. U. Nr 97, poz. 481, ze zm.), the Polish Catholic Church (statute of 30<sup>th</sup> June 1995, Dz. U. Nr 97, poz. 482, ze zm.), Jewish Communities (statute of 20<sup>th</sup> February 1997, Dz. U. Nr 41, poz. 251, ze

into the register of churches and other religious denominations<sup>9</sup>. All religious denominations with a regulated legal standing receive a specific legal status<sup>10</sup>. One of the special rights guaranteed in the Constitution is the possibility to organise the teaching of religion in public schools<sup>11</sup>.

## 2. Other forms of association for religious purposes

Art. 58 of the Constitution of the Republic of Poland stipulates that “The freedom of association shall be guaranteed to everyone”<sup>12</sup>, whereas Art. 12 provides that “The Republic of Poland shall ensure freedom for the creation and functioning of [...] societies, citizens’ movements, other voluntary associations [...]”<sup>13</sup>. The statute of 7<sup>th</sup> April 1989 - *Prawo o stowarzyszeniach (Law on associations)*<sup>14</sup> - is of primary significance (*lex generalis*) for the

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zm.), the Catholic Mariavite Church (statute of 20<sup>th</sup> February 1997, Dz. U. Nr 41, poz. 252, ze zm.), the Old Catholic Mariavite Church (statute of 20<sup>th</sup> February 1997, Dz. U. Nr 41, poz. 253, ze zm.), the Pentecostal Church (statute of 20<sup>th</sup> February 1997, Dz. U. Nr 41, poz. 254, ze zm.). The legal status of the Catholic Church is specified, apart from the individual statute, by the Concordat between the Holy See and the Republic of Poland, signed on 28<sup>th</sup> July 1993, and ratified on 23<sup>rd</sup> February 1998 (Dz. U., 1998, Nr 51, poz. 318).

<sup>9</sup>[http://www.mswia.gov.pl/portal/pl/92/223/Koscioly\\_i\\_zwiazki\\_wyznaniowe\\_wpisane\\_do\\_rejestru\\_kosci\\_olow\\_i\\_innych\\_zwiazkow\\_wy.html](http://www.mswia.gov.pl/portal/pl/92/223/Koscioly_i_zwiazki_wyznaniowe_wpisane_do_rejestru_kosci_olow_i_innych_zwiazkow_wy.html); (the state of 20<sup>th</sup> of March 2009).

<sup>10</sup> For more about the rights of religious denominations see M. Pietrzak, *Church and State in Poland*, in: *Law and Religion in Post-Communist Europe*, eds. S. Ferrari, W. Cole Durham, Leuven – Paris – Dudley 2003, pp. 225-236.

<sup>11</sup> For more on this subject see A. Mezglewski, *The organization of religious instruction in polish public schools*, in: *Christian values in postmodern society. Conference proceedings*, Kaunas 2008, pp. 86-90.

<sup>12</sup> Similar regulations are present in the international agreements ratified by Poland. In the International Covenant on Civil and Political Rights in Art. 22 it is ensured that “Everyone shall have the right to freedom of association with others [...]”. In the Convention for the Protection of Human Rights and Fundamental Freedoms, in Art. 11 it is ensured that “Everyone has the right of freedom of peaceful assembly and to freedom of association with others [...]”.

<sup>13</sup> At the same time, Art 13 of the Constitution stipulates that “[...] organizations whose programmes are based upon totalitarian methods and the modes of activity of nazism, fascism and communism, as well as those whose programmes or activities sanction racial or national hatred, the application of violence for the purpose of obtaining power or to influence the State policy, or provide for the secrecy of their own structure or membership, shall be prohibited”.

<sup>14</sup> The unified text: Dz. U., 2001, Nr 79, poz. 855, ze zm. The statute defines an association as a voluntary, independent, permanent non-profit association (Art. 2, para. 1). For more see P. Suski, *Stowarzyszenia w prawie polskim*, Warszawa 2002, pp. 43-49.

functioning of associations in Poland. It provides for the existence of two types of associations. The first type of association is referred to as “incorporated associations,” since they acquire a legal personality upon entry into the National Court Register<sup>15</sup>. Ordinary associations are the second type, which do not have a legal personality<sup>16</sup>. Churches and other religious denominations, as previously mentioned, are not subject to the provisions set forth in *Prawo o stowarzyszeniach*.

The substantiation of the right of freedom of association for religious purposes was developed in the Statute *o gwarancjach wolności sumienia i wyznania*, as well as in eleven separate statutes governing the legal statute of individual churches and other religious denominations. The Statute *o gwarancjach wolności sumienia i wyznania* ensures every individual the right of contact with other fellow believers, including participation in activities of religious organisations at an international level (Art. 2, item 6), and the right of association in secular organisations (Art. 2, item 11), while it ensures churches and other religious denominations an opportunity to form organisations for the purposes of activities for the benefit of religious formations, public worship, and at counteracting social pathologies and their effects (Art. 19 para. 2, item 14)<sup>17</sup>.

Due to the diversity and the vast number of possibilities to form associations for religious purposes, it seems appropriate to introduce their classification. The degree of dependence of these associations on the *lex generalis*, i.e. *Prawo o stowarzyszeniach*, constitutes the criterion for this division.

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<sup>15</sup> Pursuant to the statute of 20<sup>th</sup> August 1997 *o Krajowym Rejestrze Sądowym (on National Court Register)* [the unified text: Dz. U., 2001, Nr 17, poz. 209, ze zm.], the register of associations is kept by Local Courts, and registration is made by the relevant court with respect to the headquarters of the association. Incorporated associations can be established by a group of at least 15 people, having the full legal capacity to legal transactions, and having Polish citizenship or residing within the territory of Poland. For more on the subject see P. Suski, *Stowarzyszenia i fundacje...*, pp. 148-193; *Wolność zrzeszania się w Polsce...*, pp. 77-82.

<sup>16</sup> For more on the subject see P. Sarnecki, *Prawo o stowarzyszeniach: komentarz*, Warszawa 2007, pp. 81-85; P. Suski, *Stowarzyszenia i fundacje...*, pp. 297-310; *Wolność zrzeszania się w Polsce...*, pp. 83-84.

<sup>17</sup> The provisions of the statute *Prawo o stowarzyszeniach* apply to such an organisation, if it has a legal personality. For more on the subject see A. Mezglewski, H. Misztal, P. Stanisławski, *Prawo wyznaniowe...*, pp. 96-97; J. Krukowski, *Polskie prawo wyznaniowe*, Warszawa 2008, pp.153-154; J. Matwiejuk, *Pozycja prawna organizacji i stowarzyszeń religijnych w Rzeczypospolitej Polskiej*, “Studia z Prawa Wyznaniowego” 2003, vol. 6, pp. 15-17.

## **2.1. Associations for religious purposes subject to the statute**

### ***Prawo o stowarzyszeniach***

Associations formed for religious purposes, which are fully subject to the provisions of the statute *Prawo o stowarzyszeniach*, make up the first group. They can act as ordinary or incorporated associations. They function beyond the structures and supervision of religious denominations. Associations of Catholics, as stipulated by the individual statute of the Catholic Church, are examples of such associations (Art. 37)<sup>18</sup>.

## **2.2. Associations for religious purposes partially subject to the statute *Prawo o stowarzyszeniach***

Seven individual statutes, regulating the relationship of the state with individual religious denominations, stipulate the existence of such associations as the Evangelical Church of the Augsburg Confession, the Pentecostal Church, the Catholic Church<sup>19</sup>, the Seventh-day Adventist Church, the Church of Christian Baptists, the Polish Orthodox Church, and Jewish Communities. The purposes of the activities of such associations have been specified by respective individual statutes. The authorities of such religious denominations approve the associations officially, and appoint their own assistants to them (guardian, chaplain)<sup>20</sup>. The Statute *Prawo o stowarzyszeniach* partially applies to such associations. In the case of 1) the revoking of the approval of church authorities, 2) the dissolution of the association, and 3) the decision on the allocation of assets arising from the liquidation of the association, the regulations provided by individual statutes apply. In these three cases, the statute *Prawo o stowarzyszeniach* shall not apply.

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<sup>18</sup> See B. Rakoczy, *Ustawa o stosunku państwa do Kościoła Katolickiego w Rzeczypospolitej Polskiej. Komentarz*, Warszawa 2008, pp. 242-243.

<sup>19</sup> As stipulated by Art. 35 of the individual statute. See B. Rakoczy, *Ustawa...*, pp. 235-239.

<sup>20</sup> This is not stipulated by the individual statute of Jewish Communities. A. Mezglewski, H. Misztal, P. Stanisławski, *Prawo wyznaniowe...*, p. 99.

### **2.3. Organisations formed for religious purposes which are not subject to the statute *Prawo o stowarzyszeniach***

Six individual statutes, regulating the legal status of the following religious denominations, stipulate the existence of such organisations as the Polish Orthodox Church, the Evangelical Methodist Church, the Catholic Church, the Catholic Mariavite Church, the Old Catholic Mariavite Church, and the Polish Catholic Church. The formation of such organisations belongs to the authorities of those churches<sup>21</sup>. The purposes of individual organisations are stipulated by individual statutes<sup>22</sup>. The provisions of the statute *Prawo o stowarzyszeniach* shall not apply to such organisations. Thus, they cannot acquire a legal personality by way of court registration. They may acquire a legal personality by way of regulation by the Minister of the Interior and Administration<sup>23</sup>.

In conclusion, it is worth stressing that the associations for religious purposes which have been discussed may acquire the status of a public benefit organisation, if their statutory purposes include the conduction of activities and the performing of public tasks as specified by the statute of 24<sup>th</sup> April 2003 *o działalności pożytku publicznego i wolontariacie (on public benefit activity and volunteer work)*<sup>24</sup>. The statute stipulates a number of tax exemptions which public benefit organisations are entitled to and, in particular, the possibility of

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<sup>21</sup> It is provided by the individual statutes that, in the case of the Catholic Church and the Orthodox Church, secular believers may also put forward an initiative for the establishment of an association. See B. Rakoczy, *Ustawa...*, pp. 232-233.

<sup>22</sup> The individual statute of the Catholic Church Art. 34 specifies the purposes of such organisations as follows: activities for the benefit of religious formations, public worship, and Catholic education. Having considered the provision of Art. 19 of the Concordat between the Holy See and the Republic of Poland, it should be assumed that this concerns all the purposes as specified by the provisions of canon law. Since Art. 19 stipulates that “the Republic of Poland recognizes the right of believers to associations pursuant to canon law for the purposes specified therein”. For more see J. Krukowski, *Realizacja wolności zrzeszania się zgodnie z art. 19 Konkordatu polskiego z 1993 r.*, in: *Wokół problematyki cywilnej i procesowej. Studium teoretycznoprawne*, ed. A. Nowak, Katowice 2001, pp. 134-143.

<sup>23</sup> This does not concern organisations established on the initiative of secular believers. See A. Mezglewski, H. Misztal, P. Stanisławski, *Prawo wyznaniowe...*, p. 103.

<sup>24</sup> Dz. U. Nr 96, poz. 873 ze zm.

allocating 1% of tax for a public benefit organisation as selected by the payer of income tax themselves<sup>25</sup>.

## Conclusion

The freedom of forming associations to implement purposes related to the fulfilment of religious beliefs is a libertarian right originating from the inherent dignity of the person. The guarantees of this right are provided by the Constitution of the Republic of Poland, international agreements ratified by Poland, as well as various statutes. Special types of possibilities and forms of associations for religious purposes is specified by the statute *o gwarancjach wolności sumienia i wyznania*, by individual statutes regulating the status of the state and individual churches and other religious denominations, as well as by the statute *Prawo o stowarzyszeniach*. Norms specifying the conditions for the existence and functioning of religious denominations, organisations and other associations for religious purposes, which have been discussed in the present study, may be undoubtedly regarded as a symptom of the positivisation of law in the field of the freedom of conscience and religion.

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<sup>25</sup> See P. Suski, *Stowarzyszenia i fundacje...*, pp. 153-158, 285-286; D. Walencik, *Wpłaty z tytułu 1% podatku jako sposób refinansowania pomocy społecznej*, in: *Funkcje publiczne związków wyznaniowych. Materiały III Ogólnopolskiego Sympozjum Prawa Wyznaniowego*, ed. A. Mezglewski, Lublin 2007, s. 237-269; D. Walencik, *Wpłaty 1% podatku dochodowego od osób fizycznych jako źródło finansowania działalności instytucji kościelnych*, "Studia z Prawa Wyznaniowego" 2009, vol. 13 (in preparation).