



## CULTURAL HERITAGE AND THE REGULATION OF RELIGIOUS FREEDOM: THE CASE OF POLAND AND CZECH REPUBLIC

*A HERANÇA CULTURAL E A REGULAMENTAÇÃO DA LIBERDADE RELIGIOSA: O CASO  
DA POLÓNIA E DA REPÚBLICA CHECA*

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**Piotr Szymaniec**

Dr. habil. in law, Associate Professor; Angelus Silesius State University of Applied Sciences in Wałbrzych (Poland).

### Abstract

The paper poses the question of the extent to which the difference of religious structure and religiosity between Poland and the Czech Republic has an impact on regulations on religious freedom. Based on historical research the author claims that, despite this difference, after the collapse of the Soviet system both Poland and the Czech Republic decided to reintroduce the same “co-operative” model of the relations between state and churches and religious associations, which already had been implemented in the interwar period (1918–1939) and should be considered as a part of Prussian and Austro-Hungarian legal legacy. Reintroducing this model could be perceived as the return to the heritage of legal history and legal culture. It is emphasized, however, that the religious nature of a society influences the implementation of legal provisions, and on that ground confessional elements in Polish legal system are more noticeable than in the Czech Republic.

**Key words:** Poland, Czech Republic, church–state relations, religious freedom, religious associations, national identity.

### Resumo

O artigo questiona até que ponto a diferença de estrutura religiosa e religiosidade entre a Polónia e a República Tcheca tem um impacto sobre a regulamentação da liberdade religiosa. Baseado em pesquisas históricas, o autor afirma que, apesar dessa diferença, após o colapso do Sistema Soviético, tanto a Polónia quanto a República Tcheca decidiram reintroduzir o mesmo modelo “cooperativo” das relações entre Estado e igrejas e associações religiosas, o qual já havia sido implementado no período entre guerras (1918-1939) e deve ser considerado como parte do sistema legal da Prússia e do Império Austro-Hungaro. Reintroduzir esse modelo poderia ser percebido como o retorno à herança da história jurídica e da cultura jurídica. Ressalta-se, contudo, que a natureza

religiosa de uma sociedade influencia a implementação de disposições legais, e que os elementos confessionais no sistema jurídico polonês são mais perceptíveis do que na República Tcheca.

**Palavras-chave:** Polônia, República Tcheca, relações igreja-estado, liberdade religiosa, associações religiosas, identidade nacional.

## 1. INTRODUCTION

It is an obvious observation that religiosity in the Czech Republic is not as pronounced as it is in Poland. In the Czech Republic, according to data from 2011, 34.5% of the population declares themselves as unreligious persons, and a further 44.7% of population does not declare, at least in the census, any religion,<sup>1</sup> while in Poland a vast majority of society confesses Catholicism. The present paper poses the question of the extent to which the difference of religious structure has an impact on regulations on religious freedom. In the author's opinion, a comprehensive answer to this question requires looking back on the processes of building modern nations in the nineteenth and early twentieth century. These processes had distinct features in the Polish lands and Czechia, although both Poles and Czechs were deprived of their independent states. Moreover, their importance consists in the fact that during that period, the Polish and Czech elites developed different attitudes towards religion in general, and to the Catholic Church in particular.

## 2. THE BUILDING OF MODERN NATIONS

I will stress several factors which influence the place of religion in the nation-building process in Czechia, and then analyse the case of Polish lands. The counter-reformation was very successful in the Czech lands in the eighteenth century, and the Czech Baroque culture contributed much to the development of a "people's church" and a particular model of religiousness.<sup>2</sup> What is also very important, during the reign of empress Maria Theresa and her son, Joseph I, state control over the Catholic Church was tightened. This particular policy towards the Church, which is known under the name of Josephinism, consisted in particular in the closing of many orders and convents and restricting the autonomy of the Church, which became even more

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<sup>1</sup> Cf. J. Havlíček, D. Lužný, "Religion and Politics in the Czech Republic: The Roman Catholic Church and the State", *International Journal of Social Science Studies*, 2013, Vol. 1, No. 2, p. 193.

<sup>2</sup> Cf. T. Petráček, *In Maelstrom of Secularization, Collaboration and Persecution. Roman Catholicism in Modern Czech Society and the State*, Lublin: EL-Press, 2014, pp. 15–16.

connected to the monarchy than before. At the same time, however, the scope of religious freedom was enlarged. Due to the laws introduced during the Thirty Years' War, Protestant churches could not legally function in the Czech lands. That situation, however, changed in 1781 when Joseph I issued a patent on toleration which enabled Lutherans, Calvinists and Orthodox believers to organize their religious services and even to build their churches (although this right was limited). Their religious affiliation did not imperil their legal status. Similar rights were given to the Hussites in the following year.<sup>3</sup> However, these reforms did not lead to a change in religious convictions. The vast majority of people remained faithful to the Catholic Church, and only 2 percent of the society declared themselves as Protestants (most of them were Calvinists).<sup>4</sup> It seemed, therefore, that the Catholic Church retained its strong and stable position at the threshold of the nineteenth century. Thus, the question should be asked: what factors played an important role in reversing this situation? In my opinion, the movement of the so-called national awakers (*národní buditelé*) is of crucial importance in this regard. The members of the first generation of the awakers were of the opinion that all the inhabitants of the Bohemia could become the members of one Bohemian nation, regardless of their ethnic and religious background. The only important thing was their affection for the common local culture.<sup>5</sup> The notion of nation which was developed by the first awakers was, therefore, of more cultural and geographic than ethnic character. Needless to say, however, this notion evolved and changed its character during the next decades of the century.

After 1848, the movement of awakers was becoming more anti-Catholic. This was a major change, since the Catholic clergy played an important role in the first phase of national awakening at the beginning of the century.<sup>6</sup> The movement put more emphasis on the role of Hussitism in the development of the Czech nation in the fifteenth and sixteenth century. The major figure among the awakers in that period was František Palacký (1798–1876) who in his historical works developed the view of the importance of Hus in Czech history. The fact that Palacký's family was Protestant was not without significance for the development of his standpoint, although he was not openly against

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<sup>3</sup> Cf. K. Vocelka, "Enlightenment in the Habsburg Monarchy: History of a Belated and Short-Lived Phenomenon". In O.P. Grell, R. Porter (eds.), *Toleration in Enlightenment Europe*, Cambridge: Cambridge University Press, 2000, pp. 196–210; H. Kaczmarek, *Czechy. Kościół i państwo*, Kraków: Wydawnictwo WAM, 2016, pp. 75–78.

<sup>4</sup> J.R. Tretera, Z. Horák, *Religion and Law in the Czech Republic, Religion and Law in the Czech Republic*, Alphen aan den Rijn: Kluwer Law International, 2014, p. 26.

<sup>5</sup> Cf. Z. Tarajto-Lipowska, *Historia literatury czeskiej. Zarys*, Wrocław: Ossolineum, 2010, pp. 93–94.

<sup>6</sup> Cf. H. Kaczmarek, *Czechy...*, pp. 88–92, 97.

the Catholic Church.<sup>7</sup> Palacký's work played a role in the shaping of the myth of Hussitism in Czech nineteenth-century culture.

The case of the poet Karel Havlíček Borovský (1821–1856) is a significant one, showing the changing attitude of the awakeners towards religion. Even in his youth, Havlíček took a critical view of Catholic Church. At that time he was an adherent of Slavophilism, but after one year of living in Russia (1843–1844) he changed his previous opinions, and his criticism concerned also the Orthodox Church. *Křest svatého Vladimíra* ("The baptism of St. Vladimir") is the most important work of Havlíček dating from that period of his activity. The subject, treated here in a satirical way, is taken from Nestor's "The Tale of Past Years" (1113).<sup>8</sup> In the poem, prince Vladimir has a quarrel with the god Perun and finally he drowns the god (*sic!*). Then the prince, knowing that religion is necessary to rule his people, organizes a competition for a new religion – "the most religious" one (*nejcírkvovatější*). The representatives of many religions come and advertise, in exactly the same way, their particular faiths. Finally, the competition remains unresolved.<sup>9</sup> In the final verse it is said that those who organized bookmaking gained the most at the competition.<sup>10</sup> Certainly, a single phenomenon should not be overemphasized; however, such an approach to religion was unthinkable in the Polish literature and culture of the same period. Moreover, it is worth considering the reception of Havlíček's person and work. After his premature death he was treated by the awakeners movement as a true martyr to the Czech cause. It could be even claimed that the movement of awakeners created a phenomenon similar to civil religion. Their members used the scheme of martyrdom, death and miraculous resurrection as a symbol of the history of the Czech nation, which was reborn at the beginning of the nineteenth century. The most eminent awakeners were presented as the apostles of the Czech nation. The movement had their own "saints" (with Havlíček among them) and rituals.<sup>11</sup> Certainly, we should not overemphasize the influence of such practices on the

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<sup>7</sup> Cf. J. Morava, *Palacký. Čech, Rakušan, Evropan*, Praha: Vyšehrad, 1998, pp. 111–116; H. Kaczmarek, *Czechy...*, pp. 84, 97–98; T. Petráček, *In Maelstrom of Secularization...*, p. 26; Z. Tarajło-Lipowska, *Historia literatury czeskiej...*, pp. 99–101.

<sup>8</sup> Cf. Z. Tarajło-Lipowska, *Męczennik czeskiej prawdy. Karel Havlíček Borovský*, Wrocław: Wydawnictwo Uniwersytetu Wrocławskiego, 2000, p. 90.

<sup>9</sup> There are some doubts in the literature if Havlíček deliberately used the open ending (although according to some, the title is a suggestion of the conclusion), or the poem is simply unfinished. Cf. *ibid.*

<sup>10</sup> K. Havlíček Borovský, "Křest svatého Vladimíra". In K. Havlíček Borovský, *Knihy veršů*, Praha: Státní nakladatelství literatury, hudby a umění, 1953, pp. 135–136. It is worth adding that the poem contains also an anti-Jesuit fragment; cf. *ibid.*, pp. 125–130.

<sup>11</sup> Z. Tarajło-Lipowska, *Męczennik czeskiej prawdy...*, pp. 30–31; cf. E. Chalupný, *Karel Havlíček. Prostředí, osobnost a dílo*, Praha: Melantrich, 1929, pp. 150–153.

entire nation (which remained mainly Catholic), but in my view, they were meaningful for shaping the elite's attitudes towards religion. These attitudes influenced the relationship between the state and Catholic Church and other churches in Czechoslovakia after 1918.

Important social factors which led to laicization were aptly described by the contemporary scholar, Tomáš Petráček.<sup>12</sup> The scholar pointed to the modernization processes of urbanization and industrialization, which shaped a new class of workers. Having migrated from rural areas to the developing cities, they were cut off from their roots.<sup>13</sup> Their ties with their traditional rural community were broken, so the traditional forms of religious practices became more or less alien to them. Moreover, there were no churches in many new districts in the cities and towns, where the workers lived, so two generations of working class people grew up without direct contact with the Catholic Church and clergymen. Anti-clerical attitudes were also noticeable among the workers. In such a manner there appeared a large group of religiously indifferent people, although it is hard to term them atheists. It is also necessary to emphasize the emergence of the socialist movement among the workers. The Czech socialist party, created in 1878, was a major political force in the Czech lands by the early twentieth century, with about 20,000 members (in 1893 the party took the name: Československá sociálně demokratická strana dělnická, i.e. Czechoslovak Social-Democratic Party of Workers – ČSDSD).<sup>14</sup>

Both the socialists and democrats were adherents of the idea of progress, which also played a part in crystalizing the way in which Czech elites thought about the nation and its relationship to religion.<sup>15</sup> A major exponent of the very idea was Tomáš Garrigue Masaryk, the leader of the Czech Progressive Party (Česká strana pokroková) and much later the first president of Czechoslovakia. Masaryk saw history as a constant

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<sup>12</sup> T. Petráček, *Sekularizace a katolicismus v českých zemích. Specifické rysy české cesty od lidové církve k nejateističtější zemi světa*, Ostrava: Moravapress, 2013, pp. 60–61.

<sup>13</sup> The process of migration had also other socio-political consequences. Hitherto the cities of the central part of the Czech lands were dominated by German-speaking inhabitants, and due to industrialization that proportion was changed. Therefore, modernization is seen in the literature as the factor which strengthened the Czech national movement and the building of modern nation. Cf. R. Jaworski, "Samomodernizacja w warunkach wielonarodowościowego mocarstwa. Przykład czeski w XIX w.". In L. Trzeciakowski, K. Makowski (eds.), *Samomodernizacja społeczeństw w XIX wieku. Irlandczycy, Czesi, Polacy*, Poznań: Instytut Historii Uniwersytetu Adama Mickiewicza, 1999, pp. 47–63.

<sup>14</sup> H. Kaczmarek, *Czechy...*, p. 108.

<sup>15</sup> To use only one example of how the discourse on progress influences religious practices, it should be noted that at the beginning of the twentieth century a discussion of the advantages of cremation of bodies was launched. This practice ("burying with fire"), seen as hygienic and progressive, was becoming more and more common in the interwar period. Cf. O. Nešporová, *O smrti a pohřbívání*, Brno: Centrum pro sodium demokracie a kultury, 2013, pp. 116–125.

battlefield of knowledge and myth, as well as of theocracy and democracy. In his opinion, during the course of history the role of institutionalized churches would diminish. The Czech leader strongly emphasized the role of Jan Hus and the Reformation. However, in his view, the heritage of the Reformation should be seen not in a national context (as in the works of Palacký), but in the much wider context of the progress of mankind and its approaching the ideal of humanity. The Reformation's emphasis on freedom of conscience was a major step in that direction.<sup>16</sup> Recognizing the political character of every church, regardless of its doctrine, Masaryk was strongly in favor of the separation of church and state.<sup>17</sup> Needless to say, Masaryk's views, strongly rooted in his philosophy of history, could have an impact only on a few groups belonging to the Czech elite. That elite, however, played an important role in creating the new legal order in the independent Czechoslovakia. It should be concluded that adherence to a particular religion did not become a part of Czech national identity, although references to the myth of Hus and Hussites were important for the development of the Czech national imagination.

The emergence of the Polish modern nation took a different form from that of the process of shaping the Czech nation and national identity. It should be remembered that in the Polish-Lithuanian Commonwealth, "nation" was understood not so much in ethnic terms but rather perceived as a political category. The political nation consisted of the members of nobility, the only social stratum (or state) which was vested in political rights.<sup>18</sup> At the same time, religious and ethnic divisions were less important (the Warsaw Confederation act of 1573, which was later confirmed by the king Stephen Báthory in 1576, guaranteed religious peace in the entire state), although they gained importance in the second half of the seventeenth century and the early eighteenth century due to the Counter-Reformation.<sup>19</sup>

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<sup>16</sup> H.G. Skilling, *T.G. Masaryk. Proti proudu 1882–1914*, Praha: Práh, 1995, pp. 143–146.

<sup>17</sup> K. Čapek, *Hovory s T.G. Masarykem*, Praha: Ústav T. G. Masaryka, 2013, pp. 177–178; H. Kaczmarek, *Czechy...*, p. 119, 122.

<sup>18</sup> A minor exception was the Tatar nobility, the members of which, because of their religion, did not have all the rights belonging to the nobility. First of all, they could not take part in the king's election and did not have a right to vote during the local diets (*sejmiki*). Nevertheless, it should be emphasized that it is hardly possible to find another state in the early modern Europe where a Muslim minority had wider scope of rights than in the Polish-Lithuanian commonwealth. Cf. A. Konopacki, *Życie religijne Tatarów na ziemiach Wielkiego Księstwa Litewskiego*, Warszawa: Wydawnictwo Uniwersytetu Warszawskiego, 2010, pp. 27–58; J. Sobczak, *Położenie prawne ludności tatarskiej w Wielkim Księstwie Litewskim*, Warszawa–Poznań: Państwowe Wydawnictwo Naukowe, 1984, pp. 102–115

<sup>19</sup> The first sign of changing attitudes towards Protestants was the decision of the Sejm of 1638 to close the Raków Academy, led by the Polish Brethren. An act of the Sejm of 1658 required all Polish Brethren to convert to Catholicism or leave the territory of the state by 1660 (it was caused by the passive attitude



In 1795, with the third and last partition of the Polish-Lithuanian Commonwealth, this large and multiethnic entity ceased to exist. At the beginning of the nineteenth century a new, ethnic understanding of “nation” was introduced in the central part of Poland, now under the rule of Prussia. This notion was developed in the semi-independent Grand Duchy of Warsaw which was created by Napoleon in 1807.<sup>20</sup> The aim of Polish intellectuals of that period was to create such a notion of “nation” which could embrace all social strata, not only the nobility, although until the mid-nineteenth century the nobility remained the predominant group of society in the Polish lands (therefore, the structure of society was different than that in the Czech lands, where the nobility was more or less Germanized; the majority of awakeners was of bourgeois origin, and their message was directed to inhabitants of towns and cities as well as to the upper peasantry). The constitution of the Grand Duchy of Warsaw of the 22nd of July 1807, granted by Napoleon himself, proclaimed religious freedom but, simultaneously, stated in article 1 that the Catholic faith had the status of the state religion (*religia stanu*). A similar provision was included in the constitution of the Polish Kingdom (Congress Poland), another quasi-state, created from the part of the previous Grand Duchy of Warsaw and ruled by the Tsar, Alexander I. The constitution, signed by the Tsar on November 27th, 1815, stipulated in the article 11 that the Catholic faith was under the special protection of the public authorities, but other Christian denominations could enjoy freedom of religious practices.<sup>21</sup> That provision expressed the willingness of Alexander I to make a compromise with the Catholic Church and to use it to realize his political aims. The same tendency was visible in the Tsar’s attitude towards the marriage law in the Polish Kingdom.

The Napoleonic Code, which recognized secular marriages and divorce, became valid law in the Grand Duchy of Warsaw and remained in force in the Polish Kingdom. The Catholic clergy demanded the abolition of these provisions of the

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of the Polish Brethren who had been pacifists during the so-called Swedish deluge, i.e. the war with Sweden of 1655–1660). In 1668, in turn, the apostasy was made a crime. Moreover, in 1716 Protestants were forbidden to build new churches and at the same time, all the Protestant churches built after 1674 had to be destroyed. Finally, the constitution (act) of the Sejm of 1718 restricted the political rights of the Protestant nobility and from that time, Protestant noblemen could not be elected as deputies to the Sejm. Cf. J. Tazbir, *Dzieje polskiej tolerancji*, Warszawa: Wydawnictwo Interpress, 1973, pp. 131–132, 147–157.

<sup>20</sup> The historian Wawrzyniec Surowiecki (1769–1827) was one of the first exponents of the new, Herderian notion of nation. Cf. W. Surowiecki, “List do przyjaciela mieszkającego nad rzeką Wartą o wadach edukacji młodzieży polskiej (1806)”. In W. Surowiecki, *O upadku przemysłu i miast w Polsce. Wybór pism*, Kraków: Ośrodek Myśli Politycznej – Wydział Studiów Międzynarodowych i Politycznych Uniwersytetu Jagiellońskiego, 2014, pp. 4–25.

<sup>21</sup> Such a provision meant the impaired legal position of Jews and a small group of Polish Tatars.

Napoleonic Code and the return to the recognition of only religious marriages. These demands were supported by both Alexander I and Nicolas I, who ordered the government of the Polish Kingdom to submit the project of a new law concerning marriage and family matters to the diet (Sejm). The provisions concerning marriages were partly changed in 1825, but the Catholic clergy was dissatisfied with the new law. Finally, by the ukase (Tsarist decree) of 1836, the marriage law again had a religious character.<sup>22</sup> The issue of the marriage law shows that in the period of autonomy of the Polish Kingdom (until 1831) the Tsars were trying to get the support of the Catholic Church and contributed to the strengthening of its position. At the same time, Catholic bishops were largely dependent on the Tsar's will. In this period, the Church was not perceived as a force opposed to the Tsar's regime.

Under the rule of Ivan Paskevich (1782–1856), who became the *namestnik* (Tsar's deputy) of the Polish Kingdom after the fall of the November Uprising (1830–1831), the process of Russification was started, and the strengthening of the Orthodox Church was an important element in this process. The Orthodox Church became more and more expansive not only in the Polish Kingdom, but also in the lands of former Polish-Lithuanian Commonwealth, which were annexed directly by the Russian Empire. In these lands the Greek Catholic Church was dissolved in 1839, and 1.5 million of its believers were forced to join the Orthodox denomination.

Polish romanticism, with its Messianic ideas,<sup>23</sup> played an important part in establishing the linkage between Catholicism and the new notion of nation, and religion was recognized as an important element uniting the majority of those who declared themselves as Poles, regardless of their social status. After the January Uprising, the Tsar's administration became openly hostile towards the Catholic Church, and the policy of Russification was far more rigid than in 1840s.

In the part of Polish lands belonging to Prussia (and which became part of the German Empire in 1871), the tendency to perceive Catholicism as an inherent element of Polishness was strengthened due to anti-Catholic campaign launched by Bismarck in the *Kulturkampf* period. Against the provisions of Prussian constitution of 1850 which

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<sup>22</sup> Cf. P. Szymaniec, "Religion and Matrimonial Law: Codification of Matrimonial Law in the *Code Napoléon* in the Polish Lands in the First Half of the Nineteenth Century". In Z. Poláček-Tureková, M. Turošik (eds.), *Civilnoprávne inštitúty a ich historická reflexia vo svetle moderný rekodifikácií (zborník príspevkov z medzinárodnej konferencie konanej v dňoch 17.03.–18.03.2016 n pode PrF UMB)*, Banská Bystrica: Belianum, 2016, pp. 411–423.

<sup>23</sup> Cf. A. Walicki, "Problem religii w ideologiach «Polski odradzającej się»: od deizmu do mesjanizmu". In A. Walicki, *Prace wybrane. Tom 2. Filozofia polskiego romantyzmu*, Kraków: Universitas, 2009, pp. 1–82.



proclaimed the wide scope of autonomy of churches and religious associations recognized by the state,<sup>24</sup> during the *Kulturkampf* the rights of Catholic Church were heavily reduced. The arrest and trial of the Gniezno Archbishop Mieczysław Ledóchowski (1822–1902) were of great importance to Poles. The Archbishop was finally sentenced to two years in prison and immediately thereafter was considered as martyr to the Polish cause, despite his rather conservative views.<sup>25</sup> Only in the Galician region, belonging to Austria, was the position of the Catholic Church strong. After the creation of autonomy of Galicia in 1867–1873, the religious freedom of citizens was unthreatened. Therefore, it is necessary to agree with the eminent Polish historian Tadeusz Łepkowski, who wrote that except in Galicia, the Catholic Church suffered persecution in the Polish lands not only because they were Catholic, but mainly due to their Polish character. As Łepkowski points out, that fact, as well as the religious elements in the Polish literature of the Romantic period and the connection of the concept of Polish nationality with religious customs and feasts, “determined the major presence of the religious content in Polish patriotism”.<sup>26</sup>

Mass political movements in the modern sense were created in the Polish lands in the late 1880s and early 1890s. Here I will focus only on two of them, which had the greatest impact on Polish political life in the interwar period. The Polish Socialist Party was active from 1893. Despite its name, it had little in common with Marxism. According to one of the main ideologists of the movement, Bolesław Limanowski (1835–1935), the main aim was to gain the independence of Poland, but that time it was to be achieved due to a revolution organized and carried out by workers. This view was also shared by

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<sup>24</sup> Cf. articles 13–18 of the Constitution. *Verfassungsurkunde für den Preußischen Staat vom 31. Januar 1850, Gesetz-Sammlung für die Königlichen Preußischen Staaten*, p. 32

<sup>25</sup> Cf. J. Krasuski, *Kulturkampf. Katolicyzm i liberalizm w Niemczech w XIX wieku*, Wrocław: Ossolineum, 2009, pp. 169–174; Z. Zieliński, *Kulturkampf w archidiecezji gnieźnieńskiej i poznańskiej w latach 1873–1887*, Poznań: Wydawnictwo Poznańskie, 2011, pp. 108–125

<sup>26</sup> T. Łepkowski, *Polska – narodziny nowoczesnego narodu 1764–1870*, Poznań: Poznańskie Towarzystwo Przyjaciół Nauk, 2003, p. 264. It is necessary to acknowledge that in the 1840s signs of religious indifference, connected with industrialization and transformations in agriculture, were present in the Polish lands. Cf. D. Olszewski, *Przemiany społeczno-religijne w Królestwie Polskim w I połowie XIX wieku. Analiza środowiska diecezjalnego*, Lublin: Wydawnictwo Towarzystwa Naukowego Katolickiego Uniwersytetu Lubelskiego, 1984, pp. 207–216, 220–224. However, they did not lead to such consequences as somewhat similar trends that were visible in Czechia in the second half of the nineteenth century. Several reasons should be taken into account in explaining that difference. Here I would like to indicate at least three of them: the much poorer level of education in the Polish lands than in Czechia, the emerging concept of “nation” containing also a religious element, and the rebirth of spiritual life among the Polish clergy in the mid-nineteenth century. For more about the last of these reasons, see K. Górski, *Zarys dziejów duchowości w Polsce*, Kraków: Wydawnictwo Znak, 1986, pp. 276–277, 282–293; A. Barańska, “Kościół i przemiany religijności w historii Polski XIX wieku”. In A. Nowak (ed.), *Historie Polski w XIX wieku. Vol. 4: Narody, wyznania, emigracje, porównania*, Warszawa: Wydawnictwo DiG, 2015, pp. 46–47.

the leader of the movement, Józef Piłsudski. The socialist movement put an emphasis on freedom of conscience, which included also freedom of religion.<sup>27</sup> Moreover, the notion of “nation” developed by socialists did not contain religious elements at all (Piłsudski saw religious conflicts as unwanted phenomena).<sup>28</sup> Different ideas were taken by the National Democracy movement. Its leader, Roman Dmowski (1864–1939), a trained biologist, was rather an agnostic person, but he saw in the Catholic faith an important factor bonding the nation.<sup>29</sup> Dmowski’s party presented a positive attitude towards the Church because he wanted to use its influence on the great masses of Polish people. At the same time it wanted to weaken the universalistic features of the Church, and strengthen the “national” ones.<sup>30</sup> The emphasis on religious element of the nations was strongly connected with an anti-Jewish attitude, developed by National Democracy. Firstly, Jews were seen as major competitors to Poles in economic life, but later more rigid anti-Semitic views could be found in Dmowski’s writings.<sup>31</sup>

In this part of my paper, I have tried to show the factors which influenced the

<sup>27</sup> Cf. G. Markiewicz, “Stanowisko głównych polskich ugrupowań socjalistycznych w Łodzi w latach 1905–1907 wobec kwestii autonomii Królestwa Polskiego”, *Studia z Historii Społeczno-Gospodarczej*, 2013, Vol. XII, pp. 60–61.

<sup>28</sup> W. Paruch, “Religia i Kościół rzymskokatolicki w myśli obozu piłsudczykowskiego w latach 1926–1939”. In J. Jachymek (ed.), *Religia i Kościół rzymskokatolicki w polskiej myśli politycznej 1919–1993*, Lublin: Wydawnictwo Uniwersytetu Marii Curie-Skłodowskiej, 1995, pp. 98–101. Cf. J. Piłsudski, “O patriotyzmie”. In J. Piłsudski, *Pisma zbiorowe. Wydanie prac dotychczas drukiem ogłoszonych*, Vol. 2, Warszawa: Instytut Józefa Piłsudskiego, 1937, pp. 24–25

<sup>29</sup> Cf. P. Stachowiak, *Korzenie „katolicyzmu endeckiego”. Nacjonalistyczna wizja religii i Kościoła w Polsce w latach 1887–1927*, Poznań: Wydawnictwo Wyższej Szkoły Nauk Humanistycznych i Dziennikarstwa, 1999, pp. 16–20.

<sup>30</sup> Cf. R. Wapiński, *Narodowa Demokracja 1893–1939*, Wrocław–Warszawa–Kraków–Gdańsk: Ossolineum, 1980, p. 77.

<sup>31</sup> In 1911 National Democracy called for an economic boycott of Jews. According to the party, the Polish people should not establish economic relations with Jewish entrepreneurs, and refrain from buying in shops run by Jews. Moreover, some anti-Jewish riots occurred. Cf. T.R. Weeks, “Jews o the Polish Lands and Polish-Jewish Relations 1795–1914”. In A. Nowak (ed.), *Historie Polski w XIX wieku. Tom 4...*, pp. 76–77, 103, 108–109. It should be remembered that the number of Jews in the Polish Kingdom increased rapidly in the second half of the nineteenth century, mainly because of the arrival of Jews from the area of the Russian Empire (the so-called Litwaks). In total, the Jewish population accounted for around 13 percent of the Polish Kingdom’s population at the end of the 19th century (by comparison, in Galicia it was 10 percent, while in the Prussian partition Jews constituted only 2 percent of the population). Cf. M. Zgórnjak, J. Buszko, *Wielka historia Polski. Vol. IV: Polska w czasach walk o niepodległość (1815–1864). Od niewoli do niepodległości (1864–1918)*, Kraków: Bertelsmann Media, 2003, pp. 536–537. It should be noted that, in turn, the Jewish problem was not a significant one in the Czech lands. According to available statistical data, in the second half of the nineteenth century Jews accounted for 2 percent of the inhabitant of these lands. Cf. J. Štaif, “Multietnicita a statistika v českých zemích, 1790–1880”. In Z. Kárník (ed.), *Sborník k problematycy multietnicity. České země jako multietnická společnost: Češi, Němci a Židé ve společenském životě českých zemí 1848–1918*, Praha: Filozofická fakulta Univerzity Karlovy, 1996, p. 36. Although German was the main language of many Jews in larger cities, the movement towards assimilating Jews with the Czech nation was also active and its aim was to encourage young Czech Jews to study at the Czech universities. Cf. Cf. H. Krejčová, “Nástin spolkové činnosti českosložitovského asimilačního hnutí”. In Z. Kárník (ed.), *Sborník k problematycy multietnicity. České země jako multietnická společnost...*, pp. 85–107.

shaping of the understanding of “nation” in the Polish and in Czech cultures. While in the latter, religious elements were present, they were transformed by the awakeners into a kind of secular ideology, replacing in fact religion itself. In Polish culture, in turn, the religious factor was more and more important in the course of the nineteenth century, and Catholicism became perceived as an element of uniting the majority of Polish people, regardless of their belonging to a particular social strata and the country where they were living.

### 3. THE INTERWAR PERIOD

Like other states created after the World War I, Czechoslovakia was compelled to undertake international legal obligations concerning the protection of minorities. Article 2 of the Treaty contained the provision that all inhabitants of the state “shall be entitled to the free exercise, whether public or private, of any creed [*foi* in the French version], religion or belief [*croyance*], whose practices are not inconsistent with public order and public morals”.<sup>32</sup> Moreover, its provisions for national minorities were included in the very liberal constitution of 1920 (*Ústavní listina Československé republiky*).<sup>33</sup> The freedom of conscious and religion (*svoboda svědomí a vyznání*) was guaranteed by paragraph 121, while the subsequent paragraph ensured the right of the all inhabitants of the country (therefore, not only citizens) to profess and exercise, both privately and publicly, any creed, faith or religion, provided that it was not in contrary to public order and public morality. The interpretation of that provision favoured a large scope of individual religious freedom. It was said that the right to exercise one’s faith encompassed not only celebrating its rites, but doing everything a believer thought was required of him by his faith (certainly, the believer’s action could not be in conflict with public order and public morals).<sup>34</sup> According to paragraph 125, within the limits

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<sup>32</sup> The English text is available at the website: <https://history.state.gov/historicaldocuments/frus1919Parisv13/ch30> [30.08.2018].

<sup>33</sup> “Sbírka zákonů a nařízení”, No. 121/1920. A reliable English translation is available in *The Constitution of the Czechoslovak Republic*, with an introduction by J. Hoetzi and V. Joachim, Praha: Société l’Effort de la Tchecoslovaquie, 1920. On the rights of minorities, see para. 128–134. It should be noted that it was the first constitution in the world which included provisions concerning a constitutional court (which started its functioning in November 1921).

<sup>34</sup> Judikát Nejvyššího správního soudu ČSR ze dne 27. ledna 1930 [the judgment of Highest Administrative Court of the 27th of January 1930], Boh. A 8388/30 (25438/27), <http://spcp.prf.cuni.cz/lex/judik.htm> [31.05.2018]. This judgment concerned the issue of ritual slaughter, i.e. the matter which was also widely discussed in Poland. The court decided that ritual slaughter could not be considered as contrary to public morals or public order, because at the moment of recognition of Jewish communities by the Austrian state the practice of ritual slaughter was known to the state, and the state would have not recognized the Jewish community, if it had considered the practice of ritual

determined by the same two categories, the performance of religious rites was possible. Paragraph 123 stipulated that no one could be forced, directly or indirectly, to take part in religious ceremonies or rites. The rights of parents were, however, recognized by the same provision. It is interesting that apart from Paragraph 124 which contained the principle of equality of all confessions before the law, there were no detailed provisions dedicated to churches and religious associations. However, as it was decided by a decree of the Czechoslovak National Council of 28th of October 1918, the relationships between the state and churches and religious associations were still shaped by regulations from Austro-Hungarian times. Religious associations recognized by the state had public-law status, and this involved a number of privileges, including the right to teach religion at school. In any case, all children belonging to recognized churches or religious associations were obliged to participate in such lessons.<sup>35</sup>

Although such eminent figures as Masaryk supported the introduction of the separation of the state and church (such a solution was briefly mentioned in the Washington Declaration of 18th of October 1918), finally it was not introduced. The adherents of such an idea split into two factions. One of them was in favour of introducing regulations inspired by the French law of 1905, and the second, which included Masaryk himself, advocated a regulation modelled after the American “wall of separation” doctrine. However, neither of them gained sufficient support to implement its ideas. Moreover, the implementation of the idea of separation also proved difficult for practical reasons.<sup>36</sup> It should be also stressed that the first Czechoslovak Republic paid salaries to at least as many clergymen as the Austrian state did before. The details concerning that matter were regulated in the statute of 1926 and the governmental regulation of 1928.<sup>37</sup> In the Czech lands the clergymen of the Catholic and Orthodox Churches were entitled to obtain such salaries (*kongrua*), while in in Slovakia and Carpathian Ruthenia, the number of the entitled churches and associations was larger

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slaughter contrary to public morals or public order. Thus, the judgment emphasizes the continuity between Austrian legal order and the legal system of the newborn Czechoslovakia.

<sup>35</sup> J.R. Tretera, Z. Horák, *Religion and Law in the Czech Republic...*, p. 26; H. Kaczmarek, *Czechy...*, p. 127.

<sup>36</sup> Cf. J.R. Tretera, “První republika a otázka odluky státu a církvi”. In K. Malý, L. Soukup (eds.), *Československé právo a právní věda v meziválečném období (1918–1938) a jejich místo ve střední Evropě*, Praha: Karolinum, 2010, pp. 432–446; H. Kaczmarek, *Czechy...*, pp. 122–123, 130–132.

<sup>37</sup> Zákon ze dne 25. června 1926 o úpravě platů duchovenstva církví a náboženských společností státem uznaných, příp. Recipovaných [The law of 25 June 1926 on the adjustment of salaries of Churches and religious associations recognized by the states], “Sbírka zákonů a nařízení” No. 122/126; Vládní nařízení ze dne 17. července 1928 o úpravě platů duchovenstva [Government Decree of 17 July 1928 on Adjustment of Salaries of Clergy], “Sbírka zákonů a nařízení” No. 124/1928 Sb.

and included the Catholic, Evangelical and Greek-Orthodox Churches, as well as the Jewish Religious Society. Other churches and associations recognized by the state were given subsidies for remunerations from state resources.<sup>38</sup> Thus, as a result, the model of relationship between the state and churches inherited after the Austro-Hungarian times was maintained,<sup>39</sup> although some changes were introduced.

The relations of the government with the Holy See were rather harsh in the first years of the existence of Czechoslovakia. One of several reasons of that state of affairs was the fact that the government tried to influence appointments to bishoprics, referring to the entitlements previously granted to the Austrian emperor as the King of the Czech Crown regarding the church offices. Finally, however, the *modus vivendi* was signed in 1928 and mutual relations were improved. It should be noted that the form of an international agreement (concordat) was not chosen, because such an agreement might have been rejected by parliament.<sup>40</sup>

The amendment of the Austrian criminal code adopted in 1919<sup>41</sup> was without doubt aimed at the Catholic Church. It introduced a provision very similar to a *Kanzelparagraph* which was added the German criminal code as a part of the Kulturkampf policy.<sup>42</sup> According to the amendment, clergymen or other persons holding similar functions who were criticizing the legal acts, conducting political agitation or rejecting the electoral campaign were subject to imprisonment from one to six months. It should be mentioned, however, that the same act penalized the mocking of the teaching, custom or institution of a legally recognized church. Moreover, clergymen were still allowed to be members of parliament, and some of them, especially those from Slovakia, played a relevant role in parliamentary life. As an example it could be mentioned that Father Jozef Tiso, later the president of Slovakia, became a member of the National Assembly of the Czechoslovak Republic in 1920 and the Minister of Health in 1927.

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<sup>38</sup> Paragraph 196 of the regulation No. 124/1928 Sb. Cf. J.R. Tretera, Z. Horák, *Konfesní právo*, Praha: Leges, 2015, pp. 333–334.

<sup>39</sup> It should be noted that the separation between the state and church was an ongoing postulate of the leftist parties during the entire interwar period.

<sup>40</sup> Cf. J. Wisłocki, *Konkordat polski z 1925 roku. Zagadnienia prawno-polityczne*, Poznań: Uniwersytet Adama Mickiewicza, 1977, pp. 53–54; H. Kaczmarek, *Czechy...*, pp. 132–134, 185–188; J.R. Tretera, Z. Horák, *Konfesní právo...*, p. 334.

<sup>41</sup> Zákon ze dne 20. února 1919, jímž se doplňuje § 303 tr. z. č. 117/1852 ř.z. [The Law of 20 February 1919, which supplements paragraph 303 of Criminal Code No. 117/1852], "Sbírka zákonů a nařízení" No. 111/1919.

<sup>42</sup> Paragraph 130a of the criminal code. Cf. Gesetz, betreffend die Ergänzung des Strafgesetzbuchs für das Deutsche Reich vom 10. Dezember 1871, Reichsgesetzblatt, 1871, No. 49, p. 442.



In the year of creation of Czechoslovakia, more than 10 percent of the inhabitants of Czech nationality declared themselves as non-adhering to a particular religion, and another 10 percent of Czechs were in favor of creation of a national Czechoslovak church.<sup>43</sup> More than 150 priests put forward strong demands to the Holy See, concerning the introduction of the national language in the liturgy, elected offices of bishops and pastors, and the abolition of celibacy.<sup>44</sup> These demands were rejected and as a result, the dissenters created their own church – the Czechoslovak Church (*Církev československá*) – in January 1920. Its teaching referred to the Czech tradition and the person of Jan Hus. The new church, recognized by the state in September 1920, achieved a huge though relatively short-lived success.<sup>45</sup> Many clergymen hoped that it would become a state church but both Masaryk and the prime minister Edvard Beneš, advocating the separation of the state and church, were strongly against such an idea. In the first year of its existence, the new church gained half a million believers (i.e. 11% of the Czech population), and in the early 1930s almost 800,000 people declared as its believers. Generally speaking, twelve new churches and religious associations were recognized by the state in the interwar period.<sup>46</sup> Notwithstanding, 73 percent of society remained Catholics.<sup>47</sup> Moreover, the Catholic party – Czechoslovak People's Party (*Československá strana lidová*, ČSL) – played an important role in political life and since 1921 it was often a part of ruling coalitions.

The resurgent Polish state consisted of lands which previously were parts of the Austro-Hungarian monarchy (Galicia, and Spisz and Orawa belonging to Hungary before the war), Germany and Russian Empire (it should be noted that the Polish Kingdom had a slightly different legal system than that of the lands directly incorporated to the Russian Empire). Therefore, there were at least four different legal systems which had to be unified. The same should be said about the regulations concerning freedom of religion and functioning of churches and religious associations. The foundation of the

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<sup>43</sup> L. Prudký, "Die Kirche in der Tschechischen Republik ihre Situation und Entwicklung". In L. Prudký, P. Aračić, K. Nikodem, F. Šanjek, W. Zdaniewicz, M. Tomka, *Religion und Kirchen in Ost (Mittel) Europa: Tschechien, Kroatien, Polen*, Ostfildern: Schwabenverlag, 2001, p. 31.

<sup>44</sup> K. Grzybowski, "Polityka Watykanu 1917–1929". In K. Piwarski (ed.), *Szkice z dziejów papieżstwa*, Warszawa: Książka i Wiedza, 1961, p. 346; J. Wiśłocki, *Konkordat polski z 1925 roku...*, p. 52.

<sup>45</sup> The number of believers was dropping in the second half of the twentieth century, and the name of the church was changed to the Czechoslovak Hussite Church (*Církev československá husitská*, CČSH) in 1971.

<sup>46</sup> In December 1918, Lutherans and Calvinists merged into one Protestant church (*Československá církev evangelická*), which was joined by 2 percent of the society. Moreover, 0.2 percent of society were the Orthodox believers.

<sup>47</sup> J.R. Tretera, Z. Horák, *Religion and Law in the Czech Republic...*, p. 27; H. Kaczmarek, *Czechy...*, p. 126.



freedom of religion was laid by the March Constitution of 1921 and international law acts, although the principle was that churches and religious associations, which were recognized by one of three mentioned states, maintained their previous legal status.

Poland was obliged by Article 93 of the Treaty of Versailles to adopt provisions aimed at protections of those inhabitants “who differ from the majority of the population in race, language or religion”.<sup>48</sup> Moreover, on the same day as the “big” Treaty of Versailles, 28th of June 1919, the minorities treaty between Poland and the allied and associated powers was signed. The provisions it contained were very similar to those included in the mentioned Treaty of Saint-Germain-en-Laye. The treaty guaranteed, *inter alia*, the religious rights of Jewish people. Its Article 2 had exactly the same content as the mentioned Article 2 of the treaty with Czechoslovakia.<sup>49</sup> However, unlike that treaty, the agreement with Poland contained the “the Jewish clause”.<sup>50</sup> The regulation of the Treaty met with unfavorable opinions on the part of the majority of Polish lawyers, not only those with nationalist views. Juliusz Makarewicz, a famous criminal law specialist, pointed out that it unnecessarily divided Polish citizens into two categories, i.e. Poles and “guests”.<sup>51</sup> Others presented the view that it stipulated undue privileges for Jews.<sup>52</sup> Religious matters are merged in the Treaty with ethnic ones. It could be said even that on the ground of its provisions that religious rights were more the entitlements of groups than of individuals. On the one hand, the Treaty gave some protection to ethnic and religious groups, but on the other, its ratification provoked a large number of opinions of nationalist character.

The constitution of 17th of March 1921<sup>53</sup> regulated religious matters in accordance with the mentioned Treaty. The debate on constitution revealed a significant difference of opinion between the left wing on the one hand, and National Democracy and the Christian Democrats on the other. The socialists’ representatives emphasized freedom of conscience instead of freedom of religion,<sup>54</sup> while the national democrats presented exactly opposite views, saying nothing about the freedom of

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<sup>48</sup> The text of the Treaty could be found at the following website: <https://www.loc.gov/law/help/us-treaties/bevans/m-ust000002-0043.pdf> [30.05.2018].

<sup>49</sup> Text available at: <http://ungarisches-institut.de/dokumente/pdf/19190628-3.pdf> [30.05.2018].

<sup>50</sup> Cf. K. Čapková, *Czechs, Germans, Jews?: National Identity and the Jews of Bohemia*, New York–Oxford: Berghahn Books, 2012, p. 29.

<sup>51</sup> J. Makarewicz, *Mniejszości narodowe*, Lwów: Chrześcijańska Spółka Wydawnicza, 1924, pp. 3–4.

<sup>52</sup> Cf., e.g., J. Lubowiecki, *Przyczynek do traktatu o ochronie mniejszości narodowych*, Poznań: Sekretariat Chrześcijańskiego Narodowego Stronnictwa Pracy, 1921, p. 4.

<sup>53</sup> Journal of Laws [Dziennik Ustaw R.P.] No. 44, item 267.

<sup>54</sup> Cf. the speech of Ignacy Daszyński; the shorthand report of 36th meeting of the Legislative Sejm of 10th of May 1919, pp. 17–19.

conscience and accentuating the role of Catholicism for the nation.<sup>55</sup> The finally adopted solution was in the nature of a compromise.<sup>56</sup> The constitutional provisions on freedom of religion were close to the propositions of the right wing, but at the same time, the position of non-Catholic denominations was strengthened.<sup>57</sup> The constitution guaranteed not only the freedom of religious practices, already mentioned in the provisions of the “minority treaty” of 1919, but also the autonomy of churches and religious associations, consisting in the possibility of establishing internal regulations, provided they were consistent with the generally applicable laws. According to Article 113, every religious association recognized by the state had the right to celebrate public services, to run its own affairs independently, to acquire and own both movable and immovable property, and to own and use its foundations and funds, as well as endowments “for religious, scientific and charitable purposes”. The limits of the autonomy of religious associations were state laws. This provision was very close to content of Article 15 of the Austrian constitutional law of the 21st of December 1867<sup>58</sup> and at the same time to the similar provision of Article 15 of the Prussian constitution of 1850. The Constitution underlined the role of the Catholic Church, which in article 114 was recognized as *primus inter pares* among other churches and religious associations. Article 115 provided that the relationship between the state and churches and religious associations other than the Catholic Church would be regulated by laws after communicating with legal representatives of these churches and associations. According to Article 116, religious associations whose institutions, teaching and internal organization was not contrary to public order and public morality could be recognized by the state. It should be added, however, that those churches and religious associations which had been recognized by the previous Austrian, Prussian or Russian authorities<sup>59</sup> maintained their status. The clauses of public order and public morality established also the limits of freedoms of creed, of conscience and of religious practices, which were

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<sup>55</sup> Cf. the speech of Stanisław Grabski; the shorthand report of 4th meeting of the Legislative Sejm of 22nd of February 1919, pp. 101–109; S. Krukowski, *Geneza konstytucji z 17 marca 1921 r.*, Warszawa: Ludowa Spółdzielnia Wydawnicza, 1977, p. 86.

<sup>56</sup> Cf. P. Zalewski, “Wyznania”. In A. Garlicki, Z. Landau, W. Roszkowski, P. Stawecki, J. Tomaszewski (eds.), *Encyklopedia historii Drugiej Rzeczypospolitej*, Warszawa: Wydawnictwo „Wiedza Powszechna”, 1999, p. 506.

<sup>57</sup> That was also a standpoint of Jewish members of parliaments. Cf. S. Krukowski, *Geneza konstytucji...*, pp. 292–293.

<sup>58</sup> Staatsgrundgesetz vom 21. December 1867, über die allgemeinen Rechte der Staatsbürger für die im Reichsrathe vertretenen Königreiche und Länder – StGG; RGBI. No. 142/1867.

<sup>59</sup> In case of Russia, the ukase of Nicholas II on 17th of October 1906 enabled the registration of religious associations.

guaranteed to citizens by Article 111 of the Constitution. The constitutional regulations of 1921 became the legal basis for freedom of conscience and religion in the entire interwar period, and even the new constitution adopted on 23rd of April 1935 did not change them. Therefore, the compromise achieved in 1921 proved to be durable.

In 1929, 64 percent of the inhabitants of Poland were Roman Catholics and 10.9 percent were Greek Catholics. The percentage of other denominations in the population was the following: 12.4% members of the Orthodox Church, 9.7 percent Jews, 2,7 percent Protestants.<sup>60</sup> The relationships between the state and Catholic Church were regulated by the Concordat signed on 10th of February 1925.<sup>61</sup> Only the denominations which were recognized by the state were authorized to organized public worship and acquired a legal personality of a special kind – they were public law legal persons.<sup>62</sup> However, the only form of recognition for new or hitherto unrecognized churches and religious associations was a statute (or a regulation of the President of the Republic of Poland, which was the equivalent to a statute), therefore it was rather hard to obtain such a status. In the entire interwar period, only six churches and religious associations were given the rights of public law corporations, i.e. the Eastern Old-Believer Church,<sup>63</sup> the Evangelical-Augsburg Church,<sup>64</sup> the Polish Autocephalous Orthodox Church (autocephaly was proclaimed in 1925),<sup>65</sup> as well as three non-Christian associations: Jewish religious communities,<sup>66</sup> the Muslim Religious

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<sup>60</sup> H. Świątkowski, *Wyznania religijne w Polsce ze szczególnym uwzględnieniem ich stanu prawnego. Part I: Wyznania i związki religijne*, Warszawa: Wydawnictwo „Biblioteka Prawnicza”, 1937, p. 19.

<sup>61</sup> Journal of Laws, No. 72, item 501.

<sup>62</sup> These churches and religious associations registered civil status records, performed matrimonial law assignments, and maintained cemeteries. In addition, they had the right to teach religion in schools and to receive subsidies from the state. Cf. P. Zalewski, “Wyznania”..., p. 507

<sup>63</sup> Rozporządzenie Prezydenta Rzeczypospolitej z dnia 22 marca 1928 r. o stosunku Państwa do Wschodniego Kościoła Staroobrzędowego, nie posiadającego hierarchji duchownej [Regulation of the President of the Republic of Poland issued on 22nd of March 1928 on the relation of the State to the Eastern Church of Old Believers, without a hierarchy of the clergy; Journal of Laws, No. 38, item 363].

<sup>64</sup> Dekret Prezydenta Rzeczypospolitej z dnia 25 listopada 1936 r. o stosunku Państwa do Kościoła Ewangelicko-Augsburskiego w Rzeczypospolitej Polskiej [Decree of the President of the Republic of Poland issued on 25<sup>th</sup> of November 1936 on the relation of the State to the Evangelical-Augsburg Church in the Republic of Poland (Journal of Laws, No. 88, item 613)]

<sup>65</sup> Dekret Prezydenta Rzeczypospolitej Polskiej z dnia 18 listopada 1938 r. o stosunku Państwa do Polskiego Autokefalicznego Kościoła Prawosławnego [Decree of the President of the Republic of Poland issued on 18th of November 1938 on the relation of the State to the Polish Autocephalous Orthodox Church (Journal of Laws, No. 88, item 597)].

<sup>66</sup> Rozporządzenie Prezydenta Rzeczypospolitej z dnia 14 października 1927 r. o uporządkowaniu stanu prawnego w organizacji gmin wyznaniowych żydowskich na obszarze Rzeczypospolitej Polskiej z wyjątkiem województwa śląskiego [Regulation of the President of the Republic of 14th of October 1927 concerning the ordering a legal status in the organization of Jewish communities in the Republic of Poland with an exception of Polish Silesia voivodship (Journal of Laws of 1928, No. 52, item 500, as amended)].

Association in the Republic of Poland<sup>67</sup> and the Karaim Religious Association in the Republic of Poland.<sup>68</sup> The two latter religious communities had been present in the Polish lands for several centuries, but at the same time they were very small ones. The first grouped about 6,000 Polish Tatars; the second, about 21.5 thousand Karaims living in the Vilnius region. Before obtaining a new legal regulation, all these churches and religious associations acted on the basis of legal regulations issued before 1918. In addition, eleven other churches and associations were still functioning on the basis of legal regulations from the period of partitions.<sup>69</sup> It should be added that in 1929, socialist members of parliament submitted a draft of the law developing the provisions of the Constitution. The draft provided for the registration procedure for a church or religious association by the Ministry of Religious Denominations and Public Education, so it contained provisions facilitating the obtaining of special legal status by religious communities. However, the proposed law was not passed.<sup>70</sup>

Józef Piłsudski, the informal leader of the state between 1926 and 1935, was against religious conflict, thus until his death religious freedom was rather unimpaired. However, the situation changed in the second half of 1930s, when the authoritarian regime launched new policies towards ethnic minorities, which were closer to nationalist positions<sup>71</sup> and interfered also in the freedom of religion. This policy, on the one hand, was aimed at the Orthodox denomination, which consisted largely of Ukrainians, and, on the other, at Judaism. The Border Protection Corps (Korpus Ochrony Pogranicza) organized an action in Volhynia (Wołyń) region, the purpose of which was the “repolonization” of people of Polish origin who had adopted Ukrainian customs. As part of it, there were attempts to convert some of them to Catholicism. Moreover, the so-called return of temples was carried out. As the result, the Catholic Church took over churches that were once Catholic or Uniate temples. The pretext to take action was the

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<sup>67</sup> Ustawa z dnia 21 kwietnia 1936 o stosunku Państwa do Muzułmańskiego Związku Religijnego w Rzeczypospolitej Polskiej [Act of 21st of April 1936 on the relation of the State to the Muslim Religious Association in the Republic of Poland, Journal of Laws, No. 30, item 240].

<sup>68</sup> Ustawa dnia 21 kwietnia 1936 r. o stosunku Państwa do Karaimskiego Związku Religijnego w Rzeczypospolitej Polskiej [Act of 21st of April 1936 on the relation of the State to the Karaim Religious Association in the Republic of Poland, Journal of Laws, No. 30, item 241].

<sup>69</sup> A detailed analysis of provisions concerning particular churches and associations can be found in the book by Jakub Sawicki, who was lecturing on state church law at the University in Vilnius (the author could not take into account the decree the Polish Autocephalous Orthodox Church because it was issued a year after the publishing of the book). Cf. J. Sawicki, *Studia nad położeniem prawnym mniejszości religijnych w państwie polskim*, Warszawa: Wydawnictwo Kasy im. Mianowskiego, 1937.

<sup>70</sup> H. Świątkowski, *Wyznania religijne w Polsce...*, pp. 37–39.

<sup>71</sup> Cf. T. Chłopecki, *Myśl polityczna i prawna obozu rządzącego w Polsce w latach 1935–1939*, PhD dissertation, Wrocław: University of Wrocław, 2014, p. 408.

activities of Ukrainian terrorists. In 1938, the army destroyed about 127 Orthodox churches in the Chełm region, most of which were not being used. The demolition of these temples only triggered protests by the local population, whose attitude towards the state authorities became negative.<sup>72</sup>

In 1936, the prime minister Felicjan Sławoj Składkowski declared “economic strife” against Jews.<sup>73</sup> Simultaneously, the project of the law prohibiting ritual slaughter was sent to the parliament. If it had come into force, it would have impaired the religious freedom not only of Jews but also Tatars and Karaims. Formally, the initiators of the ban referred to the need to ensure animal welfare, but economic arguments played a significant role in discussions on that issue.<sup>74</sup> Ultimately, the prohibition of the ritual slaughter did not gain adequate support even in the Council of Ministers and was not introduced. According to the Act of 17th of April 1936 on the slaughter of livestock in slaughterhouses,<sup>75</sup> the conditions for ritual slaughter were to be regulated by the regulation of competent ministers. However, the adherents of the ban did not lay down their arms. In 1937 and 1938 two other projects on the same matter were submitted. The second of them would introduce the ban from 1942, but work on it in the Senate was interrupted by the outbreak of World War II.<sup>76</sup>

This short analysis shows that both in Poland and in Czechoslovakia in the model of regulation of relations between the state and churches and religious organizations based on cooperation was introduced. Moreover, the reception of Austro-Prussian regulations was obvious<sup>77</sup> and in both states certain churches and religious associations obtained a public-law status and therefore gained certain benefits (in Czechoslovakia the state co-finances the remuneration of the clergy). The constitution of Czechoslovakia paid more attention to the individual freedom of conscience and religion and the regulation of churches and religious associations was very restrained

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<sup>72</sup> Cf. E. Siemaszko, “Przemiany relacji polsko-ukraińskich od połowy lat trzydziestych do II wojny światowej”, *Biuletyn Instytutu Pamięci Narodowej*, 2010, No. 7–8 (116–117), pp. 64–65; K. Grzesiak, “Akcja burzenia cerkwi na Lubelszczyźnie w roku 1938 – konsekwencje kulturowe”, *Roczniki Kulturoznawcze*, 2013, Vol. IV, No. 1, pp. 12–17.

<sup>73</sup> Cf. T. Chłopecki, *Mysł polityczna i prawna obozu rządzącego w Polsce w latach 1935–1939...*, pp. 403–405.

<sup>74</sup> J. Tomaszewski, *Zarys dziejów Żydów w Polsce w latach 1918–1939*, Warszawa: Wydawnictwo Uniwersytetu Warszawskiego, 1990, p. 43; S. Rudnicki, “Ritual Slaughter as a Political Issue”, *Polin*, 1992, Vol. 7, pp. 147–160.

<sup>75</sup> *Journal of Laws*, No. 29, No. 237.

<sup>76</sup> Cf. J. Fałowski, *Mniejszość żydowska w Parlamencie II Rzeczypospolitej (1922–1939)*, Kraków: Krakowska Szkoła Wyższa im. Andrzeja Frycza Modrzewskiego, 2006, pp. 228–229; J. Tomaszewski, *Zarys dziejów Żydów...*, p. 44

<sup>77</sup> In Czechoslovakia there was a direct continuity between Austro-Hungarian regulations and the new law.



one, while the Polish constitution contained extended regulation on that issue, which was a compromise between those who advocated emphasizing the special place of the Catholic Church and the representatives of religious minorities.

#### 4. DISCONTINUITY AND CONTINUITY OF STATE–CHURCH REGULATIONS IN THE COMMUNIST PERIOD

It is not within the scope of the present paper to describe in detail how Communist regimes in Poland and Czechoslovakia restricted the freedom of religion of their citizens. A few remarks, however, should be presented. In both states there were adopted regulations which seemingly protected freedom of conscience and religion, while in fact they often curtailed some aspects of that freedom. In Poland the Decree of August 5, 1949 on the protection of freedom of conscience and religion had such a character. It contained in particular provisions concerning two particular crimes, which could be used for political purposes. The first of them was the “abuse of freedom of religion and conscience “for purposes hostile to the system of the Republic of Poland” (article 8), while the second consisted in the abuse of freedom of religion and conscience “in order to gain personal, proprietary or other advantage” and thereby the abuse of human credulity or misleading others by fraudulent or deceptive acts (article 9). However, in the case of the first of these offenses, not only the forms of making and attempting, but also the preparation (which, by the way, is hardly thinkable) were punishable.<sup>78</sup> The Czechoslovak constitutions of 1948 and 1960 also prohibited religious practices from being abused for non-religious purposes.<sup>79</sup> In the same manner the constitution of the Polish People’s Republic, adopted on 22nd of July 1952<sup>80</sup> stated in Article 70 that the abuse of conscience and creed to act against the interests of the Polish People’s Republic would be punishable.

There were also acts whose content was openly hostile to religion. For example, the Decree of the 5th of August 1949 amending certain provisions of the law on associations<sup>81</sup> introduced a requirement according to which so-called religious associations, not recognized by the state, should adapt their organizational framework to the law on associations in 90 days. Those associations which did not do that were

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<sup>78</sup> Cf. A. Dudek, R. Gryz, *Komuniści i Kościół w Polsce (1945–1989)*, Kraków: Wydawnictwo Znak, 2006, pp. 43–44.

<sup>79</sup> “Sbírka zákonů” No. 150/1948 (para 17 point 1); “Sbírka zákonů” No. 100/1960 (para 32).

<sup>80</sup> Journal of Laws, No. 33, item 232.

<sup>81</sup> Journal of Laws, No. 45, item 335.



liquidated. By virtue of these regulations, in 1950 the estate of Catholic organization Caritas was seized.<sup>82</sup> In Czechoslovakia the Act No. 231/1948 on the protection of people's democracy in the republic made it a crime to abuse the privileges of a clerical position or a similar function. Later the provisions of that act were moved to the criminal code.<sup>83</sup> In both states the majority of the assets of the Catholic Church were confiscated by the state. In Poland the Act of the 20th of March, 1950 on taking over the goods of a dead hand by the State, guaranteeing the priests possession of farms and establishing a Church Fund, was used to this purpose,<sup>84</sup> while its equivalents in Czechoslovakia were the acts No. 142/1947 and No. 46/1948. Formally, both of them served the revision of agrarian reform.<sup>85</sup> Moreover, in both states special offices which supervised churches and religious associations were created. In Czechoslovakia The State Office for Church Affairs (*Státní úřad pro věci církevní*)<sup>86</sup> existed only for six years, to be replaced in 1956 by the appropriate department of the Ministry of Education and Culture, while in Poland the Office for Religious Creeds (*Urząd ds. Wyznań*), established in 1950, functioned until 1988.

In both states, the Communist authorities infringed on the internal matters of churches and religious associations. It seems, however, that the gravity of these infringements was much greater in Czechoslovakia. I think here primarily about several actions against the Church in the 1950s. In 1950 both monasteries and female convents were abolished (*Akce K, Akce Ř*), without a single legal provision to allow such treatment. All Catholic friars were transported to internment camps and later deported to military forced-labour units, in which they remained sometimes three or four years. The nuns, in turn, were interned in the border regions and forced to work, mainly in factories. Both the nuns and friars were able to return to their convents and monasteries as late as in 1990. Moreover, during all those years there were no possibilities for admission to novitiate.<sup>87</sup> The only theological faculty in the entire

<sup>82</sup> Cf. J. Żaryn, *Kościół w PRL*, Warszawa: Instytut Pamięci Narodowej, 2004, p. 24; A. Dudek, R. Gryz, *Komuniści i Kościół...*, pp. 46–47, 49–51.

<sup>83</sup> J.R. Tretera, Z. Horák, *Konfesní právo...*, pp. 345–346.

<sup>84</sup> Journal of Laws, No. 9, item 87. Since then the state was to pay the salaries for the clergy through the Church Fund.

<sup>85</sup> J.R. Tretera, Z. Horák, *Konfesní právo...*, pp. 346–347.

<sup>86</sup> Cf. "Sbírka zákonů" No. 217/1949.

<sup>87</sup> J.R. Tretera, Z. Horák, *Religion and Law in the Czech Republic...*, p. 29; H. Kaczmarek, *Czechy...*, p. 137; J.R. Tretera, Z. Horák, *Konfesní právo...*, pp. 354–355, 358; R. Jakubčová, M. Turošík, "Historical and legal remarks on the year 1950 in Czechoslovakia". In P. Szymaniec (ed.), *Wymiary wolności religijnej we współczesnej Europie. Dimensions of religious freedom in contemporary Europe*, Wałbrzych: Wydawnictwo Uczelniane Państwowej Wyższej Szkoły Zawodowej im. Angelusa Silesiusa, pp. 53–65.

country was located in Jaroměřice nad Rokytnou; all other seminars were closed. In 1950, the Greek Catholic Church was dissolved, and two years later the Seventh Day Adventist Church was banned (the ban was in force until 1956). In addition, many priests and activists were persecuted, including Catholics, Greek Catholics, Adventists, Baptists and Jehovah's Witnesses.<sup>88</sup> Four Catholic bishops were interned and one of them, Štěpán Trochta, was sentenced to 25 years of imprisonment and released as late as in 1960.<sup>89</sup> During the "Prague spring" (1968), the only change was the permission to reactivate the Greek Catholic Church.<sup>90</sup> New persecutions were launched in 1971, in the period of Gustáv Husák's "normalization". Between 1949 and 1991 churches and religious associations had to obtain permission from the state to remain active, which was quite different from the state recognition granted in the interwar period.<sup>91</sup>

When discussing religious freedom in the Polish People's Republic, it must be borne in mind that the religious structure of the society changed a great deal due to the change of borders (the state was moved westward after World War II), the deaths of millions of Jewish citizens in the Holocaust, and migrations. These changes were more far-reaching than those in Czech lands (even if the removal of Sudeten Germans and the Holocaust also affected the population structure there). After the World War II, Poland became a homogeneous country in terms of ethnical and religious structure. Between 1969 and 1988, as many as 96 percent of children born in Poland were baptized in the Catholic Church.<sup>92</sup> The very strong position of Catholicism in post-war society could explain why the Church enjoyed a greater scope of freedom in Poland than in other countries of the Soviet bloc. Moreover, due to this position the Catholic Church could play, and indeed played, the role of the only legal opposition to the regime. Certainly, the Church's legal status was far less strong than its influence in society. As early as in 1945, the Communist regime terminated the Concordat with the Holy See.<sup>93</sup> That caused a kind of legal loophole which was not filled till 1989, since no

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<sup>88</sup> J.R. Tretera, Z. Horák, *Religion and Law in the Czech Republic...*, p. 30; J.R. Tretera, Z. Horák, *Konfesní právo...*, pp. 361–362.

<sup>89</sup> H. Kaczmarek, *Czechy...*, p. 139.

<sup>90</sup> Vládní nařízení o hospodářském zabezpečení církve řeckokatolické státem [Government decree on ensuring the economic security of Greek Catholic Church by the state], „Sbírka zákonů” No. 70/1968.

<sup>91</sup> J.R. Tretera, Z. Horák, *Religion and Law in the Czech Republic...*, p. 50.

<sup>92</sup> P. Borecki, *Geneza modelu stosunków państwo–Kościół w Konstytucji RP*, Warszawa: Wydawnictwo Sejmowe, 2008, p. 74.

<sup>93</sup> As the reason, the government indicated that The Pope broke the provisions of this international agreement, entrusting the management of the Polish dioceses to the German clergy during the World War II. Cf. H. Świątkowski, *Wyznaniowe prawo państwowe*, Warszawa: Państwowe Wydawnictwo Naukowe, 1962, pp. 67–70; K. Skubiszewski, "Konkordat z 10 lutego 1925 roku. Zagadnienia prawnomiędzynarodowe". In Z. Zieliński, S. Wilk (eds.), *Kościół w II Rzeczypospolitej*, Lublin: Katolicki

other legal act regulated the relationships between the state and Catholic Church. The regime interfered to the greatest extent in the internal organization of the Church during the Stalinist period. The Decree of February 9, 1953 on the appointment of clerical church position,<sup>94</sup> formally was binding also on other churches. It was stipulated that the creation, transformation and abolition of an ecclesiastical position, and the change of its scope of activity, as well as the taking up of such positions required the prior consent of the competent state authorities (Articles 2 and 3 of the decree). A person holding a church position had to take the oath of loyalty to the state (article 5). In addition, pursuant to Article 6, activities contrary to “the law and public order” and “supporting or protecting such activities” resulted in removal from the church position. This decree met with strong opposition from Church hierarchy. The bishops prepared a sharp letter to the government, dated on the 8th of May 1953.<sup>95</sup> The regime replied with the internment of the primate Cardinal Stefan Wyszyński (who was released in 1956) and eight other bishops, and with the political trial of Bishop Czesław Kaczmarek, accused of espionage.<sup>96</sup> After the end of Stalinism in 1956 the decree of 1953 was replaced with another regulation and relations between the regime and Church became somewhat milder (until 1965 when a harsh conflict between the Church hierarchy and Władysław Gomułka’s regime took place).

The authorities interfered not only with the activities of the Catholic Church. In their attitude towards smaller churches and religious associations, they often used the *divide et impera* policy. In 1947 they brought about the merger of five evangelical churches into one United Evangelical Church in the Polish People’s Republic (this union lasted up to 1988).<sup>97</sup> The Orthodox Church, although autocephalous from the formal point of view, was under the strong influence of the Russian Orthodox Church. In the 1940s and 1950s the regime saw the Evangelical Church of the Augsburg Confession fall under German influence.<sup>98</sup> Moreover, the Jehovah’s Witnesses, who were legally

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Uniwersytet Lubelski, 1981, pp. 43–47.

<sup>94</sup> Journal of Laws, No. 10, item 32.

<sup>95</sup> Cf. P. Raina, *Kościół w PRL: Kościół katolicki a państwo w świetle dokumentów 1945–1989. Tom 1. Lata 1944–1959*, Poznań: Wydawnictwo Polskiej Prowincji Dominikanów „W drodze”, 1994, p. 426.

<sup>96</sup> Cf. J. Żaryn, *Kościół w Polsce w latach przełomu (1953–1958). Relacje ambasadora RP przy Stolicy Apostolskiej*, Warszawa: Wydawnictwo Neriton, 2000, pp. 10–21; A. Dudek, R. Gryz, *Komuniści i Kościół w Polsce...*, p. 87.

<sup>97</sup> Cf. H.R. Tomaszewski, *Wyznania typu ewangeliczno-baptystycznego wchodzące w skład Zjednoczonego Kościoła Ewangelicznego w latach 1945–1956*, Warszawa: Wydawnictwo „Słowo i Życie”, 1991, pp. 134–171.

<sup>98</sup> Cf. R. Michałak, “Dziel i rządź. O polityce wobec Kościołów protestanckich w PRL”, *Biuletyn Instytutu Pamięci Narodowej*, 2004, No. 3 (38), pp. 19–21.

active in the Second Polish Republic, did not obtain registration as an association because they refused to sign the so-called Stockholm Appeal in 1950. Later members of this religious community were persecuted for refusing to undergo military service.<sup>99</sup> The Jehovah's Witnesses finally gained registration in 1989.

As it has been shown, in most areas there was no continuity between the prewar and postwar regulations of state–church relations. It is, however, necessary to ask if there were, nonetheless, some linkages between them. In Czechoslovakia the state constantly paid salaries for priests, although they were not high.<sup>100</sup> In Poland in the late 1940s and 1950s the prewar practice of regulating the legal status of a church or religious association by statute or decree was still in use. In such a way the Evangelical Reformed Church, Old Catholic Church, Mariavite Church, the Methodist Church and Evangelical Church of the Augsburg Confession were ascertained their status.<sup>101</sup> Moreover, the prewar acts concerning the Polish Autocephalous Orthodox Church, the Karaite Religious Association in the Republic of Poland, the Muslim Religious Association in the Republic of Poland and Jewish religious communities remained in force. Therefore, the ties between old and new regulations were not completely broken.

A conclusão deverá permitir ao leitor compreender se os objetivos apontados na introdução foram atendidos.

## 5. THE DIAGNOSIS OF THE CONTEMPORARY REGULATIONS OF RELIGIOUS FREEDOM IN POLAND AND THE CZECH REPUBLIC

The religious structures of both countries are very different from each other. Of the Czech Republic's 10,436,000 citizens, 14 percent are believers and 6 percent declares as believers but not identified with a particular church or religious association. The members of Catholic Church are the largest group of believers (10.4 percent of entire population), while two other biggest churches are the Evangelical Church of

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<sup>99</sup> Cf. K. Urban, *Mniejszości religijne w Polsce 1945–1991 (zarys statystyczny)*, Kraków: Zakład Wydawniczy Nomos, 1994, p. 29; J. Rzędowski, "Najdłuższa konspiracja PRL?", *Biuletyn Instytutu Pamięci Narodowej*, 2004, No. 3 (38), pp. 42–49.

<sup>100</sup> J.R. Tretera, Z. Horák, *Konfesní právo...*, pp. 351–352.

<sup>101</sup> In the period of the Polish People's Republic there were two other ways of gaining the legal personality by a church or religious association. The first was the registration under the provisions of the law on associations changed in 1949, the second consisted in the approval of the statute of a religious association. Cf. A. Chabasińska, "Polityka władz wobec mniejszości wyznaniowych w Polsce w latach 1945–1956", *Studia Lubuskie*, 2009, Vol. V, pp. 59–60.

Czech Brethren (Českokobratrská církev evangelická; 0.5 percent of population) and the Czechoslovak Hussite Church (Církev československá husitská; 0.37 percent of population).<sup>102</sup> It was not only the Catholic Church that lost a great number of believers between 1939 and 2011; but it is visible that the Protestant churches lost their importance in the society even to a greater extent. According to the National Census of 2011, 87.7 percent of the inhabitants of Poland declared themselves members of the Catholic Church, while 7.1 percent of respondents refused to answer the question concerning religious identification.<sup>103</sup> In this part of my paper it is necessary to answer the final question: whether this difference in religiosity directly influences the legal regulations concerning religious matters.

After the Velvet Revolution in Czechoslovakia, in December 1989 and January 1990, the provisions established by the Communist regime to restrain the freedom of religion were repealed. The inclusion of the guarantee of freedom of conscience and religion in the Charter of Fundamental Rights and Freedoms (*Listina Základních Práv a Svobod*) of the 9th of January 1991 did not raise any controversy (articles 15 and 16).<sup>104</sup> Before the dissolution of Czechoslovakia, on July 4, 1991, the law on freedom of religious belief and the creation of religious associations (*náboženské společnosti*)<sup>105</sup> was adopted, which, however, was quite restrictive, requiring membership declaration of up to 10,000 of inhabitants<sup>106</sup> (there was also an exception, because those churches which were the members of the World Council of Churches were required to present only 500 signatures of adult believers<sup>107</sup>). After eleven years, it was replaced by the

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<sup>102</sup> Detailed data (2011) are available at the website: <https://www.czso.cz/documents/10180/32846217/130055160118.pdf/a204f503-a62a-45a8-b517-fc564f8fc9c2?version=1.0>. The thesis that the mass Atheisation of the Czech society was caused the policy realized during the communist period is certainly oversimplified. Against it, it should be emphasized that Slovaks were subjected to the same policy, but the Atheisation tendency, although visible, is not as strong in Slovakia than in the Czech Republic (in 2001, 68,9 percent of Slovak population were Roman Catholics) Cf. A. Slodička, "Religiozita slovenských katolíkov v kontexte sekularizácie slovenskej spoločnosti". In J. Budniak, A. Kasperek (eds.), *Polska – Czechy – Słowacja. Oblicza religijności*, Katowice: Polska Akademia Nauk – Studio NOA, 2011, pp. 177–187.

<sup>103</sup> Cf. Główny Urząd Statystyczny (Central Statistical Office), *Wyznania religijne w Polsce*, Warszawa 2016, pp. 14–15. Church sources give a greater number of Catholic believers, because they include all who have been baptized in this Church.

<sup>104</sup> Now *Listina* is recognized a legal act of the same legal position as the constitution of the Czech Republic.

<sup>105</sup> Zákon ze dne 4.7.1991. Zákon o svobodě náboženské víry a postavení církví a náboženských společností [The Law of 4 July 1991 on freedom of religious belief and the status of churches and religious associations], „Sbírka zákonů” nr 308/1991.

<sup>106</sup> It is worth adding that in Slovakia this legal act remained in force, but the number of persons necessary to register a church of religious association was increased twice, first up to 20,000 and finally (2017) up to 50,000.

<sup>107</sup> In practice, however, no church had used this provision.



new, more liberal act of the 7th of January 2002.<sup>108</sup> Twenty-one churches and associations were created under the law of 1991, while seventeen others were registered according to the provisions of the law of 2002. The issue of an agreement with the Holy See caused a great deal of controversy. Although the Concordat was signed in July 2002, the parliament did not consent to its ratification.

Today, to be registered by the Minister of Culture of the Czech Republic, a church or religious association must show that 300 adult persons with at least permanent residency in the Czech Republic are its members. However, the act of 2002 did not introduce the principle of equality of registered entities. Those churches or religious associations which meet additional conditions could be granted “registration with special rights (*zvláštní práva*)”. These conditions prescribe that an entity has to be registered as a church or religious association for ten least 10 years, it should present publicly the annual reports on its activity for at least the same period and fulfill its obligations towards the state and third persons. Furthermore, there is also a requirement that 0.1 percent of the population (i.e. citizens and permanent residents) of the Czech Republic confirm their affiliation with the church or religious association. This requirement of *census* character is hard to be met. Every church or religious association with such a status has its own “special rights” which it has applied for. Therefore, these entities can obtain one or several rights included in the following catalogue: the right to religious instruction at public schools; the right to organize spiritual care in armed forces units, police, hospitals, prisons and other institutions; the right to perform marriage ceremonies, which will have also legal effect in the sphere of civil law; the right to run church schools; the right to keep confidential information obtained during confession (the latter right may be granted if confidentiality of such information has been in the scope of teaching of a particular entity for at least fifty years).<sup>109</sup> The contemporary Czech legal system no more uses the construction of a public-law legal personality in reference to churches and religious associations. However, the effect of the act of 2002 is quite similar to introducing the institution of public-law legal personality on the German model. The mentioned act creates the category of entities of relations with the state (e.g. when organizing religious instruction or spiritual care in certain facilities) are

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<sup>108</sup> Zákon o svobodě náboženského vyznání a postavení církví a náboženských společností a o změně některých zákonů [Law on freedom of religion and the status of churches and religious associations and on amendments to certain acts], “Sbírka zákonů” No. 3/2002.

<sup>109</sup> Cf. J.R. Tretera, Z. Horák, *Religion and Law in the Czech Republic...*, pp. 51–52; J.R. Tretera, Z. Horák, *Konfesní právo...*, pp. 118–123; S. Přebyl, *Konfesněprávní studie*, Brno: L. Marek, 2007, pp. 86–99.



much closer than other churches and religious associations. Certain provisions of the law of 2002 develops the norms of *Listina Základních Práv a Svobod* which guarantees, in Article 16, the autonomy of churches and religious associations and mentions the issue of religious instruction in schools (which should be regulated by the statute). Because of these regulations, the Czech model of relationships between the state and churches by no means can be named a model of strict separation. Therefore, Jiří Rajmund Tretera and Zábaj Horák are right to use the term, “co-operative model of secular state”.<sup>110</sup>

At the end of the existence of Polish People’s Republic – after the “Round Table” agreement – three legal acts were adopted, which regulated the legal position of the Catholic Church and introduced the framework regulation of freedom of conscience and religion, implementing the international legal standards of this freedom into the Polish legal order. All three were passed on the 17th of May 1989, i.e.: the Act on Guarantees of Freedom of Conscience and Creed,<sup>111</sup> the Act on the Relations of the State to the Catholic Church in the Polish People’s Republic,<sup>112</sup> and a very synthetic act on social insurance for clergymen.<sup>113</sup> These laws led to the normalization of the legal situation of the Catholic Church in Poland. The act on Guarantees of Freedom of Conscience and Creed still remains a crucial act on that matter in Polish legal order.<sup>114</sup> In the 1990s, the legal situation of ten other churches and one religious association, the Union of Jewish Religious Communities in Poland, was regulated. Among them, the Baptist Church in the Republic of Poland, the Seventh-Day Adventist Church in the Republic of Poland and the Polish-Catholic Church received regulatory recognition by the state for the first time.<sup>115</sup> As Andrzej Czohara writes, the choice of these denominations, which was obtained by law, was not accidental, because the aim was to give statutory status to the religions recognized in the interwar period.<sup>116</sup> Such an

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<sup>110</sup> J.R. Tretera, Z. Horák, *Religion and Law in the Czech Republic...*, p. 37.

<sup>111</sup> Journal of Laws, No. 29, item 155, as amended.

<sup>112</sup> Journal of Laws, No. 29, item 154.

<sup>113</sup> Journal of Laws, No. 29, item 156.

<sup>114</sup> J. Krukowski, “Status prawny religii i Kościoła rzymskokatolickiego w Polsce (1918–1993)”. In J. Jachymek (ed.), *Religia i Kościół rzymskokatolicki w polskiej myśli politycznej 1919–1993*, Lublin: UMCS, 1995, pp. 39–40.

<sup>115</sup> Act of the 30th of June 1995 on the relations of the State to the Baptist Church in the Republic of Poland (Journal of Laws, No. 97, item 480); Act of the 30th of June 1995 on the relations of the State to the Seventh-Day Adventist Church in the Republic of Poland (Journal of Laws, No. 97, item 481); Act of the 30th of June 1995 on the relations of the State to the Polish-Catholic Church in the Republic of Poland (Journal of Laws, No. 97, item 482).

<sup>116</sup> A. Czohara, T.J. Zieliński, *Ustawa o stosunku Państwa do gmin wyznaniowych żydowskich w Polsce: Komentarz*, Warszawa: Wolters Kluwer, 2012, pp. 27–28.

attitude can be understood in categories of transitional justice, i.e. the attempt to redress the wrongs which were done to particular groups by the previous regime. Using the context of transitional justice is helpful to understand why since 1997 no other religious association has obtained such recognition and why legal acts from the interwar period concerning East Old Believers Church, the Muslim Religious Association in Poland and Karaim Religious Association in Poland are still in force, although these associations are now very small (the majority of their believers lived in the eastern lands of interwar Poland, which are now parts of Belarus, Lithuania and Ukraine). It should be added that statutory regulation gives many advantages to the churches or religious associations which have obtained recognition. Firstly, its obligations towards the state may not be changed in an easy way. Secondly, certain additional rights are connected with having statutory regulation, e.g. the right to perform marriage ceremonies having legal effect in the sphere of civil law,<sup>117</sup> the right to religious instruction in public schools and the right to organize spiritual care in armed forces units. It should be added that other churches and religious associations obtain the status of legal persons by entering into the register kept by the Minister of Internal Affairs. At present (April 2018) 165 such entities are registered there.<sup>118</sup>

A transitional justice approach can also be useful to grasp the policy of the authorities towards the Catholic Church, which was given not only the property confiscated in the Communist period but also some of the immovable property which belonged to the German Catholic Church in the regions that were part of Germany till 1945.<sup>119</sup> Moreover, a new Concordat with the Holy See was signed in 1993, while its ratification took place after the constitution of 1997 entered into force. The Concordat introduced the form of marriage with a double effect, i.e. a marriage concluded in the form prescribed by canon law, exerting effects in the sphere of Polish law (article 10), and it definitely determined the so-far controversial legal issue of religious instruction in schools and kindergartens (article 12).

During the work on a new constitution, seven projects were submitted. As to the provisions on freedom of religion and conscience and the functioning of churches and religious associations, they differed from each other in regard to the scope of protection

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<sup>117</sup> Ultimately, eleven churches and religious associations were given this right, Cf. J. Strzebińczyk, "Zawarcie małżeństwa wyznaniowego podlegającego prawu polskiemu", *Rejent*, 1999, Vol. 9, No. 4 (96), pp. 11–12.

<sup>118</sup> <https://mswia.gov.pl/download/1/32127/ostE-RejestrHW13022018r.pdf> [31.05.2018].

<sup>119</sup> The functioning of the Property Commission of the Catholic Church between 1989 and 2011 (its dissolution) is a controversial subject.

of that freedom (whether it could be restricted only by means of a statute, or not) and to the attitude towards secular state and Catholicism. During the parliamentary debate it became clear that such terms as “worldview neutrality (*neutralność światopoglądowa*)” and “separation” were completely unacceptable both to the right wing and Catholic Church. Thus, in 1995 Tadeusz Mazowiecki proposed a compromise formulation, using the term “impartiality”, and it was finally used in the wording of article 25 of the present Polish constitution.<sup>120</sup> This article guarantees also the autonomy of churches and religious associations and stipulates that the relationships between them and the state should be based on “the principle of cooperation for the individual and the common good”. Therefore, the model introduced in the Polish Constitution of the 2nd of April 1997 could be named a “co-operative” one, although the confessional element is more visible than in the Czech constitutional provisions. Paweł Borecki plausibly points out that although representatives of left-wing groups had a majority in Parliament at the time when the Constitution was elaborated and adopted, the content of the adopted provisions takes into account the changes in religious relations in Poland after 1989. In particular, the provisions legitimize the Concordat of 1993, religious instruction in schools and the wide presence of religion in public life.<sup>121</sup> At the same time, however, these provisions certainly do not curtail the rights of minoritarian churches and religious associations and realize the same mode of regulation, taken from nineteenth-century Prussian and Austrian constitutional acts, which was introduced into the Polish legal system by the March Constitution of 1921.

Despite differences in the religious structure of society in Poland and the Czech Republic, the legal regulations concerning religious freedom and relations of churches and religious associations to the state have many similarities. In both states, there is a two-tier system of regulating the legal status of these entities. Moreover, the constitutional courts and other courts of the highest instances relatively rarely decide over matters concerning the freedom of religious,<sup>122</sup> but the reasons for that state of

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<sup>120</sup> The process of shaping the constitutional provisions concerning churches and religious associations is described in detail in the book by Paweł Borecki. Cf. P. Borecki, *Geneza modelu stosunków państwo–Kościół w Konstytucji RP...*, pp. 295–297. Article 25, point 2 of the Polish constitution states as follows: “Public authorities in the Republic of Poland shall be impartial in matters of religious, worldview and philosophical convictions, and shall ensure the freedom to express them within public life”.

<sup>121</sup> P. Borecki, *Geneza modelu stosunków państwo–Kościół w Konstytucji RP...*, p. 308.

<sup>122</sup> In Poland during the last years, among the judgments of the Constitutional Court there were two contradictory adjudications concerning religious slaughter (of the 27th of November 2012, case no. U 4/12, and of the 10th of December 2014, case no. K 52/13), a judgment on a doctor’s right to conscientious objection to performing a medical procedure (of 7th of October 2015, case no. K 12/14; the Court was in favour of a large scope of the doctor’s right to conscientious objection), and the judgment

affairs could be diverse.<sup>123</sup> Besides similarities, there are also differences which are, in my opinion, connected with the differences in the perception of the role of religion in the public sphere. In Poland, persons performing major constitutional functions (the President of the Republic, Prime Minister etc.) often take part in religious ceremonies and feasts; masses are also frequent parts of the state feasts. Moreover, debates on the legal regulations of such issues as abortion, euthanasia, assisted procreation, gay marriages etc. are greatly influenced by religious arguments. In Czechia, in turn, debates on these matters seem to be much calmer and the voices referring to religion (and freedom of religion) appear less frequently in these debates. The most controversial issue in Czech state–church relations seems to be restitution of property seized in the Communist period. The issue gained some media interest mainly because of the question of the state continuing to pay priests' salaries. Ultimately, according to law No. 428/2012<sup>124</sup> churches and religious associations will be provided with property (up to the value of the confiscated property for those which lost their property during the Communist period), and by 2030 the state will completely cease to finance the remuneration of priests.

Furthermore, from the formal point of view the freedom of religion is protected to a much greater extent in Poland than in the Czech Republic by means of criminal law. The Czech criminal code of 2009<sup>125</sup> includes only one offence against freedom of religion, namely the crime of restricting the freedom of religion (paragraph 176), while the Polish Penal Code of the 6th of June 1997 devotes an entire chapter (Chapter XXIV) to offences against freedom of conscience and belief, defining three particular crimes there, i.e. discrimination based on belief or irreligiousness (article 194), malignant obstruction of the performance of religious acts (article 195) and insult to religious feelings (article 196). The latter is particularly controversial, because it uses a vague category of “religious feelings”. Formally, it protects religious feelings of all kind, provided that they are the feelings shared by more than one person, but in practice all the cases which reached the courts concerned the religious freedom of the members of

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concerning the offence of the insult to religious feelings which will be mentioned below.

<sup>123</sup> For example, both in Poland and the Czech Republic there were no major cases concerning wearing of religious clothing or religious symbols.

<sup>124</sup> Zákon o majetkovém vyrovnání s církvemi a náboženskými společnostmi a o změně některých zákonů, “Sbírka zákonů” No. 428/2012. Cf. also: H. Kaczmarek, *Czechy...*, pp. 172–174; S. Příbyl, “Vermögensausgleich mit den Kirchen und Religionsgesellschaften in der Tschechischen Republik: Geltendes Gesetz und Urteil („Erkenntnis“) des Verfassungsgerichts”. In P. Szymaniec (ed.), *Wymiary wolności religijnej we współczesnej Europie. Dimensions of religious freedom in contemporary Europe...*, pp. 423–441.

<sup>125</sup> “Sbírka zákonů” No. 40/2009.

the Catholic Church. The case of the pop singer Doda (Dorota Rabczewska) was particularly prominent. In an interview of 2009, Doda stated that she could not believe in the Bible because “it is hard to believe in something that was written by someone plastered by wine and smoking some herbs”. In 2012 she was convicted of the offence and had to pay a penalty of 5,000 PLN (circa 1,100 euro). She submitted later a constitutional complaint, but the Constitutional Court decided in the judgment of the 6th of October 2015<sup>126</sup> that Article 196 of the criminal code is compatible with the Polish Constitution of 1997.

## 6 CONCLUSION

The present paper shows that the sociological factor, i.e. the attitudes towards religion in a society, plays a significant role in shaping the perception of religious freedom and the relations between the state and religious communities, but certainly it is not the only factor. As to Czechia, Jakub Havlíček and Dušan Lužný rightly state that: “The attitude of the state towards the Roman Catholic Church and the position of religion and the Church in the public sphere of Czech society are far more complex than the simplifying statement about the high level of secularity in modern Czech society suggests. Even though we observe the statistically demonstrated decrease of indicators of individual religiosity, the extent of secularity on the societal level seems to be rather ambiguous”.<sup>127</sup> They try to explain this complex phenomenon by reference to collective memory. In my opinion, in this regard the role of legal tradition should not be overlooked.

It is likely that in Czechoslovakia the “co-operative” model was accepted not only because it was already in force, as a part of Austrian legal legacy. It guaranteed a kind of minimum compromise between those who (like Masaryk) were in favour of separation between the state and church and those who postulated the creation of a national church. In Poland, the introduction of the same model in the constitution of 1921 was an outcome of a deliberate compromise, allowing the fulfillment of Poland’s international legal obligations concerning the rights of minorities, and at the same time distinguishing the positions of the Catholic Church (although without harm to other churches and religious associations<sup>128</sup>). The solutions adopted then were modeled on

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<sup>126</sup> The case file no. SK 54/13.

<sup>127</sup> J. Havlíček, D. Lužný, “Religion and Politics in the Czech Republic...”, p. 198.

<sup>128</sup> As it was mentioned, the situation changed slightly in the late 1930s.

the Austrian regulations (which in turn had roots in Prussian legal acts from the mid-nineteenth century). These regulations were very well known to a majority of the Polish lawyers and politicians, who were educated in Galicia and accustomed to them. Moreover, they were seen as working in the conditions of a multi-religious state (in those days 64 percent of the inhabitants of Poland were members of the Catholic Church). It is worth adding that the same Austro-Prussian pattern of regulation served as a model for other states of the Central Europe; for example, for the provisions of Lithuanian constitution of 1922<sup>129</sup> and the Serbian constitution of 1921.<sup>130</sup> Reintroducing the same model both in Poland and the Czech Republic after the collapse of the Soviet system could be perceived as the return to the heritage of legal history and legal culture. Transitional justice could help to explain why in Poland the pre-war method of regulating the relations between the state, and those churches and religious associations recognized as most important by the state, was also reintroduced, and why certain pre-war legal acts without great social importance remained in force. It should be, however, emphasized that the religious nature of a society influences the implementation of legal provisions, and on that ground confessional elements in Polish legal system are more noticeable than in the Czech Republic.

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<sup>129</sup> Cf. J. Kuznecovene, “Państwo i kościół na Litwie”. In G. Robbers (ed.), *Państwo i kościół w krajach Unii Europejskiej*, Wrocław: Kolonia Limited, 2007, p. 216.

<sup>130</sup> Cf. S. Avramović, “Church and state in Serbia”. In S. Ferrari, W.C. Durham, Jr., E.A. Sewell (eds.), *Law and Religion in Post-Communist Europe*, Leuven–Paris–Dudley, MA: Peeters, 2003, p. 298.



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