

## Agreements concerning the regulation of relationships between the state and non-Catholic religious denominations in the Italian legal order

### (Summary)

The adoption of the Constitution of the Republic of Poland on 2<sup>nd</sup> April 1997 caused a significant increase in the interest of the Polish ecclesiastical circles in the solutions which have been provided for in the Constitution of the Republic of Italy in the years since 22<sup>nd</sup> December 1947. Both fundamental statutes establish the principle that the relationships between the state and non-Catholic religious denominations are regulated by acts passed on the basis of agreements (Italy) or contracts (Poland) concluded with their appropriate representatives. The materials documenting the course of work on the religious regulations of the Constitution of the Republic of Poland at the same time show that the solution accepted in Italy (art. 8, para. 3 of the Italian fundamental statute) was treated by the Polish legislator as a prototype and significantly influenced the wording of art. 25, para. 5 of the Polish Constitution. There is only one fundamental difference between these two regulations. Art. 8, para. 3 of the Constitution of the Republic of Italy has been executed for almost a quarter century, while the respective regulation in the Polish fundamental statute is still awaiting its first application. Accordingly, the Italian experience can appear especially useful in the course of implementing the model.

This publication is a response to the needs of Polish theory and practice. In the conditions of a democratic state ruled by law it is difficult to imagine that the clearly specified intention of the legislator be further postponed. Hence, the main stress in this work has been put on a detailed description of the model on the basis of which the execution of art. 8, para. 3 of the Constitution of the Republic of Italy is performed. Furthermore, the conducted research constitutes an attempt to answer the questions about the conditions which need to be fulfilled if the system of agreements concluded in accordance with the relevant constitutional provision is to function properly. The study also ventures to address the question of whether the practice of the bilateral regulation of relationships between the state and non-catholic religious denominations contributes to the actual strengthening of the guarantee of religious freedom in its individual and collective dimension and ensures equal treatment of all religious denominations and all believers, regardless of their religious persuasion.

The application of the principle of bilateralism in relation to non-Catholic religious denominations is today one of the most characteristic features of Italian ecclesiastical law. The process of regulating the legal situation of these formations, based on the agreements

provided for by art. 8, para. 3 of the fundamental statute in today's Italy, is characterized by growing dynamism and encompasses a wider and more diversified range of religious groups. The eight subsequent agreements, signed on 4<sup>th</sup> April 2007, constitute a clear indication of the current dynamics. In consequence, the number of non-Catholic religious denominations which concluded extensive agreements has increased to twelve (so far – up to 30<sup>th</sup> April 2007 – six of these agreements have obtained legal approval).

The experience gathered for almost twenty-five years of the application of the constitutional regulation in question as well as the conclusions drawn in the doctrine within the sixty years of its binding force make it possible to carry out an initial evaluation. However, this needs to be done with an awareness that the above-mentioned agreement system has not yet undergone all possible trials for the last several decades.

The analysis of the content of the acts passed under art. 8, para. 3 of the Italian fundamental statute leaves no doubt that concluding the agreements provided for in this regulation does contribute to the strengthening of the guarantee of religious freedom in its individual and collective dimension. Thanks to the arrangements made with the representatives of religious denominations it was possible to establish a range of solutions relating to specific religious needs, which had not been satisfactorily addressed by the previous regulations of the Italian law.

However, much less straightforward remains the answer to the question about the dependence which exists between the bilateral method of regulation of the legal situation of particular religious formations and the principle of equality of individuals and equal freedom of religious denominations. The initiation of the “period of agreements” did not lead to the removal of a discrepancy in the distribution of rights granted to various religious groups. It only shifted the boundaries of the previously-existing divisions. As a consequence of concluding further agreements, a few religious denominations achieved a status similar to that of the Catholic Church, whereas the remaining religious formations are still legally underprivileged. The reasons for the situation described should not, however, be sought in the very practice of the bilateral regulation of relationships between the state and particular religious denominations. Rather, its source remains the current legislation concerning accepted cults, which dates back to the years 1929-1930 and which, in spite of numerous changes, clearly does not meet the present-day standards.

It is hardly surprising that individual religious denominations are decisively striving to be liberated from the restrictive legal regime, invoking art. 8, para. 3 of the Italian Constitution. However, the agreements concluded in such circumstances do not vary much

from one another. In order to increase the chances of the legal approval of the agreements, religious denominations repeatedly renounce any attempts to negotiate such regulations which would precisely solve the problems faced by their members on an everyday basis. The main objective is to assert some basic rights related to the establishment of a particular legal regulation (such as, for example, the participation in the division of resources obtained from 0.8% of personal income tax). The agreements which were concluded by the Christian Congregation of Jehovah's Witnesses in 2000 and 2007 are a case in point. Not even a single word was devoted to the issues concerning military service for example (which was still compulsory in Italy in 2000), nor to the use of blood and blood-related preparations in the process of treatment of various diseases. However, it is common knowledge that a lack of clear solutions of these problems, not only for Jehovah's Witnesses but also for people who have to make important decisions in their matters, is a constant source of various dilemmas. The position of the Parliament, which did not decide to pass an act approving of the above-mentioned 2000 agreement, nevertheless indicates that marginalizing the problems of individuals in the name of collective interests is not an appropriate solution.

The observation of Italian reality allows one to state that the basic condition for the proper functioning of the analyzed agreement system is the appropriate shaping of the regulations of the common law. They should properly guarantee religious freedom and ensure that all religious denominations are granted the rights to which they are entitled. All particular regulations could then focus on specific problems related to being faithful to a specific outlook and aiming at their most appropriate solution would not endanger collective interests in any way.

Concluding an agreement cannot be the only way to gain the rights which in a democratic state ruled by law should be vested in all religious groups accepting its principles. In this context, prolonging the work on modern regulations concerning religious freedom is hard to understand for an external observer. Passing an act which would replace the legislation on accepted cults would undoubtedly be desired, especially as its draft versions include the regulations concerning the procedure for concluding agreements mentioned in the Italian Constitution.

If the agreements in question are to contribute to ensuring equal freedom to religious denominations, it is according to this principle that all the related decisions should be made. In the Italian reality, the proper functioning of the agreement system is hindered first and foremost by the lack of objective and unambiguously specified criteria for allowing particular religious groups to negotiate their terms. Keeping the current legal state in practice does not in

the least mean that all religious denominations have the right to start negotiations. Obliging the government to negotiate with each religious group, regardless of its size and degree of stability, would have very little to do with observing the principle of rationality. However, it is also hard to accept a situation where it is only in the hands of the government to allow a specific religious group to conduct negotiations, even if the formation at issue had a considerable number of members or were rooted in Italian reality for centuries.

The obligation to observe the principle of equality also determines the limit of negotiation freedom of the government and is the most important criterion for the parliamentary evaluation of the appropriateness of an act approving of the concluded agreement. Obtaining the approval of the representatives of the interested religious denomination cannot serve as a justification for introducing any discriminating or privileging regulations. Bilateral regulations concerning various religious organisations can obviously differ. Even more so, they should differ because religious needs of people practising different religions are diverse. The limits of accepting this diversification are however determined by the principles of equal freedom of all religious denominations and equality of everyone before the law.

According to the practice pursued in Italy, the agreements discussed precisely regulate all issues whose regulation was regarded as justified by both entering parties. While preparing bills based on these agreements, mainly the technique of the transfer of the provisions negotiated previously by the parties is used. However, quite frequently the content of the bill proposed by the government differs slightly from the concluded agreement. The necessity to make certain modifications obviously follows from the different character of acts and agreements. Nevertheless, it is always related to the danger of distorting the will of negotiating parties, though the threats are not too significant in reality. However, from the perspective of an external observer they seem to be fairly easy to eliminate completely. It would suffice to supplement an agreement with an essential stipulation that the Council of Ministers is obliged to present the bill negotiated by the parties in the Parliament, and not – as it has been the case so far – a bill based on the negotiations conducted.

The wording of art. 8, para. 3 of the Italian fundamental statute fully justifies the practice of the Parliament refraining from making any changes in the bill presented. There is also no doubt that the quoted constitutional regulation does not provide for amending the relevant act without a prior conclusion of a modifying agreement. In this respect however, allowing the parliament to participate in the process of making decisions related to concluding specific agreements deserves full approval (the so-called “parliamentization” of negotiations).

First and foremost, it should participate in deciding on opening every specific negotiation. It should also be entitled to the right to evaluate the prepared bill before it is signed by the government. Only in this way is it possible to restore the proper balance of the arrangement, disturbed by the limitation of the parliament rights in the process of making the law based on agreements concerning the regulation of relationships between the state and non-catholic religious denominations.

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