

“Joint guidelines on the legal personality of religious or belief communities” adopted by the Venice Commission and the legal personality of churches and other religious organisations in Poland

Wspólne wytyczne w sprawie osobowości prawnej wspólnot religijnych lub światopoglądowych przyjęte przez Komisję Wenecką a osobowość prawna kościołów i innych związków wyznaniowych w Polsce

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Abstract: In 2014, the European Commission for Democracy through Law (the Venice Commission), in cooperation with the Office for Democratic Institutions and Human Rights of the Organisation for Security and Co-operation in Europe (OSCE/ODIHR), issued the Joint Guidelines on the Legal Personality of Religious or Belief Communities (hereinafter: the 2014 Guidelines). This document contains nonbinding rules (soft law) for state parties in the field of the legal personality of religious and belief communities. Rules proposed by the Venice Commission and the OSCE/ODIHR in the 2014 Guidelines are organised into six categories (i.e. general rules and five groups of rules concerning particular issues: general availability of legal personality to religious or belief communities, prerequisites for acquiring legal personality, processes for the acquisition and withdrawal of a legal personality, functioning of legal entities, and loss of legal personality).

An analysis of Polish law on the registration of religious community led to the general conclusion that Polish regulations are mostly compliant with the 2014 Guidelines.

However doubts about the conformity of the Polish law and the 2014 Guidelines can be raised about the lack of condition of the repetitiveness of violations of laws and/or bylaws to deregister the religious/belief community, wide margin of appreciation of the term ‘gross violation’ used in prerequisites to deregister the religious/belief community, impossibility of challenging decisions dealing with the registration of religious/belief community by a community itself, and the lack of possibility of acquiring the status of ‘church or other religious organisation’ (which involves a variety of rights and privileges) by non-religious belief communities.

Key words: legal personality; churches; religious communities; denominations; religious associations; religious organisations; belief associations; registration; Venice Commission; Poland

Streszczenie: W 2014 r. Europejska Komisja na rzecz Demokracji przez Prawo (Komisja Wenecka) we współpracy z Biurem Instytucji Demokratycznych i Praw Człowieka Organizacji Bezpieczeństwa i Współpracy w Europie (OBWE/ODIHR) przyjęła dokument pt. *Wspólne wytyczne w sprawie osobowości prawnej wspólnot religijnych lub światopoglądowych* (dalej: Wytyczne²⁰¹⁴). Dokument ten zawiera niewiążące (*soft law*) propozycje dla państw-stron w zakresie osobowości prawnej wspólnot religijnych i światopoglądowych. Zasady zaproponowane przez Komisję Wenecką i OBWE/ODIHR w Wytycznych²⁰¹⁴ można podzielić na sześć kategorii: zasady ogólne oraz pięć grup zasad dotyczących poszczególnych zagadnień (ogólnej dostępności osobowości prawnej dla wspólnot religijnych i światopoglądowych; przesłanek nabycia osobowości prawnej; postępowania w sprawie nabycia i cofnięcia osobowości prawnej; funkcjonowania osób prawnych wspólnot religijnych i światopoglądowych; utraty osobowości prawnej).

Analiza polskiego prawa dotyczącego rejestracji wspólnot religijnych zawartych w ustawie z dnia 17 maja 1989 r. o gwarancjach wolności sumienia i wyznania prowadzi do ogólnego wniosku, że polskie przepisy są w większości zgodne z zasadami wymienionymi w Wytycznych²⁰¹⁴. Brak obowiązku rejestracji (uzyskania osobowości prawnej), możliwość korzystania z powszechnych form osobowości prawnej (stowarzyszenie, fundacja, spółka prawa handlowego), zakres autonomii podczas rejestracji związku wyznaniowego oraz możliwość prowadzenia dowolnej działalności dozwolonej osobom prawnym, są w pełni zgodne z Wytycznymi²⁰¹⁴. To samo, co do zasady, dotyczy przepisów regulujących przesłanki pozbawienia osobowości prawnej (z zastrzeżeniami dotyczącymi braku warunku powtarzalności w odniesieniu do naruszeń prawa i statutu uprawniających do pozbawienia osobowości prawnej oraz potencjalnie szerokim marginesem oceny w przypadku pojęcia

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„rażącego naruszenia”). Również przepisy proceduralne dotyczące rejestracji oraz wykreślenia z rejestru związków wyznaniowych są, co do zasady, zgodne z zasadami wynikającymi z Wytycznych²⁰¹⁴ (z zastrzeżeniami dotyczącymi możliwości zaskarżenia decyzji w sprawie rejestracji wyłącznie przez wnioskodawców oraz możliwości zaskarżenia decyzji o wykreśleniu z rejestru wyłącznie przez osobę prawną). Niektóre przepisy nie są niezgodne z Wytycznymi²⁰¹⁴, lecz jedynie nieformalnie sformułowane (np. brzmienie art. 33 ust. 3 u.g.w.s.w.).

Natomiast brak możliwości uzyskania statusu tzw. „kościół lub innego związku wyznaniowego”, wiążącego się z szeregiem praw i przywilejów przez niereligijne wspólnoty światopoglądowe, wymogi posiadania obywatelstwa polskiego oraz podania szczegółowych danych (w tym daty urodzenia, miejsca zamieszkania oraz rodzaju, serii i numeru dokumentu tożsamości oraz numeru PESEL) każdego członka założyciela w celu rejestracji mogą budzić poważne obawy co do ich zgodności z zasadami przyjętymi przez Komisję Wenecką.

Słowa kluczowe: osobowość prawna; kościół; wspólnota religijna; związek wyznaniowy; wspólnota światopoglądowa; rejestracja; Komisja Wenecka

Introduction

In 2014, the European Commission for Democracy through Law (the Venice Commission), in cooperation with the Office for Democratic Institutions and Human Rights of the Organization for Security and Co-operation in Europe (OSCE/ODIHR) issued the *Joint Guidelines on the Legal Personality of Religious or Belief Communities* (hereinafter: the 2014 Guidelines).¹ This document, already mentioned in Polish literature on law on religion,² was never a subject of closer examination in Poland, nor was its accordance with Polish regulations.

Furthermore, 2024 marks the 10th anniversary of the 2014 Guidelines. Regulations in Poland that deal with the legal personality of religious communities were previously adopted, and discussion is on the way about changing the model of registering entities of religious communities. This calls for a closer look at the 2014 Guidelines and the conformity of Polish law with it. Thus, the first aim of this current study is to present the main rules adopted in the 2014 Guidelines concerning the legal personality of religious and belief communities (the term corresponds to the freedom of “religion” and “belief”, mentioned in international human rights regulations; the definitions of them both and thus relation between the two, are generally left to self-determination by the community itself (2014 Guidelines, Part 1, para. 2). Second, this paper articulates whether modern Polish laws are compliant with the 2014 Guidelines and to what extent.

Moreover, many provisions of the 2014 Guidelines are reiterations or developments of the rules derived from the European Court of Human Rights’ decisions, this work, to some extent, also presents an analysis of the compliance of Polish law with the European Convention on Human Rights³ regarding the legal personality and registration

¹ The European Commission for Democracy through Law (Venice Commission) and the Office for Democratic Institutions and Human Rights (OSCE/ODIHR), *Joint Guidelines on the Legal Personality of Religious or Belief Communities*, adopted by the Venice Commission at its 99th Plenary Session (Venice, 13–14 June 2014), available at [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2014\)023-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2014)023-e) [accessed: 15 June 2024]. For the published version, see: <https://www.osce.org/files/f/documents/9/9/139046.pdf> [accessed: 15 June 2024]; for other language editions: see <https://www.osce.org/odihr/139046> [accessed: 15 June 2024].

² Abramowicz 2023, 232–33.

³ Council of Europe, Convention for the Protection of Human Rights and Fundamental Freedoms, 4 November 1950. *United Nations Treaty Series* 213: 222–270 (English version), available at https://www.echr.coe.int/documents/d/echr/convention_ENG [accessed: 15 June 2024], hereinafter: the ECHR.

of religious communities. Because this current analysis requires presenting Polish regulations regarding the legal personality and registration of religious communities, this article provides also up-to-date information on the respective Polish laws.⁴

1. Overview of the 2014 Guidelines

As mentioned in the 2014 Guidelines (Section 1, p. 3),⁵ the primary source of the OSCE’s interest in the legal personality of religious communities can be found in Art. 16 para. 3 of the Vienna Document from 1989,⁶ which states that

[...] to ensure the freedom of the individual to profess and practise religion or belief, the participating States will [...] grant upon their request to communities of believers, practising or prepared to practise their faith within the constitutional framework of their States, recognition of the status provided for them in their respective countries.

Failure to fully implement that obligation in some OSCE countries and development of jurisprudence of the human rights bodies in the years 2004–2014 (2014 Guidelines, Sections 2–3, p. 3) were the reason for issuing the 2014 Guidelines.

The provisions of the 2014 Guidelines, which are solely dedicated to issues concerning the legal personality of religious and belief communities, are an expansion of the previous general rules included in the 2004 document of the Venice Commission⁷ (i.e. the 2004 Guidelines)⁸, which deals not only with the rules for religious or belief

⁴ From the English-language works about legal personality of religious and/or belief communities in Poland, see: Rynkowski 2007, 177 ff.; Rynkowski 2015, 159–160, 162; Sitarz, Romanko 2019, 250–259; Stanisław 2020, 65–71.

⁵ As the 2014 Guidelines uses the term “para.” for referencing to its numbered paragraphs (see: para. 32), this word is solely used for this purpose when referencing to provisions of the 2014 Guidelines. To reference paragraphs (sections) that are not numbered, this work uses the term “section” and indicate relevant pages (abbr. “p”) of the published version mentioned earlier.

⁶ Concluding the Document of the Vienna Meeting 1986 of Representatives of the Participating States of the Conference on Security and Co-Operation in Europe, held on the basis of the provisions of the final act relating to the follow-up to the conference. <https://www.osce.org/files/f/documents/a/7/40881.pdf> [accessed: 15 June 2024].

⁷ Cf. Abramowicz 2023, 232–233.

⁸ Guidelines for Review of Legislation pertaining to Religion or Belief, prepared by the OSCE/ODIHR Advisory Panel of Experts on Freedom of Religion or Belief in consultation with the European Commission For Democracy Through Law (Venice Commission), adopted by the Venice Commission at its 59th Plenary Session (Venice, 18–19 June 2004), welcomed by the OSCE Parliamentary Assembly at its Annual Session (Edinburgh, 5–9 July 2004). <http://www.osce.org/odihr/13993> [accessed: 15 June 2024]. As far as general issues are concerned, this document highlights the importance of legal personality for functioning of religious or belief communities, as well as for achieving their aims (Section II.B.8; Section II.F.1 *in principio*) and provides that: 1) there must not be any sanctions or limitations for groups deciding not to register (Section II.B.8); 2) any restrictions on the right to obtain legal personality must be justified as they are restriction of the right of association and freedom of religion or belief (Section II.B.8; Section II.F.1[1]); 3) decisions on acquiring legal personality should be issued in the reasonable time and there must be appeal procedure (Section II.B.9 *in fine*). The Guidelines’2004 also include specific provisions concerning legal personality of religious or belief communities (Section II.F). These provisions not only reiterates that registration of religious/belief entities should not be compulsory (however registration can be a prerequisite for granting legal personality; Section II.F.1[1]), but also states that conditions for obtaining legal personality should not be subject to wide governmental discretion (Section II.F.1[6]) and should not be excessively difficult to fulfil (*arg. ex*: Section II.F.1[5]). Particularly states should avoid conditions such as high amount of memberships (Section II.F.1[3]) and long period of previous existence (Section II.F.1[4]). The 2004 Guideline also provides for

communities obtaining legal personality but also with a variety of issues related to freedom of religion and belief. The relationships between the two documents are explained in the 2014 Guidelines, which provides that the latter does not abolish or amend a previous one, as the 2004 Guidelines must still be observed in “their entirety” (2014 Guidelines, Section 4, p. 3).⁹

The 2014 Guidelines consists of four parts: 1) the freedom of religion or belief and permissible restrictions in general, 2) the freedom to manifest religion or belief in community with others, 3) religious or belief organisations and 4) privileges of religious or belief communities or organisations. Although Parts 1 and 2 can be described as preliminary, they present a useful summary of the regulations and judicial decisions regarding freedom of religion or belief, including the right to manifest religion and its possible limitations. The same applies *mutatis mutandis* to Part 4, which deals with rules for lawfully introducing favours to religious or belief communities and their legal entities that are not available to other communities and entities.¹⁰

2. The 2014 Guidelines rules on the legal personality of religious or belief communities

Before presenting the particular rules of the 2014 Guidelines, two issues should be highlighted. First, the crucial statement, which can be found in the 2014 Guidelines, is that freedom of religion implies the right of religious communities to acquire legal personality, a refusal of which can be treated as a violation of the right to freedom of religion in light of Art. 9 of the ECHR¹¹ (2014 Guidelines, paras. 18–19).¹² This corresponds with the reiteration (2014 Guidelines, para. 20) of the importance of legal personality for exercising the right to freedom of religion or belief. The 2014 Guidelines (para. 20) even uses the term “the right to legal personality status.”¹³

Second, acknowledging that obtaining a legal personality is part of a human right to freedom of religion or belief (precisely speaking, the right to manifest religion or belief) resulted in the view that any limitation in acquiring a legal personality is limitation of the right to manifest one’s religion or belief in light of Art. 9 of the ECHR. Thus, all of

autonomy in organizing structures (Section II.F.1[7]), respecting vested interests (i.e. once obtained legal personality, Section II.F.1[8]), adequate transition rules in the case of law changes (Section II.F.1[9]) and prohibition of dependance of obtaining legal personality by religious/belief community upon approval of another religious or belief community (Section II.F.1[10]).

⁹ Some of the rules from the 2014 Guidelines were also included in: OSCE Office for Democratic Institutions and Human Rights (ODIHR), Freedom of Religion or Belief and Security Policy Guidance, available at: <https://www.osce.org/files/f/documents/e/2/429389.pdf> [accessed: 15 June 2024]. See: *idem*, 35–36, points 1–7. See also: *idem*, 29–34. For further analysis of this document see: Abramowicz 2022, 3 ff.

¹⁰ Due to the fact that Parts I, II and IV deals with other issues than legal personality as such, they are out of the scope of this work and they are not the subject of further analysis of this article.

¹¹ For ECHR case-law about registration of religious communities involving rules very similar to those of the 2014 Guidelines, see: McFaul 2017, 17–21; Walencik 2020, 124–128; Walencik 2024, 154–159.

¹² Important notion is that, according to views described in the 2014 Guidelines, the refusal of a legal personality violates both the right to freedom of religion of an individual, as well as the right to freedom of religion of the community.

¹³ See e.g. Bloss 2003, 17–18.

the conditions for such limitations to be permissible, resulting from Art. 9 para. 2 of the ECHR must also be observed, when the law of a state introduces conditions for obtaining legal personality (2014 Guidelines, paras. 21 and 32).

Provisions of the 2014 Guidelines, that deals with legal personality of religious or belief communities, are included in different paragraphs of Part 3 and are not arranged in categories that deal with the particular aspects of the legal personality of religious entities. However, these provisions can be organised into six groups of rules: general rules and five groups of rules dealing with particular issues.

The first group consists of general rules. They include the condition that legal regulations concerning acquiring legal personality by religious or belief communities must comply with the international agreements and human rights instruments of which a state is a party (2014 Guidelines, para. 17), and particularly OSCE commitments (2014 Guidelines, para. 23). An important part of the general rules of the 2014 Guidelines is a statement that freedom of religion results in a religious community's right to acquire legal personality and thus limitations in acquiring and possessing legal personality must comply with the rules of lawful limitations of the right to manifest one's religion or belief in the light of Art. 9 para. 2 of the ECHR.

Another rule in this category is the requirement that wherever changes to the law are introduced affecting the legal personality of religious or belief communities, adequate transition rules must be included that will guarantee vested interests, and any interference with those interests should comply with the rules limiting the right to manifest religion (2014 Guidelines, para. 36). Finally, the 2014 Guidelines provides that states should ensure that the rules of the 2014 Guidelines are implemented effectively, not only in legislation but also in practices and policies (para. 37).

The second set of rules concerns the general availability of legal personality to religious or belief communities. In this regard, states must ensure the availability of legal personality to religious or belief communities (2014 Guidelines, paras. 17–18) but without mandatory acquiring it (2014 Guidelines, para. 21 and Section 2, p. 3). This rule does not mean that there must be a *sui generis* form of legal personality in the legal system of a state; a way for acquiring legal personality may be ensured by access to a general form of legal personality (e.g. an association, a corporation or a foundation; 2014 Guidelines, para. 22).

The third set of rules concerns the prerequisites for acquiring legal personality by religious or belief communities. According to them, states must ensure that acquiring legal personality by religious or belief communities must not be more difficult than in the case of obtaining this personality by other communities (2014 Guidelines, para. 17). Additionally, according to paras. 21 and 25 of the 2014 Guidelines, prerequisites for obtaining a legal personality must comply with the rules of permissible limitations of the right to manifest one's religion or belief in light of Art. 9 para. 2 of the ECHR and should not be excessively difficult to fulfil. Guidelines also require that the procedure for acquiring a legal personality should be “open to as many communities as possible” and not limited due to “excessively narrow interpretations or definitions of religion or belief” (2014 Guidelines, para. 26). Another rule is that the autonomy of religious or belief

communities must also be guaranteed, especially concerning leadership, internal rules, the structure of the community and its name (2014 Guidelines, para. 31).

The fourth set of rules concerns the proceedings of acquiring and withdrawing a legal personality. According to the 2014 Guidelines, states must ensure that proceedings for obtaining legal personality are “quick, transparent, fair, inclusive and non-discriminatory” (2014 Guidelines, paras. 24 and 25). Additionally, decisions denying or withdrawing legal personality must include justification presenting reasons for such a decision (2014 Guidelines, para. 32), and there must be effective remedies against the decision about refusal to grant and withdrawal of the legal personality of religious or belief communities. This especially means that access to an independent and impartial court must be guaranteed (2014 Guidelines, para. 35).

The fifth set of rules concerns the functioning of the legal entities of religious or belief communities. The 2014 Guidelines require that legal persons of religious or belief communities should be entitled to perform any of the activities “normally exercised by registered non-governmental legal entities” (2014 Guidelines, para. 23).

The sixth set of rules concerns rules about the loss of legal personality by religious or belief communities. The 2014 Guidelines require that conditions for the withdrawal of the legal personality of religious or belief communities must be clear and comply with the rules of permissible limitations of the right to manifest religion, as introduced in Art. 9 para. 2 of the ECHR (2014 Guidelines, para. 32). Additionally, decisions of withdrawal of legal personality must be an *ultima ratio*, which corresponds with the proportionality rule of imposing limitations on the right to manifest religion and results in an obligation for states to introduce a variety of measures appropriate for a particular kind of violation (2014 Guidelines, para. 33). The 2014 Guidelines also states that offences committed by a particular member or leader should not result in the withdrawal of a legal personality for the religious or belief community (para. 34).

In the next part of this article, compliance of the Polish legislation with the described above particular rules of the 2014 Guidelines is analysed. The general rules described at the beginning of this paragraph of this study are analysed along with particular ones due to their nature (general compliance with international law) and because they are constituted by the particular rules (e.g. compliance with limitations clause from Art. 9 of the ECHR).

3. Availability of legal personality to religious or belief communities in Poland

In Poland, there is no obligation for religious or belief communities to register and/or acquire a legal personality,¹⁴ which is in full compliance with corresponding rules from paras. 17–18 and 21 of the 2014 Guidelines.

¹⁴ Cf. Stanisław 2020, 65, no. 147.

Although the Polish Constitution¹⁵ lacks a provision like that of Art. 137 para. 4 of the German Constitution¹⁶ (Weimarer Reichsverfassung, WRV) or the Art. 6 para. 2 of the Spain's Law on Religious Liberty (LOLR)¹⁷, which guarantees religious communities access to general forms of legal personality,¹⁸ Polish law does not prohibit religious or belief communities from using them. Among other general forms of legal personality,¹⁹ they can form a legal entity, such as a corporation (on the grounds of the Act of September 15, 2000 – the Code of Commercial Companies²⁰), an association (on the grounds of the Act of April 7, 1989 – Law on associations)²¹ or a foundation (on the grounds of the law of April 6, 1984, on foundations²²). None of these acts explicitly prohibits creating a legal entity as a legal form of functioning religious or belief community in the sphere of private law²³. Therefore, there can be no doubt about fulfilling the general requirement of para. 22 of the 2014 Guidelines to provide religious or belief communities with access to legal personality.

Historically speaking, rules for obtaining or retaining legal personality (in the form of association) by religious communities and their entities during the time of the Polish People's Republic were used to control and discriminate against religious organisations, especially those of the Catholic Church.²⁴ Nowadays, Polish law also provides the *sui generis* form of a legal personality called “churches and other religious organisations.” It is regulated by the Act of May 17, 1989, on guarantees of freedom of conscience and religion (hereinafter: u.g.w.s.w.)²⁵ and generally speaking, it allows every community that matches the definition of ‘religious community’ and has at least 100 founding members with Polish citizenship with full private-law legal capacity to register after filing necessary documents.²⁶

This approach can be seen as liberal²⁷. The status of a “church” or “other religious organisation” with this special legal personality can also be granted by an act of parliament (and, in the case of the Catholic Church, via concordat).²⁸ This *sui generis* form of legal personality (acquired via registration or an act of parliament) is very desirable, as many of the privileges prescribed by law are reserved for legal entities of this kind (e.g. tax deductions, right to own cemeteries, right to teach religion in public schools)

¹⁵ Constitution of Poland of April 2, 1997, Journal of Laws [Dziennik Ustaw, hereinafter: Dz. U.] issue 483 as amended. For English translation see: <https://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm> [accessed: 15 June 2024].

¹⁶ Die Verfassung des Deutschen Reichs, 11 August 1919, Reichsgesetzblatt 1919, no. 152, pp. 1383–1418.

¹⁷ Ley Orgánica 7/80 del 5 de julio de 1980 de Libertad Religiosa, B.O.E. no. 177 of July, 24, 1980, p. 16 804.

¹⁸ See: Mückl 2007, 109 (concerning German law); see also: Motilla 2007, 209–210 (concerning Spanish law).

¹⁹ Cf. Pasek 2017, 161.

²⁰ Ustawa z dnia 15 września 2000 r. – Kodeks spółek handlowych, Dz. U. 2024 issue 18 as amended.

²¹ Ustawa z dnia 7 kwietnia 1989 r. – Prawo o stowarzyszeniach, Dz. U. 2020 issue 2261.

²² Ustawa z dnia 6 kwietnia 1984 r. o fundacjach, Dz. U. 2023 issue 166.

²³ About associations formed for religious purposes see: Krzysztofek 2017, 126–127; Ordon 2009, 57 ff.

²⁴ See: Mirek 2014, 65–66; Ordon 2012, 59 ff; Ordon 2016, 241–242, 244; Ordon 2014, 197–198.

²⁵ Ustawa z dnia 17 maja 1989 r. o gwarancjach wolności sumienia i wyznania, Dz. U. 2023 issue 265.

²⁶ As of April 8th, 2024, there are 173 registered churches and other religious organizations see: <https://www.gov.pl/attachment/d7b775a9-7c3c-46e5-884e-e958410fbafe> [accessed: 27 June 2024]. For some previous statistical information about registration see: Piszcz-Czapla 2010, 152, 156, 159–160, 162–163; Rynkowski 2007, 181–182; Stanisiz 2020, 71, no. 169. For the most up-to-date statistics (years 2019–2021) about religious denominations – see: https://stat.gov.pl/download/gfx/portalinformacyjny/en/defaultaktualnosci/3632/1/3/1/religious_denominations_in_poland_2019-2021.pdf [accessed: 28 June 2024]. See also: Pasek 2017, 163–165.

²⁷ Rynkowski 2015, 160.

²⁸ Cf. Stanisiz 2020, 68, no. 158–160.

and they do not apply to regular forms of legal personality (e.g. corporation, association or foundation).²⁹

Achieving the status of a “church” or “other religious organisation” by an act of parliament or by an international agreement (in the case of the Catholic Church) is the effect of a mutual state-religious community agreement and as such, it does not constitute a registration proceeding. Additionally, provisions of the in-force individual laws (and concordat in the case of the Catholic Church) about legal personality reflect the internal structure of those religious communities and, in almost all cases, grant legal personality to all entities of the religious communities (there are no formal registration proceedings; in most cases, to obtain legal personality, only information about creating an entity of the religious community is required). Because of this, the rules of the 2014 Guidelines are not relevant in the cases of those religious communities whose status is regulated by an act of parliament or by an international agreement (in the case of the Catholic Church). This is why, to answer the question of the extent to which Polish regulations in the field of legal personality follow the rules of the 2014 Guidelines, the analysis in this work will be limited to the regulations of the Act of 17 May 1989 on guarantees of freedom of conscience and religion.³⁰

4. Prerequisites for acquiring a legal personality

Registration of a church or other religious organisation is explicitly restricted only to religious communities,³¹ which (by the very definition) are established to profess and spread religious faith, with their system, doctrine and rites of worship (Art. 2 point 1 u.g.w.s.w.). As the 2014 Guidelines provides religious and belief communities with the right to have legal personality, it seems that the questioned regulation is too narrow. However, the practice of registering authorities led to the conclusion that sometimes communities based on beliefs are also granted legal personality.³² Concerning the term “religion”, the rule of

²⁹ From the practical point of view, it is very important that on the grounds of the Act of 17 May 1989 on guarantees of freedom of conscience and religion also organisational units can acquire legal personality (Art. 32 para. 3 in conj. with Art. 34 paras. 2 and 3 u.g.w.s.w.).

³⁰ Analyzing particular Polish regulations for acquiring and withdrawing legal personality of religious or belief communities through an act of parliament is impossible, as there is no law that regulates the process of issuing such statutes. All of 15 individual acts (14 acts of parliament and one presidential ordinance with the force of a parliamentary act) were issued before the April 4th, 1997 (i.e. the date the Polish Constitution was adopted). Additionally, rights of religious communities are generally guaranteed by the provision of Art. 25 para. 4 Polish Constitution, which requires prior to issuing a statute affecting their status an agreement between the state and the religious community.

³¹ Cf. Rynkowski 2007, 179; Stanisław 2020, 67, no. 154–155.

³² This apply mainly to communities that can be seen as based on belief (interpreted as a philosophical statement), e.g. Buddhism. Buddhist communities (13) such as: Związek Buddystów Zen “Bodhidharma”, Buddyjski Związek Diamentowej Drogi linii Karma Kagyu, “Kanzeon” Związek Buddyjski, “Wspólnota Bez Bram” Mumon-Kai Związek Buddyjski Zen Rinzai w Rzeczypospolitej Polskiej, Buddyjska Wspólnota Zen Kannon, Związek Buddyjski Tradycji Karma Kamtżang w Polsce, Związek Buddyjski Khordong w Polsce, Misja Buddyjska-Trzy Schronienia w Polsce, Związek Buddyjski Dak Szang Kagyu w Polsce, Związek Buddystów Czán, Związek Buddyjski “Dzogczen Kunzang Cziuling” w Rzeczypospolitej Polskiej, Związek Buddyjski “Yeshe Khorlo” w Rzeczypospolitej Polskiej, Ośrodek Wietnamskiego Buddyizmu w Polsce were registered and acquired legal personality as “church or other religious organization.”

wide interpretation mentioned in para. 26 of the 2014 Guidelines is fulfilled. This does not concern atheistic beliefs, which are definitely out of the scope of the definition of Art. 2 point 1 u.g.w.s.w.; therefore, it raises doubts about conformity with the 2014 Guidelines. In Poland communities based on the belief that even within wide interpretation cannot be treated as “religious communities” are forced to seek legal personality in other forms and are deprived of rights that exclusively belong to “churches and other religious organisations” (setting aside whether this differentiation in status is justifiable in the sense of the proportionality rule).

As far as prerequisites for registration are concerned, there is no provision explicitly regulating the conditions for registering; however, they may be reinterpreted from the text of Arts. 31–32 of the u.g.w.s.w. Those prerequisites are³³ filing a declaration of creating a “church or other religious organisation,” filing a motion for registration (which includes some information required by law and bylaws with required content) and filing a list of a minimum of 100 Polish citizens with full private-law legal capacity, that includes the names, date of birth, place of residence and type, series and number of an identity document and PESEL (Universal Electronic System for Registration of the Population) number of each applicant with his or her signatures confirmed by a notary.

The negative condition that results in the refusal of registering is that the application contains provisions contrary to the provisions of laws protecting public safety and order, health, public morals, parental authority or the fundamental rights and freedoms of others (Art. 33 para. 3 u.g.w.s.w.).³⁴

Particular conditions for registration considered burdensome are listed in paras. 25 and 27–30 of the 2014 Guidelines, and they include the obligation to list all members with their full names, dates of birth and places of residence in a registration motion and get that motion signed by all of them. Other examples are obligations to provide excessively detailed information, pay high or unreasonable registration fees, have an approved legal address, have an excessive number of members or have existed for a long period. Burdensome conditions are also considered prerequisites to have founding members of a state citizenship or “headquarters” on the territory of a state and to seek approval or opinion of another religious or belief community for the registration.

On the grounds of the Act of 17 May 1989 regarding the guarantees of freedom of conscience and religion, only some of the above-mentioned examples of burdensome conditions (a list of all members with required information, excessive numbers of members, founding members of a state citizenship or “headquarters” on the territory of a state) can be problematic. This is because registration requires drafting bylaws with necessary provisions only (analogous to those prescribed in the law on associations³⁵) and brief information about the existing forms of religious life and the methods of operation of a church or other religious organisation in the territory of the Republic of Poland, information on the basic objectives, sources and doctrinal principles, information on religious

³³ Cf. Rynkowski 2007, 177–179.

³⁴ Cf. very similar regulations in Spain: Martinez de Codes 1998, 380. For some cases of denial of legal personality see: Rynkowski 2007, 179; see also: Pasek 2017, 179–180.

³⁵ Compare Art. 10 para. 1 of the law on associations and Art. 32 para. 2 u.g.w.s.w.

rites, data concerning the address of a registered office of a church or other religious organisation and the personal data of members of executive management bodies. It must also be noted that the fee for applying for registration is nominal (10 PLN = c. 2,50 \$).³⁶ A community has to file an address for legal activity without its prior approval and there is no period of existence or opinion of other communities required.³⁷

At first sight, it seems that requirement of 100 minimum memberships violates the rule that acquiring a legal personality by religious or belief communities must not be more difficult than obtaining this personality from other communities (2014 Guidelines, para. 17). However, this rule means that if the religious or belief community can only acquire a legal personality in the general form, the requirement should not be more severe than in the case of other types of communities.

From this viewpoint only, as religious or belief communities can acquire legal personality on the grounds of the Law on associations (Art. 9), with the minimum of seven members, Polish law complies with the 2014 Guidelines as far as this requirement is concerned.³⁸ Therefore, the question is not whether there are discriminatory particular rules for the registration of a religious or belief community, but whether it is justified to set a minimum of 100 members as a threshold for achieving the status of “church or other religious organisation,” which guarantees rights not available³⁹ to associations created on the grounds of the Law on associations, the Code of Commercial Companies and the Act on foundations.

In other words, simply setting 100 minimum memberships does not violate 2014 Guidelines, because there are ways to obtain legal personality (e.g. an association or a foundation) for smaller communities, but it can be discriminatory if a particular right is granted only to communities registered as a “church or other religious organisation” (which must have at least 100 members) and there is no justification for such limitation in the light of Art. 9 para. 2 of the ECHR.

The same applies to other requirements introduced by the Act of 17 May 1989 on guarantees of freedom of conscience and religion, which are not necessary to obtain legal personality as such, but a special status of “church or other religious organisation.” It concerns the requirement for founding members to be Polish citizens with full private-law legal capacity and filing detailed information about them (name, date of birth, place of residence and type, series and number of the identity document and PESEL number of each applicant). It seems hard to justify that it is necessary to grant the privileged status of a “church or other religious organisation” to include such detailed information about the founding members. It may be noted that the notary form guarantees that the applicants are alive at the moment of signing the list and that the names and surnames are true. It seems difficult to justify that such sensitive data as a PESEL number must be

³⁶ According to Art. 1 para. 1 point 1 letter a of the Act of 16 November, 2006 (Ustawa z dnia 16 listopada 2006 r. o opłacie skarbowej, Dz. U. 2023 issue 2111) the fee is formally for “carrying out an official act on the basis of application.”

³⁷ About this last issue see: Stanisław 2020, 70–71, no. 167.

³⁸ Similarly, there are no more strict rules for other types of general form of legal personality (i.e. foundation, corporation) in the case they were to be used by religious or belief communities.

³⁹ For notions about the rule of equal treatment of religious communities in Poland and see: Stanisław 2019, 147 ff.

included in the registry files, which are public (the correspondence address is also suitable for legal correspondence during registration proceedings). The same difficulty concerns the limitation of founding members having Polish citizenship,⁴⁰ while a Polish residency seems to be a more proportionate requirement that can be justified on the grounds of public security or public order.⁴¹

The above-described negative condition for registering (i.e. not including in application provisions contrary to the provisions of laws protecting public safety and order, health, public morals, parental authority or the fundamental rights and freedoms of others) is justified, but its wording is unfortunate. Values such as public safety, public order, health and morals, as well as the protection of the rights and freedoms of others, are all listed in the exclusive catalogue of Art. 9 para. 2 of the ECHR. However, there are two differences. First, there is no mention in Art. 9 para. 2 about parental authority as a separate value that can be grounds for lawful limitation of exercising the right to manifest religion and thus also for lawful limitation concerning acquiring a legal personality. However, “parental authority” seems to be one of the rights of others and thus it can be omitted in Art. 33 para. 3 u.g.w.s.w.⁴² Second, Art. 9 para. 2 of the ECHR does not mention “fundamental” rights and freedom of others nor does Art. 53 para. 5 of the Polish Constitution. *Prima facie* Art. 33 para. 3 u.g.w.s.w. adopts less severe conditions, as (formally) its wording allows for the registration of bylaws that include provisions contrary to the provisions of laws protecting rights and freedoms that are not “fundamental”. The term requires clarification, as there is no definition of it in the Act of 17 May 1989 on guarantees of freedom of conscience and religion and probably replacement with the term “constitutional”.

Respect for the autonomy of religious or belief communities, as required by para. 31 of the 2014 Guidelines, is provided in Polish law. This is because the scope of autonomy prescribed in the Act of 17 May 1989 on guarantees of freedom of conscience and religion is wider than in any other type of general form of legal personality.⁴³ In particular, there are no requirements concerning the structure of an internal organisation (e.g. bodies and their scope of competence), which is unique even to the standards existing in the case of foundations or associations.⁴⁴ In other words, religious or belief communities can freely set up organisational rules according to their self-determination, of course within

⁴⁰ See also the view that this provision of the Act of 17 May 1989 on guarantees of freedom of conscience and religion can also be doubtful as Art. 7 para. 1 u.g.w.s.w. guarantees foreigners and apatrids equal freedom of conscience and religion: Rynkowski 2007, 178. For views about inconformity of this provision with art. 9 of the ECHR see: Pietrzak 2005, 234; Stanisław 2020, 69, note 81. Cf. Piszcz-Czapla 2010, 153–154; Walencik 2024, 162–163.

⁴¹ It is worth noting that there is a difference between registration under Law on Associations and the Act of 17 May 1989 on guarantees of freedom of conscience and religion. While the Act of 17 May 1989 on guarantees of freedom of conscience and religion demands founding members to be Polish citizens, Law on Associations (Art. 4 para. 1) guarantees right to associate to foreigners residing in the territory of Poland.

⁴² Such amendment will also correspond with provisions of the Act of 17 May 1989 on guarantees of freedom of conscience and religion on limitations of manifesting religion (Art. 3, para. 1 u.g.w.s.w.).

⁴³ Cf. Strzała 2016, 272–274.

⁴⁴ When religious or belief community choose to found corporation, the possibility for regulating internal organization is very limited, as their internal structure is generally prescribed by the law. In the case of Law of Association (Art. 11 paras. 1–3), association must have a general assembly (which must be the supreme body), a board of directors to manage day-to-day affairs and a control body. Foundation needs to have, for example, a management board (Arts. 5 and 10 of the Law on foundations).

the limits of fundamental concepts of private law (e.g. bylaws cannot contradict the idea of legal entity or theory of representation). The explicitly mentioned requirement concerning the bylaws (i.e. that the name of a church or other religious organisation must differ from that of other organisations) can be easily justified in the light of protecting the rights of others because they need to know exactly with whom they enter into a contract.

5. Process for the acquisition and withdrawal of a legal personality

As far as proceedings concerning registration are concerned, Art. 34 para. 1 u.g.w.s.w. provides that the decision to enter the register of churches and other religious organisations should be made within 3 months from the date of starting the proceedings. In the case the motion contains provisions contrary to the provisions of laws protecting public safety and order, health, public morals, parental authority or the fundamental rights and freedoms of others, the decision of refusal to register shall be issued within 3 months of applying. If the registration authority finds deficiencies or shortcomings in the content of the motion, it shall set a two-month deadline for rectifying it and shall, upon expiry of that deadline, issue a decision refusing registration within three months of the date on which the application was filed (Art. 34 para. 4 u.g.w.s.w.). These are modifications to general rules on time limits for handling administrative cases, which are generally shorter;⁴⁵ however described periods for resolving the question of granting legal personality cannot be treated as too long. Therefore, within this scope, the Act of 17 May 1989 on the guarantees of freedom of conscience and religion fully complies with the standards of the 2014 Guidelines.

Also, the requirement that decisions denying or withdrawing legal personality must include justification presenting reasons for such decisions (2014 Guidelines, para. 32) is fulfilled. According to Art. 33 paras. 2–3 and Art. 36 para. 2 u.g.w.s.w., decisions regarding a refusal of registration and deletion from the register are issued in the form of an administrative decision. In Polish law, the rule is that administrative decisions must contain citation of the legal basis of the decision as well as factual and legal justification (Code of Administrative Proceedings, Art. 107, para. 1, points 4 and 6).

Both previously mentioned decisions can be challenged. Decisions dealing with registration can be challenged only by applicants and not by a community itself; a decision to delete from a register can be challenged only by a legal entity. First, in administrative proceedings, founding members of the religious community can apply to the authority that issued the decision about registration (legal entity in the case of the decision to delete from the register) for a review of the case. This is formally not an “appeal” in the very

⁴⁵ According to Art. 35 para. 2 of the Act of 14 June, 1960 – Code of Administrative Proceedings (Ustawa z dnia 14 czerwca 1960 r. – Kodeks postępowania administracyjnego, Dz. U. 2024 issue 572), matters which can be considered on the basis of evidence presented by a party together with a motion shall be settled without delay. A case requiring an investigation should be settled no later than within one month, and a particularly complicated case – no later than within two months from the date of initiation of the proceedings (Art. 35 para. 3 of the Code of Administrative Proceedings).

sense of the word used in the Code of Administrative Proceedings, as there is no higher instance; however, it is much the same in practice as the provisions on appeals against decisions apply *mutatis mutandis*. It is also possible to file a complaint about new decision (issued after a review of the case) to the administrative court and, later, a cassation complaint to the Supreme Administrative Court.⁴⁶ Therefore, there is no doubt that there are effective remedies against a decision about refusal to grant and withdrawal of the legal personality of religious or belief communities, including guaranteeing access to court, as mentioned in para. 35 of the 2014 Guidelines. Lately, this processual guarantee has even strengthened.⁴⁷

6. Functioning of legal entities

Concerning the scope of the activities that can be carried out by religious or belief communities' legal entities, it can be said that there is no general provision that narrows it down. If the religious or belief community chooses to use the general form of the legal personality (e.g. corporation, foundation or association), such a legal entity is entitled to perform any activities that are available for legal entities of the same kind.

Today, there are no provisions in Polish law that do not allow legal entities of religious communities to perform some activities only on the grounds that they are legal entities of a religious community. Previously, there was such a limitation prescribed in Art. 36 of the Polish Civil Code.⁴⁸ According to that provision, the legal capacity of a legal person for rights and obligations was limited only to the scope of the tasks of the legal person and to rights and obligations that were not excluded by statutes or bylaws. That meant in the case of the legal entities of religious communities that they could lawfully conduct only activities related to their “religious” tasks (e.g. they could not perform business activities). This provision has not been in force since October 1, 1990. From that day forward, even the *sui generis* legal entities of religious communities, especially the above-mentioned legal persons called “churches and other religious organisations,” can perform any of the activities that are normally exercised by registered non-governmental legal entities. The Act of 17 May 1989 on guarantees of freedom of conscience and religion also does not provide

⁴⁶ See Art. 33 para. 4 u.g.w.s.w. mentioning complaint to the administrative court on the decision of refusal of registration. Article 3 para. 2 point 1 of the Act of 30th August, 2002 – Law on proceedings before administrative courts (Ustawa z dnia 30 sierpnia 2002 r. – Prawo o postępowaniu przed sądami administracyjnymi, Dz. U. 2024 issue 935) states that complaint is available to any administrative decision. According to art. 173 of this act a cassation complaint may be filed with the Supreme Administrative Court against generally (there are some exceptions) any verdict of an administrative court.

⁴⁷ According to Art. 52 para. 1 of the law on proceedings before administrative courts, complaint to administrative court can be filed upon condition that there was appeal in the course of administrative proceedings filed to the administrative authorities before lodging the complaint. In 2017 there was an amendment to Art. 52 para. 3 of that Act that allows today to file a direct complaint to administrative court without lodging a mandatory motion for a review of the case with the authority that issued administrative decision in the first instance, but still such a motion for a review can be filed, which leaves the choice to the applicants.

⁴⁸ Ustawa z dnia 23 kwietnia 1964 r. – Kodeks cywilny, Dz. U. 2023 issue 1610 as amended. For the text of cited provision see original text: Dz. U. 1964 issue 93.

any regulation about limitation of it.⁴⁹ To conclude, requirements derived from para. 23 of the 2014 Guidelines are met.

7. Loss of legal personality

Important regulations concern the possibility of the loss of legal personality by religious or belief communities. According to Art. 36 para. 1 u.g.w.s.w., deletion from the register will occur in the case that a church or other religious organisation has a legal and property situation that has been regulated by a separate act of parliament. The same concerns a church or other religious organisation that has notified the registration authority that it has ceased its activities. Deleted from the register is also a church or other religious organisation that has lost the qualities that were a prerequisite for being entered into the register. This last situation occurs in particular when a church or other religious organisation, within three years, has not responded to the request of the registration authority and updated its entries in the register to the extent of information required in the registration process (concerning the address of the registered office of the church or other religious organisation and the data of the persons who are members of the executive management bodies).⁵⁰

The case of deletion from the register, since the legal and financial situation of a church or other religious organisation has been regulated by a separate law, does not involve loss of legal personality but affects only the way of regulation of the legal status of a religious community. The change is that a church or other religious organisation is not subjected to the registration system regulated in the Act of 17 May 1989 on guarantees of freedom of conscience and religion, but its legal status is granted by the individual act of parliament. As such, this does not involve, *per se*, the loss of legal personality but rather strengthens it, as depriving a religious community (and its entities) of its legal personality requires a new act of parliament and cannot be done via an administrative decision of a registration authority on the grounds of the Act of 17 May 1989 on guarantees of freedom of conscience and religion.

A case of deletion from a register of a church or other religious organisation that has notified a registration authority that it has ceased its activities does not limit the rights of religious communities; on the contrary, it is an example of the autonomy of religious communities, which are in charge of the decision whether to cease to take part in the state legal system in the form of a *sui generis* legal entity of a “church or other religious organisation.”

The case of deletion from the register, since a church or other religious organisation has lost the qualities that were a prerequisite for being entered into a register, requires

⁴⁹ Provisions of Art. 27 para. 1 u.g.w.s.w (which states that the activities of churches and other religious associations may not violate the provisions of generally applicable laws protecting public safety, public order, health or morals, parental authority or the fundamental rights and freedoms of other) are only the iteration of the general rules about the limitations of exercising one's rights and do not impose particular limitations to legal entities of religious communities.

⁵⁰ Stanisław 2020, 71, no. 170.

more attention because it is the compulsory withdrawal of a legal personality. The Act of 17 May 1989 on guarantees of freedom of conscience and religion describes the grounds for deletion as the “loss of the qualities that were a prerequisite for being entered in the register.” Because there is no formal list of “qualities that were a prerequisite for being entered in the register,” the grounds for deletion from the register must be interpreted from the provisions of the Act of 17 May 1989 on guarantees of freedom of conscience and religion. As other prerequisites for registering are formal (i.e. filing appropriate documents), the “loss of the qualities that were a prerequisite for being entered in the register” implicitly means a reduction of members of the religious community below the threshold of 100 members⁵¹ (setting aside the problem of whether the loss of religious character mentioned in the definition in Art. 2 point 1 u.g.w.s.w. is included in the scope of the term “loss of the qualities that were a prerequisite for being entered in the register”). The assessment of this provision must reflect the previously described assessment of the condition for registration to have a minimum of 100 members.⁵² As long as setting a 100-membership threshold for registration is considered justified, the condition for deletion from the register of the loss of the minimum number of members is also lawful.

Another issue is that a state has the right to eliminate legal entities that cease to exist, especially to avoid risk in private-law transactions and to protect the rights of its participants. Therefore, it seems justifiable to delete from the register organisations that no longer conduct any activity or that let false information remain in the register. For that reason, failure to respond to the request of a registration authority to confirm or update entries in the register concerning crucial, most essential information needed to participate in the private-law sphere (address, data of the members of the executive management bodies, which allows them to deliver documents or other declarations of will) is in proportion with the need to protect public order and the rights of others, meant in Art. 9 para. 2 of the ECHR, which is required by para. 32 of the 2014 Guidelines. Especially as the rights to assets of the liquidated church and other religious organisations are disposed of according to the decisions of the community itself, previously included in the bylaws filed with the motion for registration (Art. 32 para. 2 point 10 u.g.w.s.w.).

Until 30 May 1998, there were no special regulations that could result in deleting from the register a church or other religious organisation (and/or one of its legal entities) that performed illegal activities. On that day, Art. 36a u.g.w.s.w. was added, which allows the registration authority or the public prosecutor to file a request for the provincial court to declare that the activities of a church or other religious organisation are contrary either to the provisions of law referred to in Art. 27 para. 1 u.g.w.s.w. or to the bylaws. After a final court judgement confirming the gross violation of the law or bylaws, a registration authority deregisters the church or other religious organisation, which involves the loss of legal personality.

To this case the same rules apply as in the case of the conformity of limitations of registering a church or other religious organisation. This means that the conditions for

⁵¹ Cf. Strzała 2019, 289. For different opinions see: Januchowski 2009, 37; Plisiecki 2013, 98.

⁵² Ibidem.

deletion from a register must comply with the rule of limitation of the right to manifest religion, as introduced in Art. 9 para. 2 of the ECHR. References to the laws mentioned in Art. 27 para. 1 u.g.w.s.w. (as the laws that limit activities of a church or other religious organisation and violation of which can result in the deletion from the register) causes that the provisions of this article to be assessed in light of the standards introduced by Art. 9 para. 2 of the ECHR.

The provisions of Art. 27 para. 1 u.g.w.s.w. are generally the same as the provisions of Art. 33 para. 3 u.g.w.s.w., which introduces registration prerequisites and which follow Art. 9 para. 2 of the ECHR. Thus, the conclusions must be the same, which means that the conditions for deletion from a register of a church or other religious organisation (and/or one of its legal entities) that performs illegal activities are generally in compliance with the standards introduced by Art. 9 para. 2 of the ECHR and, thus, with the requirements of para. 32 of the 2014 Guidelines; however, the wording of Art. 27 para. 1 u.g.w.s.w. should be changed.⁵³

Apart from the analysis of the reference to the provisions of Art. 27 para. 1 u.g.w.s.w., an assessment of other conditions for deletion from a register prescribed by Art. 36a u.g.w.s.w. must also be performed. In this regard, things that raise doubts are: the lack of middle-of-the-road measures and the open-to-discretionary interpretation term “gross violation.”⁵⁴ These last two issues raise serious concerns about their compliance with para. 33 of the 2014 Guidelines, which require repeated violations to withdraw legal personality.

Conclusion

Analyses of Polish law regarding the registration of religious communities led to the general conclusion that Polish regulations are mostly compliant with the rules listed in the 2014 Guidelines. Lack of mandatory registration/acquiring legal personality as well as the possibility for a religious community to use a common form of legal personality (i.e., association, foundation or corporation) are in accordance with the rules of the 2014 Guidelines. The Polish provisions dealing with the registration guarantee the appropriate scope of autonomy and legal entities of religious communities are entitled to conduct any activities normally conducted by legal entities, which also complies with the rules of 2014 Guidelines.

The provisions that regulate prerequisites for withdrawal of a legal personality from a register are generally in accordance with the 2014 Guidelines. However, Polish law lacks repetitiveness of violations of laws and bylaws in conditions for outlawing a community. Potentially wide margin of appreciation in the case of the term “gross violation” in Polish regulations about deregistering of the church or other religious organisation, that

⁵³ See above in part “Prerequisites for acquiring legal personality.”

⁵⁴ For other controversies about interpretation of art. 36a u.g.w.s.w. – see: Koredczuk 2010, 57–61.

gives the authorities opportunity to interpret the term too freely, can violate the rules of the 2014 Guidelines.

The provisions of Polish law dealing with proceedings about (de)registration are generally in accordance with the 2014 Guidelines (with the exception that decisions dealing with registration can be challenged only by applicants and not by a community itself, and a decision to delete from a register can be challenged only by a legal entity). Some provisions are unfortunate (i.e. the wording of Art. 33 para. 3 and Art. 27 para. 1 u.g.w.s.w.) and, thus, not contrary to stipulations of the 2014 Guidelines, but still, they should be amended.

Other regulations raise serious concerns about their compatibility with the rules endorsed by the Venice Commission. This includes no possibility of acquiring the status of “church or other religious organisation” (which involves a variety of rights and privileges) by non-religious belief communities. However, even as the Venice Commission proposed granting non-religious belief communities status equal to that of religious communities, such a regulation can be disputable, as many privileges that religious communities have been granted by law due to their religious character and pursuing religious aims by them.

Other regulations that seem not to be under the rules of the 2014 Guidelines are the requirements of Polish citizenship to register a religious community and to provide detailed information about founding members, including date of birth, place of residence and type, series and number of an identity document and PESEL (Universal Electronic System for Registration of the Population) number. Although the 2014 Guidelines is not legally binding, as are all documents of the Venice Commission (i.e. soft law⁵⁵), its provisions should be at least considered when assessing or amending laws affecting the legal personality of religious or belief communities. This argument is in favour of appropriate changes in Polish law in some of the above-mentioned cases of the incompatibility of Polish law with the 2014 Guidelines.

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⁵⁵ Hoffmann-Riem 2014, 580–581.

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