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Revindication of religious organizations' properties in Poland: Thirty years' experience of building a democratic state ruled by law

Rewindykacja nieruchomości związków wyznaniowych w Polsce – doświadczenia trzydziestu lat budowania demokratycznego państwa prawnego

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Abstract: This article analyzes the provisions under which the property of legal entities of religious organizations in Poland nationalized during the Polish People's Republic is revindicated after the year 1989. The paper discusses models and methods of regulating the property matters of church legal entities, taking into account numerous changes in the legal status due to subsequent amendments to the provisions as well as the evolution of their interpretation by the judicature and doctrine. Special attention is paid to debatable legal issues, including the unauthorized differentiation of the legal situations of individual religious organizations.

It can be concluded that the legislator has consistently enfranchised all church legal entities by applying the *status quo* principle. The only provisions that raise objections are those of Art. 60 para. 6 of the Act on the relationship between the State and the Catholic Church and Art. 35 para. 3 of the Act on the relationship between the State and the Evangelical Methodist Church, according to which a complaint to a voivode on the failure to issue a decision can be submitted after a period of two years from the date of initiation of administrative proceedings.

The regulatory proceedings introduced into the Polish legal system by the provisions of the Act of 1989 on the relationship between the State and the Catholic Church, duplicated in the provisions of the Acts on the relationship between the State and the Polish Autocephalous Orthodox Church, Evangelical Church of the Augsburg Confession, and Jewish Religious Communities, as well as in the Act on guarantees of freedom of conscience and religion were original and innovative in many respects. Based on the proceedings, it was possible to pursue claims out-of-court with the participation of the interested parties, that is, church legal entities and the State. In retrospect, the regulatory proceedings can be considered an instrument of transitional justice. Over the years, however, as a result of the negligence of the legislator, that instrument has become increasingly inconsistent with the 1997 Constitution of the Republic of Poland and the standards set by it.

With regard to the possibility of transferring agricultural property located in the Western and Northern Territories of Poland to legal entities of religious organizations, no *ad quem* deadline to submit applications has been established for legal entities of the Catholic Church. Meanwhile, additional restrictive criteria have been introduced and the list of entities authorized to transfer the property narrowed down.

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Allowing legal entities of the Polish Autocephalous Orthodox Church, Evangelical Reformed Church, and Baptist Church to file new revindication requests in 2004 in the course of transforming the administrative proceedings into regulatory proceedings should be assessed negatively.

The objections raised are mainly the result of the lack of a post-transition systemic solution to the issue of revindication not only of the property of religious organizations but, most of all, other entities. Even though 30 years have passed since the change in the political system in Poland, regulating property relations, including compensation for losses resulting from the activities of the communist authorities, remains an unsolved issue.

Key words: churches and other religious organizations; nationalization; revindication; enfranchisement; regulatory proceedings

Streszczenie: Celem tego artykułu jest analiza przepisów, na mocy których odbywa się w Polsce po 1989 r. rewindykacja nieruchomości osób prawnych związków wyznaniowych upaństwowionych w okresie Polski Ludowej. Omówiono w nim zarówno tryby, jak i sposoby regulacji spraw majątkowych wyznaniowych osób prawnych, uwzględniając liczne zmiany stanu prawnego wprowadzane kolejnymi nowelizacjami przepisów oraz ewolucję ich wykładni dokonywanej przez judykaturę i doktrynę. Zwrócono szczególną uwagę na dyskusyjne kwestie prawne, w tym na nieuprawnione zróżnicowanie sytuacji prawnej poszczególnych związków wyznaniowych.

Przeprowadzone w artykule analizy prowadzą do wniosku, że ustawodawca konsekwentnie uwłaszczył wszystkie wyznaniowe osoby prawne, stosując zasadę *status quo*. Zastrzeżenia budzą jedynie przepisy art. 60 ust. 6 ustawy o stosunku Państwa do Kościoła Katolickiego i art. 35 ust. 3 ustawy o stosunku Państwa do Kościoła Ewangelicko-Metodystycznego, zgodnie z którymi skarga na niewydanie przez wojewodę decyzji jest dopuszczalna po upływie 2 lat od daty wszczęcia postępowania administracyjnego.

Wprowadzone do polskiego systemu prawnego przepisami ustawy z 1989 r. o stosunku Państwa do Kościoła Katolickiego postępowanie regulacyjne, powielone następnie w przepisach ustaw o stosunku Państwa do Polskiego Autokefalicznego Kościoła Prawosławnego, Kościoła Ewangelicko-Augsburskiego oraz gmin wyznaniowych żydowskich, a także w ustawie o gwarancjach wolności sumienia i wyznania, było pod wieloma względami oryginalne i nowatorskie. Stwarzało bowiem możliwość pozasądowego dochodzenia roszczeń z udziałem zainteresowanych – wyznaniowych osób prawnych i państwa. Z perspektywy czasu postępowanie regulacyjne można postrzegać jako instrument sprawiedliwości tranzycyjnej. Z upływem lat w wyniku zaniedbań ustawodawcy instrument ten stawał się jednak coraz bardziej niespójny z obowiązującą Konstytucją RP i wyznaczonymi przez nią standardami.

Odnośnie do możliwości przekazania nieruchomości rolnych osobom prawnym związków wyznaniowych na Ziemiach Zachodnich i Północnych Polski nie ustanowiono terminu *ad quem* dla składania wniosków w przypadku osób prawnych Kościoła Katolickiego, ale równocześnie wprowadzono dodatkowe kryteria obostrzające oraz zawężono krąg podmiotów uprawnionych do przekazania nieruchomości. Negatywnie należy ocenić stworzenie w 2004 r. możliwości składania nowych wniosków rewindykacyjnych przez osoby prawne Polskiego Autokefalicznego Kościoła Prawosławnego, Kościoła Ewangelicko-Reformowanego oraz Kościoła Chrześcijan Baptystów w trakcie przekształcenia postępowania administracyjnego w postępowanie regulacyjne.

Zasygnalizowane zastrzeżenia są w głównej mierze efektem braku po przemianach ustrojowych systemowego rozwiązania problemu rewindykacji nie tylko mienia związków wyznaniowych, ale przede wszystkim pozostałych podmiotów. Uporządkowanie stosunków własnościowych w Polsce, w tym również zrekompensowanie strat będących wynikiem działalności władz komunistycznych, mimo upływu 30 lat od zmiany systemu politycznego, pozostaje sprawą ostatecznie nierozwiązaną.

Słowa kluczowe: kościoły i inne związki wyznaniowe; nacjonalizacja; rewindykacja; uwłaszczenie; postępowanie regulacyjne

Preliminary remarks

During the period of the Polish People's Republic, that is, in the years 1944–1989, restricting the property rights of religious organizations was one of the elements of the fight of the communist authorities against religion. This was manifested by the confiscation of property of legal entities of churches and other religious organizations, carried out both in line with and in violation of the law in force at the time. The law on religion, adopted at the turn of the 1980s and 1990s as part of the system changes in Poland, could not ignore the effects of the long-lasting restrictive policy of the communist authorities related to the property of religious organizations. Consequently, it also includes provisions on the regulation of the financial situation of those entities. The acts on the relationship between the State and individual religious organizations (the so-called individual denominational acts)[1] and the Act of 17 May 1989 on guarantees of freedom of conscience and religion[2] (the so-called general denominational act) specify the conditions for the application by legal entities of religious organizations for

[1] The Act of 17 May 1989 on the relationship between the State and the Catholic Church in the Republic of Poland, consolidated text: Dziennik Ustaw [Journal of Laws; hereinafter: Dz. U.] 2019, item 1347 as amended, hereinafter: ACC; the Act of 4 July 1991 on the relationship between the State and the Polish Autocephalous Orthodox Church, consolidated text: Dz. U. 2014, item 1726 as amended, hereinafter: APAOC; the Act of 13 May 1994 on the relationship between the State and the Evangelical Church of the Augsburg Confession in the Republic of Poland, Dz. U. 2015, item 43, hereinafter: AECA; the Act of 13 May 1994 on the relationship between the State and the Evangelical Reformed Church in the Republic of Poland, consolidated text: Dz. U. 2015, item 483 as amended, hereinafter: AERC; the Act of 30 June 1995 on the relationship between the State and the Evangelical Methodist Church in the Republic of Poland, consolidated text: Dz. U. 2014, item 1712 as amended, hereinafter: AEMC; the Act of 30 June 1995 on the relationship between the State and the Baptist Church in the Republic of Poland, consolidated text: Dz. U. 2015, item 169 as amended, hereinafter: ABC; the Act of 30 June 1995 on the relationship between the State and the Seventh-day Adventist Church in the Republic of Poland, consolidated text: Dz. U. 2014, item 1889 as amended, hereinafter: ASAC; the Act of 30 June 1995 on the relationship between the State and the Polish-Catholic Church in the Republic of Poland, consolidated text: Dz. U. 2014, item 1599 as amended, hereinafter: APCC; the Act of 20 February 1997 on the relationship between the State and the Jewish Religious Communities in the Republic of Poland, consolidated text: Dz. U. 2014, item 1798, hereinafter: AJRC; the Act of 20 February 1997 on the relationship between the State and the Catholic Mariavite Church in the Republic of Poland, consolidated text: Dz. U. 2015, item 44 as amended, hereinafter: ACMC; the Act of 20 February 1997 on the relationship between the State and the Old Catholic Mariavite Church in the Republic of Poland, consolidated text: Dz. U. 2015, item 14 as amended, hereinafter: AOCMC; the Act of 20 February 1997 on the relationship between the State and the Pentecostal Church in the Republic of Poland, consolidated text: Dz. U. 2015, item 13, hereinafter: APC.

[2] Consolidated text: Dz. U. 2022, item 1435 as amended, hereinafter: AGFCR.

the restoration of ownership rights to the nationalized property, or part of it, or transfer of the ownership rights to the property, including replacement property, or grant of financial compensation. To handle the above-mentioned claims, two out-of-court modes have been established.[3] The first is an administrative mode. Pursuant to this mode, following the decision of a voivode with jurisdiction over the location of a given property, the property, or part of it, which remains in the possession of a church legal entity on the date a given individual act takes effect, becomes property of that legal entity by operation of law (enfranchisement) after fulfilling the additional conditions specified in the act. Moreover, the voivode or other authority exercising, on behalf of the State Treasury, the rights arising from the ownership of property, or the authorities of local government units, within their jurisdiction, may transfer the ownership of the property, or part of it, to a religious organization or its legal entity. The precondition for the transfer is that the property is suitable as a site of religious worship or charitable, care, or educational activities, or it can be used to establish or expand, to a limited extent, a farm of a church legal entity that operates in the Western and Northern Territories of Poland (transfer of property).[4] The second mode, known as regulatory proceedings, is applied by regulatory commissions composed of representatives appointed by religious organizations, in equal numbers, and the minister in charge of religious denominations and national or ethnic minorities. This mode is applicable to properties nationalized

[3] The article does not cover the issues regulated by the provisions of the Act of 17 December 2009 on the regulation of the legal status of certain property remaining in the possession of the Polish Autocephalous Orthodox Church (Dz. U. 2010, No. 7, item 43). This is the first separate, *stricte* denominational law adopted after the entry into force of the new Constitution of the Republic of Poland of 2 April 1997 (Dz. U. 1997, No. 78, item 483 as amended, hereinafter: Constitution of the Republic of Poland). The compromise contained therein ended the long-standing dispute between the Orthodox Church and the Catholic Church of the Greek Catholic rite related to the ownership of 22 post-Uniate sacred buildings. Hence, together with the transfer of property from the State Treasury to the relevant church legal entities, all property claims of the entities against the State Treasury and against each other expired. For more information on the subject, see: Bielecki 2015, 185–263; Piszcz-Czapla 2010, 279–323; Podolska-Meducka 2017, 113–127; Leszczyński, Walencik 2018, 109–125.

[4] The Western and Northern Territories are the areas that were incorporated into Poland after World War II following the agreement between the United States, the USSR, and Great Britain concluded during the Potsdam Conference (July-August 1945). Thus, the area in question includes a large part of Silesia, the Lubusz Land, West Pomerania with Szczecin, East Pomerania with Gdańsk, and the southern part of East Prussia or Warmia and Masuria; a total of 102,855 km^2.

under the conditions set forth in denominational acts; its purpose is to restore the ownership of properties to religious entities upon their request.

The provisions on the regulation of property matters of religious organizations have been amended many times, which, in turn, has led to a diversification of the legal situation of religious organizations. Currently, the acts on the relationship between the State and the Polish Autocephalous Orthodox Church, Evangelical Church of the Augsburg Confession, Evangelical Reformed Church, Evangelical Methodist Church, Baptist Church, and Seventh-day Adventist Church contain provisions relating to three issues: the enfranchisement of legal entities of religious organizations, the possibility of transferring property to them, and submitting revindication applications for assessment by regulatory commissions. Regarding some of the aforementioned religious organizations, the regulations in question also cover the property of religious organizations that were identical in terms of religion but organizationally separate in the past.[5] Today, the Act on the relationship between the State and the Catholic Church establishes the rules for the enfranchisement of its legal entities, the possibility of transferring property located in the Western and Northern Territories to them, and regulatory proceedings conducted by common courts. The Acts on the relationship between the State and the Polish-Catholic Church and the Pentecostal Church contain norms on the enfranchisement of legal entities of those churches and the possibility of transferring property to them, while the Act on the relationship between the State and the Jewish Religious Communities contains provisions on the enfranchisement and regulatory proceedings. The Acts on the relationship between the State and the Old Catholic Mariavite Church and Catholic Mariavite Church only include provisions on the enfranchisement of legal entities of those religious organizations. In turn, the Act on guarantees of freedom of conscience and religion contains only provisions related to regulatory proceedings, while its subject matter may also be the transfer of property located in the Western and Northern Territories (Art. 38b AGFCR). Finally, the following regulations: Art. 33 AOCMC, Art. 34 ASAC, Art. 36 AEMC[6] explicitly relate

[5] Cf. Art. 39 AECA; Art. 35 and 36a AEMC; Art. 34a ASAC; Art. 35 APC. See: Binemann-Zdanowicz 2017, 70–87; Zawiślak 2020, 387–419.

[6] To implement that provision, an order was issued by the Minister – the Head of the Office of the Council of Ministers – of 24 June 1996 on the detailed principles and mode of the restoration

to the restoration of ownership rights (or free perpetual usufruct) over specific properties listed in the provisions.

1. Enfranchisement

The acts that regulate the legal situation of individual religious organizations define the scope of the subject matter of enfranchisement (i.e., the prerequisites that must be met by the property) in a rather diverse manner.[7] The differences relate to the stance of the religious organizations' authorities towards property issues and scale of nationalization of their property during the Polish People's Republic. The properties subject to enfranchisement most often include those that were subject to the provisions of the Act of 20 March 1950 on the takeover of goods of a "dead hand" by the State, ensuring the possession of arable farms by parish priests and setting up the Church Fund[8] and the decree of 24 April 1952 on the abolition of foundations,[9] as long as they have been handed over, leased, rented, or transferred to legal entities of religious organizations, as well as properties on which cemeteries or sacred buildings with accompanying buildings are located. In the Acts on the relationship between the State and the Polish-Catholic Church (Art. 33 APCC), the Seventh-day Adventist Church (Art. 33a ASAC) and the Jewish Religious Communities (Art. 29 AJRC), no additional criteria to be met by the property subject to enfranchisement were included.

The *sine qua non* condition for enfranchisement in all cases is the possession of a given property or a part of it that is owned by the State Treasury, by a legal entity of a given religious organization on the date the relevant individual act takes effect.[10] The provisions of the denominational acts do

of ownership rights of the Evangelical Methodist Church in Poland to the property located in Kraków at ul. Straszewskiego no. 20, Monitor Polski [Polish Monitor; hereinafter: M.P.] 1996, No. 39, item 389.

7 Cf. Art. 60 ACC; Art. 46 APAOC; Art. 39 AECA; Art. 23 AERC; Art. 35 AEMC; Art. 39 ABC; Art. 33a ASAC; Art. 33 APCC; Art. 29 AJRC; Art. 29 ACMC; Art. 32 AOCMC; Art. 35 APC.

8 Dz. U. 1950, No. 9, item 87 as amended.

9 Dz. U. 1952, No. 25, item 172 as amended.

10 Cf. judgment of the Supreme Administrative Court of 31 July 2003, I SA 3217/01, not published, and the following judgments of the Voivodship Administrative Court in Warsaw: of 1 August 2006, I SA/Wa 664/06, LEX No. 276579; of 9 December 2009, I SA/Wa 1301/09,

not specify whether it refers to "actual possession." Therefore, it cannot be assumed that any kind of possession (actual possession within the meaning of the Civil Code[11]), including dependent possession (e.g., resulting from a lease agreement), constitutes the fulfillment of the condition set by the legislator for the acquisition of the ownership rights. This leads to the assumption that the acquisition, by virtue of law, of ownership rights to a property could only apply to the type of possession of State Treasury property that gave the holder the possibility of independently using that property in accordance with the principles of sound economy, and thus had characteristics relevant for the exercise of power by the owner, also enabling the holder, to a certain extent, to dispose of that property (e.g., through a lease or rental agreement).[12]

In all the acts regulating the enfranchisement of legal entities of religious organizations, the uniformly adopted rule was that the transfer of ownership of property, or a part of it, to church legal entities is made upon the request of those entities for a declaratory decision by the competent voivode over the location of the property. Although the decision is declaratory in nature, the applicable regulations are not only the provisions of the relevant denominational act, but also the Act of 14 June 1960 – the Code of Administrative Procedure[13] and the Act of 30 August 2002 – the Law on proceedings before administrative courts.[14] The enfranchisement application must be accompanied by documents proving the fulfillment of the statutory prerequisites, an up-to-date copy of the land and mortgage register (issued no later than 3 months before submission of the application), and an extract from the land register with a relevant description and map. The application is not subject to stamp duty.[15]

The parties to the proceedings are as follows: the State Treasury, the legal entity of the religious organization (i.e., the entity in charge of

LEX No. 582704; of 4 November 2015, I SA/Wa 1004/15, LEX No. 2030491; of 3 November 2020, I SA/Wa 1228/20, LEX No. 3173813.

11 The Act of 23 April 1964 – the Civil Code, consolidated text: Dz. U. 2022, item 1360.

12 Judgment of the Supreme Court of 4 December 2002, III RN 206/01, LEX No. 78677, and judgments of the Voivodship Administrative Court in Warsaw: of 10 August 2006, I SA/Wa 650/06, LEX No. 276575 and of 20 July 2017, I SA/Wa 477/17, LEX No. 2356386.

13 Consolidated text: Dz. U. 2022, item 2000, hereinafter: CAP.

14 Consolidated text: Dz. U. 2022, item 329 as amended, hereinafter: LPAC.

15 See: Art. 3 of the Act of 16 November 2006 on Stamp Duty (consolidated text: Dz. U. 2022, item 2142) in conjunction with the provisions of individual acts introducing such an exemption.

the land), as well as the entity that holds a specific right in rem to the land (e.g., the right of perpetual usufruct). Consideration of the latter is justified by the fact that the acquisition of property by a church legal entity under the procedure in question also affects third parties.[16]

In the event of an unfavorable resolution of the case (issuance of a negative decision), the church legal entity may file an appeal to the minister competent for religious denominations and national and ethnic minorities, within 14 days from the date of receipt of the decision. The appeal is filed through the voivode who issued the decision (Art. 127 para. 1 and 2 CAP in conjunction with Art. 17 para. 2 and Art. 129 para. 1 and 2 CAP). In turn, in the event of an unfavorable resolution by the minister, the party may file an appeal to the Voivodship Administrative Court in Warsaw, which adjudicates as a court of the first instance. Pursuant to Art. 173 para. 1 LPAC, a cassation appeal may be lodged with the Supreme Administrative Court against the final judgment or ruling issued by a voivodship administrative court.

On the time limit for settling a case relative to the issuance of the enfranchisement decision by a voivode, Art. 35 para. 4 CAP is of great importance. It stipulates that special provisions may specify other time limits than those determined in para. 3 of that Article. Article 60 para. 6 ACC and Art. 35 para. 3 AEMC, which provide that a complaint against the failure to issue a decision is admissible after two years from the date of initiation of the administrative proceedings should thus be considered as special provisions. It is an exception to Polish law and applies only to those two religious organizations. In my opinion, those provisions should be seen as inconsistent with the principle of equality of churches and other religious organizations.

In the event that enfranchisement proceedings coincide with other administrative or judicial proceedings related to the determination of legal status of the property subject to enfranchisement, the latter is suspended until a decision is issued by the competent voivode. The courts or administrative bodies concerned shall then make the files of the proceedings

[16] Cf. judgement of the Supreme Administrative Court of 27 September 1990, II SA 502/90, *Orzecznictwo Naczelnego Sądu Administracyjnego* 1990, No. 2–3, item 54; judgment of the Voivodship Administrative Court in Warsaw of 9 December 2009, I SA/Wa 1411/09, LEX No. 582711; judgment of the Court of Appeal in Warsaw of 19 June 2020, V ACa 370/19, LEX No. 3160250.

available to the voivode. When the final decision is issued, the voivode notifies the court or administrative body that had suspended the proceedings, and returns the case file. The issuance of a final decision on enfranchisement is the basis for closing the suspended proceedings by a court or administrative authority.

Acquisition of ownership rights to a property, or part of it, through enfranchisement is free of taxes and fees associated with the transfer. Furthermore, the resulting applications for entries in the land and mortgage register are exempt from stamp duty.[17]

2. Regulatory proceedings

The material scope of regulatory proceedings has also been narrowed down to the most important categories of the nationalized property of religious organizations. The proceedings have applied, inter alia, to property taken over in the course of the execution of the above-mentioned Act on the takeover of goods of a "dead hand" by the State, ensuring the possession of arable farms by parish priests and setting up the Church Fund (if the farms due to parish priests under that act were not separated), property taken over after the year 1948 in the course of enforcement of council tax arrears, expropriated property (if financial compensation for the expropriated property has not been paid), property nationalized under the decree of 26 October 1945 on ownership and use of land in the area of the Capital City of Warsaw,[18] as well as property taken over by state organizational units with no legal title (regardless of subsequent legislation regulating such acquisitions). The subject matter of regulatory proceedings could also be the transfer of ownership of property, or part of it, the purpose of which was the restoration of religious practices or activities of an educational or charitable nature in that property.[19] These solutions resulted from adopting the principle of partial recovery of the property of religious organizations

[17] For more details on the enfranchisement of church legal entities, see: Walencik 2006, 133–153; Walencik 2007a, 339–349; Walencik 2009d, 163–188; Walencik 2013, 235–246.

[18] Dz. U. 1945, No. 50, item 279.

[19] Cf. Art. 47 para. 1 APAOC; Art. 40–41 AECA; Art. 24 AERC; Art. 36a AEMC; Art. 40 ABC; Art. 34a ASAC; Art. 30 AJRC; Art. 38a–38b AGFCR.

and are a form of a compromise between the claims of those entities and the ability of the State to repair the damage caused.

Revindication applications – apart from those submitted by legal entities of the Catholic Church – are assessed by mixed commissions consisting of representatives of religious organizations and the State, composed on a parity basis. For the Polish Autocephalous Orthodox Church,[20] Evangelical Church of the Augsburg Confession[21] and Jewish Religious Communities,[22] appropriate regulatory commissions are established. In turn, the Inter-Church Regulatory Commission[23] assesses applications submitted by legal entities of other religious organizations. From 28 April 1990[24] to 28 February 2011, the Property Commission was also in operation, which assessed revindication applications from legal entities of the Catholic Church.[25] The basic legal regulations related to those proceedings were included in the repealed Art. 61–64 ACC and the order of the Minister – the Head of the Council of Ministers of 8 February 1990 on the detailed course of regulatory proceedings for the restoration of ownership rights to property, or part of it, to legal entities of the Catholic Church.[26] The enumerated provisions of the Code of Administrative Proceedings also apply to regulatory proceedings.

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20 Cf. Art. 48a para. 2 APAOC and the regulation of the Minister of Internal Affairs and Administration of 14 May 1999 on the detailed course of the proceedings of the Regulatory Commission for the Polish Autocephalous Orthodox Church (Dz. U. 1999, No. 45, item 456). See: Bendza 2007, 87–100; Bendza 2009, 145–245; Walencik 2008a, 63–74; Walencik 2008c, 100–110.

21 Cf. Art. 43 para. 1 AECA and the order of the Minister – the Head of the Office of the Council of Ministers of 12 October 1994 on the detailed course of the regulatory proceedings for the restoration of ownership rights to property, or part of it, to legal entities of the Evangelical Church of the Augsburg Confession in Poland (M.P. 1994, No. 55, item 461). See: Binemann-Zdanowicz 2009, 372–400; Binemann-Zdanowicz 2020; Sławiński 2008, 349–365.

22 Cf. Art. 32 para. 1 AJRC and the order of the Minister of Internal Affairs and Administration of 10 October 1997 on the detailed procedure of the Regulatory Commission for the affairs of the Jewish Religious Communities (M.P. 1997, No. 77, item 730). See: Czohara 2012, 226–268.

23 Cf. Art. 38a para. 1 AGFCR and the regulation of the Minister of Internal Affairs and Administration of 20 December 2004 on the detailed course of the regulatory proceedings before the Inter-Church Regulatory Commission (Dz. U. 2004, No. 279, item 2768). See: Zamirski 2018, 179–195; Zamirski 2020, 739–753.

24 This is the date when the first members of the Property Commission were appointed. Formally, the Property Commission existed since 23 May 1989 but the order on the detailed course of the regulatory proceedings conducted before the Commission (which determined, inter alia, the number of its members) entered into force only on 16 February 1990.

25 For more details on the Property Commission see: Pelc 1995, 103–137; Walencik 2008b.

26 M.P. 1990, No. 5, item 39.

Despite the fact that the Property Commission has been operating for almost 21 years, the provisions relative to its functions have not been gradually adjusted to the new economic conditions and the changing legal order in Poland. Thus, they became increasingly inconsistent with the Constitution of the Republic of Poland in force since 1997, and the standards set by it (e.g., no two-instance proceedings, no possibility to appeal to the court against the decision of the adjudicating panel of the Commission). This resulted from the many years of negligence of the legislative authority who did not make any effort to adapt the pre-Constitutional Act on the relationship between the State and the Catholic Church to the requirements of the new basic law of Poland.[27] Meanwhile, in the conduct of proceedings before the Property Commission, the arrangements adopted by the Joint Commission of Representatives of the Government of the Republic of Poland and the Polish Bishops' Conference applied. The memoranda of understanding between the two concerned the following:

- principles of property appraisal in the proceedings before the Property Commission (22 June 2001);
- extending the regulatory proceedings to cover the property of legal entities of the Catholic Church located in the Western and Northern Territories (3 July 2006);
- improving the operation of the Property Commission (25 June 2009).[28]

Doubts exist as to whether the Joint Commission was entitled to regulate issues that were, or should have been, specified in the provisions of an act or an order (after 17 October 1997[29] – a regulation). Nevertheless, the Property Commission conducted proceedings based on those arrangements, even though they were not binding legal norms. The negligence of the legislator resulted in irregularities in the operation of the Property Commission, which was criticized by representatives of the legal doctrine[30] and publicized in the media. Consequently, the Commission was dissolved.

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27 Cf. the dissenting opinion of the judge of the Constitutional Tribunal S. Wronkowska-Jaśkiewicz of 8 June 2011, K 3/09, *Orzecznictwo Trybunału Konstytucyjnego. Zbiór Urzędowy. Seria A* 2011, No. 5, item 39 (p. 47).

28 Borecki, Janik (eds.) 2011, 209–211, 265–266, 364–365. See: Walencik 2013, 289–290.

29 This is the date when the Constitution of the Republic of Poland came into force.

30 See: Wąsowski 2007, 39–54; Wąsowski 2008, 163–178; Borecki 2009, 399–413; Borecki 2012, 121–140; Walencik 2009a, 487–501; Walencik 2009b, 171–181; Łętowska 2011, 3–19; Łętowska 2012, 141–164; Łętowska 2017, 209–221.

Other regulatory commissions continue to adjudicate although they operate according to the same principles as the Property Commission. This is a clear violation of the constitutional principle of equality of churches and other religious organizations (Art. 25 para. 1 of the Constitution of the Republic of Poland).[31] However, it should be stressed that they operate in accordance with the amended interpretation of the provisions on regulatory proceedings. In past judgments of administrative courts, it was originally assumed that decisions made by regulatory commissions were not administrative decisions issued by "another entity," within the meaning of Art. 1 para. 2 CAP and cannot be the subject of a complaint to the administrative court.[32] The provisions of the Act on the relationship between the State and the Jewish Religious Communities and (already repealed at the time of the judgment) provisions of the Act on the relationship between the State and the Catholic Church and regulating those issues were subject to judicial review by the Constitutional Tribunal. In its judgment of 13 March 2013,[33] the tribunal ruled that Art. 33 para. 5 in conjunction with Art. 33 para. 2 sentence 3 AJRC – understood as not excluding legal remedies other than an appeal against the decision of the Regulatory Commission for Jewish Religious Communities – was consistent with Art. 165 para. 2, Art. 31 para. 3, Art. 77 para. 2, and Art. 78 of the Constitution of the Republic of Poland. However, the tribunal did not determine whether the decisions issued by the Commission indeed constituted decisions or were resolutions with the characteristics of a *sensu largo* administrative act (sec. 3.4.8). Nevertheless, it found that the phrase "the decision of the adjudicating panel shall not be appealed against"[34] meant that the proceedings were single-instance, which did not exclude the possibility of filing a motion to reopen or annul the decision

[31] Cf. Sobczyk 2012, 235–246.

[32] Ruling of the Supreme Administrative Court of 26 September 1991, I SA 768/91, LEX No. 26069; judgment of the Supreme Administrative Court of 20 December 2007, II OSK 1570/06, *Orzecznictwo Naczelnego Sądu Administracyjnego i Wojewódzkich Sądów Administracyjnych* 2008, No. 6, item 116; and rulings of the Voivodship Administrative Court in Warsaw: of 23 January 2007, I SA/Wa 65/07, LEX No. 1007561; of 23 January 2007, I SA/Wa 66/07, LEX No. 1007563, and of 14 August 2008, I SA/Wa 895/08, LEX No. 1039626.

[33] Judgment of the Constitutional Tribunal of 13 March 2013, K 25/10, *Orzecznictwo Trybunału Konstytucyjnego. Zbiór Urzędowy. Seria A* 2013, No. 3, item 27.

[34] The same phrase is used in Art. 48a para. 12 APAOC, Art. 45 para. 5 AERC, Art. 38d para. 9 AGFCR.

(sec. 3.4.11). The Constitutional Tribunal argued that the legislator did not rule out the possibility of a judicial review of the legality of a decision issued under administrative court proceedings (sec. 3.4.12). This position was repeated in the conclusions (sec. 3.5). In view of the analogous legal solutions in force concerning the Regulatory Commission for the Polish Autocephalous Orthodox Church, Regulatory Commission for the Evangelical Church of the Augsburg Confession, and Inter-Church Regulatory Commission, the same understanding of those provisions should be adopted.

The issue of the legal nature of the decision of the regulatory commission was resolved by the Voivodship Administrative Court in Warsaw in its judgment of 14 April 2015.[35] The court found that the decision made by the commission was an administrative decision. Subsequently, the Supreme Administrative Court, in its 28 April 2017 judgment,[36] dismissed the cassation appeal against the voivodship administrative court judgment, admitting that the court of first instance reasonably assumed that the decision of the commission was indeed an administrative decision. However, unlike the court of first instance, it ruled that the time limit for lodging a complaint against that decision was 30 days from the date of its delivery, and the complaint should be filed with the authority that had issued it.

It is worth pointing out that legal entities of the Polish Autocephalous Orthodox Church, Evangelical Reformed Church, and Baptist Church could initially pursue their revindication claims through administrative proceedings.[37] Only as a result of the amending Act of 26 June 1997 did they gain the right to apply for the initiation of regulatory proceedings, within three months from the date of entry into force of the amending Act. The subject matter of such regulatory proceedings could be cases for the restoration of ownership rights to the nationalized property, provided that the administrative proceedings under which those cases were previously considered were not closed.[38] However, the three-month time

[35] Judgment of the Regional Administrative Court in Warsaw of 14 April 2015, I SA/Wa 2479/14, LEX No. 1818589.

[36] Judgment of the Supreme Administrative Court of 28 April 2017, II OSK 2099/15, LEX No. 2315653.

[37] Cf. Art. 48 para. 1 APAOC; Art. 24 para. 5 in conjunction with Art. 23 para. 2 AERC; Art. 41 ABC.

[38] Cf. Art. 3, Art. 5, Art. 7 and Art. 14 of the Act of 26 June 1997 on amending the Act on guarantees of freedom of conscience and religion and on amending certain acts, Dz. U. 1998, No. 59, item 375.

limit provided for in the amending Act turned out to be unrealistic. Hence, the legislator, pursuant to Art. 2 of the Act of 30 April 2004 on amending the Act on guarantees of freedom of conscience and religion[39] extended the time limit from three months to two years.[40]

In assessing the above-mentioned amending acts, it should be emphasized that by creating the possibility for legal entities of the Polish Autocephalous Orthodox Church, Evangelical Reformed Church, and Baptist Church to submit applications to have the administrative mode "transformed" into a more favorable regulatory mode, the legislator wanted to ensure equal treatment of all religious organizations. Since the three-month time limit for submitting applications for such "transformation," which was established in 1997, proved to be too short in practice, it seemed reasonable for the legislator to take action to extend it (which in practice also meant its restoration). Taking action served as the actual implementation of the ideas behind the Act of 26 June 1997 that were not achieved due to the lack of realism. Seemingly, the purpose of Art. 2 of the Act of 30 April 2004 on amending the Act on guarantees of freedom of conscience and religion aimed to correct a peculiar mistake made by the legislator. If the Act of 26 June 1997 was to make the legal situation of various religious organizations similar in terms of the mode of proceedings for pursuing their revindication claims, the Act of 30 April 2004, which had the purpose of rectifying the insufficient time limit for submitting applications to "transform" the administrative proceedings into regulatory ones, should also be seen as consistent – in this respect – with the principle of equality of churches and other religious organizations.

Creating the possibility of submitting "new" revindication applications requires a separate assessment. That regulation caused the aforementioned churches to have a total of four years for submitting revindication applications (the original two-year time limit for submitting the applications examined in administrative proceedings, which could then be transformed into regulatory proceedings, and the "new" two-year time limit for submitting additional revindication applications examined in regulatory mode).

[39] Dz. U. 2004, No. 145, item 1534.
[40] See: Walencik 2007b, 181–200; Walencik 2007c, 67–85.

Here it is difficult to disagree with the legal opinion of W. Odrowąż-Sypniewski that:

> It is impossible […] to admit that the fact that revindication applications of legal entities of the Polish Autocephalous Orthodox Church, Evangelical Reformed Church and Baptist Church were not originally considered under regulatory proceedings but in administrative proceedings significantly affects the process of the regulation of property matters and justifies the adoption of regulations that fundamentally differentiate the legal position of individual churches in terms of the time limit within which revindication claims can be settled.[41]

It is opined that Art. 2 of the Act of 30 April 2004 on amending the Act on guarantees of freedom of conscience and religion, as it relates to the possibility of submitting additional revindication applications by the aforementioned churches, should be perceived as inconsistent with the principle of equality of churches and other religious organizations (Art. 25 para. 1 of the Constitution of the Republic of Poland).

The statistics of the cases examined in regulatory proceedings before regulatory commissions is presented below. The total number of applications submitted to the Property Commission was 3,075. Of these, 48 were qualified as submitted after the statutory time limit, and the case files in 11 did not survive until today. As a result of the conducted regulatory proceedings, the Property Commission reached 3,655 resolutions,[42] including 1,807 decisions, 1,666 settlements, 164 notices of failure to agree on a decision, and 2 rulings. Apart from these, 230 cases were not closed. Pursuant to the resolutions of the Property Commission, a total area of 65,705.2221 ha was returned or transferred to the legal entities of the Catholic Church in the Republic of Poland, and a total amount of PLN141,694,863.83[43] of compensation and indemnities was paid.[44]

The Regulatory Commission for the Evangelical Church of the Augsburg Confession received 1,182 applications for the initiation of regulatory

41 Cf. Odrowąż-Sypniewski 2004, 8.

42 This figure includes cases when the resolution involved several combined cases or identical cases (two or more applications related to the same claim) but handled separately.

43 The quoted amount takes into account the 1995 denomination.

44 Cf. Walencik 2013, 348–349.

proceedings related to the restoration of ownership rights to property and free transfer of ownership rights to property to legal entities of the Evangelical Church of the Augsburg Confession in Poland. As part of the proceedings before the commission, 186 settlements were reached, 147 decisions restoring ownership rights to property or granting replacement property were given, the proceedings were dismissed in 532 cases or the regulatory application was rejected for lack of legal grounds for its consideration, 3 decisions were issued to suspend the proceedings, and no decision was agreed upon in 15 cases. As of 1 April 2020, 199 applications were still pending examination by the commission.

The Regulatory Commission for the Polish Autocephalous Orthodox Church received a total of 472 applications (including 9 collective applications relating to property situated in 275 localities). Five hundred and sixty-six cases were initiated. As of 1 June 2020, 191 cases were still waiting to be examined. In the remaining cases, 254 settlements and 62 partial settlements were reached; in 17 proceedings, there was a decision to pay compensation, and a decision to pay partial compensation; 18 decisions were issued to transfer property, and 4 partial decisions; in 76 proceedings, the decision was to discontinue the proceedings; and in 3 proceedings, the decision was to reject the application. In 7 cases, the commission did not agree on a decision.

Five thousand five hundred and forty-four applications were submitted to the Regulatory Commission for the Jewish Religious Communities and 5,504 proceedings were initiated (40 applications were rejected due to their submission by unauthorized entities). Two thousand eight hundred and fifty-four proceedings were fully or partially completed, including: 669 settlements; 539 decisions (fully or partially) taking into account applications; 1,018 decisions to discontinue the regulatory proceedings; 553 decisions to reject the application; and in 107 cases, no decision was agreed upon. Seventy-one regulatory proceedings were suspended. As of 31 December 2019, 2,650 cases were still pending examination.

The Inter-Church Regulatory Commission received a total of 170 cases, 90 of which have been completed. The commission has completed the activities related to the revindication of property at the request of the Bible Society in Poland, Church of Evangelical Christians, Anglican Church, Pentecostal Church, and Evangelical Methodist Church. The applications

made by the Bible Society in Poland and Church of Evangelical Christians were not accepted. As of 31 January 2020, there were 80 proceedings pending relative to applications made by the Baptist Union of Poland (48 cases), New Apostolic Church (19 cases), Seventh-day Adventist Church (8 cases), Muslim Religious Union (1 case), and Evangelical Reformed Church (4 cases).[45]

3. Amending Act of 16 December 2010 and its consequences

Pursuant to the Act of 16 December 2010 on the amendment of the Act on the relationship between the State and the Catholic Church in the Republic of Poland,[46] Art. 62, Art. 63 para. 4–8, Art. 64, Art. 65, and Art. 67 of the amended act were repealed.[47] Also, Art. 2 of the Act of 16 December 2010 stipulated that the Property Commission would be dissolved on 1 March 2011 (the Commission stopped its operations on 28 February 2011). Following the entry into force of the Act of 16 December 2010, the objective of the commission was to present by 28 February 2011 a report on its activities to the minister in charge of religious denominations and national or ethnic minorities, Secretariat of the Polish Bishops' Conference, and Joint Commission of Representatives of the Government and this Conference (Art. 2 para. 2 and 3). The Property Commission, pursuant to Art. 3 of the Act of 16 December 2010, was to hand over the documentation collected in the course of its regulatory proceedings to the above-mentioned minister as well. Moreover, it was to notify the participants in the regulatory proceedings, in writing, that the applications filed before 1 February 2011 under Art. 62 para. 3 sentence 1 ACC and Art. 2 of the amending Act of 11 October 1991 would not

45 Cf. response of the Undersecretary in the Ministry of Internal Affairs and Administration, Błażej Poboży, of 31 July 2020 to interpellation No. 3112 on the financing of churches and religious organizations in Poland. https://www.sejm.gov.pl/Sejm9.nsf/InterpelacjaTresc.xsp?key=BS69SP [accessed: 30 May 2022].

46 Dz. U. 2011, No. 18, item 89.

47 This means that only the regulatory proceedings conducted before the Property Commission were abolished, while the provisions on the possibility of the enfranchisement of church legal entities as well as the possibility of free transfer of property to church legal entities that undertook their activities in the Western and Northern Territories after 8 May 1945 remained in force even after the completion of court proceedings initiated under Art. 4 para. 1 and 2 of the amending Act.

be processed.[48] Pursuant to Art. 4 para. 1 and 2 of the Act of 16 December 2010, the participants in regulatory proceedings, in case the adjudicating panel or the Property Commission in its full composition did not agree on a ruling before 1 February 2011, could apply for the resumption of the suspended court or administrative proceedings within six months from the date of receipt of a written notification about the above. If such proceedings were not initiated, those entities could apply to the court for adjudication of the claim. In considering the case, the court is obliged to apply the provisions of Art. 63 paras. 1–3 ACC. If applications for the initiation of regulatory proceedings fail to be considered, the provision of Art. 4 para. 1 of the Act of 16 December 2010 applies accordingly, except that the time limit indicated therein is calculated from the date of entry into force of that Act, that is, from 1 February 2011. The time limits for bringing an action by church legal entities that received a notification of a failure of the Property Commission to agree on a ruling before 1 February 2011, or whose applications were not considered by the Commission before 1 February 2011, are statutory time limits. Therefore, failure to adhere to these time limits results in the termination of claims for the continuation of the proceedings.

The analysis of the provisions of the amending Act leads to the conclusions presented below. First, the amending Act was prepared in haste and with no due analysis of the consequences.[49] In particular, there are no transitional provisions or norms that would adapt the legal situation of the participants in the regulatory proceedings conducted before the Property Commission to the needs of civil proceedings. It mainly relates to the manner of the transition from regulatory proceedings before the Property Commission to revindication proceedings as special civil proceedings, which require action on the part of church legal entities. Further, the provisions of the amended Act do not adequately protect the interests of local government units or third parties whose rights might become affected by the proceedings. Moreover, the rules of adjudication and scope of the judicial independence of the court remain unspecified.[50] It is difficult to understand what the legislator was guided by while making the decision that

[48] Act of 11 October 1991 on the amendment of the Act on the relationship between the State and the Catholic Church in the Republic of Poland, Dz. U. 1991, No. 107, item 459.

[49] Walencik 2011, 36–48; Piszcz-Czapla 2013, 321–339.

[50] Jaślikowski 2022.

the applications not assessed by the Property Commission would not be automatically handed over to the competent courts or administrative authorities, including courts or administrative bodies before which relevant proceedings were already conducted. Such termination of a pending case and making further proceedings dependent on the activity of a party (the plaintiff) have no substantive justification. It also contradicts the principles governing the change of the mode of proceedings as a result of amendments to the act. It is particularly noteworthy that the files of the initiated court cases or administrative proceedings covered within the scope of the jurisdiction of the Property Commission were transferred to it *ex officio* and those proceedings were suspended pursuant to Art. 61 para. 4 ACC.

Second, apparently, the legislator decided to subject revindication proceedings to the wrong mode of civil proceedings. It would be more appropriate to handle these cases in non-contentious proceedings. This is supported by a number of facts. The basic criterion for the referral of a case is the existence of "public interest to the extent that it imposes the need to provide special legal protection to legal relations designated by substantive law in cases where there are no two opposing entities,"[51] as well as the absence of dispute over the law.[52] In the cases covered by revindication proceedings, the public interest is expressed by the need to eliminate the state of violation of the rule of law by public authorities and regulate property relations with regard to seized church property. On the lack of opposing entities in the proceedings, it should be stated that in revindication cases, the problem is not so much the dispute as to whether the pursued revindication should take place (no dispute over the law) but rather the determination of the method of revindication and the entity to be affected. From the viewpoint of a church legal entity, it does not matter which respondent will lose some of their property; however, on the part of the respondents there is a clear conflict of interests. It is in the interest of each respondent to demonstrate that it is not their property that should be revindicated; therefore, the objective of each of the parties is not so much to prove that the claim of the other party is unfounded but to point out that it is the property of the co-respondent that should be used to settle the claim.

[51] Korzan 1997, 14.
[52] Ibidem.

Furthermore, it should be noted that the number of potentially interested parties in the case is also significant and sometimes difficult to determine. The entities whose property will be covered by the proceedings as well as the parties whose rights and obligations may be affected by the final resolution want to participate in the proceedings (third parties with a material or obligation right to the property). Adopting a non-contentious mode of proceedings would allow the legal situation of the participants in the proceedings to be defined better, without the need to refer to the provisions on co-participation and secondary intervention, which are difficult to apply in such cases. Also, granting the court more powers when it comes to adjudicating does not raise any doubts in the case of non-contentious proceedings. As for that mode, the situation in which the court is not bound by the content of the application (e.g., inheritance cases, Art. 677 of the Act of 17 November 1964 – the Code of Civil Procedure[53]) does not raise any objections. In this case, there is no need to decide which party is to cover the costs of the proceedings as each participant bears their own expenses. Lastly, certain elements typical of non-contentious proceedings, such as the absence of parties – there are participants and interested entities instead – were already present in the proceedings conducted before the Property Commission. Adopting a non-contentious mode would therefore be consistent with the logic of the existing regulations and at the same time guarantee the participants the right to have their case assessed by an independent court in two-instance proceedings.[54]

Thirdly, the purpose of the Act of 2010 was only to dissolve the Property Commission rather than stop the regulatory proceedings themselves. In the case of applications that have not been handled by the commission, the proceedings are continued at the request of the applicants; however, they are handled by common courts, with the purpose of settling the action for the formation of the right.[55] Legal entities of the Catholic Church, including other participants in the regulatory proceedings whose cases are currently being heard by common courts, fully enjoy the right to a fair trial (Art. 45 para. 1 of the Constitution of the Republic of Poland). Therefore,

[53] Consolidated text: Dz. U. 2021, item 1805 as amended.
[54] See: Stec, Walencik 2011, 23–50; Walencik 2013, 293–307.
[55] Cf. judgment of the Court of Appeal in Gdańsk of 8 May 2013, I ACa 880/12, LEX No. 1344023; judgment of the Court of Appeal in Kraków of 19 April 2021, I ACa 587/18, LEX No. 3210886.

they can use the remedies specified in the Code of Civil Procedure against a ruling given by the court, including the amendment or revocation of the decision; meanwhile, the participants in regulatory proceedings before regulatory commissions may use the judicial remedies provided for in the administrative proceedings.[56] This means that the provisions of the denominational acts, despite the phrase: "The decision of the adjudicating panel shall not be appealed against" (Art. 33 para. 5 AJRC) used in their wording, do not exclude the possibility of filing a motion to reopen the proceedings with the regulatory commissions (Art. 148 CAP) due to procedural defects in issuing the decision. It is also possible to file a motion to have the decision of the commission annulled (Art. 157 para. 2 CAP) due to material defects; however, the use of these measures depends on other premises indicated in the provisions. Finally, it is possible to have the final decision of the commission revoked or amended if justified by the public interest or legitimate interest of the party (Art. 154 and Art. 155 CAP). Further, the single-instance nature of regulatory proceedings is not an obstacle to pursuing rights in court and does not exclude the possibility of challenging the legality of a given decision in administrative court proceedings.[57] In contrast, the entities whose cases had already been examined by the Property Commission were treated differently. While the cases that were closed with a decision of the adjudicating panel of the Property Commission or with a settlement that have not been challenged in court seem to be definitely closed, there is a lack of adequate legal measures with regard to the cases in which the adjudicating panel of the Property Commission

[56] At this moment in time (following the judgment of the Constitutional Tribunal of 13 March 2013, K 25/10), the view that regulatory proceedings are of a uniform mediatory and amicable nature, or the opinion – which I used to follow – that regulatory proceedings imply a "*sui generis* amicable-jurisdictional mode" with features of arbitration (cf. Walencik 2009c, 387–389) needs to be revised. Contrary to the established line of jurisprudence of administrative courts, the Constitutional Tribunal took the position that the activity of regulatory commissions was a manifestation of the broadly understood activity of public administration. These commissions unilaterally decide on the legal situation of individual entities being outside the Commission and the structure of government administration, with these decisions being binding. Thus, the decision of the Regulatory Commission has the features of an external administrative act, while administrative acts are issued under the mode of administrative proceedings. Therefore, it can be concluded from the general principles of administrative law that the regulatory proceedings leading to a decision made by the adjudicating panel constitute administrative proceedings.

[57] Cf. the judgment of the Constitutional Tribunal of 13 March 2013, K 25/10.

issued a decision that was challenged before an administrative court.[58] The discontinuation of proceedings concerning the Property Commission before the Constitutional Tribunal and the dissolution of the commission in 2011 did not affect the completion of proceedings before administrative courts that were obliged to examine the complaints filed with them. As the Supreme Administrative Court stated in its 29 January 2015 ruling,[59] it was up to the legislator to indicate the general legal successor to the Property Commission. Moreover, in the opinion of the Supreme Administrative Court, it could not be assumed *a priori* that the absence of a legal successor to the Property Commission was definitive and irremovable as the legislator had the power to indicate, by means of an act, an entity that would be granted the competence of the Property Commission.[60] However, the failure of the legislator to act led to the expiration of the three-year time limit set forth in Art. 130 para. 1 sentence 2 LPAC and the consequent discontinuation of the proceedings before administrative courts. In this case, there is not only the violation of the principle of equality of churches and other religious organizations (conducting regulatory proceedings by different entities and in the course of different proceedings, either common courts and civil proceedings or regulatory commissions, and then administrative courts and administrative proceedings, as well as administrative court proceedings) but also, or most of all, the deprivation of the right of the interested parties to have their dispute examined by an impartial and independent court (Art. 45 para. 1 of the Constitution of the Republic of Poland).

58 For example, in *Legal opinion of 2 November 2009 on the effects of the decisions of the Property Commission operating based on the Act of 17 May 1989 on the relationship between the State and the Catholic Church in the Republic of Poland* (BAS-WAL-2135/09) (quoted after: Kościelny 2010), J. Lipski presents arguments in favor of entrusting control over the decisions of the Property Commission to administrative courts.

59 Ruling of the Supreme Administrative Court of 29 January 2015, II OSK 687/07, LEX No. 1769991.

60 Therefore, in that particular case, there were no grounds to discontinue the cassation proceedings before the expiration of the three-year time limit set forth in Art. 130 para. 1 sentence 2 LPAC. That time limit started on the date of the issuance by the Supreme Administrative Court of the ruling on the refusal to resume the suspended proceedings due to the loss of judicial capacity by the Property Commission, i.e., on 25 November 2013 (II OPS 1/08, LEX No. 1391695). Based on this ruling, starting from the date of its issuance, the reason for suspending the proceedings was the loss of judicial capacity by the authority whose action was the subject matter of the complaint.

4. Transfer of property

According to individual denominational acts, with the exception of the acts on the relationship between the State and the Old Catholic Mariavite Church, Catholic Mariavite Church, Catholic Church, and Jewish Religious Communities (which contain some special solutions), a voivode or other authority exercising rights arising from the ownership of property on behalf of the State Treasury or bodies of local government units within the scope of their jurisdiction may, at the request of church legal entities, transfer, free of charge, ownership rights to property or part of it to a religious organization or its legal entities. For ownership rights to property to be transferred free of charge, the property must be used for religious practices or charitable, care, or educational activities, or must be used to establish or expand a farm that belongs to a church legal entity that operated until 1945 in the Western and Northern Territories of Poland; however, the area cannot be larger than 15 ha of agricultural land.[61] This free transfer of the ownership rights may constitute the subject matter of regulatory proceedings before the Inter-Church Regulatory Commission pursuant to Art. 38b para. 1 AGFCR. If it is impossible to implement regulations during the proceedings, the case is discontinued (Art. 38b para. 2 AGFCR).

The Act on the relationship between the State and the Catholic Church provides for the possibility of transfer, free of charge, the land in the possession of the State Land Fund or the Agricultural Property Stock of the State Treasury to church legal entities, which started operating in the Western and Northern Territories after 8 May 1945. If the land is under the management or use of legal entities, the ownership rights can only be transferred with the consent of those entities. The size of the transferred agricultural property, along with the agricultural land already owned by the applicant, may not exceed: for parish farms – 15 ha; for diocesan farms – 50 ha; for farms of theological, diocesan and monastic seminaries – 50 ha; for farms of religious congregations – 5 ha (unless they are involved in charity, care or educational activities; in such cases, agricultural land with an area of up to 50 ha may be transferred). Ownership rights to the property are transferred following the decision of a voivode competent for the location of

[61] Cf. Art. 48e APAOC; Art. 45a AECA; Art. 26b AERC; Art. 37 AEMC; Art. 43 ABC; Art. 35 ASAC; Art. 34 APCC; Art. 36 APC.

the property issued with the consent of the President of the Agricultural Property Agency of the State Treasury.[62] This decision is the basis for entries in the land and mortgage register (cf. Art. 70a ACC).

The provision of Art. 30 para. 2 AJRC assumes that at the request of the Jewish Community or the Union of Communities, regulatory proceedings are initiated for the transfer of ownership rights to the property, or part of it, which in the Western and Northern Territories on 30 January 1933 was owned by synagogue communities that operated under Title II of the Act of 23 July 1847 on the relations of Jews and other religious Jewish legal entities,[63] or for the transfer of ownership rights to the property, or part of it, whose legal status was not established: 1) if there was a Jewish cemetery or synagogue in that territory on 30 January 1933; 2) which formerly constituted the seats of synagogue communities in localities that were the seats of Jewish communities on the date of entry into force of the Act; 3) for the purpose of restoring religious practices or care, educational, or charitable activities. Administrative proceedings for the transfer of property can only be initiated at the request of eligible legal entities. The application must include: a statement presenting the size of the agricultural land currently owned by the applicant or a statement confirming that the applicant does not own any land; a statement that an agricultural farm is in operation on the agricultural land owned by the applicant or if the applicant does not own agricultural land, a statement that the applicant intends to own a farm; an extract from the land and building register confirming the ownership of the whole property of the applicant; details of the property that the applicant would like to obtain. The application may only concern undeveloped agricultural land and is subject to stamp duty.

The provisions of the Act on the relationship between the State and the Catholic Church are the only ones to contain a provision according to which ownership rights to the property referred to in Art. 70a paras. 1 and 2 ACC are transferred based on a decision of a voivode having jurisdiction over the location of the property, issued with the approval of

[62] Under the current legal environment: the Director General of the National Support Centre for Agriculture.

[63] Zbiór Ustaw Pruskich, 1847, No. 30, p. 263.

the President of the Agricultural Property Agency.[64] The voivode issues the decision only after the proceedings of the cooperating authority are closed, that is, when the position (decision) of the Director General of the National Support Centre for Agriculture (the authorized competent director of the local branch) becomes final.[65] The decision of the voivode issued pursuant to Art. 70a para. 3 ACC is not subject to the regulations contained in Art. 35 para. 4 CAP; according to Art. 60 para. 6 sentence 2 ACC it is possible to lodge a complaint with the administrative court for failure to issue a decision after two years from the date of initiation of the administrative proceedings. In addition, the legislator did not grant legal entities of the Catholic Church an exemption from taxes and fees under Art. 60 para. 7 ACC if the agricultural property is transferred free of charge.

On 22 January 2009, a group of deputies to the Sejm of the Republic of Poland applied with the Constitutional Tribunal to declare the provisions of Art. 70a paras. 1 and 2 ACC and some others provisions incompatible with Art. 25 paras. 1 and 2 of the Constitution of the Republic of Poland.[66] According to the applicants, Art. 70a paras. 1 and 2 ACC create the best opportunities for legal entities of the Catholic Church to establish or expand farms in the Western and Northern Territories of Poland, as the right to submit applications for the transfer of agricultural property is not restricted by any time limits. Moreover, in the case of the Catholic

[64] See: Art. 5 para. 2 letter b of the Act of 29 December 1993 on amending the Act on the management of State Treasury agricultural property and on amendments to certain acts, Dz. U. 1994, No. 1, item 3. Pursuant to Art. 18 para. 1 of the Act of 11 April 2003 on the shaping of the agricultural system (consolidated text: Dz. U. 2022, item 461 as amended), every time the current provisions refer to the Agricultural Property Agency of the State Treasury, they mean the Agricultural Property Agency, which was dissolved on 31 August 2017. On 1 September 2017, it was replaced with the National Support Centre for Agriculture (Art. 45 of the Act of 10 February 2017 – Provisions implementing the Act on the National Support Centre for Agriculture, Dz. U. 2017, item 624 as amended), which, by operation of law, was granted all the rights and obligations of the dissolved Agency (Art. 46).

[65] Cf. judgment of the Supreme Administrative Court of 13 January 2009, II OSK 1792/07, LEX No. 486226; judgment of the Voivodship Administrative Court in Olsztyn of 9 July 2020, II SA/Ol 88/20, LEX No. 3035287.

[66] Motion of a group of deputies to the Sejm of the Republic of Poland for the 6 term of office of 22 January 2009 to declare inconsistency with the Constitution of the Republic of Poland and the European Convention for the Protection of Human Rights and Fundamental Freedoms of certain provisions of the Act of 17 May 1989 on the relationship between the State and the Catholic Church in the Republic of Poland; the photocopy is in the possession of the author.

Church, the number of legal entities that can file such requests is the largest one. In comparison, in the case of several other eligible religious organizations, applications for the transfer of agricultural property can only be filed by parishes (congregations, communities). Finally, with regard to legal entities of the Catholic Church, the largest area standards were adopted – up to 50 ha. In the case of other eligible religious organizations, the size of agricultural property that can be transferred to establish or expand parish farms (communities, congregations) is only up to 15 ha. Furthermore, the overwhelming majority of religious organizations with a regulated legal situation cannot take advantage of analogous opportunities to expand the size of their agricultural property in the Western and Northern Territories. In its 8 June 2011 judgment,[67] the Constitutional Tribunal stated however that the purpose of Art. 70a paras. 1–2 ACC was to compensate for the damage caused by the change of the shape of the borders of the Republic of Poland. After World War II, a significant part of the property owned by church legal entities remained outside of Poland. Besides, the principle of equality of churches and other religious organizations does not imply that all religious communities are treated in exactly the same way. It is a guarantee that public authorities create a legal framework that enables the introduction of equality depending on the characteristics and features of individual churches and other religious organizations. Legal differences may arise from factual differences and the principle of equality does not imply gaining factual equality. In the tribunal's opinion, where there are differences between religious organizations, they should be treated in different ways, with the differences possibly resulting from the actual number of followers or how deeply individual communities are rooted in the history of the State. Moreover, the Constitutional Tribunal recalled that the allegation of unequal treatment of churches and other religious organizations with regard to property located in the Western and Northern Territories of Poland had already been the subject of its consideration in its 2 April 2003 judgment.[68] It found back then that the legal regulation ensured equal protection of the property rights of all religious organizations.

[67] Judgment of the Constitutional Tribunal of 8 June 2011, K 3/09, *Orzecznictwo Trybunału Konstytucyjnego. Zbiór Urzędowy. Seria A* 2011, No. 5, item 39.

[68] Judgment of the Constitutional Tribunal of 2 April 2003, K 13/02, *Orzecznictwo Trybunału Konstytucyjnego. Zbiór Urzędowy. Seria A* 2003, No. 4, item 28.

Currently, none of the acts that regulate the property matters of churches and other religious organizations guarantee the possibility of granting religious communities ownership rights to the nationalized property located in the Western and Northern Territories. However, the law allows the acquisition of ownership rights to property located in those territories by transfer of ownership rights to the property, or part of it, if the transfer is to serve specific purposes (religious worship, care, educational or charity activities, or establishing or expanding a farm that belongs to a church legal entity).

The Constitutional Tribunal also pointed out that the provisions of the acts on the relationship between the State and churches and other religious organizations do not regulate the issue of obtaining property located in the Western and Northern Territories of Poland homogeneously for all religious organizations. However, this does not mean a violation of the principle of equal treatment expressed in Art. 25 para. 1 of the Constitution of the Republic of Poland as the acts that regulate the status of individual religious organizations were introduced based on agreements concluded by representatives of the Council of Ministers with representatives of the religious organizations. In creating the denominational acts, the legislator considered historical conditions as well as the number, structure, and scope of activities of the individual religious communities. The differences in the proceedings and criteria for transferring ownership rights to agricultural property owned by the State Treasury result from the specificity of a given religious organization. Such differentiation falls within the scope of Art. 25 para. 1 of the Constitution of the Republic of Poland. Thus, the Constitutional Tribunal found that Art. 70a paras. 1–2 ACC is consistent with the principle of equality of churches and other religious organizations.[69]

Admittedly, the legislator has indeed introduced a heterogeneous manner of regulating the matters of religious organizations related to the property located in the Western and Northern Territories of Poland. The legislator has only consistently enfranchised all church legal entities by applying the *status quo* principle. However, the legal status concerning the free

[69] Cf. press release of the Constitutional Tribunal after the trial involving the Property Commission (K 3/09). http://www.trybunal.gov.pl/rozprawy/2011/k_03_09.htm [accessed: 30 May 2022], and the judgment of the Constitutional Tribunal of 8 June 2011 (K 3/09).

transfer of property, or part of it, to a religious organization or its legal entities was differentiated. The lack of adequate provisions in the Acts on the relationship between the State and the Old Catholic Mariavite Church and Catholic Mariavite Church can be explained by the fact that the superior authorities of those churches have abandoned the idea of adopting them. That the free transfer of ownership rights to property, or part of it, to the Jewish Religious Communities is the subject matter of regulatory proceedings can be explained by the Holocaust. It was why the membership of the Jewish Religious Communities, especially those based in the area in question and those who survived World War II, was small, and the documentation concerning the ownership rights to the property of those communities survived in residual form. Therefore, that task was entrusted to the competent regulatory commission (it is the responsibility of that commission and not the applicant to establish the facts of the case), which can use all means of evidence – i.e., it can use any source of truthful information that can be used for the establishment of the facts. However, the introduction of additional restrictions in the Act on the relationship between the State and the Catholic Church is incomprehensible, namely only church legal entities that started operating in the Western and Northern Territories after 8 May 1945 are allowed to submit an application for the free transfer of property. What about church legal entities that have been operating in that area constantly (e.g., since Prussian times) or have started their activity before the date specified in that act? Furthermore, only land owned by the State Land Fund or the Agricultural Property Stock of the State Treasury may be transferred, and only after receiving a positive decision from a voivode competent for the location of the property issued with the consent of the Director General of the National Support Centre for Agriculture. Therefore, such powers are not vested in the bodies of local government units within their jurisdiction, which is guaranteed in other denominational acts with provisions on the possibility of transferring property free of charge. There is also the issue of *ratio legis* of the provision, according to which, to allow free transfer of property, a voivode must obtain the consent of the Director General of the National Support Centre for Agriculture. If that provision was intended to protect the interests of the State Treasury from "excessive distribution," why does it apply only to legal entities of the Catholic Church? Another example of the differentiation of legal status (even being the example

of the legislator getting confused) is the provision of Art. 38b para. 1 of the AGFCR and lack of analogous solutions in the Act on the relationship between the State and the Catholic Church. The above-mentioned Art. 38b para. 1 AGFCR assumes that the subject matter of regulatory proceedings before the Inter-Church Regulatory Commission may also be the free transfer of ownership rights to the property, or part of it, which was owned by a church legal entity that operated in the Western and Northern Territories of Poland until 1945, for the purpose of restoring religious practices, charitable, care, or educational activities. Based on the grammatical interpretation of Art. 38a para. 2 AGFCR, it can be concluded that property claims against the State could also be submitted to the Inter-Church Regulatory Commission by 31 December 1998 by legal entities of the Catholic Church. Such an interpretation, however, supposes irrationality on the part of the legislator – why would the legislator establish the Property Commission for dealing with the claims of legal entities of the Catholic Church? The *ratio legis* for establishing the Inter-Church Regulatory Commission meant the final settlement of property matters between the State and the Evangelical Reformed Church, Evangelical Methodist Church, Baptist Church, Seventh-day Adventist Church and their legal entities who had previously filed revindication claims under administrative proceedings (cf. Art. 38a para. 1 AGFCR) as well as the final settlement of property matters between the State and religious organizations, and even national inter-church organizations, which have not had such an opportunity so far (cf. Art. 38a para. 2 AGFCR). Thus, legal entities of the Catholic Church can submit their claims (including those covering the property located in the Western and Northern Territories) to the Property Commission. And so they did; however, until 2006, their requests were rejected as unfounded. Only by virtue of the memorandum of understanding of the Joint Commission of Representatives of the Government of the Republic of Poland and the Polish Bishops' Conference of 29 March 2006, it was decided that the regulation of the property matters of the Catholic Church could cover the claims of church legal entities from the Western and Northern Territories[70] (it is, obviously, questionable whether the Joint Commission had

[70] Memorandum of understanding of the Joint Commission of Representatives of the Government of the Republic of Poland and the Polish Bishops' Conference on the extension of the regulatory

the authority to settle issues that should be regulated by law). Finally, in all acts that contain provisions for the free transfer of ownership rights to property, or its part, to a religious organization or its legal entities – except for the Act on the relationship between the State and the Catholic Church – strict deadlines for submitting applications in this regard were specified.[71]

In light of the above, it is difficult to agree with the findings of the Constitutional Tribunal that the differences in the proceedings and criteria for the transfer of agricultural property owned by the State Treasury and located in the Western and Northern Lands of Poland to legal entities of religious organizations do not breach the principle of equal rights of churches and other religious organizations. The failure to establish *ad quem* time limits for the submission of applications for the transfer of agricultural property – as the Tribunal noted – for only one religious organization is an unauthorized differentiation that favors that organization. Meanwhile, the introduction of additional restrictive criteria for that religious organization (the consent of the Director General of the National Support Centre for Agriculture) and narrowing down the list of authorities authorized to transfer property (only a voivode and not the authorities of local self-government units within their jurisdiction) – to which the court did not refer at all – is an unauthorized differentiation that discriminates against that organization.[72]

Conclusions

According to the data from the National Support Centre for Agriculture, in the period from 1992 to the end of 2019, the sizes of properties owned by the Agricultural Property Stock of the State Treasury restored or transferred to church legal entities were as follows: Catholic Church – 82,570 ha;

proceedings to cover the property of legal entities of the Catholic Church located in the Western and Northern Territories of 3 July 2006. See in: Borecki, Janik (eds.) 2011, 265–266; letter from the Minister of Justice, Z. Ziobro, to Bishop S. Wielgus, the Co-chair of the Joint Commission of Representatives of the Government of the Republic of Poland and the Polish Bishops' Conference, 21 April 2006. See: ibidem, 268–271.

71 See the motion of a group of deputies to the Sejm of the Republic of Poland for the 6 term of office of 22 January 2009, quoted above, p. 15.

72 See: Zieliński 2010, 5–24; Walencik 2010, 167–187; Walencik 2013, 246–255.

Polish Autocephalous Orthodox Church – 6,156 ha; Evangelical Church of the Augsburg Confession – 498 ha; Evangelical Reformed Church – 11 ha; Evangelical Methodist Church – 239 ha; Baptist Church – 252 ha; Seventh-day Adventist Church – 21 ha; Polish-Catholic Church – 138 ha; Pentecostal Church – 385 ha.[73] These data do not include the property owned by local government units or the State Treasury and represented by other entities (starosts, voivodes, ministers); they do not cover financial compensation either. The data, however, make it possible to notice the considerable scale of the restitution of property taken over by the State from religious organizations during the period of the Polish People's Republic. Therefore, the irregularities of the provisions applied in that matter are all the more striking.

The analysis of the provisions of individual denominational acts adopted since 1989 and the Act on guarantees of freedom of conscience and religion, and their numerous amendments, taking into account the interpretation of those norms by the judicature, leads to the following conclusions. According to the law as it stands, the legislator has consistently enfranchised all church legal entities, applying the *status quo* principle. The only provisions that raise objections are those of Art. 60 para. 6 ACC and Art. 35 para. 3 AEMC, according to which a complaint to a voivode about the failure to issue a decision can be submitted after a period of two years from the date of initiation of administrative proceedings.

The regulatory proceedings introduced into the Polish legal system by the provisions of the Act of 1989 on the relationship between the State and the Catholic Church, duplicated in the provisions of the Acts on the relationship between the State and the Polish Autocephalous Orthodox Church, the Evangelical Church of the Augsburg Confession, and the Jewish Religious Communities, as well as in the Act on guarantees of freedom of conscience and religion were original and innovative in many respects. Based on the proceedings, it was possible to pursue claims out-of-court with the participation of the interested parties, that is, church legal entities and the State. In retrospect, the regulatory proceedings can be

[73] Cf. response of the Minister of Agriculture and Rural Development, Jan Krzysztof Ardanowski of 12 August 2020 to interpellation No. 8852 on submitting applications for the transfer of ownership rights to agricultural property owned by the State Treasury by certain churches and other religious organizations. http://orka2.sejm.gov.pl/INT9.nsf/klucz/ATTBSFHWT/%24FILE/i08852-o1.pdf [accessed: 30 May 2022].

considered an instrument of transitional justice. Over the years, however, as a result of the legislator's negligence, that instrument has become increasingly inconsistent with the Constitution of the Republic of Poland in force and the standards set by it. Moreover, the adopted amendments and the interpretative judgment of the Constitutional Tribunal of 13 March 2013 (K 25/10) introduced significant procedural changes. The cases of legal entities of the Catholic Church that were not closed by the Property Commission were dealt with in civil proceedings before common courts. In cases where the adjudicating panel or the Property Commission issued a decision that was subsequently challenged before an administrative court, there were no relevant legal regulations, especially indicating a legal successor to the dissolved Property Commission. However, the applications filed by legal entities of other religious organizations continue to be processed in single-instance proceedings before regulatory commissions. Still, the interpretation of the provisions regulating the course of those proceedings has been changed. Currently, the lack of possibility of appeal against the decision of the regulatory commission in question does not preclude filing a motion with that commission to have the proceedings reopened (Art. 148 CAP) and the decision annulled (Art. 157 para. 2 CAP) nor have the final decision of the commission revoked or amended if justified by the public interest or legitimate interest of the party (Art. 154 and Art. 155 CAP). Further, the single-instance nature of regulatory proceedings is not an obstacle to pursuing rights in court nor does it preclude the possibility of challenging the legality of a given decision in administrative court proceedings.

Regarding the possibility of transferring agricultural property to legal entities of religious organizations in the Western and Northern Territories of Poland, no *ad quem* deadline to submit applications has been established for legal entities of the Catholic Church. Meanwhile, additional restrictive criteria were introduced and the number of entities eligible to transfer property was limited. Moreover, allowing legal entities of the Polish Autocephalous Orthodox Church, Evangelical Reformed Church, and Baptist Church to file new revindication requests in 2004 in the course of transforming the administrative proceedings into regulatory proceedings should be assessed negatively.

Considering the performed analyses, objections must be raised as to the compatibility of the current legal solutions with not only the principle

of equality of churches and other religious organizations (Art. 25 para. 1 of the Constitution of the Republic of Poland) but also the principle of equal treatment of legal entities – the participants in the proceedings (Art. 32 of the Constitution of the Republic of Poland). With regard to the cases when the adjudicating panel of the Property Commission issued its decision and it was questioned before an administrative court, there was a clear deprivation of the right to a fair trial (Art. 45 para. 1 of the Constitution of the Republic of Poland). The indicated objections were mainly the result of the lack of a post-transition systemic solution to the issue of revindication not only of the property of religious organizations but, most of all, of other entities. Even though 30 years have passed since the change in the political system in Poland, regulating property relations, including compensation for losses resulting from the activities of the communist authorities, remains an unsolved issue. In post-1989 Poland, no comprehensive restitution of private property nationalized during the communist era has been undertaken nor has a general reprivatization act that could solve the issue been adopted (despite several attempts). Since the collapse of the Polish People's Republic, in situations where private properties were expropriated by this communist State in violation of the provisions in force at that time, the properties seized are recovered based on administrative decisions and court judgments. Relevant statutory provisions have been adopted only in the case of religious organizations and the property located beyond the Bug River.

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