

The background features a large, stylized 'V' on the left and a large '9' on the right, both in a vibrant green color. The 'V' is composed of thick, slightly irregular strokes. The '9' is also thick and rounded. The overall aesthetic is modern and graphic.

Polish Journal
of Political
Science

Volume 9 Issue 3 (2023)

Polish Journal of Political Science
Volume 9 Issue 3

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The journal is published in cooperation with Centre for Development of Research and Education (Ośrodek Rozwoju Badań i Edukacji) and Interdisciplinary Research Center of the University of Warsaw „Identity – Dialogue – Security” (Interdyscyplinarne Centrum Badawcze Uniwersytetu Warszawskiego „Tożsamość – Dialog – Bezpieczeństwo”)

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Warsaw 2023

eISSN 2391-3991

Original version: e-book

Submit your paper: pjps@uw.edu.pl



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Church Universities in the Higher Education System in Poland. Part 1: Universities Run by non-Catholic Churches and Religious Associations

DOI: [10.58183/pjps.03012023](https://doi.org/10.58183/pjps.03012023)

Abstract

This study is a prolegomena for reflection on the legal system of church universities in Poland. This article is the first of two parts of research on this issue. In this part, attention has been focused on, firstly, the specificity of the Polish context of the issues we are interested in, and, secondly, the universities run by non-Catholic churches and religious associations. The presented specificity is also an introduction to research, which was included in a separate text “Church Universities in the Higher Education System in Poland. Part 2: Universities Run by the Catholic Church.” The material scope of Part 1 includes analyses of legal and non-legal sources regulating the functioning of non-Catholic church universities in Poland. In addition, a systemic division of these universities has been proposed, together with their description and specification of differences in legal status.

Keywords

concordat, church university, church legal person, churches and religious associations

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Issues

Church universities are entities run or in some way associated with a church or churches. However, without a clarification of the concept of *church*, this definition does not explain anything. Although in its Art. 25(1) the Constitution¹ establishes the principle of equality of churches and other religious associations, but does not specify how this concept should be understood. It is only the Act on the guarantees of the freedom of conscience and religion,² in Art. 2(1), that defines churches and other religious associations as religious communities established to profess and spread religious faith, having their own systems, doctrines and cult rites. In the context of the above, as Bogusław Banaszak notes, it should be recognized that church is a special name for a religious association, usually meaning that it is based on Christian doctrine. It is worth noting, however, that a religious association decides its name itself and does not have to take this feature into account.³

Therefore, a question should be asked whether all churches and religious associations in Poland can run universities, and if not, which ones can and on what terms? There is no simple and automatic answer to this question, because there are no legal provisions that would regulate this issue in a uniform manner. Consequently, it is first necessary to refer to legal acts underlying the regulation of mutual relations of the Polish State with a given church or religious association.

The abovementioned Art. 25 of the Constitution provides for two separate modes of bilateral regulation of relations between the Republic of Poland and religious associations.⁴ The legal basis for the regulation of relations between the Republic of Poland and the Catholic Church (Art. 25(4) of the Constitution) has been defined differently than between the Republic of Poland and other churches and religious associations (Art. 25(5) of the Constitution). The relations between the Republic of Poland and the Catholic Church are defined in an international agreement concluded with the Holy See and the Act, while the relations with other churches and religious associations are governed by laws adopted on the basis of agreements concluded by the Council of Ministers with their respective representatives.

Different shaping of relations with the Catholic Church does not mean it is privileged and is not a manifestation of lack of equality. On one hand, this is a consequence of the special position of the Holy See in international law, which has no equivalent in the case of other churches and religious associations, and on the other, recognition of the traditional form of regulating relations with the

1. Konstytucja Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 r., Dz.U. 1997 nr 78 poz. 483 z późn. zm., [Constitution of the Republic of Poland of 2 April 1997, Journal of Laws 1997, No. 78, item 483 as amended].

2. Ustawa z dnia 17 maja 1989 r. o gwarancjach wolności sumienia i wyznania, Dz.U. 2022 poz. 1435, [Act of 17 May 1989 on the guarantees of the freedom of conscience and religion, Journal of Laws 2022, item 1435].

3. B. Banaszak, *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, 2nd edition, SIP Legalis 2012, thesis 1.

4. M. Olszówka, *Komentarz do art. 25, in: Konstytucja RP. Tom I. Komentarz do art. 1–86*, eds. M. Safjan, L. Bosek, SIP Legalis 2016, thesis 88.

Holy See through the Concordat. The Constitution also provides that not all of these relations will be covered by the Concordat and will then be regulated in statutes, and due to the need to normalize various aspects of the Catholic Church's activity in social life not all of them will be covered by a single statute.⁵

Chronologically, the first after 1989 and still binding legal act regulating the relations of the Republic of Poland with the Catholic Church is the Act on the relation of the state to the Catholic Church in the Republic of Poland,⁶ which entered into force on 23 May 1989, that is long before the entry into force of the Constitution (17 October 1997). In turn, the Concordat⁷ had been signed on 28 July 1993, that is also before the Constitution was adopted. However, its ratification took place after the Constitution had been adopted, under the procedure laid down in its Art. 89. Eventually, the Concordat entered into force on 25 April 1998. This is a basic normative act regulating the relations with the Catholic Church, which in the hierarchy of legal acts takes precedence over statutes with a view to the method of ratification with the prior consent expressed in the statute. It is Art. 15 of the Concordat that defines the right of the Catholic Church to freely establish and run higher schools, including universities, separate faculties and higher seminaries for the clergy as well as research institutes.

In the case of other churches and religious associations, the basis for regulating the relations are the statutes adopted under the agreements concluded by the Council of Ministers with their respective representatives. This means that an agreement concluded with the authorities of a given church, although it is not a generally applicable act of law, defines or even predetermines the content of a future statute, and any unilateral interference by the legislator in the sphere of relations between individual churches and religious associations is excluded.⁸

Although all currently functioning particular legal acts defining the state's relation towards a non-Catholic religious association were concluded before the entry into force of the Constitution, it is the bilateral and consensual procedure of their conclusion (resulting more from legislative practice than the letter of the law) caused that after the entry into force of the Constitution they all became statutes within the meaning of Art. 25(5) of the Constitution.⁹ The analysis of these statutes makes it possible to determine that in seven of them we are dealing with the provisions guaranteeing a given church the possibility of providing higher education.

5. B. Banaszak, *Konstytucja...*, op. cit., thesis 9.

6. Ustawa z dnia 17 maja 1989 r. o stosunku Państwa do Kościoła Katolickiego w Rzeczypospolitej Polskiej, Dz.U. 2023 poz. 1966 z późn. zm., [Act of 17 May 1989 on the relation of the State to the Catholic Church in the Republic of Poland, Journal of Laws 2023, item 1966 as amended].

7. Konkordat między Stolicą Apostolską i Rzeczpospolitą Polską, podpisany w Warszawie dnia 28 lipca 1993 r., Dz.U. 1998 nr 51 poz. 318, [Concordat between the Holy See and the Republic of Poland signed in Warsaw on 28 July 1993, Journal of Laws 1998, No. 51, item 318].

8. Wyrok Trybunału Konstytucyjnego z 2 kwietnia 2004 r., K 13/02, [Judgment of the Constitutional Tribunal of 2 April 2004, K 13/02].

9. M. Olszówka, *Komentarz...*, op. cit., thesis 103.

When transferring the above considerations onto the ground of the higher education system and trying to place church universities therein, it should be emphasized that Art. 7 of the Act on higher education and science¹⁰ mentions universities among entities that make up this system. On the other hand, Art. 13 of the Act on higher education and science introduces a separate division into public (established by a state authority) and private universities (established by a natural or legal person other than a local government entity or state or local government legal person).

On the other hand, Art. 8 of the Act on higher education and science excludes the application of certain provisions of this Act (Sections II-IV, Art. 180, Section VI Chapter 1, as well as Sections VII-IX and XII-XIV) to universities and higher theological seminaries run by churches and other religious associations, with the exception of the Catholic University of Lublin, with a reservation that a statute or an agreement between the Council of Ministers and the authorities of a church or another religious association may provide otherwise. In this case, the legislator upheld the principle of regulatory autonomy of universities and higher theological seminaries run by churches and other religious associations, and at the same time preserved the legal status of the Catholic University of Lublin as a university subject to the regulations laid down for public universities.¹¹

Against this background, however, there are significant doubts as to the place in the higher education system of universities run by churches and other religious associations, or more precisely, whether these universities are part of it at all, or form a separate system? In addition, how in the context of the above one should interpret exclusion of the Catholic University of Lublin from the provision of Art. 8 of the Act on higher education and science, which means that *a contrario* the provisions of the Act on higher education and science apply to this university.

Trying to determine the legal status of church universities and their place in the higher education system, one should start by dividing these universities into two separate groups, i.e. universities run by the Catholic Church and universities run by other churches and religious associations. The validity of such a division results from the provisions of the Constitution and reflects the separate regulation of relations with the Catholic Church and other churches and religious associations already presented above.

10. Ustawa z dnia 20 lipca 2018 r. - Prawo o szkolnictwie wyższym i nauce, Dz.U. 2023 poz. 742, [Act of 20 July 2018 on higher education and science, Journal of Laws 2023, item 742].

11. K. Kaleta, *Komentarz do art. 8*, in: *Prawo o szkolnictwie wyższym i nauce. Komentarz*, ed. A. Jakubowski, Wydawnictwo C.H. Beck 2023, p. 41.

Universities run by non-Catholic churches and religious associations

In accordance with Art. 25(5) of the Constitution, relations with non-Catholic churches and religious associations are regulated at the level of the appropriate particular statute adopted on the basis of agreements concluded by the Council of Ministers with relevant representatives of these churches. Currently, in Poland, in addition to the Catholic Church, there are 14 churches and other religious associations, whose relations with the State are governed by separate legal acts.¹² Among them, seven have the right to run universities, namely: (1) Polish Autocephalous Orthodox Church,¹³ (2) Evangelical Methodist Church in the Republic of Poland,¹⁴ (3) Christian Baptist Church in the Republic of Poland,¹⁵ (4) Seventh-Day Adventist Church in the Republic of Poland,¹⁶ (5) Polish Catholic Church in the Republic of Poland,¹⁷ (6) Old Catholic Church of the Mariavites in the Republic of Poland,¹⁸ and (7) Pentecostal Church in the Republic of Poland.¹⁹

The seven particular statutes cited above grant churches the right to establish and run theological colleges in which they educate according to their own program candidates for the clergy and lay people preparing to carry out the mission of a given church. Only universities named in a given statute may provide education in theology and grant professional titles of bachelor. These are the following:

- (1) Orthodox Theological Seminary in Warsaw authorised to run courses in theology and grant the professional title of bachelor of Orthodox theology;²⁰
- (2) Jan Łaski Theological Seminary in Warsaw authorised to run courses in theology and grant the professional title of bachelor of Orthodox theology;²¹
- (3) Higher Baptist Theological Seminary in Warsaw authorised to run courses in theology and grant the professional title of bachelor of Baptist theology;²²
- (4) Michał Belina-Czechowski Theological and Humanities College in Podkowa Leśna (formerly Michał Belina-Czechowski Higher Seminary of the Seventh-Day Adventist Church in Podkowa Leśna) authorized to conduct studies in theology and to grant the professional title of bachelor of Adventist theology;²³
- (5) Higher Theological Seminary of the Old Polish Catholic Church in Warsaw authorised to run studies in theology and grant the professional title of bachelor of Old Catholic theology;²⁴

12. See: *Kościóły i inne związki wyznaniowe, których stosunki z Państwem są uregulowane ustawami partykularnymi*, <https://www.gov.pl/web/mswia/koscioly-i-inne-zwiazki-wyznaniowe-ktorych-stosunki-z-panstwem-sa-uregulowane-ustawami-partykularnymi>, (access 30.06.2023).

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14. Ustawa z dnia 30 czerwca 1995 r. o stosunku Państwa do Kościoła Ewangelicko-Methodystycznego w Rzeczypospolitej Polskiej, Dz.U. 2014 poz. 1712, [Act of 30 June 1995 on the relation of the State to the Evangelical Methodist Church in the Republic of Poland, Journal of Laws 2014, item 1712].

15. Ustawa z dnia 30 czerwca 1995 r. o stosunku Państwa do Kościoła Chrześcijan Baptystów w Rzeczypospolitej Polskiej, Dz.U. 2015 poz. 169, [Act of 30 June 1995 on the relation of the State to the Church of Christian Baptists in the Republic of Poland, Journal of Laws 2015, item 169].

16. Ustawa z dnia 30 czerwca 1995 r. o stosunku Państwa do Kościoła Adventystów Dnia Siódmego w Rzeczypospolitej Polskiej, Dz.U. 2014 poz. 1889,

- (6) Higher Theological Seminary of the Old Catholic Church of the Mariavites in Warsaw authorised to run studies in theology and grant the professional title of bachelor of Mariavite theology;²⁵
- (7) College of Theology and Social Sciences in Warsaw authorised to run courses in theology and grant the professional title of bachelor of theology.²⁶

In the case of these universities, it is important that only the professional title specified in the Act regulating the relations with a given church is equivalent to the title conferred by the universities bound by the provisions of the Act on higher education and science. Any other education at these universities that ends with conferring another professional title will result in it not being equivalent to the professional title specified in the Act on higher education and science.

It should be emphasized that apart from recognisability of the titles specified in the statutes, these universities operate outside the higher education system, and the minister competent for higher education and science has no influence on the activities of these universities, including the quality of education. According to Art. 8 of the Act on education and science the provisions regarding supervision over the system of higher education and science do not apply to these universities. Supervision in this respect has been completely entrusted to the authorities of a given church, and yet it concerns the courses the completion of which guarantees obtaining a title recognized by the State.

Another important issue that has been regulated at the level of the abovementioned seven particular laws is the warranted entitlement of all seven churches to educate their clergy at the Christian Academy of Theology in Warsaw in their particular theologies taught at independent scientific and didactic units. According to the Act of 16 March 2000 on the establishment of the Christian Theological Academy in Warsaw,²⁷ it is a public university established in 1954 as a successor of the Department of Evangelical Theology of the University of Warsaw and referring to the traditions of the Faculty of Orthodox Theology at the University of Warsaw. However, the university is supervised by the minister competent for higher education and science, and the Faculty of Theology additionally remains under the supervision of the authorities of the relevant churches to the extent specified by the university's constitution. As stated in Art. 433(3) of the Act on higher education and science, it is the minister supervises public theological universities and other public universities providing education in theology, as well as – to the extent specified by the international agreement concluded with the Holy See and the statutes regulating the relations

[Act of 30 June 1995 on the relation of the State to the Seventh-Day Adventist Church in the Republic of Poland, Journal of Laws 2014, item 1889].

17. Ustawa z dnia 30 czerwca 1995 r. o stosunku Państwa do Kościoła Polskokatolickiego w Rzeczypospolitej Polskiej, Dz.U. 2014 poz. 1599, [Act of 30 June 1995 on the relation of the State to the Polish Catholic Church in the Republic of Poland, Journal of Laws 2014, item 1599].

18. Ustawa z dnia 20 lutego 1997 r. o stosunku Państwa do Kościoła Starokatolickiego Mariawitów w Rzeczypospolitej Polskiej, Dz.U. 2015 poz. 14, [Act of 20 February 1997 on the relation of the State to the Old Catholic Church of the Mariavites in the Republic of Poland, Journal of Laws 2015, item 14].

19. Ustawa z dnia 20 lutego 1997 r. o stosunku Państwa do Kościoła Zielonoświątkowego w Rzeczypospolitej Polskiej, Dz.U. 2015 poz. 13, [Act of 20 February 1997 on the relation of the State to the Pentecostal Church in the Republic of Poland, Journal of Laws 2015, item 13].

20. Ustawa z dnia 4 lipca 1991..., op. cit., art. 19(4).

21. Ustawa z dnia 30 czerwca 1995 r. o stosunku Państwa do Kościoła Ewangelicko-Methodystycznego..., op. cit., art. 15(2).

between the Republic of Poland and churches and religious associations other than the Catholic Church as well as by the constitutions of these universities – the authorities of churches and other religious associations.

When analysing the universities run by non-Catholic churches, it is worth paying attention to the Evangelical College of Theology in Wrocław providing education in evangelical theology.²⁸ It is a private school that was founded in 2012 under the then applicable provisions of the Higher Education Act.²⁹ Its founder is the Evangelical Union in the Republic of Poland.³⁰ In addition, it is a university entered in the records of non-public universities under number 336 and is subject to the supervision of the minister competent for higher education. Consequently, all provisions of the Act on higher education and science apply to it in the same way as to all other non-public schools.

Conclusions

The above reflection included in Part 1 devoted to the issue of the legal system of church universities in Poland should be treated primarily as a fundamental introduction to the discussed issue. There is no doubt that in the manner described above one can only sketch a map of universities run by non-Catholic churches and other religious associations against the background of the higher education system. It is worth noting that due to the breadth of the research area in question, such issues as the financing of church universities deserve a separate study or an analysis of the internal regulations of a given church and the competences of their church authorities vis-à-vis these universities. The analyses included in this study are therefore an incentive for an in-depth research. However, Part 2 planned in the framework of the investigations will not be an extension of this research area. Its content will focus on the problems of the universities run by the Catholic Church. It will be a continuation of the reflections on the Polish higher education system in Poland and an attempt to find out its guiding principles.

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28. See: *Informacje ogólne o Ewangelikalnej Wyższej Szkole Teologicznej we Wrocławiu*, <https://ewst.pl/studialicencjackie/ewst-2/informacje-ogolne/>, (access 30.06.2023).

29. Ustawa z dnia 27 lipca 2005 r. Prawo o szkolnictwie wyższym, Dz.U. 2017 poz. 2183, [Act of 27 July 2005 on higher education, Journal of Laws 2017, item 2183].

30. Evangelical religious association with its seat in Wrocław, registered in Poland since 2004, more informa-

Ustawa z dnia 16 marca 2000 r. o Chrześcijańskiej Akademii Teologicznej w Warszawie, Dz.U. 2021 poz. 1365, [Act of 16 March 2000 on the Christian Theological Academy in Warsaw, Journal of Laws 2021, item 1365].

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