

MARTA ORDON*

MODIFICATION OF THE LEGAL BASIS OF THE ACTIVITY
OF RELIGIOUS ORDERS IN POLAND INTRODUCED
BY THE COMMUNIST AUTHORITIES IN 1949

INTRODUCTION

Poland, as other countries falling under the influence of the Soviet Union after the Second World War, was imposed a political system based on the socio-philosophical approach referred to as Marxism-Leninism. It was an essentially atheistic system, hostile towards religion and religious associations. Because in Poland the vast majority of the population were Roman Catholics, the anti-religious campaign of the communist regime was particularly levelled at the institutions of the Roman Catholic Church. One of the methods of this campaign was the exploitation of the provisions of statute law. This study casts light on the circumstances and effects of changes to the legal acts defining the legal framework of the activities of religious orders¹ in post-war Poland. The content relies primarily on the analysis of the legislation and archival material gathered in the state and ecclesiastical archives in Poland. The author references the Polish-

* Dr, Wydział Prawa, Prawa Kanonicznego i Administracji, Katolicki Uniwersytet Lubelski Jana Pawła II, Al. Raclawickie 14, 20-950 Lublin, e-mail: mordon@kul.pl

¹ In this study, following the domestic secular legislator, the terms religious orders and religious congregations will be used to represent all forms of religious life and the state of evangelical perfection provided for in canon law.

-language literature² because the subject in question has not yet been thoroughly covered by English-speaking researchers³.

1. THE STATUS OF RELIGIOUS ORDERS IN POLISH LAW AFTER 1949

In Poland before World War II, the activity of religious orders was governed by canon law⁴ and they enjoyed autonomy granted to the

² The issue of the situation of the Roman Catholic Church in the People's Republic of Poland (PRL) has already been addressed in a number of publications after the 1989 democratic transformation. Some of the most worthy of mention are: A. Dudek, *Państwo i Kościół w Polsce 1945-1970*, Kraków 1995; K. Krasowski, *Państwo a Kościół katolicki w Polsce 1945-1955*, Poznań 1997; J. Żaryn, *Dzieje Kościoła katolickiego w Polsce (1944-1989)*, Warszawa 2003; A. Dudek, R. Gryz, *Komuniści i Kościół w Polsce (1945-1989)*, Kraków 2003; Z. Zieliński, *Kościół w Polsce 1944-2002*, Radom 2003; *Represje wobec Kościoła katolickiego na Dolnym Śląsku i Opolszczyźnie (1945-1989)*, eds. S.A. Bogaczewicz, S. Krzyżanowska, Wrocław 2004; *Prawo i polityka wyznaniowa w Polsce Ludowej. Materiały II Ogólnopolskiego Sympozjum Prawa Wyznaniowego (Kazimierz Dolny, 26-28 października 2004)*, eds. A. Mezglewski, P. Stanisławski, M. Ordon, Lublin 2005; *Władze wobec Kościołów i związków wyznaniowych w Wielkopolsce w latach 1945-1956*, ed. K. Białecki, Poznań 2008; A. Szymański, *Proces likwidacji działalności charytatywnej Kościoła katolickiego w sferze publicznoprawnej w latach 1944-1965. Studium historyczno-prawne*, Opole 2010. The fate of religious congregations in Poland under the communist rule have been the leading motif of several historical studies, some of which are: E. Kaczmarek, *Dlaczego przeszkadzały? Polityka władz partyjnych i rządowych wobec żeńskich zgromadzeń zakonnych w Polsce w latach 1945-1956*, Warszawa 2007; *Zakony żeńskie w PRL. Studia i materiały do historii najnowszej żeńskich zgromadzeń zakonnych w Polsce*, ed. A. Mirek, Lublin 2008; A. Mirek, *Siostry zakonne w obozach pracy w PRL w latach 1945-1956*, Lublin 2009; D. Zamiatała, *Zakony męskie w polityce władz komunistycznych w Polsce w latach 1945-1989*, vol. 1: *Problematyka organizacyjno-personalna*, Kielce 2009; J. Marecki, *Zakony pod presją bezpieki. Aparat bezpieczeństwa wobec wspólnot zakonnych na terenie województwa krakowskiego 1944-1975*, Kraków 2009; D. Zamiatała, *Działania represyjne władz komunistycznych wobec zakonów męskich w PRL*, „Kościół w Polsce. Dzieje i Kultura” 2011, vol. 11, pp. 211-236; *Represje wobec żeńskich zgromadzeń zakonnych w PRL. Zagadnienia wybrane*, eds. J. Myszor, A. Dziurok, Katowice 2012; D. Zamiatała, *Zakony męskie w polityce władz komunistycznych w Polsce w latach 1945-1989*, vol. 2: *Działalność duszpasterska i społeczna zakonów 1945-1989*, Warszawa 2012.

³ As regards the English language studies on the situation of the Roman Catholic Church in post-war Poland, see: R.C. Monticone, *The Catholic Church in Communist Poland 1945-1985*, New York 1986; M.S. Mazgaj, *Church and State in Communist Poland. A History, 1944-1989*, McFarland 2010.

⁴ In particular, the provisions of the 1917 Code of Canon Law (*Codex Iuris Canonici*, Pii X Pontificis Maximi iussu digestus, Benedicti Papae XV auctoritate promulgatus, praefata

Roman Catholic Church in Article 113 and 114 of the 1921 Constitution⁵ and in the provisions of the Concordat concluded between the Holy See and the Republic of Poland on 10 February 1925⁶. Orders had juridical personality under civil law as held in Article XVI of the Concordat, which granted Polish ecclesiastical and religious juridical persons, their status confirmed in canon law, the same rights as held by secular legal persons⁷. Of significance was also Article I of the Concordat recognizing canon law as a foundation of the Church's activity⁸. During that period, religious orders were exempted from the provi-

tion, fontium annotatione et indice analytico-alphabetico ab. E. Petro Card. Gaspari auctus, Romae 1918).

⁵ Act of 17 March 1921 the Constitution of the Republic of Poland (Journal of Laws No. 44, item 267 as amended). Article 113: "Every religious association recognized by the state shall have the right to conduct collective and public worship; may independently manage its internal affairs; may possess and acquire movable and immovable property, manage it and dispose of it; may possess and use of its funds and foundations, or other establishments for the purpose of worship, science, and charity. No religious association, however, can stand in opposition to the laws of the state." Article 114: "The Roman Catholic denomination, which prevails in the nation, shall hold a privileged position among other denominations, yet all of them shall enjoy equal rights. The Roman Catholic Church shall be governed by her own rules. The State-Church relations shall be regulated by an agreement with the Holy See, subject to ratification by the Sejm." These provisions were upheld by the Constitution of 23 April 1935 (Journal of Laws No. 30, item 227) [English translation by the author].

⁶ Journal of Laws No. 72, item 501. The Concordat entered into force on 3 August 1925.

⁷ Article XVI: "All Polish ecclesiastical and religious juridical persons shall have, in accordance with the provisions of applicable law, the right to acquire, dispose of, possess and administer, according to canon law, their movable and immovable property, as well as the right to stand before all the instances and authorities of the State to protect their civil rights. The ecclesiastical and religious juridical persons shall be regarded as Polish if the purpose of their establishment concerns Polish ecclesiastical or religious matters and if the persons authorized to represent them and to administer their assets reside in the territory of the Republic of Poland on a permanent basis. The ecclesiastical and religious juridical persons that shall not meet the above conditions shall enjoy the civil rights granted by the Republic to aliens." [English translation by the author] Since Article XVI did not mention any juridical persons, the Minister of Justice published a list of ecclesiastical and religious juridical persons acting according to canon law (Communiqué of the Minister of Justice of 15 May 1926 on the regulations of canon law on ecclesiastical and religious juridical persons, Official Journal of the Ministry of Justice, No. 10, no item, pp. 175-182).

⁸ For more, see: L. Halban, *Konkordat zawarty między Rzeczpospolitą Polską a Stolicą Apostolską*, Warszawa 1925, pp. 5-6, 17-20; S. Łukomski, *Konkordat zawarty dnia 10 lutego 1925 roku pomiędzy Stolicą Apostolską i Rzeczpospolitą Polską*, Łomża 1934, pp. 48, 145-146.

sions on the establishment and legalization of lay associations. Such exemptions were expressly stipulated in Article 9(a) of the Regulation of the President of the Republic of Poland of 27 October 1932 – Law on Associations⁹.

After World War II, the legal situation of religious orders changed dramatically. In their resolution of 12 September 1945, the Provisional Government of National Unity (PGNU) invalidated the Concordat of 10 February 1925¹⁰, shifting the blame for the existing situation to the Holy See on the grounds that it, allegedly, violated the provisions of the Concordat during the German occupation. Yet, beyond doubt, the actual cause of this decision was ideological. Although under international law, the resolution of the PGNU cannot be regarded as terminating the Concordat, which is an international agreement anyway, the fact is that after 12th of September 1945 the Concordat was not respected by the Communist regime at all¹¹. Consequently, religious juridical persons were deprived of the legal personality under civil law granted in Article XVI of the Concordat.

2. THE LEGAL STATUS OF RELIGIOUS ORDERS AFTER 1949

2.1. THE AMENDMENTS OF 1949

The re-regulation of the legal situation of religious orders was to follow the procedure – as communicated by the official propaganda – of their registration in line with the Law on Associations. By the Decree of 5 August 1949 amending certain provisions of the Law on

⁹ Journal of Laws No. 94, item 808 as amended (hereinafter “the Law on Associations”).

¹⁰ The text of the resolution available in: *Państwowe prawo wyznaniowe Polskiej Rzeczypospolitej Ludowej. Wybór tekstów źródłowych*, ed. M. Fąka, Warszawa 1978, pp. 26-27. The resolution was not published in any official journal, only in the daily press.

¹¹ On the legal effects of the resolution, see: H. Rybczyński, *W sprawie konkordatu między Stolicą Apostolską a Rzeczpospolitą Polską 10 II 1925 roku*, in: *Kościół w II Rzeczypospolitej*, eds. Z. Zieliński, S. Wilk, Lublin 1981, pp. 49-52; K. Skubiszewski, *Konkordat z 10 lutego 1925 roku. Zagadnienia prawnomiędzynarodowe*, in: *Kościół w II Rzeczypospolitej*, pp. 35-47; A. Mezglewski, *Spór o „wygaśnięcie” konkordatu polskiego z 1925 roku*, „Roczniki Nauk Prawnych” 1998, vol. 8, pp. 325-340.

Associations¹², the wording of Article 9(a) of the Regulation of the President of the Republic of Poland of 27 October 1932 was modified to make religious orders fall under the said law. As provided for in the decree, religious orders were subject to dissolution if they fail to register under the Law on Associations within 90 days as of the decree coming into force. Their property was to be repossessed and administered by the Council of Ministers. A detailed registration procedure was recommended in a regulation of the Minister of Public Administration of 6 August 1949¹³. The procedure required that the orders submit “an application requesting the regulation of their legal existence” to the appropriate minister through the regional authority representing the central administration. The attachments to the application were: 4 copies of the articles of association (i.e. the religious constitution), a list of members of the managing body (i.e. the management of the order or its province), including the roles and functions of such members, a list of branches and the names of the managing persons in such branches (i.e. the individual monasteries and religious houses), a list of institutions and scientific, educational, medical, and economic establishments managed by these entities, as well as an itemization of immovable property. Furthermore, the total number of order members was to be provided, divided into specific categories. Once submitted, such an application determined any further operation of the organization.

The inclusion of religious orders into the Law on Associations was officially justified by the urgency to re-organize and “tidy up” the existing legislation. The actual motives for the introduction of this legal requirement are exposed in the “top secret” Instruction No. 30 of the Ministry of Public Security (MPS) dated 1 September 1949¹⁴. It reads that the amendment to the Law on Associations made effective by the

¹² Journal of Laws No. 45, item 335.

¹³ Journal of Laws No. 47, item 358.

¹⁴ The Institute of National Remembrance – Commission for the Prosecution of Crimes against the Polish Nation, Lublin Branch (IPNL), Zarządzenia, rozkazy, instrukcje wydane przez MBP w 1949 r., file ref. IPN Lu-055/40, sheets 160-161verte. The document published: *Instrukcje, wytyczne, okólniki dyrektora Departamentu V MBP dotyczące działań przeciwko Kościołowi katolickiemu w latach 1945-1953*, eds. A. Dziurok, J. Marecki, F. Musiał, Kraków-Katowice 2012, pp. 170-178.

decree of 5 August 1949 aimed to put an end to the “espionage and subversive activity” targeted at the state authorities. In the opinion of the MPS, religious orders were a cover-up for the Church’s support for “hostile political organizations”, and the change in the regulations was to facilitate the elimination of such organizations involved in activities “misaligned with the state’s interest”¹⁵.

2.2. CHURCH’S POSITION ON THE NEW LEGAL SITUATION

The Polish Episcopate recognized the new legal requirements imposed by the communist regime as a serious threat and encroachment upon the internal affairs of the Church. The bishops voiced their strong disagreement with the amended Law on Associations in a letter to the government dated 21 September 1949¹⁶. Firmly enough, they stressed that “the Law on Associations is not a proper instrument to regulate the internal life and activities... of religious orders.” The Polish Episcopate was aware that the refusal to register would entail the negative consequences of the repossession and loss of property. Bishops did not intend to fuel the existing controversy in the relations between the Church and the state. Nor did they wish to hand over the decision on the operation of religious orders to the state administration. Consequently, they delayed the final decision, attempting to push for the repeal of

¹⁵ For more on the instruction of the Ministry of Public Security, see: M. Ordon, *Rozpracowanie katolickich organizacji masowych. Nowelizacja prawa o stowarzyszeniach w świetle tajnej instrukcji MBP z 1 września 1949 r.*, „Studia z Prawa Wyznaniowego” 2004, vol. 7, pp. 255-262.

¹⁶ The letter available in: Archives of Modern Records in Warsaw (AMR), Office for Religious Affairs (ORA), file ref. 133/5, sheets 1-5; also in P. Raina, *Kościół w PRL. Kościół katolicki a państwo w świetle dokumentów 1945-1989*, vol. 1: *Lata 1945-1959*, Poznań 1994, pp. 181-184. The ORA was established under the Act of 19 April 1950 on changes to the organization of the supreme state authorities with regard to municipal management and public administration (Journal of Laws No. 19, item 156). Until 1989, when it was dissolved, it had been responsible for the implementation of the Communist policy regarding religious affairs, including the monitoring of the activities of religious orders and other organizations of the Roman Catholic Church. For more on the ORA and its activity, see: H. Misztal, A. Mezglewski, *Zakres kompetencji, styl działania i cele Urzędu do Spraw Wyznań*, in: *Prawo i polityka wyznaniowa w Polsce Ludowej*, pp. 33-70.

the amended law¹⁷. In addition, the tension and uncertainty about the future of Poland-based orders were fuelled by the events in Czechoslovakia where the Church's autonomy was seriously undermined, many members of the clergy arrested by the security service and the property of religious congregations confiscated by the state¹⁸. The situation in Czechoslovakia was believed to prelude what was going to happen in Poland: the registration requirement was only a pretext to the complete liquidation of religious orders. Ultimately, the Polish Episcopate, due to the autonomy of religious orders, assumed an advisory role and, apparently, chose the gradual adaptation to the revised legislation¹⁹.

As suggested by the Polish Episcopate, Polish religious orders and congregations submitted the required applications "to regulate their

¹⁷ The Polish Episcopate delayed the final decision on this crucial matter until the last day, which is evidenced in a circular addressed to the religious authorities in which the bishops recommend that "religious orders and congregations are advised against taking any steps" with regard to the registration requirement "until further notice". At the same time, the competent religious authorities were instructed to have all the necessary documents in place for the registration (J. Żaryn, *Kościół a władza w Polsce (1945-1950)*, Warszawa 1997, p. 267). The quotation from the circular after J. Żaryn, *Dzieje Kościoła katolickiego*, p. 101.

¹⁸ For more on the situation of the Church in Czechoslovakia in this period, see: B. Cywiński, *Ogniem próbowane. Z dziejów najnowszych Kościoła katolickiego w Europie Środkowo-Wschodniej*, vol. II, Lublin-Rome 1990, pp. 234-257; F. Długoš, *Prenasladovanie veriacich spiškej diecézy v rokach 1948-1989*, Levoča 2003; M. Moravčíková, *State and Church in the Slovak Republic*, in: *State and Church in the European Union*, ed. G. Robbers, Baden-Baden 2005, pp. 495-496, 511; J.R. Tretera, *State and Church in the Czech Republic*, in: *State and Church in the European Union*, pp. 39-40; M. Moravčíková, *Religion, Law, and Secular Principles in the Slovak Republic*, in: *Religion and the Secular State. Interim National Reports*, under the direction of Javier Martinez-Torrón, W. Cole Durham, Jr., Washington 2010, p. 618; O. Podolec, *Czechosłowackie ustawodawstwo kościelne z 1949 r. i jego stosowanie w praktyce*, in: *Represje wobec Kościoła w krajach bloku wschodniego. Komuniści przeciw religii po 1944 roku*, ed. J. Marecki, Kraków 2011, pp. 13-25; I.A. Petranský, *Represje wobec Kościoła katolickiego na Słowacji (1944-1948)*, in: *Represje wobec Kościoła w krajach bloku wschodniego*, pp. 27-42; J. Caronič, *Represje czechosłowackiego aparatu bezpieczeństwa wobec greckokatolickich wspólnot zakonnych w 1950 r.*, in: *Represje wobec Kościoła w krajach bloku wschodniego*, pp. 43-55.

¹⁹ So in A. Micewski, *Kardynał Wyszyński. Prymas i Mąż Stanu*, Paryż 1982, p. 67. On the other hand, J. Krukowski writes that the Episcopate "ordered" that the registration requirement be satisfied (*Prawo chrześcijan do stowarzyszenia się i możliwości jego realizacji w prawie kanonicznym i polskim*, „Kościół i Prawo” 1991, vol. 9, p. 205), and J. Żaryn adds that the bishops decided so after consultation with the Intra-religious Board [Porozumienie Międzyzakonne] (*Dzieje Kościoła katolickiego*, p. 101).

legal existence”. According to the records of the Office for Religious Affairs, in 1949, 46 male and 111 female congregations filed their registration applications²⁰.

2.3. AUTHORITIES’ APPROACH

The submitted applications for registration were actually never examined by the registration authority: the orders were not listed in the register of associations, nor did they receive any official confirmation of the completed registration²¹. The registration authority, that is, the Minister of Public Administration nominated in the regulation of 6 August 1949, never produced any list that might have been considered a formal register. The then Regulation of the Minister of Internal Affairs of 10 December 1932 on the registration of associations²² was very specific about the registry-keeping and even indicated the type

²⁰ The ORA guidelines on the policy towards religious orders and congregations of 12 December 1958 (number missing), AMR, ORA, file ref. 133/7, sheets 130-131. According to the same source, not all the Poland-based religious orders submitted their applications in that time. For example, the Order of Saint Stanislaus (Pol. *stanisławici*), the Congregation of the Sisters of the Angels (founded in 1889) and “several congregations of local origin” failed to do that (ibidem, p. 129). On the decision of the Congregation of the Sisters of the Angels to refuse registration, see A. Mirek, *Siostry zakonne w obozach pracy w PRL*, pp. 108-109.

²¹ The fact that the applications for registration filed by religious orders were never examined is corroborated in several sources. For example, in a study by M.A. Łączka (*Wspomnienia o współpracy międzyzakonnej zgromadzeń żeńskich w Polsce po II wojnie światowej do 1960 r.*, vol. 1, Warszawa 1984, p. 24). In his letter to the director of the ORA dated 22 February 1962 and concerning the application of the regulations on association to religious orders, Bp Z. Choromański wrote, “Twelve years have passed and the state administration have not issued a registration certificate to any religious order or congregation” (the text of the letter in P. Raina, *Kościół w PRL*, vol. 2: *Lata 1960-1974*, Poznań 1995, pp. 184-185). Even the personnel of the ORA admitted that: see the guidelines of the ORA concerning the policy towards religious orders and congregations dated 12 December 1958 (number missing), AMR, ORA, file ref. 133/7, p. 129; letter dated 5 July 1960 to the barrister, O. Pietruski, (L.dz. IV.39/4/60), signed by A. Merker, later the director of the ORA, authorized by the 5th director of the ORA (AMR, ORA, file no. 53/73, pp. 2-3), and a letter of ORA Director Tadeusz Żabiński to the Secretary of the Episcopate, Bp Z. Choromański, dated 10 February 1962 and concerning statistical surveys (the letter cited in P. Raina, *Kościół w PRL*, vol. 2, p. 179) in which the director explicitly confirms the lack of “the registration of orders”.

²² Journal of Laws No. 116, item 963.

of information to be provided in each of its six columns. The lists of religious orders found in the Archive of Modern Records²³ in no way satisfy the legal registration requirements laid down in the relevant regulations. These lists only contain numbered “names of associations, that is, religious congregations”²⁴. Importantly, the Archives of Modern Records reveal a detailed list of religious institutions applying for registration in 1949 together with their addresses²⁵. It supports the thesis that the authorities did not really intend to “regulate the legal existence” of religious congregations, but rather to collect information about the existing orders, their property and activities. In the Instruction No. 30 of the MPS dated 1 September 1949 and mentioned elsewhere, it is clearly stated that the registration requirements imposed on religious orders should expedite their penetration and elimination.

The lack of a properly maintained register leads to yet another conclusion. The discrepancy between the specific nature of religious congregations and the Law on Associations was so extensive that the authorities – despite the endeavours to force them under the regulations imposed on the secular associations – were not capable of making it. In this case, the data from the applications for the regulation of the legal existence did not fit into the columns of the registration forms required by the association laws. The authorities apparently struggled with the application of the Law on Associations to religious orders; this was seen in the regulation of the Minister of Public Administration dated 6 August 1949 in which he laid down an extraordinary procedure for

²³ Collections including the records of the Ministry of Public Administration and the Office for Religious Affairs.

²⁴ The most meticulously prepared was “the list of religious associations registered under the decree of 5 August 1949” (date and number missing), AMR, ORA, file ref. 133/7, sheets 120-126. Others lists found in the AMR resemble incomplete, draft notes, with missing pages, bearing no date or author’s signature (e.g. register of religious associations (date and number missing), AMR, ORA, file ref. 127/147, no card no.). They are oftentimes handwritten notes made in an ordinary A5-format notepad. because of the missing date, it is not easy to assess whether such a “list” was drawn up in 1949 or later, based on the data from the statistical surveys submitted obligatorily by congregations in the subsequent years.

²⁵ A list of the religious houses of male and female religious congregations reported in 1949 along with the applications for the regulation of the legal existence [12 December 1958], (number missing), AMR, ORA, file ref. 133/7, sheets 1-119.

the registration of religious orders that differed from that applied to other associations. It was also necessary to amend the provisions of the Law on Associations in such a way that the ban on the establishment of associations adhering to the principle of absolute obedience of the members to the association governance did not apply to religious congregations with regard to the conducting of their worship²⁶. In the opinion of the Church, the introduced change was far from resolving the issue “because the extent of religious obedience, in accordance with the religious constitutions, goes beyond the exercise of religious worship in the strict sense of the word”.

No registration certificate justifies the claim that, in accordance with Article 21 of the Law on Associations, religious congregations, as not being included in the register, did not legally exist as secular associations. It goes without saying that unregistered associations cannot fall

²⁶ See Article 1 of the Decree of 5 August 1949 amending the Law on Associations. The exclusion of religious orders from this ban was necessary; otherwise, it would have created a paradox in which religious orders subject to the Law on Associations would have become organizations prohibited by this law at the same time, particularly due to its ban on creating associations following the principle of absolute obedience to the association governance (so believes W. Dawidowicz, *Polskie prawo administracyjne*, Warszawa 1978, p. 169). In the opinion of W. Kisiel, this important exception, “testifies to the incompatibility of the Law on Associations with the idea of regulation of the legal and administrative situation of ecclesiastical organizational units.” In his opinion, if the legislator deemed it right to “surrender religious orders and secular institutes to the legal and administrative rationing, it should formulate rules tailored to the specific nature of these institutions.” In particular, it should recognize their “centuries-old (and not given *ex nunc*) internal autonomy corresponding to the principle of absolute obedience to the religious authority”. In summarizing his argument, W. Kisiel points out, “I notice a lack of consistency in determining the legal basis for the administrative and legal relations between the state and the Church. At the same time, the artificial disintegration by the legislator of the regulations on the Roman Catholic Church is striking. Religious orders are subject to the law on associations which does not apply to other organizational units of the same Church. Still, in the light of canon law, the organizational unity of the Church is unquestionable, even taking into account the specific canonical nature of religious orders. ...From the viewpoint of the principles of proper legislation, it is reprehensible to isolate a portion of the uniform structure for the purpose of statutory regulation” (*Pozycja Kościoła Rzymskokatolickiego w polskim prawie administracyjnym*, Kraków 1986, pp. 10-11). This opinion clearly indicates that even the lawyers publishing during the Communist regime recognized the problem and shared many of the Church’s objections as regards the application of the Law on Associations to religious orders.

under the regulations on the registered ones²⁷. Nevertheless, in the subsequent years, under the pretence of monitoring activities aimed at “associations”, the state authorities often encroached upon the internal affairs of religious orders. With such an end in view, they invoked the provisions on the control of the activities of associations and demanded regular “reports on activities”²⁸. The data so collected was exploited to take further anti-Church decisions.

Despite the many attempts made by the Polish Episcopate to repeal the controversial laws²⁹, the communist regime did not change the legal status of religious orders until 1989³⁰.

²⁷ A similar position is endorsed by the legal advisers drawing up legal opinions commissioned by the Polish Episcopate. See “Pouczenia prawne w oparciu o obowiązujące w Polsce ustawy według stanu na dzień 10 listopad 1952 r. Prawny byt zakonów”, Archive of the Secretariat of the Polish Episcopal Conference in Warsaw (ASPEC, file ref. 02110, no card no.), and also “Czy przepisy prawa o stowarzyszeniach mają zastosowanie do zakonów i zgromadzeń zakonnych?” – Opinion of 18 July 1953 (ASPEC, file ref. 0211, no card no.).

²⁸ In demanding the reports, the director of the ORA, Tadeusz Żabiński, argued that ever since the entry into force of the decree of 5 August 1949, the Law on Associations had been applying to religious orders, and the lack of formal registration did not exempt them from falling under the regulations governing the operations of other registered associations (*List Dyrektora UdSW do Sekretarza Episkopatu bp. Z. Choromańskiego z dnia 10 lutego 1962 r. w sprawie ankiet statystycznych*, in: P. Raina, *Kościół w PRL*, vol. 2, p. 179).

²⁹ One of such attempts led to the inclusion of one of the points of the Agreement between the representatives of the government and the Polish Episcopate signed on 14 April 1950 (the text available in: *Państwowe prawo wyznaniowe Polskiej Rzeczypospolitej Ludowej*, pp. 27-30). Point 19 read: “With regard to their vocation and within the limits of the binding laws, religious orders and congregations shall enjoy a complete freedom of action”. Also, after the political thaw of 1956, during the resumed meetings of the representatives of the government and the Episcopate, referred to as the Joint Commission, the Church insisted that religious orders be exempted from the provisions of the Law on Associations. See the proposals submitted at the meeting of the Joint Commission on 8 March 1957 (ASPEC, file ref. 0211, no card no.). See also: M. Kosek, *Relacje Episkopat – Rząd w optyce wybranych problemów podejmowanych na forum Komisji Wspólnej w latach 1956-1967*, in: *Prawo i polityka wyznaniowa w Polsce Ludowej*, pp. 99-111.

³⁰ Only then, on 17 May 1989, an Act was passed on the Relations Between the State and the Catholic Church in the People’s Republic of Poland, Journal of Laws No. 29, item 154 as amended.

CONCLUSION

Until 1949, religious orders had not been covered by the regulations on the creation and legalization of secular associations. Pursuant to the decree of 5 August 1949, however, they were obligated to comply with the provisions of the Law on Associations. Failure to apply for the registration resulted in the dissolution of the order and the forfeiture of its assets by the state. Still, despite the submission of the applications as provided by law, the authorities refused to register orders and did not maintain an official register of such entities, either. In point of fact, the Communist regime only intended to develop such a legal context in which the law might be used as a tool of repression against religious orders. The actual aim of the 1949 amendment was not the intent to clarify the legal status of religious orders, which remained uncertain in the aftermath of the Resolution of the Provisional Government of National Unity of 12 September 1945 invalidating the 1925 Concordat. The authorities only intended to establish a strict state control over religious organizations and, by extension, gradually reduce their activity until their complete disappearance from public life³¹.

BIBLIOGRAPHY

- Caronič J., *Represje czechosłowackiego aparatu bezpieczeństwa wobec greckokatolickich wspólnot zakonnych w 1950 r.*, in: *Represje wobec Kościoła w krajach bloku wschodniego. Komuniści przeciw religii po 1944 roku*, ed. J. Marecki, Kraków 2011, pp. 43-55.
- Cywiński B., *Ogniem próbowane. Z dziejów najnowszych Kościoła katolickiego w Europie Środkowo-Wschodniej*, vol. II, Lublin-Rome 1990.
- Długoš F., *Prenasladovanie veriacich spiškej diecězy w rokach 1948-1989*, Levoča 2003.
- Dudek A., *Państwo i Kościół w Polsce 1945-1970*, Kraków 1995.

³¹ The amendment of 1949 crippled not only religious orders but also other Catholic associations and organizations; see M. Ordon, *Freedom of Association in the People's Republic of Poland and Its Restriction with Regard to the Roman Catholic Church*, „Review of Comparative Law” 2012, vol. 17, pp. 53-66.

- Dudek A., Gryz R., *Komuniści i Kościół w Polsce (1945-1989)*, Kraków 2003.
- Halban L., *Konkordat zawarty między Rzeczpospolitą Polską a Stolicą Apostolską*, Warszawa 1925.
- Instrukcje, wytyczne, okólniki dyrektora Departamentu V MBP dotyczące działań przeciwko Kościołowi katolickiemu w latach 1945-1953*, eds. A. Dziurok, J. Marecki, F. Musiał, Kraków-Katowice 2012.
- Kaczmarek E., *Dlaczego przeszkadzały? Polityka władz partyjnych i rządowych wobec żeńskich zgromadzeń zakonnych w Polsce w latach 1945-1956*, Warszawa 2007.
- Kisiel W., *Pozycja Kościoła Rzymskokatolickiego w polskim prawie administracyjnym*, Kraków 1986.
- Krasowski K., *Państwo a Kościół katolicki w Polsce 1945-1955*, Poznań 1997.
- Krukowski J., *Prawo chrześcijan do stowarzyszania się i możliwości jego realizacji w prawie kanonicznym i polskim*, „Kościół i Prawo” 1991, vol. 9, pp. 191-210.
- Łukomski S., *Konkordat zawarty dnia 10 lutego 1925 roku pomiędzy Stolicą Apostolską i Rzeczpospolitą Polską*, Łomża 1934.
- Marecki J., *Zakony pod presją bezpieki. Aparat bezpieczeństwa wobec wspólnot zakonnych na terenie województwa krakowskiego 1944-1975*, Kraków 2009.
- Mazgaj M.S., *Church and State in Communist Poland. A History, 1944-1989*, McFarland 2010.
- Mezglewski A., *Spór o „wygaśnięcie” konkordatu polskiego z 1925 roku*, „Roczniki Nauk Prawnych” 1998, vol. 8, pp. 325-340.
- Mirek A., *Siostry zakonne w obozach pracy w PRL w latach 1945-1956*, Lublin 2009.
- Monticone R. C., *The Catholic Church in Communist Poland 1945-1985*, New York 1986.
- Moravčíková M., *State and Church in the Slovak Republic*, in: *State and Church in the European Union*, ed. G. Robbers, Baden-Baden 2005, pp. 491-518.
- Moravčíková M., *Religion, Law, and Secular Principles in the Slovak Republic*, in: *Religion and the Secular State. Interim National Reports*, under the direction of Javier Martinez-Torrón, W. Cole Durham, Jr., Washington 2010, pp. 615-628.
- Ordon M., *Rozpracowanie katolickich organizacji masowych. Nowelizacja prawa o stowarzyszeniach w świetle tajnej instrukcji MBP z 1 września 1949 r.*, „Studia z Prawa Wyznaniowego” 2004, vol. 7, pp. 255-262.

- Ordon M., *Freedom of Association in the People's Republic of Poland and Its Restriction with Regard to the Roman Catholic Church*, „Review of Comparative Law” 2012, vol. 17, pp. 53-66.
- Państwowe prawo wyznaniowe Polskiej Rzeczypospolitej Ludowej. Wybór tekstów źródłowych, ed. M. Fąka, Warszawa 1978.
- Petranský I.A., *Represje wobec Kościoła katolickiego na Słowacji (1944-1948)*, in: *Represje wobec Kościoła w krajach bloku wschodniego. Komuniści przeciw religii po 1944 roku*, ed. J. Marecki, Kraków 2011, pp. 27-42.
- Podolec O., *Czechosłowackie ustawodawstwo kościelne z 1949 r. i jego stosowanie w praktyce*, in: *Represje wobec Kościoła w krajach bloku wschodniego. Komuniści przeciw religii po 1944 roku*, ed. J. Marecki, Kraków 2011, pp. 13-25.
- Prawo i polityka wyznaniowa w Polsce Ludowej. Materiały II Ogólnopolskiego Sympozjum Prawa Wyznaniowego (Kazimierz Dolny, 26-28 października 2004)*, eds. A. Mezglewski, P. Stanisławski, M. Ordon, Lublin 2005.
- Raina P., *Kościół w PRL. Kościół katolicki a państwo w świetle dokumentów 1945-1989*, vol. 1: *Lata 1945-1959*, Poznań 1994.
- Raina P., *Kościół w PRL. Kościół katolicki a państwo w świetle dokumentów 1945-1989*, vol. 2: *Lata 1960-1974*, Poznań 1995.
- Represje wobec Kościoła katolickiego na Dolnym Śląsku i Opolszczyźnie (1945-1989)*, eds. S.A. Bogaczewicz, S. Krzyżanowska, Wrocław 2004.
- Represje wobec żeńskich zgromadzeń zakonnych w PRL. Zagadnienia wybrane*, eds. J. Myszor, A. Dziurok, Katowice 2012.
- Rybczyński H., *W sprawie konkordatu między Stolicą Apostolską a Rzeczpospolitą Polską 10 II 1925 roku*, in: *Kościół w II Rzeczypospolitej*, eds. Z. Zieliński, S. Wilk, Lublin 1981, pp. 49-52.
- Władze wobec Kościołów i związków wyznaniowych w Wielkopolsce w latach 1945-1956*, ed. K. Białecki, Poznań 2008.
- Skubiszewski H., *Konkordat z 10 lutego 1925 roku. Zagadnienia prawnomiędzynarodowe*, in: *Kościół w II Rzeczypospolitej*, eds. Z. Zieliński, S. Wilk, Lublin 1981, pp. 35-47.
- Szymański A., *Proces likwidacji działalności charytatywnej Kościoła katolickiego w sferze publicznoprawnej w latach 1944-1965. Studium historyczno-prawne*, Opole 2010.
- Tretera J.R., *State and Church in the Czech Republic*, in: *State and Church in the European Union*, ed. G. Robbers, Baden-Baden 2005, pp. 35-54.
- Zakony żeńskie w PRL. Studia i materiały do historii najnowszej żeńskich zgromadzeń zakonnych w Polsce*, ed. A. Mirek, Lublin 2008.

- Zamiatała D., *Zakony męskie w polityce władz komunistycznych w Polsce w latach 1945-1989*, vol. 1: *Problematyka organizacyjno-personalna*, Kielce 2009.
- Zamiatała D., *Działania represyjne władz komunistycznych wobec zakonów męskich w PRL*, „Kościół w Polsce. Dzieje i Kultura” 2011, vol. 11, pp. 211-236.
- Zamiatała D., *Zakony męskie w polityce władz komunistycznych w Polsce w latach 1945-1989*, vol. 2: *Działalność duszpasterska i społeczna zakonów 1945-1989*, Warszawa 2012.
- Zieliński Z., *Kościół w Polsce 1944-2002*, Radom 2003.
- Żaryn J., *Kościół a władza w Polsce (1945-1950)*, Warszawa 1997.
- Żaryn J., *Dzieje Kościoła katolickiego w Polsce (1944-1989)*, Warszawa 2003.

ZMIANA PODSTAWY PRAWNEJ DZIAŁALNOŚCI ZAKONÓW W POLSCE DOKONANA PRZEZ WŁADZE KOMUNISTYCZNE W 1949 R.

Streszczenie

Artykuł pokazuje okoliczności i skutki zmiany aktów prawnych, określających prawne ramy działalności zakonów w Polsce po II wojnie światowej. Do roku 1949 zakony nie podlegały przepisom dotyczącym tworzenia i legalizacji zrzeżeń świeckich. Na podstawie dekretu z dnia 5 sierpnia 1949 r. zostały zobowiązane do podporządkowania się przepisom Prawa o stowarzyszeniach. Brak wniosku o rejestrację skutkowało rozwiązaniem zgromadzenia zakonnego i przejściem jego majątku na rzecz państwa. Pomimo złożenia przewidzianych prawem wniosków, władze nie dokonały rejestracji zakonów, nie prowadziły również formalnego rejestru tych podmiotów. W rzeczywistości bowiem władzom zależało jedynie na ukształtowaniu takiego stanu prawnego, który można byłoby wykorzystać jako narzędzie represji wobec zakonów. Jak pokazują materiały archiwalne, prawdziwym celem nowelizacji z 1949 r. nie było dążenie do uregulowania stanu prawnego zakonów, który w tamtym okresie pozostawał niepewny ze względu na uchwałę Tymczasowego Rządu Jedności Narodowej z dnia 12 września 1945 r. deklarującą nieobowiązywanie Konkordatu z 1925 r. Władzom zależało jedynie na objęciu zakonów skrupulatnym nadzorem państwowym, a w konsekwencji stopniowe ograniczanie ich działalności, aż do zupełnego usunięcia z życia społecznego. Tekst oparty został przede wszystkim na analizie aktów prawnych oraz

na materiałach archiwalnych zgromadzonych w polskich archiwach państwowych i kościelnych.

Streszczenie: Marta Ordon

Słowa kluczowe: Polska Rzeczpospolita Ludowa, Kościół Katolicki, zakony, Prawo o stowarzyszeniach, reżim komunistyczny, ograniczenia wolności religijnej w PRL, zgromadzenia zakonne w PRL

Key words: People's Republic of Poland, Catholic Church, religious orders, the Law on Associations, freedom of thought, conscience and religion, freedom of association, associations in Poland, anti-religious activities, Communist regime, repression against religious orders