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## **Church Universities in the Higher Education System in Poland. Part 2: Universities Run by the Catholic Church**

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### **Abstract**

This study serves as prolegomena to reflection on the legal framework of church universities in Poland. This article is the second of two parts of research on this issue. This installment specifically examines universities administered by the Catholic Church. The specifics of church universities within the Polish higher education system were outlined in Part 1, “Church Universities in the Higher Education System in Poland. Part 1: Universities Run by non-Catholic Churches and Religious Associations.” Part 2 explores the legal and extralegal sources governing the operation of Catholic church universities in Poland. Additionally, it proposes a systematic categorization of these higher education institutions, providing descriptions and highlighting differences in their legal statuses. The “Summary” at the end of this text encompasses both the analyses presented in Part 1 and Part 2.

### **Keywords**

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

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## Introduction

This study (Part 2) builds upon previous research regarding church universities within the higher education system in Poland, specifically concentrating on those operated by the Catholic Church. The introductory topics leading into the detailed analyses presented in the text were previously addressed in Part 1.<sup>1</sup> The “Summary” at the conclusion of this text encompasses the discussions covered in both Part 1 and Part 2.

## Universities run by the Catholic Church

As stated in Part 1, the principal legal document governing the relations between the Republic of Poland and the Catholic Church is the Concordat.<sup>2</sup> It is noteworthy, however, that the initial post-1989 legislation of this nature was the Act on the Relation of the State to the Catholic Church in the Republic of Poland.<sup>3</sup> It is worthwhile to begin by examining its contents in order to analyze the legal status of universities operated by the Catholic Church in Poland. First and foremost, in Article 5, the law introduces the notion of a “church legal person,” thereby establishing a fundamental principle recognizing the Catholic Church’s right to participate in civil law transactions under its own organizational framework. However, this necessitated the definition of the legal personality of various organizational units. As a result, depending on their organizational structures, church legal persons of national, territorial, personal scope, and universities were delineated.<sup>4</sup>

It is important to emphasize, however, that the list of church legal persons in the Act on the Relation of the State to the Catholic Church in the Republic of Poland should be viewed as illustrative. This is due to the provision in Article 4(2) of the Concordat, which stipulates that the Republic of Poland acknowledges the legal personality of all territorial and personal ecclesiastical institutions that have obtained such status in accordance with the provisions of canon law.<sup>5</sup> It is evident that one of the key characteristics of church legal persons is their operation under both canon law and Polish law simultaneously. While their establishment is governed by the regulations of canon law,<sup>6</sup> the provisions of Polish law play a primary role, particularly concerning their participation in civil law transactions.<sup>7</sup>

Hence, the framework of the legal persons within the Catholic Church, including universities, is structured in a manner that incorporates specific organizational units endowed with legal personality. However, the legal personality of the Church is not merely the aggregate of the personalities of its individual units. When discussing the legal personality of the Catholic Church and

1. M. Kwiecień-Miland, *Church Universities in the Higher Education System in Poland. Part 1: Universities Run by non-Catholic Churches and Religious Associations*, “Polish Journal of Political Science”, 2023, Vol. 9, Issue 3, pp. 4–13, DOI: [10.58183/pjps.03012023](https://doi.org/10.58183/pjps.03012023).

2. Konkordat między Stolicą Apostolską i Rzeczypospolitą 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].

3. 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].

4. M. Pietrzak, *Prawo wyznaniowe*, Wydawnictwo Prawnicze „LexisNexis” 2005, p. 206.

5. A. Mezglewski, H. Misztal, P. Stanisz, *Prawo wyznaniowe*, Wydawnictwo C.H. Beck 2011, p. 143.

6. With regard to universities, canon 816 of the Code of Canon Law stipulates

its organizational units, consideration must be given to three distinct categories of legal personality as delineated in legal doctrine. These categories facilitate the establishment of legal relations with other entities, namely: (1) the public legal personality of the Holy See, serving as the representative entity of the Catholic Church in international affairs; (2) the legal personality of the Catholic Church within a particular country, functioning as a specific organizational entity operating within the territorial jurisdiction of the state and forming part of the universal Church; (3) the civil legal personality of church organizational units, enabling the Catholic Church to engage in legal transactions within a given country.<sup>8</sup>

In the Act on the Relation of the State to the Catholic Church, Article 9(1) enumerates the following universities: (1) the Catholic University of Lublin, (2) the Pontifical University of John Paul II in Kraków, (3) the Pontifical Faculty of Theology in Poznań,<sup>9</sup> (4) the Pontifical Faculty of Theology in Wrocław, (5) the Pontifical Faculty of Theology in Warsaw with its two sections, St. John the Baptist and St. Andrew Bobola “Bobolanum,”<sup>10</sup> and (6) the Faculty of Philosophy of the Society of Jesus in Kraków.<sup>11</sup>

On the other hand, as per Article 23 of the Act on the Relation of the State to the Catholic Church, it should be noted that the right to establish and operate higher seminaries and other higher education institutions has been granted to the Polish Bishops’ Conference, dioceses, and religious orders.<sup>12</sup> The establishment of higher education institutions with a broader scope of teaching is conducted by law at the request of the Polish Bishops’ Conference. It is important to note that church legal persons have the right to establish and operate higher vocational schools under the regulations outlined in the Act on Higher Vocational Schools.<sup>13</sup>

The aforementioned legal framework is not comprehensive, and thus, in accordance with Article 23(2) of the Act on the Relation of the State to the Catholic Church, matters concerning the status of papal universities, as well as the method and extent of the state’s recognition of ecclesiastical degrees and titles were intended to be addressed through an agreement between the Government of the Republic of Poland and the Polish Bishops’ Conference. Such an agreement was concluded on June 30, 1989,<sup>14</sup> but lost its legal validity following the conclusion of a new agreement on July 1, 1999, which will be examined later on.

Turning to the provisions of the Concordat, it should be noted that matters concerning church universities are addressed in Article 15(1), which stipulates that the Republic of Poland guar-

that universities and ecclesiastical faculties may be established only by virtue of an erection made by the Holy See or approval granted by it. The Holy See has supreme authority over these institutions. See Code of Canon Law promulgated by Pope John Paul II on 25 January 1983, legal status as of 18 May 2022, updated translation into Polish, [https://episkopat.pl/wp-content/uploads/2022/05/Kodeks-Prawa-Kanonicznego\\_t%C5%82umaczenie\\_przyj%C4%99te-14.03.2022\\_02-na-stronie-KEP\\_18.05.2022.pdf](https://episkopat.pl/wp-content/uploads/2022/05/Kodeks-Prawa-Kanonicznego_t%C5%82umaczenie_przyj%C4%99te-14.03.2022_02-na-stronie-KEP_18.05.2022.pdf), (access 30.06.2023).

7. B. Rakoczy, *Ustawa o stosunku Państwa do Kościoła Katolickiego w Polsce. Komentarz*, Wolters Kluwer Polska 2008, Art. 5.

8. Postanowienie Sądu Najwyższego – Izba Cywilna z dnia 19 listopada 2008 r. (III CSK 91/08), SIP Legalis nr 555119, [Order of the Supreme Court – Civil Chamber of 19 November 2008. (III CSK 91/08), SIP Legalis, No. 555119].

9. Currently, its activities continue at the Faculty of Theology of the Adam Mickiewicz University in Poznań, established by a decision of the university’s Senate on June 29, 1998.

10. Currently, the Catholic Academy in Warsaw and its two sections: Collegium Joanneum and Collegium Bobolanum. Cf. Obwieszczenie Ministra Spraw Wewnętrznych i Administracji z dnia 20 stycznia 2021 r. w sprawie zmiany nazwy Papieskiego Wydziału Teologiczne-

antees the Catholic Church the right to freely establish and operate higher education institutions, including universities, separate faculties, and higher seminaries of the clergy, as well as scientific research institutes.

On the other hand, as mentioned earlier, the method of ratification of the Concordat pursuant to Article 89 of the Constitution is of central importance. As an agreement ratified with the prior consent of the law specified in Article 87(2) of the Constitution, its legal validity within the hierarchy of legal sources is superior to that of laws.<sup>15</sup> A consequence of the principle of hierarchical construction of the system of legal sources is, on one hand, the restriction of interpreting concepts found in acts of a higher order based on acts of a lower order.<sup>16</sup> On the other hand, there is an obligation to interpret acts of a lower order in a manner that is consistent and coherent with acts of a higher order.<sup>17</sup> In practice, this signifies that in situations where there is uncertainty regarding the Concordat and the Act on the Relation of the State to the Catholic Church, the interpretation of the provisions of the Concordat will hold precedence and be considered definitive.<sup>18</sup> As stipulated in the Act on the Relation of the State to the Catholic Church, the Concordat specifies that the legal status of higher education institutions, as well as the method and extent of state recognition of ecclesiastical degrees and titles, and the legal status of Catholic theological faculties at state universities, will be governed by agreements between the Government of the Republic of Poland and the Polish Bishops' Conference, authorized by the Holy See.

The current agreement between the Government of the Republic of Poland and the Polish Bishops' Conference was concluded on July 1, 1999.<sup>19</sup> It regulates the legal status of higher education institutions established and operated by the Catholic Church, encompassing universities, separate faculties, and higher seminaries of the clergy. It also outlines the procedure and extent of state recognition of degrees and titles conferred by these higher education institutions. The 1999 Agreement serves as a comprehensive framework governing the status of church universities operated by the Catholic Church, providing insights into the nature of the mutual relations between individual universities and the minister responsible for higher education. Both the Concordat and the Act on the Relation of the State to the Catholic Church in the Republic of Poland contain declaratory and guarantee provisions, making it challenging to ascertain the current functioning of such higher education institutions within the higher education system. Notably, the 1999 Agreement introduces the significant concept of "church higher education institutions," defining them as higher education institutions, including universities, separate faculties, and higher seminaries. Furthermore, according to the Agreement's

go w Warszawie oraz jego dwóch sekcji: św. Jana Chrzciciela i św. Andrzeja Boboli "Bobolanum" na Akademia Katolicka w Warszawie oraz jej dwie sekcje: Collegium Joanneum i Collegium Bobolanum, M.P. 2021 poz. 113, [Announcement of the Minister of Internal Affairs and Administration of 20 January 2021 on changing the name of the Pontifical Faculty of Theology in Warsaw and its two sections, St. John the Baptist and St. Andrew Bobola "Bobolanum" to the Catholic Academy in Warsaw and its two sections: Collegium Joanneum and Collegium Bobolanum, M.P. 2021, item 113].

11. Currently, the Ignatianum Academy in Kraków.

12. All three entities have legal personality.

13. Currently these matters are regulated by Ustawa z dnia 20 lipca 2018 r. – Prawo o szkolnictwie wyższym i nauce, Dz.U. 2023 poz. 742 z późn. zm., [Act of 20 July 2018 on higher education and science, Journal of Laws 2023, item 742 as amended].

14. Cf. Obwieszczenie Ministra Edukacji Narodowej z dnia 30 czerwca 1989 r. w sprawie ogłoszenia tekstu umowy między Rządem Polskiej Rzeczypospolitej Ludowej a Konferencją Episkopatu Polski w sprawie uregulowania statusu wyższych uczelni papieskich oraz trybu i zakresu uznawania przez Państwo stopni i tytułów naukowych nadawanych przez te uczelnie, M.P. 1989 nr 22

wording, the status of church higher education institutions is also conferred upon diocesan and monastic higher education institutions that educate lay people in ecclesiastical sciences, provided they meet the statutory requirements for personnel and study programs.

The crucial aspect, however, lies in confirming the legal personality of church higher education institutions and endowing them with specific powers. Legal personality confirmation applies to both universities that are to be established and those already in existence on the effective date of the Agreement. The latter category includes: (1) the Catholic University of Lublin; (2) the Pontifical Academy of Theology in Kraków<sup>20</sup>; (3) the Pontifical Faculty of Theology in Wrocław, (4) the Pontifical Faculty of Theology in Warsaw,<sup>21</sup> and (5) the “Ignatianum” Higher School of Philosophy and Pedagogy in Kraków.<sup>22</sup>

Analyzing the provisions of the aforementioned legal acts—the Constitution, the Concordat, the Act on the Relation of the State to the Catholic Church, and the Agreement between the Government of the Republic of Poland and the Polish Bishops’ Conference—universities operated by the Catholic Church can be categorized into three groups: (1) universities explicitly mentioned by name in the text of the 1999 Agreement; (2) separate faculties at public universities; (3) higher seminaries, diocesan, and monastic higher education institutions that educate lay individuals in ecclesiastical sciences. This division, while simplified, is based on universally applicable laws, and serves to organize the heterogeneous group of church universities (from the perspective of legal status).

Regarding the first group, which comprises the five universities listed in the 1999 Agreement, an issue arises concerning the interpretation of the legal status of the Catholic University of Lublin (KUL). On one hand, Paragraph 2(1) of the 1999 Agreement states that church higher education institutions, including KUL, existing on the date the Agreement came into force, are entitled to the rights outlined therein. On the other hand, Paragraph 3 of the 1999 Agreement specifies that concerning KUL, the provisions of the Act of 12 September 1990, on Higher Education and the Act of 12 September 1990, on Academic Titles and Degrees shall apply accordingly.<sup>23</sup> Adding to this the provision of Article 8 of the Act on Higher Education and Science, which sanctions the application of the provisions of this law to KUL, a rather significant doubt immediately arises regarding the position of this university within the Polish system of higher education.

poz. 174, [Announcement of the Minister of National Education of 30 June 1989, regarding the publication of the agreement between the Government of the People’s Republic of Poland and the Polish Bishops’ Conference concerning the regulation of the status of higher education institutions of the Papal Church and the method and extent of recognition by the State of degrees and titles conferred by these institutions, published in M.P. 1989, No. 22, item 174]. This legislation expired upon the entry into force of the agreement between the Government of the Republic of Poland and the Polish Bishops’ Conference concerning the legal status of higher education institutions established and operated by the Catholic Church, including universities, separate faculties, and higher seminaries of the clergy, as well as the method and extent of recognition by the State of the degrees and titles conferred by these higher education institutions, signed in Warsaw on July 1, 1999.

15. Cf. B. Banaszak, *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, C.H. BECK 2009. p. 434.

16. Wyrok Trybunału Konstytucyjnego z 6 listopada 2012 r., K 21/11, SIP Legalis, Nr 542753, [Judgment of the Constitutional Court of 6 November 2012, K 21/11, SIP Legalis, No. 542753].

17. Cf. M. Wiącek, *Komentarz do art. 87, in: Konstytucja RP. Tom II. Komentarz do art. 87–243*, eds. M. Safjan, L. Bosek, Wydawnictwo C.H. Beck 2016, thesis 69; Wyrok Trybunału Konstytucyjnego

Firstly, we need to examine whether, based on Article 8 of the Act on Higher Education and Science, KUL can be deemed a public university within the scope of this law. Analyzing Article 13 of the Act on Higher Education and Science, which states that public universities are established by a state body, the answer is unequivocally negative. Indeed, KUL was founded in 1918 under a concession from the Ministry of Religious Denominations and Public Enlightenment, dated September 6, 1918, as a private university in Lublin.<sup>24</sup> In the same year, four faculties of the university were inaugurated: Theology, Canon Law and Moral Sciences, Law and Social and Economic Sciences, and the Humanities. Subsequently, under Article 1 of the Act of 9 April 1938, granting the Catholic University of Lublin full state academic school rights,<sup>25</sup> it was bestowed with the full rights of a state university.<sup>26</sup> After World War II, academic classes resumed on August 21, 1944. Despite the introduction of restrictive measures against KUL, the authorities of the time did not opt to formally repeal the law of April 9, 1938, which defined the legal status of the Catholic University of Lublin.<sup>27</sup>

In contrast, legal modifications aimed at aligning the utilization of public funds by the Catholic University of Lublin with the status enjoyed by state universities occurred in the law of June 14, 1991, concerning the funding of the Catholic University of Lublin from the state budget.<sup>28</sup> This law permitted the university to receive subsidies under the regulations established for state universities, with the exception of grants and other budgetary funds designated for covering the expenses associated with implementing fixed assets under construction (construction investments) for the teaching process.<sup>29</sup> This was amended in 2008,<sup>30</sup> and since then, KUL has been receiving grants and other funds from the state budget in accordance with the regulations established for public universities. However, the conferment of public university rights to KUL and the application of the provisions of the Act on Higher Education and Science to KUL do not imply its recognition as a public university within the scope of the Act on Higher Education and Science. Within the organizational framework of the Catholic Church, KUL operates as a church legal person, which, in the higher education system, functions as an church institution of higher education.

The question regarding the extent of application of the provisions of the Act on Higher Education and Science to KUL still necessitates clarification. The frequently referenced Article 8 excludes KUL from the nonapplication of its provisions to universities and higher seminaries operated by churches and other religious associations. Consequently, *a contrario*, the provisions of the Act on Higher Education and Science should be fully applicable to KUL. However, Article 3 of the 1999 Agreement only mentions the *appropriate* application of these regulations to KUL. This matter seems

z 12 stycznia 2000 r., P 11/98, SIP Legalis Nr 46357, [Judgment of the Constitutional Court of 12 January 2000, P 11/98, SIP Legalis, No. 46357]; Wyrok Trybunału Konstytucyjnego z 5 stycznia 1999 r., K 27/98, SIP Legalis Nr 43174, [Judgment of the Constitutional Court of 5 January 1999, K 27/98, SIP Legalis, No. 43174].

18. Cf. J. Piechowicz, *Konkordat a Konstytucja RP*, <https://wspia.eu/media/qdsjyidn/81-piechowicz-joanna.pdf>, (access 30.06.2023).

19. Agreement between the Government of the Republic of Poland and the Polish Bishops' Conference on the legal status of higher schools established and operated by the Catholic Church, including universities, separate faculties and higher seminaries of the clergy, and on the mode and scope of recognition by the State of degrees and titles conferred by these higher schools, signed in Warsaw on July 1, 1999. Cf. Obwieszczenie Ministra Spraw Zagranicznych z dnia 29 lipca 1999 r. o wykonaniu Konkordatu między Stolicą Apostolską i Rzeczpospolitą Polską, Dz.U. 1999 nr 63 poz. 727, [Announcement of the Minister of Foreign Affairs of July 29, 1999 on the implementation of the Concordat between the Holy See and the Republic of Poland, Journal of Laws 1999, No. 63, item 727].

20. Currently, the Pontifical University of John Paul II in Kraków.

21. Currently, the Catholic Academy in Warsaw and its two sections: Collegium

to be resolved by Article 8 of the Act on Higher Education and Science, which states that laws and agreements between the Council of Ministers and the authorities of a church or other religious association may contain other provisions that supersede the regulations of the Act on Higher Education and Science. The 1999 Agreement, defining the status of KUL as a church institution of higher education, is precisely such a legal document that takes precedence over the provisions of the Act on Higher Education and Science. Therefore, the provisions of the Act on Higher Education and Science are only *appropriately* applicable to KUL. This implies that in matters not covered by the special provisions pertaining solely to KUL, the regulations governing higher education will be applicable.<sup>31</sup>

The matter of the non-recognition of KUL as a public university, with the consequent application of the provisions of the Act on Higher Education and Science, may initially appear unsubstantial for the university's daily operations. However, from a formal standpoint, it holds significant importance. This is evident from the uncertainties that arose following the enactment of the Act on Higher Education and Science on October 1, 2018, concerning the necessity for KUL to appoint a university council<sup>32</sup> and a college of electors.<sup>33</sup> At that time, the university highlighted the impossibility of such action, citing, among other reasons, the provisions outlined in its statute, which indicated that the powers of the university council, particularly those related to monitoring and control, would overlap and interfere with the authority of the Grand Chancellor and the Holy See. Ultimately, it was determined that the implementation of the new law did not alter the previous interpretation, which leaned towards not recognizing KUL as a public university. Consequently, it was agreed that KUL does not need to appoint both a university council and a college of electors. Instead, it was proposed that the powers typically held by the university council should be assigned to another body within the university. This case underscores the challenges associated with interpreting the appropriate application of the provisions of the Act on Higher Education and Science to KUL. The scope of interpretation in this instance is considerable, requiring careful consideration to avoid inconsistencies that may result in a selective application of specific provisions of the Act on Higher Education and Science to KUL.

Turning to the next four church higher education institutions singled out in group one (i.e., the Pontifical University of John Paul II in Kraków, the Pontifical Faculty of Theology in Wrocław, the Catholic Academy in Warsaw, and the Ignatianum Academy in Kraków), it is important to note that their legal status differs significantly from that of KUL. This distinction arises because Article 8 of the Act on Higher Education and Science excludes the application of most of the provisions of this law to

Joanneum and Collegium Bobolanum. Cf. Obwieszczenie Ministra Spraw Wewnętrznych i Administracji z dnia 20 stycznia 2021..., op. cit.

22. Currently, the Ignatianum Academy in Kraków.

23. Currently Ustawa z dnia 20 lipca 2018..., op. cit.

24. W. Góralski, *Status prawny wydziałów teologii katolickiej na uniwersytetach państwowych*, in: *Pro bono Republicae. Księga jubileuszowa profesora Michała Pietrzaka*, eds. P. Borecki, A. Chochara, T.J. Zieliński, LexisNexis 2009, p. 257.

25. Ustawa z dnia 9 kwietnia 1938 r. o nadaniu Katolickiemu Uniwersytetowi Lubelskiemu pełnych praw państwowych szkół akademickich, Dz.U. 1938 nr 27 poz. 242, [Act of 9 April 1938 on granting the Catholic University of Lublin full rights of state academic schools, Journal of Laws 1938, No. 27, item 242].

26. A. Balicki, M. Pyter, B. Zięba, *Komentarz do art. 8*, in: *Prawo o szkolnictwie wyższym i nauce. Komentarz*, Wydawnictwo C.H. Beck 2021, thesis 2.

27. Justification for the bill to amend the law on funding the Catholic University of Lublin from the state budget, cf. Druk Sejmowy nr 249 z 19 grudnia 2007 r., Rządowy projekt ustawy o zmianie ustawy o finansowaniu Katolickiemu Uniwersytetowi Lubelskiemu z budżetu

them. Therefore, we encounter here, at least formally, a certain duality, where in some limited areas (such as the evaluation of doctoral schools or the assessment of scientific activities), the provisions of the Act on Higher Education and Science will directly apply to these universities, while in other areas (such as education and the certification of degrees), the authority of these universities will be derived from the 1999 Agreement.

**L**et us now investigate the provisions of the 1999 Agreement. According to Article 4, individuals who meet the requirements outlined in the Act on Higher Education and Science may be admitted to study at these institutions, as well as at other church higher education institutions, and their students are entitled to the rights afforded to students of higher education institutions established under this law. The statute of a church higher education institution may specify additional conditions that applicants must meet. On the other hand, Article 6 of the 1999 Agreement stipulates that the state's recognition of the degrees conferred on graduates by church higher education institutions is contingent upon the fulfillment of the conditions for offering a curriculum as outlined in the relevant regulations on higher education. To this end, the authorities of church higher education institutions submit to the minister responsible for higher education and science the institution's statute and any amendments, study plans and any amendments, information regarding changes in the positions of the institution's single-member bodies, and annual lists of academic staff in the curricula offered at the institution. Subsequently, the minister responsible for higher education and science determines, through an administrative decision, whether the church higher education institution complies with the conditions for conducting a curriculum as specified in the applicable regulations on higher education.

**C**onsequently, despite the exclusion, based on Article 8 of the Act on Higher Education and Science, of the application of Section II of the aforementioned law to church higher education institutions, which regulates, among other things, the conditions for conducting studies, these provisions will, in practice, still apply indirectly to church higher education institutions. This is because the provisions of the 1999 Agreement stipulate that the state's recognition of degrees conferred on graduates by church higher education institutions is contingent upon these institutions meeting the conditions for conducting a curriculum. These conditions, in turn, are outlined in the Act on Higher Education and Science, and their fulfillment must be confirmed by an appropriate decision of the minister responsible for higher education and science. It is important to note, however, that the legal basis for the application of the regulations defining the conditions for education to church higher

państwa, [Sejm Druk No. 249 of 19 December 2007, Government bill to amend the law on funding the Catholic University of Lublin from the state budget], [https://orka.sejm.gov.pl/Druki6ka.nsf/0/447F4954CDA004D5C12573FC0036F4BC/\\$file/249.pdf](https://orka.sejm.gov.pl/Druki6ka.nsf/0/447F4954CDA004D5C12573FC0036F4BC/$file/249.pdf), (access 30.06.2023).

28. Ustawa z dnia 14 czerwca 1991 r. o finansowaniu Katolickiego Uniwersytetu Lubelskiego z budżetu państwa, Dz.U. 1991 nr 61 poz. 259, [Act of 14 June 1991 on the financing of the Catholic University of Lublin from the state budget, Journal of Laws 1991, No. 61, item 259].

29. Cf. Druk Sejmowy nr 249 z 19 grudnia 2007..., op. cit.

30. Ustawa z dnia 10 października 2008 r. o zmianie ustawy o finansowaniu Katolickiego Uniwersytetu Lubelskiego z budżetu państwa, Dz.U. 2008 nr 203 poz. 1268, [Act of 10 October 2008 amending the law on financing the Catholic University of Lublin from the state budget, Journal of Laws 2008, No. 203, item 1268].

31. B. Rakoczy, *Ustawa o stosunku...*, op. cit. Art. 9.

32. Ustawa z dnia 20 lipca 2018..., op. cit., Art. 17(1) in conjunction with Art. 18.

33. Ibidem, Art. 24(2)(11), Art. 25, Art. 27(1) and (2) in conjunction with Art. 34(1)(3) and Art. 432(1).



education institutions is not the provisions of the Act on Higher Education and Science, but rather the provisions of the 1999 Agreement, which reference the provisions of the Act on Higher Education and Science.

The aforementioned arrangements pertain solely to those fields of study wherein completion is associated with the conferral of a degree recognized by the state. This limitation arises because church higher education institutions may offer education in numerous other areas and fields of study not encompassed by the decision of the minister of higher education and science. In such cases, graduation from these institutions will not result in the granting of a degree equivalent to those awarded by universities operating within the higher education system. In this context, the ruling of the Voivodeship Administrative Court in Łódź is significant, as it asserted that undertaking the *Ex uni-versa* exam at one of the church universities does not equate to obtaining a higher education degree.<sup>34</sup>

In the case of ecclesiastical doctoral and post-doctoral degrees, as well as the ecclesiastical title of professor conferred by church higher education institutions, their recognition by the state, in accordance with Articles 8 and 9 of the 1999 Agreement, is also contingent upon meeting the conditions outlined in the Act on Higher Education and Science. However, in this scenario, no specific method of confirming their fulfillment is prescribed, as the provisions of Section V of the Act on Higher Education and Science, which govern degrees and titles, are not excluded. By virtue of Article 8 of the Act on Higher Education and Science, these provisions are directly applicable to church higher education institutions.

The financing of the four universities mentioned above is governed by separate laws.<sup>35</sup> They stipulate that these universities receive subsidies and other funds from the state budget according to the rules established for public universities. Therefore, despite having a different legal status from KUL, the matter of funding for these church higher education institutions is essentially the same. Similar to KUL, the equalization of these institutions with public universities in terms of funding unequivocally does not categorize them as public universities.

The second group of universities administered by the Catholic Church, known as separate faculties, possesses a distinctly different legal status. These faculties specialize in theology but operate within the framework of public universities. Presently, there are seven theology faculties situated at various public universities: the University of Silesia in Katowice, the University of Opole, the Uni-

34. Wyrok WSA w Łodzi z 28 stycznia 2004 r., II SA/Łd 1567/03, LEX nr 725685, [Judgment of the Voivodeship Administrative Court in Łódź of January 28, 2004, II SA/Łd 1567/03, LEX, No. 725685].

35. Ustawa z dnia 5 kwietnia 2006 r. o finansowaniu Papieskiego Wydziału Teologicznego we Wrocławiu z budżetu państwa, Dz.U. 2006 nr 94 poz. 649, [Act of 5 April 2006 on financing the Pontifical Faculty of Theology in Wrocław from the state budget, Journal of Laws 2006, No. 94, item 649]; Ustawa z dnia 5 kwietnia 2006 r. o finansowaniu Akademii Katolickiej w Warszawie z budżetu państwa, Dz.U. 2006 nr 94 poz. 648, [Act of 5 April 2006 on the financing of the Catholic Academy in Warsaw from the state budget, Journal of Laws 2006, No. 94, item 648]; Ustawa z dnia 5 kwietnia 2006 r. o finansowaniu Akademii Ignatianum w Krakowie z budżetu państwa, Dz.U. 2006 nr 94 poz. 650, [Act of 5 April 2006 on financing the Ignatianum Academy in Kraków from the state budget, Journal of Laws 2006, No. 94, item 650]; Ustawa z dnia 26 czerwca 1997 r. o finansowaniu Papieskiej Akademii Teologicznej w Krakowie z budżetu państwa, Dz.U. 1997 nr 103 poz. 650 z późn. zm., [Act of 26 June 1997 on financing the Pontifical Academy of Theology in Kraków from the state budget, Journal of Laws 1997, No. 103, item 650 as amended].

versity of Szczecin, the Nicolaus Copernicus University in Toruń, the Adam Mickiewicz University in Poznań, the University of Warmia and Mazury in Olsztyn, and the Cardinal Stefan Wyszyński University in Warsaw. Concerning the Cardinal Stefan Wyszyński University, two additional faculties should be included, which, while carrying out their research and educational duties based on theological principles, are officially recognized as “faculties of Catholic theology.” This interpretation is endorsed in the Agreement<sup>36</sup> between the government of Poland and the Polish Bishops’ Conference regarding the legal status of the faculties of ecclesiastical sciences at the Cardinal Stefan Wyszyński University.<sup>37</sup>

Regarding the legal statutes of separate faculties, the 1999 Agreement does not include provisions on this matter. It’s important to note that this agreement has a general nature. When a theological faculty is established at a state university, a separate agreement is always concluded between the government of the Republic of Poland and the Polish Bishops’ Conference authorized by the Holy See. It typically includes a provision stating that the theological faculty at a university operates in accordance with relevant state and church regulations. Therefore, the legal status of separate faculties is determined by the provisions of the Act on Higher Education and Science, as well as by relevant internal ecclesiastical regulations, such as the Code of Canon Law<sup>38</sup> and the Apostolic Constitution *Veritatis Gaudium*<sup>39</sup> on Ecclesiastical Universities and Faculties.<sup>40</sup>

Consequently, oversight of separate theological faculties at public universities falls under the jurisdiction of both the minister responsible for higher education and science, and the ecclesiastical authority (the grand chancellor of the theological faculty and the Congregation for Catholic Education). Article 433(3) of the Act on Higher Education and Science specifies that supervision of a public theological university and another public university offering theological education is conducted by the minister. Additionally, within the scope defined by the international agreement concluded with the Holy See and the laws governing relations between the Republic of Poland and churches and religious associations other than the Catholic Church, as well as by the statutes of these universities, supervision is also carried out by the authorities of churches and other religious associations.

This is particularly evident in the procedure for enacting the statutes of a theological faculty, as well as a public theological university. Article 442(3) of the Act on Higher Education and Science<sup>41</sup> explicitly stipulates the requirement to reach an agreement on the content of the statutes, or on provisions related to the delivery of theological education, with the competent authorities of churches and other religious associations. This provision is a *lex specialis* in relation to Article 34 of the Act on

36. Umowa z 29 września 1999 r. między rządem RP a Konferencją Episkopatu Polski w sprawie statusu prawnego wydziałów nauk kościelnych Uniwersytetu Kardynała Stefana Wyszyńskiego, niepublikowana, [Agreement of 29 September 1999 between the Government of the Republic of Poland and the Polish Bishops’ Conference on the legal status of the faculties of ecclesiastical sciences of Cardinal Stefan Wyszyński University, unpublished]. According to W. Góralski, the text of the agreement is in the rectorate of UKSW. Cf. W. Góralski, *Status prawny wydziałów...*, op. cit., p. 259.

37. W. Góralski, *Status prawny wydziałów...*, op. cit., p. 259.

38. Code of Canon Law..., op. cit.

39. Francis, *Apostolic Constitution Veritatis Gaudium on Ecclesiastical Universities and Faculties*, [https://www.vatican.va/content/francesco/en/apost\\_constitutions/documents/papa-francesco\\_costituzione-ap\\_20171208\\_veritatis-gaudium.html](https://www.vatican.va/content/francesco/en/apost_constitutions/documents/papa-francesco_costituzione-ap_20171208_veritatis-gaudium.html), (access 30.06.2023).

40. W. Góralski, *Status prawny wydziałów...*, op. cit., p. 260.

41. Ustawa z dnia 20 lipca 2018..., op. cit., Art. 442(3).

Higher Education and Science, which contains general provisions governing the granting of statutes to universities. However, the requirement to act in agreement serves as an intermediate step between seeking agreement and acting based on an opinion. This means that while the senate of a higher education institution is not obligated to, it is encouraged to seek the consent of the competent authorities of the relevant church or religious association, as confirmed by past practice.<sup>42</sup>

Providing a closer characterization of the third distinguished group of universities run by the Catholic Church, which includes higher seminaries and diocesan and monastic higher education institutions educating lay people in ecclesiastical sciences, proves to be quite challenging. These entities are established, merged, and dissolved based on internal church regulations, which are not universally binding laws and are not required to be made public. While Adam Balicki reports the existence of 39 diocesan seminaries and numerous monastic seminaries (with the author citing only 20 examples),<sup>43</sup> this data pertains to the state as of 2021. It is difficult to assess their current validity given the increasing frequency of reports about the merger or liquidation of seminaries in recent times.<sup>44</sup>

An additional challenge arises from Article 7(1) of the 1999 Agreement, which states that church higher education institutions without the authority to confer a master's degree may establish cooperation agreements for master's level education with church higher education institutions possessing such rights. This practice, often referred to as "affiliation" in literature, allows an entity without the ability to confer a state-recognized degree to attain this privilege through collaboration. The decision to engage in such agreements, their content, and the oversight of affiliated entities lie solely within the jurisdiction of the Church authority. Consequently, determining the actual number of affiliations proves difficult as this information is not consistently disclosed. However, some church higher education institutions, such as the Theological Faculty of the University of Szczecin, do provide details about affiliated seminaries on their websites.<sup>45</sup>

The question of whether such entities must obtain confirmation of their eligibility for training in the form of an administrative decision by the minister responsible for higher education and science, as outlined in Article 6(3) of the 1999 Agreement, remains ambiguous. From a formal standpoint, Article 6 of the 1999 Agreement applies to all church higher education institutions without exceptions. It is only Article 7(1) of the 1999 Agreement that introduces a new category of 'church higher education institutions without the right to confer a master's degree,' which must enter into

42. I. Degtyarova, *Komentarz do art. 442*, in: *Prawo o szkolnictwie wyższym i nauce. Komentarz*, ed. J. Woźnicki, Wolters Kluwer Polska 2019, p. 1218.

43. A. Balicki, M. Pyter, B. Zięba, *Komentarz do art. 8...*, op. cit., thesis 1.

44. M. Łysek, *Czy seminaria duchowne w Polsce naprawdę się likwidują? Ilu będzie w tym roku kandydatów do kapłaństwa?*, <https://deon.pl/wiara/wiara-i-spoleczenstwo/czy-seminaria-duchowne-w-polsce-naprawde-sie-likwiduja-ilu-bedzie-w-tym-roku-kandydatow-do-kaplanstwa,2248349>, (access 30.06.2023).

45. Cf. *Uniwersytet Szczeciński, Wydział Teologiczny*, <https://teo2.usz.edu.pl/#>, (access 30.06.2023).

agreements for master's-level education. If this is the case, does it also imply that such entities still have to fulfill the conditions of Article 6(3) of the 1999 Agreement? The answer may likely be affirmative, particularly for diocesan and monastic higher education institutions training lay people in ecclesiastical sciences. After all, Article 1(1) of the 1999 Agreement explicitly makes their status as church higher education institutions conditional on meeting the statutory requirements for staffing and programs of study, and thus compliance with these requirements must be confirmed in some manner. However, practice strongly contradicts this position, with only the universities, excluding KUL, listed in Article 2(1) of the 1999 Agreement, typically applying for a decision from the minister confirming compliance with the conditions for conducting a curriculum, as outlined in Article 6(3) of the 1999 Agreement.

In the case of higher seminaries, the possibility of granting degrees takes a different turn. Specifically, Article 7(2) of the 1999 Agreement states that graduates of higher theological seminaries, undergoing six-year studies in accordance with ecclesiastical law requirements, may attain a master's degree in theology. This is based on cooperation agreements established under the Apostolic Constitution "Sapientia Christiana"<sup>46</sup> with church higher education institutions and state universities incorporating faculties of theology authorized to conduct master's studies in this domain. Consequently, there is no requirement to meet the conditions for curricula under the Act on Higher Education and Science, nor to confirm their fulfillment. The sole condition is affiliation with the relevant university. This rationale aligns with viewing higher seminaries as sites for the training of future priests.

46. Francis, *Apostolic Constitution...*, op. cit.

## Conclusions

Summarizing a general principle to elucidate the legal status of church-operated universities within Poland's higher education system exceeds the scope of this study (Part 1, Part 2). A practical division that emerges is the differentiation between universities administered by the Catholic Church and those administered by other religious denominations and associations. This distinction is firmly rooted in the distinct legal frameworks governing the interaction of these institutions with the state. Further categorization within these groups necessitates a descriptive examination of each university, considering its unique characteristics.

Despite numerous inconsistencies in the regulation of universities operated by churches and other religious associations, their functioning in practice does not encounter significant systemic challenges. It would indeed be beneficial to clarify the matter of meeting the educational require-

ments in these universities, or at least to specify the areas of supervision by the minister responsible for higher education and science. However, it should be noted that a significant role in determining the status of universities run by churches and other religious associations within the higher education system is played by a sort of customary practice that has evolved over years of legislative operation. It seems that altering it to address certain issues may prove exceedingly difficult and ineffective, as *consuetudo altera natura est*. Undoubtedly, given the breadth of the subject matter, issues such as the financing of church colleges, or the analysis of the internal regulations of a particular church and the powers of its ecclesiastical authorities over these colleges, warrant a separate study.

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