

THE PRINCIPLE OF THE HEALTHY COOPERATION BETWEEN THE STATE AND THE CHURCH FOR THE BENEFIT OF THE INSTITUTION OF MARRIAGE AND THE FAMILY: AN INTRODUCTION TO THE ISSUE*

Prof. Dr. habil. Józef Krukowski

Polish Academy of Sciences Branch in Lublin, Poland
e-mail: jkruk@kul.pl; <https://orcid.org/0000-0003-0819-7357>

Abstract

The article deals with two themes that are of fundamental importance for the present and the future of the relations between the state, the Church and the nation. The first issue concerns the principle of Church–state cooperation with respect to the paradigm of religious-political dualism that emerged in European culture following Jesus Christ’s commandment, “So give back to Cesar what is Cesar’s, and to God what is God’s” (Matt. 22:21), with respect to two legal systems – canon law and Polish law – in the context of social and political transformations leading from the communist totalitarianism to democracy. The second issue relates to the application of the principle of Church–state cooperation to benefit the institution of marriage and the family, in keeping with Article 18 of the Polish Constitution and Article 11 of the Concordat between the Holy See and Poland.

Keywords: system of law, Polish law, canon law, concordat, constitution, common good, Holy See

Introduction

The article examines two themes of fundamental importance for the present and future of the Polish state, the Church, and the nation.

* A paper presented at the National Academic Conference organised by the Association of Polish Canonists in Miejsce Piastowe, Poland, on 5-6 September 2023, titled *Cooperation between the Church and the State for the Institution of Marriage and Family*, organised for the 40th anniversary of the promulgation of the Holy See’s *Charter of the Rights of the Family* and the 30th anniversary of the signing of the *Concordat between the Holy See and the Republic of Poland*.

The first is related to the evaluation of the principle of interaction between the state and the Church in respect of the basic principles underlying the Church–state relationship, considering two systems of law – canon law and Polish law – operative during the socio-political transition from communist totalitarianism to democracy.

The second theme concerns the application of this principle to the cooperation of the institution of marriage and the family in light of the *Charter of the Rights of the Family*,¹ the Polish Constitution,² and the Concordat between the Holy See and the Republic of Poland.³

1. The principle of sound cooperation between the state and the Church

The Second Vatican Council, in its pastoral constitution *Gaudium et spes* – defining the Catholic Church’s position on the relationship between the state and the Church – proclaimed that: “The Church and the political community [the state] in their own fields are autonomous and independent from each other. Yet both, under different titles, are devoted to the personal and social vocation of the same men. The more that both foster sounder cooperation between themselves with due consideration for the circumstances of time and place, the more effective will their service be exercised for the good of all.”⁴

In terms of legal axiology, the following elements can be distinguished in this proclamation: 1) the universal principle that, in fact, the same territory is home to human communities of different types (religious and political), each autonomous and independent in its order (in its own domain)

¹ Pontifical Council for the Family, *Charter of the Rights of the Family* (22.10.1983), https://www.vatican.va/roman_curia/pontifical_councils/family/documents/rc_pc_family_doc_19831022_family-rights_en.html [henceforth: *Charter*].

² Constitution of the Republic of Poland of 2 April 1997, Journal of Laws No. 78, item 483, as amended [henceforth: Constitution].

³ Concordat between the Holy See and the Republic of Poland of 28 July 1993, Journal of Laws No. 1998, No. 51, item 318 [henceforth: Concordat].

⁴ Vatican II, *Constitutio pastoralis de Ecclesia in mundo huius temporis Gaudium et spes* (07.12.1965), AAS 58 (1966), p. 1025-115; English text available at: https://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_const_19651207_gaudium-et-spes_en.html, no. 76 [henceforth: GS].

is autonomous and independent – that is, each of them has its own value; 2) the fact that these communities serve “the individual and social vocation of the same people,” which is the common good; 3) these communities will better achieve their goal if they engage in “sound cooperation” which takes into account the “circumstances of place and time.”

By way of historical retrospection, we must say that the above-cited principle of sound interaction between the Church and the state is the core element of the paradigm of religious-political dualism, which is the original contribution of the Christian religion to European and universal culture. This paradigm follows from Christ’s commandment “So give back to Caesar what is Caesar’s, and to God what is God’s” (Matthew 22:21),⁵ given in reply to Pharisees who asked Him whether it is appropriate to pay taxes to the emperor. The commandment has a universal nature, and it transcends the Pharisaic mentality. To be sure, the novelty of this order is the duality of obligations: the same group of people are subject to two powers: political (human) and religious (divine).

In pagan antiquity, there was religious-political monism between politics and religion. The monarch was both the head of state and the head of the religious community at the same time; more than that – in ancient Rome the emperor was revered as a god.

The above-mentioned commandment of Christ became the basis of the paradigm of religious-political dualism, the interpretation of which has evolved in keeping with the changes that have occurred in the ideological and political regimes of the countries in the territory of which the Church carries out its mission.

This principle can be viewed on two planes: 1) the vertical plane, manifested in relations holding between two powers: the state and the ecclesiastical authority – each enjoying supremacy (sovereignty) in its own domain; and 2) the horizontal plane, visible in the relationship between two distinct communities: the political community (the state), and the religious community – the Church.

The principle of religious-political dualism found its way into public life in the early fourth century, when Roman Emperor Constantine the Great

⁵ *New International Version*, Bible Gateway, <https://www.biblegateway.com/passage/?search=Matthew+22%3A21&version=NIV>.

proclaimed “freedom to profess the Christian faith” [Lombardi 1985, 23-87; Krukowski 1993, 18-19]. He recognised the operation of the Church exercising its mission in the Roman state as equal to other pagan religions and safeguarded its legal protection.

The significance of this principle in practice is attested by Ivo of Chartres, a prominent medieval canonist (1040-1116): *cum regnum et sacerdotium inter se conveniunt, bene regitur mundus, floret et fructificat Ecclesia* – when secular authority (*regnum*) and ecclesiastical authority (*sacerdotium*) go hand in hand, the world is governed well, the Church flourishes and bears fruit. This statement implies that the cooperation between the state and the Church, if agreed upon, is beneficial for both. However, it was not easy to establish a working relationship between the two subjects: the one exercising supreme state authority and the other having supreme ecclesiastical authority. It follows that in the “Holy Roman Empire” popes and emperors struggled for hegemony. To ensure peace between the two domains, the institution of concordat was created – a bilateral agreement between the subject of the highest state authority (the emperor) and the highest ecclesiastical authority (the pope) in the same Christian community [Krukowski 2013, 22-36].

When at the outset of the modern era, in the late 18th century, secular states arose, the principle of cooperation between the state and the Church was challenged. Under the influence of liberal ideology, there was a return to ideological and political monism [ibid., 53-59, 72-76]. This monism solidified in the 20th century, because totalitarian communist states introduced a radical Church–state separation, consisting in subordinating the Church to the interests of the communist party – and widespread secularization by imposing atheist ideology on society at large in lieu of religion [ibid., 59-64, 76-80; Hemperek 1985, 79-100; Krukowski 1992, 25].

The Holy See took a critical stance towards religious-political monism, and – in compliance with the tenets of religious-political dualism – despite the difficulties stemming from disparate ideological assumptions – it sought interaction between the state and the Church vertically and horizontally, for the benefit of the same people, who are both members of the Church and citizens of the state. The Second Vatican Council, in its pastoral constitution *Gaudium et spes*, proclaimed the requirement that the cooperation between the state and the Church be sound. The question then arises: What are the principles underlying a healthy cooperation between the state

and the Church in Poland today? To answer that, we should turn our attention to principles of these relations that were negotiated at the stage of socio-political and political transformation, which led from communist totalitarianism to democracy – through dialogue between representatives of various political parties and the Polish bishops in the late 20th century. These are set forth in two fundamental, normative acts: the 1997 Constitution and the Concordat signed in July 1993 and ratified early in 1998.

Of particular relevance is the fact that on the threshold of socio-political and political transformation, the Polish Bishops' Conference called attention to the necessity of revising those assumptions imposed by the communist regime. In a letter addressed to the Constitutional Commission of the National Assembly dated 16 June 1990, titled *On the Axiological Assumptions of the New Constitution*,⁶ the Conference pointed out two issues.

The first relates to the axiological assumptions of the future Constitution of the Republic of Poland. The Conference proposed that the Constitution be grounded in values fundamental to all humanity – rooted in the innate dignity of the human person – and the human freedoms and rights issuing therefrom, as well as in those historical values that are “the most precious to the Polish Nation [...], related to the history of the evangelization of society.”

The other issue concerns the institutional relationship between the state and the Church. The Conference proposed as follows:

- 1) “We are convinced that the time has come to reject the flawed and harmful simplification, unfortunately well-established in the public consciousness, that the secularism of the state is presented as the essential and almost the only guarantee of freedom and equality of citizens.”
- 2) “The constitutional regulation of relations between the state and the Catholic Church should rest on the principles of mutual respect, sovereignty and independence, as well as healthy cooperation for the common good, that is, the creation of conditions of social life thanks to which the person, the family and associations can more easily attain their excellence.”
- 3) “The formula on the separation of the Catholic Church from the State should be excluded from the Constitution. It evokes negative associations

⁶ *The Position of the Polish Bishops' Conference on the Axiological Premises of the New Constitution*, in: Krukowski 1993, 229-83.

with the time when totalitarian regime dominated, and it was employed by the state to subdue the Church. What is more, it is inaccurate, as it can bring about disregard for the values in question.”

On the other hand, the position of the state party on determining new rules for mutual relations depended on the ideologies followed by the various political parties. This was because the era of political pluralism had commenced. A special situation emerged in the parliament elected in the elections of 8 September 1993, in which representatives of post-communist parties won a majority. It was largely due to the fact that society was being intimidated with the Concordat signed on 28 July 1993. Significantly, the debate in the Constitutional Commission of the National Assembly over the draft Constitution for the Third Republic was being held in parallel with a debate on the proposal to ratify the Concordat. As it happened, the proposal was blocked by left-wing politicians (Democratic Left Alliance and Labour Party) on ideological grounds.

Politicians of the post-communist parties tabled an objection that Article 1 of the Concordat was incompatible with the principle of “Church–state separation” inscribed in the 1950 Constitution of the Polish People’s Republic and retained temporarily in the so-called “Small Constitution” of 1992. Left-wing party politicians interpreted it line with the tenets of communist ideology, from the perspective of the state’s supremacy over the Church. The incompatibility, they argued, was that the Concordat did not respect the principle of “Church–state separation”, included in the so-called “Small Constitution” and inherited from the communist regime [Krukowski 2019, 160-69].

The following principle was inscribed in Article 1 of the Concordat signed on 28 July 1993: “The State and the Church are autonomous and independent in their own domains, and they are fully committed to respecting this principle in mutual relations and in co-operating for the individual and common good.”

The meetings of the Constitutional Commission of the National Assembly concerning the preparation of the draft Constitution were attended by a representative of the Polish Bishops’ Conference as an observer with the right to speak.⁷

⁷ The Conference was represented in the sessions of the Constitutional Commission of the National Assembly by Bp. Tadeusz Pieronek (1990-1993), Rev. Prof. Remigiusz Sobański (1994), and Rev. Prof. Józef Krukowski (1994-1997).

Representatives of the post-communist and liberal parties proposed including the following principles in the draft Constitution: “secular character of the state,” “separation of the Church from state,” “neutrality of the state towards religious beliefs,” and the principle of regulation of relations between the Catholic Church and other Catholic organisations only by way of legislation (excluding the Concordat). They also motivated their opposition to the ratification proposal with their objection that it contravened the principle of equality of Churches and thus giving the Catholic Church a privileged status. At the time, the representative of the Polish Bishops’ Conference in the meetings of the Constitutional Commission explained that the conclusion of the Concordat does not infringe the principle of equal rights of churches if the freedom guarantees that had been included in the Concordat were extended to other churches and religious organisations by way of legislation and using analogy. The position of the Conference representative at the meetings of the Constitutional Commission was the subject of fierce polemics sparked by left-wing representatives, and initially by representatives of minority churches.⁸

The debate over the rules underpinning the relations between the state and the Catholic Church and other religious organisations has been one of the most important constitutional dilemmas. Following the dialogue between the representative of the Polish Bishops’ Conference and politicians at successive sessions of the Constitutional Commission of the National Assembly, the solution to this dilemma came with Article 25 of the Polish Constitution, enacted on 2 April 1997. The article takes into account the demands made by the Conference representative. The article has the following wording: “1. Churches and religious organizations shall have equal rights. 2. Public authorities in the Republic of Poland shall be impartial in matters of personal conviction, whether religious or philosophical, or in relation to outlooks on life, and shall ensure their freedom of expression within public life. 3. The relationship between the State and churches and other religious organizations shall be based on the principle of respect for their autonomy and the mutual independence of each in its own sphere, as well as on the principle of cooperation for the individual and the common good. 4. The relations between the Republic of Poland and the Roman

⁸ Constitutional Commission of the National Assembly, Bulletin, X, p. 148-59; XIV, p. 92-93, 107-108; XVI, p. 78-84, 107-108; Krukowski 2023, 470-79.

Catholic Church shall be determined by international treaty with the Holy See, and by statute. 5. The relations between the Republic of Poland and other churches and religious organizations shall be determined by statutes adopted pursuant to agreements concluded between their representatives and the Council of Ministers.”

These principles form a certain logical whole, so they should be interpreted and applied in combination. Then, the cooperation between the state and the Church in Poland – as advocated by the Second Vatican Council – will be “healthy.”

It is noteworthy that the principles underlying the Church–state relations – enshrined in Article 25 of the Constitution – are original because thanks to them the coexistence of the state and the Church in contemporary Poland entered the phase of renewed respect for the Christian religious-political dualism so much ingrained in European culture. This is because they do not contain – as proposed by left-wing politicians – ideological formulas that inhere in religious-political monism, for example: “secularism of the state,” “separation of church and state” and “neutrality of civil authority towards religious beliefs and world-views.” These formulas were marked with ambiguity and imbued with hostility toward religion and the Catholic Church in particular.

Putting law into practice depends on politicians’ goodwill. Consequently, from a logical point of view, it should have been supposed that after the enactment of a constitution that did not enshrine the church–state separation principle, the path was open for the ratification of the Concordat. Regrettably, post-communist politicians, who formed a majority in the Sejm at the time, still would not ratify the Concordat. Consent was given in early 1998 by the Sejm (and the Senate) of the next term, elected in new elections, in which the opponents of the Concordat (post-communists) lost their majority [ibid., 167-69].

2. Application of the constitutional and concordat principle of cooperation between the state and the Church for the sake of marriage and the family

It is essential to establish a goal towards which cooperation between the Church and the state must strive. Article 25 of the Constitution and Article 1 of the Concordat provide that the purpose of this interaction

is the good of man and the common good, hence the question: What is the common good as the goal of this cooperation? Well, it can be interpreted in either ethical or legal terms.

From the ethical perspective, the common good – viewed as the purpose of interaction between the Church and the state – comprises three components: the good of man, the good of the family, and the good of the nation [Krukowski 1982, 53-66]. Legally, it implies respect for the rights of those. To clarify, the Church and the state are obligated and empowered to work together so as to assist people in general, the family, and the nation (which is a family of families) in pursuance of their due rights and freedoms.

The first component of the common good – as the goal of interaction between the Church and the state – is therefore the welfare of man, who ranks first in the hierarchy of all beings on Earth. This primacy is construed on ontological, ethical, and legal planes. Ontologically, man is a person, or a being endowed with inalienable dignity, the essential attributes of which are reason, freedom, and conscience [Mazurek 1991, 302]. Man, therefore, cannot be assigned to any community. Conversely, all forms of social life, including the Church and the state, are subordinate to man to serve him.

The second essential component of the common good, viewed as the purpose of Church–state cooperation, is the good of marriage and the family. Marriage as a union between two people is grounded in natural law. Marriage is the foundation of the family. The family is the subject of fundamental rights and duties – just as the human person is – springing from human nature (GS 42).

These rights were specified by John Paul II in his exhortation *Familiaris consortio*⁹ and in the Holy See's *Charter of the Rights of the Family* [Paglia 2013]. The Holy See is the author of the Charter as the supreme authority in the Church, possessing public law personality in international relations. For that reason, the Charter was addressed to state authorities and international organizations – governmental and non-governmental alike – and to all Christians and their families. Notably, the promulgation

⁹ John Paul II, Adhortatio apostolica *Familiaris consortio* de familiae christianae muneribus in mundo huius temporis (22.11.1981), AAS 74 (1982), p. 81-191; English text available at: https://www.vatican.va/content/john-paul-ii/en/apost_exhortations/documents/hf_jp-ii_exh_19811122_familiaris-consortio.html [henceforth: FC].

of the Charter came when a major assault on the family was launched by proponents of “sexual revolution,” rampant in the West, and educational confusion brought about by “gender ideology.”

It is also significant that the preamble to the Charter contains a firm statement: “The family is based on marriage, that intimate union of life in complementarity between a man and a woman which is constituted in the freely contracted and publicly expressed indissoluble bond of matrimony and is open to the transmission of life.”

The Charter’s catalogue comprises twelve articles concerning individual rights and community rights. These are: 1) the rights due to every human being, springing from the innate dignity of the human person; 2) the rights of spouses to contract marriage and establish a family; 3) the rights of the family, which include the rights of parents and the rights of children.

Put synthetically, this catalogue stipulates as follows. 1) “All persons have the right to the free choice of their state of life and thus to marry and establish a family or to remain single” (Article 1); “The institutional value of marriage should be upheld by the public authorities; the situation of non-married couples must not be placed on the same level as marriage duly contracted” (Article 1c); 2) “The spouses, in the natural complementarity which exists between man and woman, enjoy the same dignity and equal rights regarding the marriage” (Article 2c); 3) “The spouses have the inalienable right to found a family and to decide on the spacing of births and the number of children to be born” (Article 3); and “Those who wish to marry and establish a family have the right to expect from society the moral, educational, social and economic conditions which will enable them to exercise their right to marry in all maturity and responsibility” (Article 1); 4) “The future spouses have the right to their religious liberty. Therefore to impose as a prior condition for marriage a denial of faith or a profession of faith which is contrary to conscience, constitutes a violation of this right” (Article 2b); 5) “The spouses have the inalienable right to found a family and to decide on the spacing of births and the number of children to be born [...], in accordance with the objective moral order which excludes recourse to contraception, sterilization and abortion” (Article 3); 6) “The family has a right to assistance by society in the bearing and rearing of children” (Article 3c); 7) “Children, both before and after birth, have the right to special protection and assistance, as do their mothers during pregnancy and for a reasonable period of time after childbirth”

(Article 4d); 8) “Since [parents] have conferred life on their children, [they] have the original, primary and inalienable right to educate them; hence they must be acknowledged as the first and foremost educators of their children” (Article 5); 9) “Parents have the right to educate their children in conformity with their moral and religious convictions, taking into account the cultural traditions of the family [...] [having] the necessary aid and assistance to perform their educational role properly” (Article 5a); 10) “The primary right of parents to educate their children must be upheld in all forms of collaboration between parents, teachers and school authorities, and particularly in forms of participation designed to give citizens a voice in the functioning of schools and in the formulation and implementation of educational policies” (Article 5e); 11) “The family has the right to exist and to progress as a family” (Article 6); at the same time, the Charter states that “divorce attacks the very institution of marriage and of the family” (Article 6b); 12) “Every family has the right to live freely its own domestic religious life under the guidance of the parents, as well as the right to profess publicly and to propagate the faith, to take part in public worship and in freely chosen programs of religious instruction, without suffering discrimination” (Article 7); 13) “The family has the right to exercise its social and political function in the construction of society” (Article 8); in particular: “Families have the right to form associations with other families and institutions, in order to fulfil the family’s role suitably and effectively, as well as to protect the rights, foster the good and represent the interests of the family” (Article 8a); 14) “Families have the right to be able to rely on an adequate family policy on the part of public authorities in the juridical, economic, social and fiscal domains, without any discrimination whatsoever” (Article 9); 15) “Families have a right to a social and economic order in which the organization of work permits the members to live together, and does not hinder the unity, well-being, health and the stability of the family, while offering also the possibility of wholesome recreation” (Article 10). This requirement applies in particular to remuneration for work which should be sufficient to meet the needs of the family; 16) “The family has the right to decent housing, fitting for family life and commensurate to the number of the members, in a physical environment that provides the basic services for the life of the family and the community” (Article 11); 17) “The families of migrants have the right to the same protection as that accorded other families” (Article 12).

This catalogue mentions “rights of the family,” “rights of children,” and “rights of parents” who represent the families they have established. These rights have a social dimension, which means that all forms of social life should be geared towards the family – in other words, they should help the family exercise its proper rights and duties. This is because the family is incapable of securing its interests entirely on its own, without the help of larger social groups, especially the Church and the state.

What are, therefore, the tasks of the Church and the state vis-a-vis the family? The Church’s task is to provide assistance to the family through pastoral work, which involves preparing young people for marriage and caring for marriage and the family, especially in the religious and moral education of children in a well-organised manner (FC 65–85). The current tasks of the Church in Poland with regard to the family are formulated by the Polish Bishops’ Conference in the *Directory for the Pastoral Care of Families*.¹⁰

The state, on the other hand, is to secure the assistance for the family in the economic, social, educational, political and cultural spheres, which are necessary for families “to face all their responsibilities in a human way” (FC 45).

The Church is committed to safeguarding rights of the family by reason of threats presented by various institutions and ideologies. The Church also engages in criticism of state and local government entities for their sluggishness in respecting family rights, particularly because of the dangers posed by anti-family ideology (gender, LBGTQ+).

The state is to positively assist the family in fulfilling its roles, especially to ensure the permanence of marriage. However, except when necessary, the state should not take over the family’s proper tasks imposed on it by natural law, but assist it in accordance with the principle of subsidiarity.

Cooperation between the Church and the state for the sake of the family takes place in two areas. The first is to work for the respect and protection of human life from the conception until natural death. The second is to work together to educate children and young people, as parents alone

¹⁰ Polish Bishops’ Conference, *Dyrektorium Duszpasterstwa Rodzin*, Redakcja Głos Katolicki, Warszawa 2003, p. 58-59. The document was adopted during the 322nd Plenary Meeting of the Polish Bishops’ Conference in Warsaw on 1 May 2003.

are unable to ensure the proper formation and education of their offspring. The state should secure adequate resources for the family, also material, and effective aids to assist the family in fulfilling its roles.

3. The principle of cooperation between the state and the Church for the sake of marriage and the family

The principle of cooperation between the state and the Church for the benefit of marriage and the family in Poland today is safeguarded chiefly by two high-level normative acts: the 1997 Constitution of the Republic of Poland and the 1993 Concordat.

For the matters at hand, of crucial importance is Article 18 of the Constitution: “Marriage, being a union of a man and a woman, as well as the family, motherhood and parenthood, shall be placed under the protection and care of the Republic of Poland.”

Three elements are crucial in this article: 1) the notion of marriage as “a union of a man and a woman”; 2) the definition of its essential functions, which are “motherhood” and “parenthood” (parenthood obviously including being a father); 3) the assurance of “protection and care” of state authorities.

The fact that these provisions were placed in Chapter 1 of the Constitution titled “The Republic” puts them among the cardinal principles defining the political system of the modern Polish state. We may now ask, what is the significance of this fact?

The answer is to be sought in the fact that the need to include the definition of marriage as “a union between a man and a woman” in the 1997 Polish Constitution emerged mainly in response to threats posed by left-wing parties and Polish and international NGOs operating under the inspiration of gender and LGBTQ ideology.

At this point, we should note that including the words about marriage being “a union between a man and a woman” in a constitution passed by the Constitutional Commission of the National Assembly was not easy, as the majority of its members were supporters of leftist ideologies. Indeed, supporters of gender ideology sought to inscribe in the Polish Constitution a principle that would pave the way for the legalization of homosexual unions in Poland. The constitutional definition of marriage implies a ban on same-sex marriages.

The inclusion of a definition of marriage as a union between a man and a woman is of tremendous formal importance since the constitutional principle of the hierarchy of normative acts constituting the Polish legal system must be complied with, as this guarantees the primacy of the Polish Constitution over all normative acts (Article 8(1) of the Constitution). As a result, the possibility of redefining marriage by statute is ruled out; in other words, same-sex marriages or so-called civil unions possessing the right to adopt offspring are prohibited by law.

Article 53(3) of the Constitution is of special note here. It ensures parents' right to decide about the religious instruction their children receive in public schools in accordance with their own beliefs.

Second in the hierarchy is the normative act on the implementation of the principle of cooperation between the state and the Church for the benefit of marriage and the family – the Concordat of 1993. Its Article 11 states: “The Contracting Parties declare their will to co-operate to protect and respect the institutions of marriage and the family, which are the foundation of society. They emphasise the value of the family, and the Holy See for its part, reaffirms the Catholic teaching on the dignity and indissolubility of marriage.”

This article contains two declarations: 1) a joint declaration of the contracting parties and 2) a unilateral declaration of the Holy See.

In the first, the contracting parties commit to co-operate “for the purposes of protecting and respecting the institution of marriage and the family, which are the foundation of society.” This declaration is based on the recognition of values that are common to both parties, represented by the institutions of marriage and the family. Both parties undertake to work together for their own good since they constitute the “foundation of society.” From their perspective marriage represents a fundamental value as a union of two people of opposite sexes, aimed at mutual assistance, producing and educating children in an environment conducive to their psychological and personal development. To be sure, the declaration bodes well for the cooperation between the state and the Church in the face of the crisis of marriage and the family in the era of consumerism. Both Parties are committed to defending marriage as a monogamous union between a man and a woman.

In the second declaration, the Holy See, on behalf of the Catholic Church, reaffirmed its commitment to defending marriage as a natural union between a man and a woman elevated by Christ to the dignity of a supernatural sacrament [Krukowski 1995, 317].

The Polish Constitution provides that “marriage” is a “union of a man and a woman” (Article 18). From this provision issues a prohibition on same-sex marriage in Poland. In this way, the Polish constitutional legislator distances itself from recognising same-sex marriages, which is being forced by the pressure groups of extreme liberals.¹¹

Note that there is a difference between canon law and Polish law regarding the degree of permanence of marriage. The Church, for its part, based on theological premises, defends the position that marriage between baptised persons is endowed with the attribute of sacramentality and indissolubility.

By contrast, the modern Polish state, being secular, does not respect the theological premises regarding the sacramentality and indissolubility of Christian marriage in its legal system. Therefore, Polish law supports the permanence of marriage, but admits divorce between spouses, also between baptised spouses. Conversely, ecclesiastical legislation does not recognise the institution of divorce, while respecting the state’s competence for marriage between baptised persons as regards its civil effects.

The modern Polish state respects the right to freedom of conscience and religion, which involves the freedom to choose the form of civil marriage – that is, the possibility of contracting civil marriage before the registrar or a canonical marriage before a cleric, observing a procedure defined by Article 10 of the Concordat and the Act of 24 July 1998 amending the Family and Guardianship Code.¹²

¹¹ In the legal literature, we come across an opinion that Article 18 of the Constitution, by explicitly defining marriage “as a union of a man and a woman”, does not preclude legitimate marriages with a different legal subjectivity and structure – that is, between people of the same sex [Łętowska and Woleński 2013, 15-40]. This, however, cannot be endorsed for logical and formal reasons.

¹² Act of 24 July 1998 Amending the Acts: The Family and Guardianship Code, the Code of Civil Procedure, the Law on Civil Status Records, the Act on State Relations with the Catholic Church in the Republic of Poland, and Some Other Acts, *Journal of Laws* No. 1998, No. 117, item 42. See Krukowski 2019, 268-313; Bucoń 2022, 112-24.

In the second part of Article 11 of the Concordat, the Holy See – in view of the institution of divorce in Polish law – “reaffirms Catholic teaching on the dignity and indissolubility of marriage.” The state, on the other hand, acknowledges this position of the Church.

The use of the principle of healthy cooperation between the state and the Church for the sake of marriage and the family involves respect and protection of the two basic roles of the family: procreation and education.

The protection of the procreative function of marriage and the family should, by its very nature, involve respect for the fundamental human right to life from the moment of conception until natural death. On this account, there is controversy over the extent to which Polish legislation protects the family’s procreative function. This protection should exist in various branches of law, so not only in constitutional law, but also in family law, provision of administrative law governing education and upbringing, labour law (family allowances), and criminal law (protection of conceived life).

As far as the educational function of the family is concerned, the interaction between the state and the Church concerns the protection of the right of parents to the religious and moral education of their children, in accordance with their beliefs, not only in the family home, but also at school with respect to religious and ethical instruction. To achieve that, parents are guaranteed respect for their decisions concerning the religious instruction of their children in public schools, too; they have the right to review the school programme of children’s sex education, they can choose either a public or a private school for their children. Also, governmental subsidies are assured for private schools.

Respect for the rights of parents in the Third Republic is laid out more specifically in ordinary laws.

4. Obstacles to cooperation between the state and the Church for the benefit of marriage and the family

When we speak about the interaction between the state and the Church in Poland for the sake of marriage and the family, we must not overlook existing difficulties and even serious impediments to the implementation of this principle. They occur for a number of reasons, but first and foremost,

they are due to the ideological assumptions endorsed by left-wing parties, which during parliamentary elections seek to gain a majority in the supreme bodies of legislative power (the Sejm and Senate), organs of executive power (the Government), and in local government bodies with a view to legislating legal norms conforming to their ideology, or sometimes even undermining the system of Christian values.

At the same time, it is important to realize that modern Poland is a democratic secular state that respects religious and world-view pluralism existing among its citizens. Generally speaking, the positive law of a democratic state is the result of a compromise between divergent ideological assumptions subscribed to by political parties and associations that operate as pressure groups (e.g., an association of feminists). These assumptions are not only incompatible with those of the Catholic Church, but contradictory and openly hostile to religion in general, especially the Christian vision of marriage and the family.

To conclude, it must be said that the principle of interaction between the state and the Church incorporated in the Polish Constitution and the Concordat, being as broad as possible, lays the groundwork upon which laws and other implementing acts need to be built.

Law-making in a democratic state is carried out as a result of ideological struggle. Positive law is often born out of a compromise between different competitive parties and interest groups that advocate different systems of values. In this situation, the Church, as a transmitter of Christian values, should influence society through its pastoral activity. Catholics, for their part – as citizens – are expected to exert influence on their representatives, who have a direct share in the exercise of state power, to ensure that the state pursues a pro-family policy.

REFERENCES

- Bucoń, Paweł. 2022. *Prawo do zawarcia związku małżeńskiego i założenia rodziny. Perspektywa prywatnoprawna i publicznoprawna*. Lublin: Wydawnictwo KUL.
- Hemperek, Piotr. 1985. "Współpraca między Kościołem i państwem." *Kościół i Prawo* 4:79-100.
- Krukowski, Józef. 1982. "Podstawy współdziałania kościoła i Państwa w nauczaniu Stefana kard. Wyszyńskiego." *Zeszyty Naukowe KUL* 30, no. 1:53-66.
- Krukowski, Józef. 1992. "Podstawy współdziałania Kościoła i państwa." *Kościół i Prawo* 8:19-32.

- Krukowski, Józef. 1993. *Kościół i państwo. Podstawy relacji prawnych*. Lublin: Redakcja Wydawnictw Katolickiego Uniwersytetu Lubelskiego.
- Krukowski, Józef. 1995. *Konkordaty współczesne. Doktryna. Teksty (1964-1994)*. Warszawa: Wydawnictwo Civitas Christiana.
- Krukowski, Józef. 2013. *Kościelne prawo publiczne. Prawo konkordatowe*. Lublin: Towarzystwo Naukowe KUL.
- Krukowski, Józef. 2019. "Część II. Teraźniejszość: Konkordat między Stolicą Apostolską a Rzeczpospolitą Polską." In Burczak, Krzysztof, Waclaw Uruszczak, Wojciech Góralski, and Józef Krukowski. *Konkordaty Polskie. Historia i teraźniejszość*, edited by Józef Krukowski, 147-411. Lublin: Towarzystwo Naukowe KUL.
- Krukowski, Józef. 2023. "Geneza konstytucyjnych zasad relacji między Państwem a Kościołem katolickim i innymi związkami wyznaniowymi w Polsce współczesnej (art. 25 Konkordatu)." In *Między prawem a polityką. Księga jubileuszowa dedykowana profesor Hannie Suchockiej*, edited by Bogumiła Kaniewska, Tadeusz Wallas, and Krzysztof Urbaniak, 465-81. Poznań: Wydawnictwo Naukowe Wydziału Nauk Politycznych i Dziennikarstwa Uniwersytetu im. Adama Mickiewicza w Poznaniu.
- Łętowska, Ewa, and Jan Woleński. 2013. "Instytucjonalizacja związków partnerskich a Konstytucja RP z 1997 r." *Państwo i Prawo* 6:15-40.
- Lombardi, Giuseppe. 1985. "L'Editto di Milano del 313 e la laicità dello Stato." In *I diritti fondamentali della persona umana e la libertà religiosa. Atti del colloquio giuridico, e 8-10 marzo 1984*, edited by Franco Biffi, 23-87. Roma: Libreria Editrice Vaticana.
- Mazurek, Franciszek. 1991. *Prawa człowieka w nauczaniu społecznym Kościoła*. Lublin: Redakcja Wydawnictw KUL.
- Paglia, Vincenzo. 2013. *Karta praw rodziny Stolicy Apostolskiej. Prezentacja, interpretacja i komentarz*. Pełplin: Bernardinum.