

Paulina Łabieniec

*Article 25(5) of the Polish Constitution in practice.
The politico-legal perspective*

Summary

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prof. dr hab. Małgorzata Król

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The purpose of this dissertation is to analyse Article 25(5) of the Constitution from a politico-legal perspective, with the aim to propose legal measures which would be appropriate to protect certain values, such as freedom of conscience and religion in the individual and community dimension, equality of religions, autonomy and mutual independence of the state and religious associations, as well as bilateral arrangement of relations between the state and religious associations, particularly important in the context of the recently postulated communicative model of lawmaking, i.e. a model open to deliberation and taking into account the participation of social actors in the lawmaking process. Article 25(5) of the Constitution, as providing for the possibility of concluding a legislative agreement, is one of the few communicative elements in the Polish law-making model.

Moreover, the aim of the paper is to answer the question of what legal measures should be taken so that Article 25(5) of the Constitution is implemented to protect the values considered important in the relations between the state and religious associations. Article 25(5) stipulates that 'relations between the Republic of Poland and other churches and religious associations shall be determined by laws passed on the basis of agreements concluded by the Council of Ministers with their competent representatives'. This is an important element in the Polish system of the state relations with religious associations, introducing the principle of bilateralism in regulating the legal situation of religious associations other than the Catholic Church. According to Article 25(4) of the Constitution, the situation of the Catholic Church in Poland is regulated by an international agreement (concordat) and laws. Article 25(5) of the Constitution was created in order to realize the principle of equality of religions and to allow other religious associations to participate in the formation of law defining their activities in the state. Since the entry into force of the Constitution, Article 25(5) has not been implemented. Not a single agreement with the Council of Ministers has been signed, nor has any individual law been passed on the relationship between the state and a church or another religious association. The provision intended to guarantee the equality of churches and other religious associations, as well as their participation in the formation of religious law, has proved to be an ineffective means to protect those values.

The proposal of legal measures that would adequately protect the indicated values was preceded by an analysis of the past practice of applying Article 25(5) of the Constitution. The analysis was carried out on the basis of documents from the archives of the Ministry of Internal Affairs and Administration and a questionnaire sent to churches and other religious associations

applying for the enactment of an individual law. On the basis of draft laws submitted by religious associations, a list was compiled of the powers they seek under Article 25(5) of the Constitution. As a result of the research, deficiencies in the implementation of Article 25(5) of the Constitution were found, consisting in the failure to conclude agreements with religious associations (since the entry into force of the Constitution) and the failure of the Council of Ministers to provide reliable justification for refusing to conclude such agreements or to respond in any way to the requests of religious associations.

The paper synthesizes the debate around Article 25(5) of the Constitution within the doctrine of Polish religious law, and it presents the author's own position on the *de lege ferenda* postulates appearing in the doctrine, taking into account the results of the research conducted. The necessity of amending Article 25(5) of the Constitution is emphasized, while the Council of Ministers is urged to reliably justify its decisions regarding the legal situation of churches and other religious associations in the state, particularly in view of respect for the principle of equality of religions requiring justification of different treatment of similar entities.