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Civic tax write-off as a potential source of funding for churches and other religious associations in Poland. A legal and denominational perspective

SUMMARY

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Churches and other religious associations enjoy an innate right to possess temporal goods. These are indispensably necessary for them to fulfill their mission in both the strictly religious and charitable spheres. The role of the state, recognizing this right flowing from freedom of conscience and religion exercised collectively, is to recognize and guarantee the ability of religious communities to acquire, administer, and alienate material goods.

In medieval Europe, a beneficent system developed, based on separate property masses, the benefits of which were derived by an authorized entity. The purpose of this system was to provide the Church with the resources needed for worship, evangelization, works of mercy or maintenance of the clergy. Unfortunately, the process of secularization of church property, observed since the 18th century, led to the state's involvement in the partial maintenance of the Church through a system of convertible benefits. This type of action can also be observed on Polish soil, and culminated in the nationalization of church land properties in the 1950s. In exchange for the nationalized land, a Church Fund was established, the idea, participation, and functioning of which remains a bone of contention to this day.

With the democratic changes taking place in European countries over the years, it was recognized that the involvement of public funds in the financing of religious worship, the maintenance of clergy or the expansion of a particular worldview was problematic from the perspective of a democratic secular state characterized by a pluralism of views in society. It was therefore necessary to seek new forms of state fulfillment of historical obligations that are more accommodating in a liberal democracy. At present, it is recognized that the most adapted to the legal and social realities of democratic states is the state funding of religious communities by means of taxation. Its fundamental advantage remains the surrender to personal income taxpayers of the decision to donate a portion of the state's tax to a selected church or other confessional association. This instrument does not generate additional fiscal burdens and ensures respect for taxpayers' freedom of conscience and religion.

In Poland, the idea of abolishing the Church Fund has been present in the public debate since the early 1990s. Increasing interest in legal solutions present in Western European countries has opened this discourse to replacing the Fund with a tax assignment. The Polish Bishops' Conference called for such reform as early as 2008, and in 2013 there was even a bill drafted to make this direction of change realistic. However, it was not free of flaws (including in the fundamental aspects of the reform) and never entered into force.

The dissertation essentially adopts two research theses. First, a democratic state implementing the model of coordinated separation should withdraw from financing the religious activities of confessional associations and the maintenance of their clergy, since an

integral element of freedom of conscience and religion is the voluntary provision of financial benefits to religious institutions. However, this does not mean that the state cannot assume the role of passive intermediary in transferring funds to religious communities in accordance with the express will of the citizens. Accordingly, the second thesis is that replacing the controversial Church Fund with a civic tax write-off is a constitutionally acceptable solution in principle, as well as a desirable way to end the historical dispute over the nationalization and non-reimbursement of church land properties and the operation of the Church Fund in violation of the law.

The work primarily uses a formal-dogmatic research method, through which the designations of concepts and terms contained in normative acts will be discovered and discussed. The analysis of normative acts of various ranks – from constitutions and international agreements, through acts with the force of a law and those of an executive nature to documents of internal law, including acts of church law – was carried out considering the jurisprudence of Polish, foreign, and international courts and tribunals. The dissertation also analyzes draft laws that never came into force, along with the most important one – the draft law on amendments to the Law on Guarantees of Freedom of Conscience and Religion and Certain Other Laws of July 25th, 2013, to which a separate chapter of the dissertation was devoted. The use of the comparative method, which made it possible to compare the legal construction of various models of tax assignment functioning in different legal systems was of momentous importance. An auxiliary legal-historical method was also applied and became useful for analyzing the evolution of regulations on financing religious communities over the years.

The study consists of five chapters, which begin with an introduction and end with a summary of the most important content. The first chapter is introductory in nature to the issues of the state's financial relations with churches and other religious associations as an integral element of the realization of freedom of conscience and religion in individual and community terms. After presenting the legal basis for the property rights of religious communities in the Constitution of the Republic of Poland, acts of international law and laws, the author raises the question of civil law personality of church organizational units as a condition for participation in legal transactions. Then the author shows the sources of financing of churches and other confessional associations in the Republic of Poland. The chapter also presents legal and financial regulations in the internal law of the largest religious community in Poland – the Catholic Church. Finally, a consideration of the voluntariness of providing for religious associations in common law and in canon law is carried out, as well as on the reasons behind the state's financial involvement in supporting confessional associations.

The second chapter is aimed at examining the requirements that the Polish Constitution places on the introduction of the tax assignment into the Polish legal order. This part of the study primarily analyzes Article 25 in its entirety, as well as Articles 53(1)-(2) and (7) of the Polish Constitution. The analysis of the directives arising from the various principles established in these provisions is primarily aimed at embedding the tax assignment in a specific model of state-church relations, together with the practice of its implementation.

After establishing the fundamental requirements for the construction of a civic tax write-off and the process of its implementation by the Polish Constitution, the author examines the three basic models of tax assignment operating in Spain, Italy, and Hungary. In the third chapter, the discussion of each model begins with the socio-religious conditions and the legal framework of state-church relations in the country in question. Emphasis is then distributed, with varying degrees of intensity, between the evolution of the system of financing religious associations and its current shape, the process of secularization and its consequences, and the legal construction of the assignee. Also included are such elements as the control of the spending of tax assignment funds by beneficiaries or the financial consequences of using this instrument. The discussion of each model concludes with an assessment of its design and operation.

The fourth chapter is devoted to the evolution of the Polish system of financing churches and other religious associations from public funds. Initially, the author analyzes the impact of legal reforms on changes in the assets of religious communities in the Polish lands. Then, the author presents the current system of financing confessional associations from public funds, with particular emphasis on positive financing, and above all the activities of the Church Fund in its historical and current dimensions. This information serves, on the one hand, to show the historical obligations of the state towards religious associations, and, on the other hand, makes it possible to place the Polish system of financing religious communities against the background of European legal and financial experience in state-church relations.

The subject of the last chapter is a critical analysis of the draft law on amendments to the Law on Guarantees of Freedom of Conscience and Religion and Certain Other Laws of July 25th, 2013, which aimed to replace the Church Fund with a civic tax write-off. The chapter begins with an overview of legislative initiatives in the Third Republic of Poland that sought to abolish the Fund. This is followed by a discussion of the project's public consultation process and its content. Some of the comments made during the consultations have been excluded to a separate section. The chapter concludes with an assessment of the construction of the civic tax write-off as designed in 2013.

The research work made it possible to formulate a number of important conclusions. The full realization of freedom of conscience and religion must include guaranteeing individuals the possibility of transferring or not transferring funds for the purposes of worship, spreading the faith, conversion, attracting new believers or maintaining clergy in accordance with their will. In turn, the state should refrain from such transfers of property to churches and other confessional associations that would be aimed at supporting any of the referenced areas of their activity. A number of considerations, however, speak in favor of not absolutizing the voluntariness of financial transfers from the state budget to religious associations. It is permissible to provide public funds directly to both specific projects carried out by church organizational units, as well as to use legal and tax instruments to increase the own funds of religious communities. One of the instruments of the latter is the tax assignment, already used in some European countries. There is no doubt that it is possible to introduce a civic tax ascription into the Polish system of financing religious communities in accordance with the Polish Constitution. However, constitutional requirements will determine the construction of this instrument.

The civic tax write-off should not become a new, additional instrument for financing churches and other religious associations in Poland, but should be used as an element in ending the dispute over nationalized and unreturned church land properties. The process would therefore involve liquidating the Church Fund after drawing up a balance sheet of its activities, assessing the value of the still-unreturned church land properties and introducing a civic tax write-off. The introduction of a civic tax write-off should not significantly affect other elements of the current system of financing religious communities in Poland, although it is conceivable that changes in the area of negative and indirect financing could become a bargaining element during negotiations on the construction of the write-off. It should be assumed that the draft law on amendments to the Law on Guarantees of Freedom of Conscience and Religion and Certain Other Laws of July 25th, 2013, together with the comments and opinions submitted during inter-ministerial arrangements and public consultations, as well as the doctrinal output, will become a natural starting point for resuming work on the introduction of a civic tax write-off. After comprehensive consideration of the topic, the author advocates a two-stage implementation of the described reform.

Stage one would be a five- or six-year transitional period involving the abolition of the Church Fund in its entirety and the operation of the tax write-off on the Hungarian model. The deduction would be 1.5% of the PIT, analogous to the PBO deduction, and would guarantee a high, predetermined amount to be distributed to religious associations. As in Hungary,

taxpayers would decide how to allocate 1.5% of the tax due from them, with the remaining amount distributed in proportion to the number of clear choices. The budget for a deduction structured in this way should be estimated to amount to at least PLN 1 billion a year, thereby ensuring that the state's historical obligations to confessional associations are paid off. In addition, a longer transition period, together with higher revenues during this period, does justice to the comments made to the July 25th, 2013 draft by minority religious associations. In the first stage of the reform, the state should guarantee religious unions that the deduction budget will not change for the worse as a result of any legal and tax changes.

In the second stage, starting after the end of the transition period, the tax write-off would function similarly to the Spanish model, so that religious associations would receive only 1.5% of the PIT transferred in explicit elections. The amount of funds transferred would then most likely drop by more than half, but which religious associations would have time to prepare for, and from the perspective of the state budget, the amounts transferred would normalize. At both stages, all religious communities with a regulated legal situation (and only them) would be entitled to receive support through the write-off, with the assurance of discretionary spending. The above changes would not necessarily affect the reform of other elements of the system of financing religious associations, but of course, in the course of negotiations, they can be adjusted. In addition, the above two-step solution should be confirmed in the Concordat of Parity, along with the Holy See's recognition that the state's historical obligations have been fulfilled.

