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The Polish Episcopate and Poland's Signing and Ratifying of the Concordat with the Holy See (28 July 1993)

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SIGNING AND RATIFYING OF THE CONCORDAT
WITH THE HOLY SEE (28 JULY 1993)**

Introductory remarks

At the beginning of the system transformation, the Church had had the most authority of all institutions in the country. Pope John Paul II enjoyed unconditional reverence, whose pilgrimages had a great impact on the Polish transformation (Mariański 2001: 408). After his VII Pilgrimage, the Polish Episcopate had stressed that to a large degree Poland owed its deep transformation to John Paul II (*Słowo biskupów...* 1999: 2091).

Basing on laws concerning religious denominations that were passed on 17 May 1989, which added a new meaning to regulations included in the Constitution of 22 July 1952, the presence of the Church in many areas of social life became legal, which created a positive climate for the subsequent changes (Pieronek 1998: 25). The new political reality brought about a need to regulate mutual relations between the Polish Republic and the Holy See, and at the same time – a need to emphasize the importance of the institutional Church (Wroczyński 1996: 4–6). In the circumstances various conceptions of the role of religion and of the impact of the Church on society emerged. One could notice, on the one hand, opinions that envisaged „Iranization of Poland”, while on the other hand – opinions that spoke about diminishing social impact of religion and its reduction to the level characteristic of radically secularized France. Those opinions turned out to be mistaken because of their much simplified view of the changes that were experienced by the Polish society. „If processes of transformation – as Reverend Piotr Mazurkiewicz wrote – were to follow their predicted courses, according to those forecasts Poland would, just within

a few years, turn into a theocratic state or else religion would turn into a dead relic of the past being of interest only to curious tourists visiting skansen-type museums. Other possibilities, it seems, have not been taken into account” (Mazurkiewicz 2003: 181).

The attitude of Konferencja Episkopatu Polski

The Polish Episcopate stressed the necessity to make an integral reform of the law that should always be supportive of the human being. Following the changes of 1989 and 1990, the Church joined in the wholesale reforming of the Polish society and of the state (*List pasterski...* 1990: 1674–1675). On 25 August 1993 the Polish bishops drew attention to the Concordat with the Holy See. It had been signed the same year on 28 July by the Minister for Foreign Affairs of the Polish Republic and The Holy See’s Nuncio in Poland after nearly three years’ work dedicated to its contents¹. So solemn a form of the contract between a religious community and a political community was justified by Konferencja Episkopatu Polski (the Episcopal Conference of Poland) by the importance of the Catholic Church in Poland and by regulations of the canonical law that obliged the Nuncio to press for regulating the relations between the state and the Church in the form of a concordat (*Biskupi...* 2003: 2471).

The beginnings of the 1993 Concordat’s genealogy could be identified in the fact that the former Concordat (signed on 10 February 1925) was nullified by Tymczasowy Rząd Jedności Narodowej [Temporary Government of National Unity] which stipulated in its decree of 12 September 1945 that the Concordat lost its validity because the Holy

¹ The new Concordat provoked a grand public debate that lasted for four years between those who favored and those who opposed its ratification. Only after parliamentary elections of 1997, which were victorious for the parties of the right, on 8 January 1998 a law was passed that reconfirmed its ratification. The President of Poland ratified it on 23 February 1998. On 25 March the ratification documents were exchanged. On 15 April 1997 Włodzimierz Cimoszewicz’s cabinet issued a declaration which had been elaborated with the approval of the Holy See. This declaration explained some doubts concerning the Concordat’s interpretation that had been voiced during the debate over its ratification. In accordance with art. 31 p. 2 of the Vienna Convention regarding treaty regulations of 1969, this declaration, authored by the Polish government, constitutes an integral part of the Concordat whose regulations came into force as of 25 April 1998, including Poland’s interpretation thereof. The present footnote draws on Pietrzak (2003: 211).

See had broken its regulations during WW II. Namely, decisions by Pope Pius XII, who nominated Polish and Slovak clergy for posts to administer Polish dioceses, conflicted with regulations included in art. IX, which had it that none part of the Polish Republic would be dependent upon a bishop whose seat is located outside of the borders of the Polish state (Gajda 2004: 41). Vatican recognized the post-war Polish People's Republic's western border only in 1972. The first draft of the convention to regulate reciprocal relations after WW II was provisionally accepted in May 1988 but it was invalidated by the Church in 1989.

The new Concordat was signed by Hanna Suchocka's government on 28 July 1993 despite the fact that her cabinet had already lost the vote of confidence in the Polish Sejm on 29 of May. President Lech Wałęsa did not accept the government's resignation and instead opted for Sejm's dissolution, which is why Suchocka's cabinet functioned until 26 October of that year. The Concordat was signed shortly before new parliamentary elections. It is worth adding that the governing majority that emerged after these elections opposed the unconditional ratification of the Concordat. The Concordat's opponents depicted the document in terms of an agreement between Poland and Vatican that had granted the Church too many privileges which could not be reconciled with the model of a secular state. The privileges applied mainly to regulations concerning weddings, funerals, religious teaching, church services in closed establishments and the Church's finance (Graczyk 1999: 162). During the press conference that was organized after the Concordat had been signed, the Vatican Nuncio in Poland, archbishop Józef Kowalczyk, declared that the Concordat actually defended the Polish *raison d'état*, strengthened Poland's identity, its sovereignty and independence (Trzeciak 1998: 85).

When the Concordat's text was being elaborated, no discussion over its contents was possible for the negotiations had been made secret². „Initially there was some pressure – as Roman Graczyk writes – to renegotiate the Concordat but faced with the Vatican's definite refusal only a bilateral declaration was to be negotiated that contained some interpretation of the document's contents. Ultimately – following

² Negotiations concerning concordats usually take place following the procedure defined in the Geneva Convention on the treaty law adopted on 23 May 1969. As in the case of any other international agreement, they are conducted with the participation of experts and are not disclosed to their non-parties until the moment the negotiated document is officially signed. This footnote draws on Krukowski 2008: 93.

equally determinate Vatican's refusal – it was decided that the declaration would be one-sided, in other words it would contain an interpretation of the Concordat's regulations as seen by Polish government, even though the shape of this interpretation was to be elaborated „with the approval from” the Holy See (Graczyk 1999: 162–163).

The Polish Episcopate stated again that the Concordat was an agreement between two subjects of international law, but not an agreement concluded between two states. The Concordat was concluded by the Polish Republic not with the state of Vatican but with the Holy See which represented the Catholic Church. According to the basic principle of the Concordat, the state and the Church are independent from one another and autonomous and they undertake an obligation to fully respect this principle (*Biskupi...* 2003: 2473).

The Church attached great hopes to the Concordat, assuming that it was an opportunity to arrange the relations between the Church and the state in a proper and permanent manner. It claimed that the Concordat was an expression of some mature political compromise on both sides and that its contents were in many respects modern and exemplary (*Stanowisko...* 1994: 2477). The Church was of the opinion that the Concordat was beneficial for Poland, which found itself in a new political situation. Its ratification would thus contribute to increased credibility of its democratic and economic processes in the international arena (*Oświadczenie...* 1994: 2474). Therefore, the Sejm's voting over the Concordat's ratification should be exempt from the principle of parliamentary discipline, which was why the bishops published an appeal addressed to all MPs irrespective of their political party membership, calling upon them to take their decisions true to their conscience (*Oświadczenie...* 1994: 2474).

During the debate about the Concordat's ratification, one could for the first time notice in the documents produced by the Polish Episcopate a clear approval of the principle of independence and autonomy of the state and of the Church. The Episcopate stated in them that it interpreted the principles of autonomy and independence in such a way that the state and the Church should be governed according to their own respective laws, that is as a situation in which the state authorities should not interfere with the Church's internal matters and in which the Church authorities should not interfere with the state's internal matters. This position was in substance very close to the principle of separation between the Church and the state in democratic countries. However, it is to be noticed that in the Polish Episcopate's pastoral letters there

appeared diverse, sometimes mutually exclusive, interpretations of the Vaticanum II model of relations between the state and the Church. To a large degree, this was an effect of the existing balance of political power and resulted from the fact that within the Episcopate the model of separation had been negated (Borecki 2008: 111).

The Concordat was signed and ratified with an infringement upon the existing law:

- Hanna Suchocka's cabinet signed the Concordat having lost the mandate from the parliament to conclude such an agreement,

- in light of the Constitution in force at that time, the legal and material situation of the Catholic Church should have been regulated by means of parliamentary laws, which excluded the cabinet's competences to conclude international agreements regulating the matters,

- an approval to ratify the Concordat was based on the simple majority of votes, whereas the Constitution required that it should have been done by the qualified majority of 2/3 of the votes, since the Concordat transfers some competences of the state organs in some matters over to an international organization,

- the priest instituting a marriage on the basis of the Concordat regulations applies canonical law which constitutes a foreign law since the Polish state had not participated in its creation. In this way the Concordat infringes upon the constitutional sovereignty of the Polish state's legal order and breaks the functional separation of the state's legal order from the Church's legal order,

- the formula of the qualified majority during the Concordat's ratification was justified by the contents of its art. 22, basing upon which a joint committee of representatives of the Polish Republic and the Holy See was to be established to be entrusted with the task of supervising changes in the Polish financial laws that concerned the Church's institutions and assets. By this the Polish state's sovereignty in financial matters had been restricted (Pietrzak 2003: 211–212).

As claimed by Paweł Borecki, the determined efforts by the Polish Church to conclude the Concordat were a manifestation of not only its loyalty to the Holy See, but also of ambitions typical of this particular Church. This claim is evidenced by the fact that on 4 May 1988 a representative of the Polish Episcopate had provisionally signed a draft convention between PRL and the Holy See, which had not been approved of by the Pope – later the Vatican diplomacy tried to reduce its rank. It is also evidenced by the proceedings of the negotiations concerning the Concordat in which no representative of the Holy See par-

ticipated apart from the Nuncio who was also a Pole, that is the archbishop Józef Kowalczyk (Borecki 2008: 111). It is also to some extent confirmed by the official position of the Polish Episcopate that had stated that even if it was not a party to the Concordat, it was vitally interested in its ratification (*Stanowisko...* 1994: 2478).

The Episcopate stated with regret that the Concordat became an object of ideological struggles that overshadowed substantial discussions and created additional cleavages in the society in which there was an urgent need to work for conciliatory solutions. The rise of the antagonisms was not caused by objective difficulties but by positions taken by some of the political forces that denied the Church's right to presence in the society and in the state. According to the Episcopate, this situation evidenced difficulties in overcoming the ideology that had been previously imposed on the Catholic majority by the forceful dominance of the Communist mono-party. Also, it was bred by accusations that the Concordat was not compliant with the constitutional principles and laws existing in Poland, which was simply not true³. Apart from that, doubts related to the Concordat could be easily removed by means of the state's and the Church's legislation, including the preservation of equal rights to which all denominations were entitled (*Oświadczenie...* 1994: 2475). Following the parliamentary elections won by Sojusz Lewicy Demokratycznej [Democratic Left Alliance], much criticism was voiced regarding both the fact that the Concordat had been concluded and its specific contents. Those critical voices had – with minor exceptions – a political nature. In Bishop Tadeusz Pieronek's opinion, in this manner politics as practiced by the party of the left had been put above Polish *raison d'état*, which was why the Concordat's ratification was blocked for more than two years by means of curious parliamentary ruses (Pieronek 1998: 187).

On 1 July 1994, Sejm voted for the motion that deferred ratification of the Concordat and made it dependent upon checking of its compliance with the new Polish constitution, which provoked an immediate reaction on part of the Episcopate. The bishops claimed that their position in this case had been motivated by their sense of responsibility for the Church and the Polish nation as well as by their awareness of serious consequences that might follow from the posi-

³ The Concordat's proponents maintained that the anti-Concordat propaganda tried to persuade the society that it was an agreement that conflicted with the Polish state's laws, and because of this it was harmful for the Polish state. See Dudziak 1995: 41.

tion taken by Sejm. Namely, the parliament's decision could be negatively impacting on the regulation of the relations between the state and the Church and on Poland's position in the international arena (*Stanowisko...* 1994: 2477).

The Episcopate reconfirmed its earlier opinion as expressed on 18 June 1994 in its communication following the 270th Conference of the Polish Episcopate, stating that the Concordat had been turned into an object of political games and that the negative attitude shown by a significant part of the MPs was a proof of their hostility towards the Church as an autonomous institution. This was to be seen both in declarations made by many parliamentarians and in the results of the vote over the ratification bill. „We regret that a determined will was lacking in the Polish Sejm – we read in a position paper by Konferencja Episkopatu Polski – to ratify the Concordat. The existing will sufficed only to effectively block further ratification procedures. Lacking grounds for the many of the arguments raised against the Concordat during the Sejm discussions strengthens our conviction that it was not objective reasons, and not the Motherland's well-being coupled with respect for the Church's and the state's sovereignty, but primarily an ideological prejudice that had decided about the results of the voting in the parliament. Many deputies had ignored the substantial arguments given by the representatives of the parties to the agreement and of those adduced by other deputies. We believe it is superfluous to restate our opinion about the majority of the objections repeated at Sejm against the Concordat” (*Stanowisko...* 1994: 2478).

The Episcopate was of the opinion that the Polish state, which adopted the principles of freedom of conscience and religious denomination, had to abide by the rights it had offered to the faithful and should not have ignored the fact that its society was overwhelmingly Catholic. Disregard for that fact was inter alia visible in raising questions about the state's obligation to provide for religious education at school in the situation when the majority of parents demanded it. Not taking into account their convictions would practically mean breaking the Catholics' rights, which resembled the communist times. Although the Catholics constituted an overwhelming majority, they had been treated as a shameful and unimportant minority. This situation resembled Poland's postwar history, when the minority having at its disposal adequate means had tried to impose its will on the majority with the aim of forcing the society into atheism. Today similarly, the sphere of religious life had become an object of many attacks, which was why the

Church demanded that Christian values should be respected in the mass media and in public life. This meant that the rights that the State had guaranteed for the minorities should be granted to the majority as well (*O wartościach...* 1993: 2466).

The bishops were very critical of the climate dominant in public life in Poland. They stated that the young Polish democracy was characterized by a wide-spread disregard for fundamental values and that it broke the principles of Christian morality. They warned the faithful that the Catholic morality could not be reconciled with any form of corruption. The state was being transformed into an oligarchic playground for interest groups, overt and covert, formal and informal, which resulted in undermined legitimacy of the authorities and was harmful for the citizens. Such practices were to be get rid of as soon as possible in order to make Poland the state of law (*Komunikat...* 2003: 57).

Summary

The Polish Episcopate erroneously evaluated the social-political reality during the first years of the country's social transformation. It had assumed that the Polish society was homogenous in terms of views and banked on a tight relation between nationality and religion. The Church was convinced that after 1989 it had still preserved its mandate of the citizens' political deputy. This belief resulted from an instrumental understanding of democracy as a regime based upon the formula of government by the Catholic majority (Borecki 2008: 103).

The Episcopate pointed out to many worrying phenomena in the Polish democracy at the same time expressing its satisfaction with political freedom enjoyed by the sovereign state and the freedom of the Church in Poland. The Church, following the Concordat's ratification by the Polish parliament, could carry out its mission for the benefit of properly understood common good, while respecting the principle of full autonomy and independence of the state and of the Church (*Słowo pasterskie...* 2001: 44). It stressed the great importance of the Concordat which was interpreted by the Church-related milieus in terms of an international agreement that stabilized reciprocal relations between the state and the Church, making them also independent of the changeable historical conjectures, primarily those political in nature. This is why it could be seen as a significant step in the struggle for normalization of the state-Church relations. The Concordat only, being an international

agreement that stands above ordinary laws, was able to guarantee the stability of the legal regulations in mutual relations (Pieronek 1998: 175–177). The Concordat contributed to the stabilization in the relations between the state and the Church and, indirectly, also those between the state and the remaining religious organizations (Krukowski 2010: 159).

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