

NATION – DELEGATION – CONSTITUTION: RECONSIDERING ROLE OF RELIGION IN POLISH IDENTITY DEVELOPMENT¹

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Abstract: Democratic politics creates a specific ‘chain of representation’. According to Article 104 of the Polish Constitution, the MPs are the representatives of the entire Nation. The understanding of the “entire Nation” allows to determine whether national identity is open and inclusive, or closed and exclusive. One can distinguish two ideal types of a nation: heterogeneous and homogeneous. The first type is connected to the universalist understanding of “constitutional essentials”, the second to the particularistic one. In the paper, we pointed out the elements of heterogeneity in the text of Polish constitutions as well as the elements of homogeneity in the constitutional practice. Religion becomes an important factor influencing the interpretation and application of the constitution. The heterogeneous concept of the nation and the universalist “constitutional essentials” can be narrowed down in the political practice. The particularistic elements of the constitution and the homogenizing tendencies present in the application of the constitution might lead to polarization. In such a case, there would be a radical reinterpretation of the entire chain of delegation.

Key words: delegation, religion, heterogeneity, homogeneity, nation, “constitutional essentials”

1 INTRODUCTION

In this article we present partial results of the research on the legislative delegation in a representative democracy. We point to the existence of a bond between a nation (demos) and a constitution. At the same time, we assume that depending on the understanding of the concept of a nation, the meaning of constitutional institutions may change. In this paper, we refer to the existence of a dominant religion in an open society (its nature stated in a constitution), the religion being one of the factors of the homogenization of a nation. Due to the institutionalization of religion, a church emerges as a powerful political figure. In consequence, religion (through institutional church) is able to change the national identity and further affect the reinterpretation of constitutional provisions.

Thus, in the first section the meaning of a nation and democratic delegation is described (2). Then the two ideal concepts of the nation are presented (3) and put in the context of constitutional essentials (4) as well as the struggle of the two values in Polish political thought: religion and democracy (5). The theoretical explanation is illustrated by a variety of examples rooted in the periods of the Second (6) and Third Republic of Poland (7). Finally, we conclude the findings briefly in section 8.

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2 NATION AND DEMOCRATIC DELEGATION²

In the most general and almost intuitive sense, democracy means the rule of the people who are defined as “all the citizens” or as “a nation”. In this very system, using the words of J. J. Rousseau, “the legislative power belongs to the people and can belong only to them”.³ Similarly, I. Kant states that “The Legislative Power, viewed in its rational Principle, can only belong to the united Will of the People”.⁴ In this approach, democracy is identical with the principle of self-determination of the people, i.e. being subject only to such a law that the people gave themselves. However, this democratic principle is not a description of a real political situation, but just an idea that in a highly abstract form is to express the democratic mechanism of legitimacy of the law-making process.⁵ This mechanism consists not so much in the personal participation of the people in the legislation process, but in the form of delegating the legislative competence to their representatives. The law established by these representatives is to be seen as an expression of “the will of the people”. K. Strøm, W. C. Müller and T. Bergman describe delegation within democratic politics as a process of delegating where the entity with the authority to make political decisions (people – the sovereign authority) conditionally points to the entities that make decisions on their behalf (representatives).⁶ In such a model all levels of taking political decisions ought to be oriented to the preferences of citizens. The election of representatives in general elections that fulfil specific democratic criteria may be viewed as a specific embodiment of such a delegation as well as a form of holding them responsible.

Democratic politics within the system of representation creates a specific ‘chain of representation’: “1. Delegation from voters to their elected representatives. 2. Delegation from legislators to the executive branch, specifically to the head of government (the Prime Minister). 3. Delegation from the head of government (Prime Minister) to the heads of different executive departments. 4. Delegation from the heads of different executive departments to civil servants”.⁷ In constitutional democracy, the aforementioned “chain of law-making delegations” is not an authorization of a purely formal nature since the act of delegation is not limited to the composition of a legislative body. First of all, as far as political views are concerned, representatives should have the same preferences as their electorate, which is important in the context of regaining a mandate. Secondly, the delegation procedure itself is legally established at the constitutional level, at least as to the rules according to which it should be carried out. Thirdly, the result of the legislator’s action cannot violate the constitution but, on the contrary, it should let the constitutional norms be implemented and clarified. From the legal point of view, it is important for both the election of representatives and the actions of the “body of representatives” (according to E. J. Sieyès’ words “le corps des délégués”⁸) to be

² This paper develops the ideas presented in: *The nation, delegation and constitutional change in Poland* (under publication).

³ ROUSSEAU, J.-J. *The Social Contract and The First and Second Discourses*. New Haven – London : Yale University Press, 2002, p. 193.

⁴ KANT, I. *The Philosophy of Law. An Exposition of the Fundamental Principles of Jurisprudence as the Science of Right*. Edinburgh : T. & T. CLARK, 1887. AA VI 314, p. 166.

⁵ See PRZEWORSKI, A. *Democracy and the Limits of Self-Government*. New York : Cambridge University Press, 2010, p. 17 – 20.

⁶ STRØM, K. – MÜLLER, W. C. – BERGMAN T. *Parliamentary Democracy: Promise and Problems*. In STRØM, K. – MÜLLER, W. C. – BERGMAN T. (ed.): *Delegation and Accountability in Parliamentary Democracies*. Oxford : Oxford University Press, 2006, p. 3 – 32.

⁷ *Ibid.*, 20.

⁸ SIEYÈS, E. J. *What Is the Third Estate?* In SIEYÈS E. J. *Political Writings. Including the Debate between Sieyès and Tom Paine in 1791*. Indianapolis, Cambridge : Hackett Publishing Company, 2003, p. 134.

normatively defined in the constitution, that is in the so-called “higher legislation”. Therefore, this so-called “normal legislation” is dependent, to some extent at least, upon the “higher legislation”.⁹

“The chain of law-making delegations” laid down in the constitution is to implement all the fundamental principles and values for a given society. This democratic character of the chain is connected with the fact that through political institutions and legislative procedures, the ideas of social freedom and equality that comprise both the concept of individual and collective autonomy are implemented.¹⁰ Although they may be interpreted in various ways, in general they constitute a universal element of a democratic state. The introduction of systemic inequalities and limitations of freedoms, for instance limiting the possibility of active participation in democratic procedures or preventing arbitrarily selected groups from independent political activity, which in consequence leads to the situation that a system that is characterized by such limitations can at best be described as not a fully democratic one. These universal ideas are implemented in a specific context of a given constitutional culture.¹¹ One of the fundamental components of this culture is the way in which the collective “We”, meaning the people, is interpreted. Are we then united in having equal rights and freedoms and in striving to implement all the abstract ideas that we share, or do we have the same blood ties, history, culture and religion? In other words, what factors constitute a nation? Should we presume that a nation communicates in many voices, metaphorically speaking, and democratic procedures are to help us to communicate, or does the national bond mean that as a collective being we speak with a single voice? In the first case, the ‘chain of law-making delegations’ will be a form of political coexistence within pluralism based on universal principles, whereas in the second case it will become a form of national unity and identity.

According to Article 104 of the Polish Constitution,¹² the MPs are the representatives of the entire Nation, not only their voters. To determine a common understanding of the “entire Nation” allows one to define whether national identity is open and inclusive, or closed and exclusive. In other words, it helps to decide whether the legislative delegation allows for peaceful coexistence in diversity, or it is just an expression of one will of the nation.

3 TWO IDEAL TYPES OF A NATION IN THE CONTEXT OF RELIGION

As far as the concept of a nation is concerned, two ideal types can be given, a nation which is homogeneous and a heterogeneous one.¹³ This distinction will allow us to determine which type domi-

⁹ See ACKERMAN, B. *We the People. Foundations*. Cambridge, London : The Belknap Press of Harvard University Press, 1995, passim.

¹⁰ For instance, H. Kelsen points to the constitutive meaning of freedom for a democratic system (See KELSEN, H. *The Essence and Value of Democracy*. Lanham, Boulder, New York, Toronto, Plymouth: Rowman & Littlefield Publishers, 2013), whereas R. Dahl writes about the “logic of equality” (See DAHL, R. A. *On Democracy*. New Haven, London : Yale University Press, 1998). Generally speaking, both ideas are important for a democratic identity, whereas preferences for the one or the other may result from either factual circumstances, e.g. the need for redistribution, or ideological factors (e.g. the idea of a state as a night watchman or a welfare state). At the level of constitutional rights and freedoms, a stance that does not give preference for one of these fundamental ideas is also possible, namely, a democratic state should be based on equal freedoms (See RAWLS, J. *Political Liberalism*. New York : Columbia University Press, 1993; GUÉROT, U. *Warum Europa eine Republik werden muss! Eine politische Utopie*. Bonn: Verlag J.H.W. Dietz Nachf. GmbH, 2016, chapter 6).

¹¹ Cf. MÜLLER, J.-W. *Constitutional Patriotism*. Princeton, Oxford : Princeton University Press, 2007, p. 59 – 60.

¹² The Constitution of the Republic of Poland of 2 April 1997 [Dz. U. 1997 Nr 78, poz. 483 (The Journal of Law, Number 78, Item 483)].

¹³ Below we use the very definitions made for our article *The nation, delegation and constitutional change in Poland* (under

nates in the Polish state. At the same time, some tensions and conflicts can be described caused by the use of the aforementioned types. The first ideal type of the nation may be described as a homogeneous nation. National identity in this sense is associated with a certain condition of homogeneity based on specific “characteristics” that allow to distinguish “natives” from “strangers”. From such a perspective the nations perceive “blood, soil, ethnolinguistic peoplehood and religion as necessary or at least central elements of national identity”.¹⁴ The stress here is laid on “homogeneity and on cultural assimilation to the dominant paradigm”.¹⁵ The homogeneous nation appears to be founded on “the prepolitical unity of a community with a shared historical destiny”.¹⁶ This type stresses the ethnic and/or cultural homogeneity of the national identity: “nations are communities of people of the same descent, who are integrated geographically, in the form of settlements or neighbourhoods, and culturally by their common language, customs, and traditions”.¹⁷ The second type may be referred to as a heterogeneous nation. The nationality here is based on a community of political ideals and goals. As opposed to the notion based on homogeneity, the nation is understood as a political community that leaves “the door open a crack, since they allow anyone in who can join in the project of ‘life, liberty, and the pursuit of happiness’- or, in the case of India, of economic equality – that defines the national aspiration”.¹⁸ A nationality is understood as a “membership in terms of shared goals and ideals, thus in a way that does not require homogeneity – in dress, dietary custom, religious belief, or even outward religious observance”.¹⁹ A heterogeneous nation is a nation of citizens. In such a meaning, “the nation is the bearer of sovereignty. [...] The intentional democratic community (*Willensgemeinschaft*) takes the place of the ethnic complex”.²⁰ Politically speaking, a nation becomes a “constitutive feature of the political identity of the citizens of a democratic polity”: “The nation of citizens finds its identity not in ethnic and cultural commonalities but in the practice of citizens who actively exercise their rights to participation and communication”.²¹ The first ideal type is constituent for the concept of the ‘nation state’ (*Nationalstaat*), whereas the other for the ‘state nation’ (*Staatsnation*). In this context, a distinction can be made between the legitimacy of legislation based on the common will of a homogeneous nation and the one based on commonly accepted procedures. In the former, the result of legislation is predetermined by the presumed content of this will, whereas in the latter, the procedures are fixed and their outcome is variable.

One of the criteria for determining whether a given nation is closer to a homogeneous or heterogeneous type is the role that religion plays in the way of how its followers perceive the national identity. Namely, whether it is a factor, or one of the factors, constitutive and necessary, or a factor that is neutral and incidental. As E. J. Hobsbawm points out, the role of religion in constituting national identity is not clear, however, “the link between religion and national consciousness can be very close, as the examples of Poland and Ireland demonstrate. In fact, the relation seems to grow

publication) in which we also present a wider explanation of how to understand the concept of a nation referred to as an ideal type.

¹⁴ NUSSBAUM, M. C. *The New Religious Intolerance. Overcoming the Politics of Fear in an Anxious Age*. Cambridge, London : The Belknap Press of Harvard University Press, 2012, p. 13.

¹⁵ *Ibid.*, 14.

¹⁶ HABERMAS, J. *Between Facts and Norms. Contributions to a Discourse Theory of Law and Democracy*. Cambridge : The MIT Press, 1996, p. 492.

¹⁷ *Ibid.*, p. 495.

¹⁸ NUSSBAUM, M. C. *The New Religious Intolerance*, op. cit., p. 16.

¹⁹ *Ibid.*, p. 18.

²⁰ HABERMAS, J. *Between Facts and Norms*, op. cit., p. 495.

²¹ *Ibid.*, p. 495 – 496.

closer where nationalism becomes a mass force than in its phase as a minority ideology and activists' movement".²² According to M. Nussbaum "European nations tend to conceive of nationhood and national belonging in ethno-religious and cultural-linguistic terms. Thus, new immigrant groups, and religious minorities, have difficulty being seen as full and equal members of the nation. All these nations are the heirs of romanticism, with its ideas of blood, soil, and natural belonging".²³ The Polish understanding of a nation is distinctive due to the experience of the absence of state (1795 – 1918) and the formation of national consciousness in opposition to the partitioners (the foreign powers – Russia, Prussia and Austria). The nation is perceived as something different and more permanent than the state institutions, and ethnic and cultural national identity as something more important than civic affiliation. "In today's Poland – writes G. Zubrzycki – the nation is primarily understood in ethnic terms. It is conceived as a community of history and culture, whereas the state (and "society") proceeds from an associational-political relation. Nationality and citizenship are thus distinct: the first term has a clear ethnic and cultural connotation, referring to one's tie with a historical and cultural community, a community of descent, "Poland," whereas the second strictly reflects the legal-political relationship between the individual and the state".²⁴ Catholicism institutionalized in the Catholic Church is of great importance for the ethno-national identity of Poles.²⁵ This is an element that gives them the homogeneous identity and allows them to distinguish themselves from "Others". Citizenship, on the other hand, is associated with the formal and legal status of an individual, which means that someone with a different ethnical origin can still become a citizen. It may trigger a certain kind of tension between the homogeneous national identity and democratic inclusion of citizenship. Is not therefore this formal-legal civic equality neutralized by the perception of an ethnic nation as a "true sovereign"? Is not the understanding of democratic principles tinged with homogeneous perception of the nation seen as "natural and obvious"? If that were the case, it would be a priori introduced inequality between ethnic Poles and citizens of other ethnic origin, as well as between the homogeneously understood "Polishness" (the Polish identity) of Catholicism and other religions.

4 CONSTITUTIONAL ESSENTIALS – PARTICULARISTIC OR UNIVERSALIST?

The Republic of Poland, as it is laid in the Constitution of 1997, is a "democratic legal state" (Article 2) in which the highest authority belongs to the Nation referred to in the Preamble as "all the citizens of the Republic". At the normative level, it alludes to the heterogeneous type of a nation. This is a "natural" solution when we take all the universalist principles of a democratic system as a reference point. According to J. Rawls a democratic constitution should contain two elements that are understood as

²² HOBBSBAWM, E. J. Nations and nationalism since 1780. Program, myth, reality. Cambridge : Cambridge University Press, 2000, p. 67 – 68. B. Anderson argues that a nation can fulfill a sense-creating role similar to religion, but it does not mean that the nation in the era of secularism "replaces" religion entirely. See ANDERSON, B. Imagined Communities. Reflections on the Origin and Spread of Nationalism. London, New York : Verso, 2006, p. 10 – 12. E. Gellner links the rise of nationalism with secularization. See GELLNER, E. Nations and Nationalism. Oxford : Basil Blackwell, 1983, p. 78.

²³ NUSSBAUM, M. C. The New Religious Intolerance, op. cit., p. 94.

²⁴ ZUBRZYCKI, G. The Crosses of Auschwitz. Nationalism and Religion in Post-Communist Poland. Chicago, London : The University of Chicago Press, 2006, p. 36.

²⁵ Ibid., p. 22 – 23.

“constitutional essentials”: “(a) fundamental principles that specify the general structure of government and the political process: the powers of the legislature, executive and the judiciary; the scope of majority rule; and (b) equal basic rights and liberties of citizenship that legislative majorities are to respect: such as the right to vote and participate in politics, liberty of conscience, freedom of thought and of association, as well as the protections of the rule of law”.²⁶ We emphasize that it is the second element that determines the democratic character of the system since it also determines the political subjectivity of citizens. The first element relates to the structure of state authorities which should implement the rights and freedoms defined in the second element. Basic rights and freedoms should apply to all citizens regardless of their origin, race, religion or political views.

A democratic constitution is based on a kind of universalist morality that attributes equal rights and freedoms to everyone. The concept of a nation associated with the universalist “constitutional essentials” would be open and pluralistic (heterogeneous), which means that anyone who accepts basic democratic principles and ideas can belong to a democratic state²⁷. Regardless of whether one is aware of this fact or not, using the language of universal, equal rights and freedoms adds a moral dimension to the very essence of the democratic constitution. “Most contemporary constitutions – writes R. Dworkin – declare individual rights against the government in a very broad and abstract language (...). The moral reading proposes that we all – judges, lawyers, citizens – interpret and apply these abstract clauses on the understanding that they invoke moral principles about political decency and justice”.²⁸ It may be assumed that the implementation of the principles contained in “constitutional essentials” depends on the extent to which these principles correspond with or influence the moral beliefs of a given society as well as of the legal and political elites that interpret and apply this constitution.

The universalist “constitutional essentials” in democratic states are then somehow applied in specific political, historical, cultural and economic conditions in which they are embedded. Nevertheless, even in democratic countries, political figures argue over the interpretation and best implementation of “constitutional essentials”.²⁹ Their interpretation can be influenced by beliefs which we consider to be “natural and obvious”, that is those that we do not question and often unknowingly accept as “appropriate”. Referring to the theses of M. Nussbaum and G. Zubrzycki we may claim that between the universalist “constitutional essentials” and the real beliefs of the majority or a part of the citizens there may be a conflict in the situation when a nationality is closely bound with the ties of its culture, religion and ethnic origins. In spite of the fact that the universalist “constitutional essentials” are pledged to be applied on the normative and legal level, on the level of real beliefs of both citizens and public office holders, these specific particularistic “constitutional essentials” can

²⁶ RAWLS, J. *Political Liberalism*, op. cit., p. 227.

²⁷ Pluralism in this sense would not be absolute and unconditional. See the concept of “reasonable pluralism”, *ibid.*, Lecture II.3. The concept of democratic pluralism is presented by Ch. Mouffe (in *MOUFFE*, Ch. *The Democratic Paradox*. London, New York : Verso, 2000), however, it is not absolute because democratic institutions should protect people against violence and domination without preventing people from being engaged in democratic disputes and conflicts. A particular emphasis on a conflict and pluralism is essential because, as argued by P. Bourdieu, universalism supported by state institutions also manifests a tendency to unify, depreciate particular identities or regulate the state of belonging to a universal culture, see *BOURDIEU*, P. *Practical Reason. On the Theory of Action*. Stanford: Stanford University Press, 1998, Chapter 4. Democratic, universal “constitutional essentials” would involve to the extent possible both individual and group particular identities without destroying them, and yet transform them enough to let them function within one state.

²⁸ DWORKIN, R. *Freedom’s Law. The Moral Reading of American Constitution*. New York : Oxford University Press, 1997, p. 2.

²⁹ MÜLLER, J.-W. *Constitutional Patriotism*, op. cit., p. 54 – 55.

still prevail over. In such a case, it becomes obvious that the democratic majority should respect the will of the nation constituted by ethnicity, culture and religion. The homogeneous type of the nation adopts this very type of “constitutional essentials” as the supreme power of a democratic state.

Understandably, it cannot be stated a priori that such a nation will be intolerant to minorities, however, the very adoption of such a concept induces a deep polarization between “those who belong to the Nation” and “those who are only the citizens”. It introduces the category of the “internal Other”, the category which is to exclude people from the rightful participation in democracy, for instance people who are of non-dominant religion or of a foreign origin. This exclusion can be applied to a larger group of people since “Jews have been the traditional »internal Other«, but »bad Catholics«, »cosmopolitan secularists«, and Freemasons (the last two categories, however, working as code words for »Jews«) also have been categories of symbolic exclusion from the nation in ethno-Catholic milieus. (...) Any opponent of the ethnic vision of the nation, therefore, is accused, through a series of associations and double entendres, of being a »Jew«.³⁰ The heterogeneous concept of the nation adopted in the Polish Constitution 1997 may be distorted by the fact that despite the open and civic approach, the nation will be perceived in terms of a homogeneous unity. Religion can be one of the components of such a unity. The formally open kind of a society would have a real inclination to exclude or discriminate against “internal Others”, and a state that is declared to be ideologically neutral could show the features of a religious state.

The tension between the universalist and particularistic “constitutional essentials” can be reflected in the state practices (i.e. political rivalry between parties, legislation and constitutional judiciary). It indicates on which axiological foundation our constitutional identity is based, the foundation of freedom and equality or religion and national culture. Another question is that maybe we are dealing with a conflict, the resolution of which in favour of one of the foundations is not so obvious. Therefore, the following query might be raised in relation to the Polish national identity: Is the nature of the real “constitutional essentials” as a part of the political system of Poland, universalist or particularistic? This question can be simplified to the expression of a concern of whether we are connected by our ethnicity and religion or by the universal democratic principles?

5 DMOWSKI OR KELLES-KRAUZ? RELIGION OR DEMOCRACY?

We may get a partial answer to this question by examining the position of religion and the religion dominant in a society in the constitutions of the Second (1918 – 1939) and in the constitutions of the Third Republic of Poland (1989 –) and the related state practice. However, before we bring these issues up for a discussion, we should point out that the instances of both the homogeneous and heterogeneous concepts of the nation may be found in the Polish political thought. The concepts of R. Dmowski and K. Kelles-Krauz may be used as examples here.³¹ Dmowski emphasizes the ethnic and cultural concept of a nation which forms itself into a state for the need of the achievement

³⁰ ZUBRZYCKI, G. *The Crosses of Auschwitz*, op. cit., p. 90.

³¹ R. Dmowski (1864 – 1939) was an influential Polish politician and a nationalist thinker. K. Kelles-Krauz (1892 – 1905) was an outstanding (albeit less-remembered today) thinker and a socialist activist. For an English-speaking reader, the following works may be of interest: WALICKI, A. *The Troubling Legacy of Roman Dmowski*. In *East European Politics and Societies*. Vol. 14, No.1 (2000), pp. 12 – 46 oraz SNYDER, T. *Nationalism, Marxism, and Modern Central Europe. A Biography of Kazimierz Kelles-Krauz (1872 – 1905)*. Cambridge : Harvard University Press, 1997.

of national goals. He associates this unique identity of the Polish nation with Catholicism. What makes Poles a modern European nation is embedded “both in our ancient ethnic background and in the fact that the Polish state has existed for centuries, as well as in our Catholicism which has lasted for ten centuries. Catholicism is not an addition to the Polish identity, only its colouring in a certain way, but is inherent in its essence, and to a large extent forms its essential part. The attempt to separate Catholicism from our Polish identity, to separate the nation from religion and from the Church, means destroying the very essence of the nation”.³² Kelles-Krauz emphasizes the fact that the cultural, historical and linguistic identity is crucial to form solidarity bonds within a democratic state. A nation is “a strong spiritual union of people speaking one language regardless of a given or previous nationality, regardless of history (...), regardless of religion, regardless of the estates and classes”.³³ The nation established by the language is not a homogeneous being since it is divided into various groups and social classes, and there are also political and economic conflicts arising. Within the nation, democratic competition and deliberation are possible.³⁴ The linguistic criterion does not exclude “untrue or not Polish enough Poles” from the national community, nor does it refuse minority citizens the civic rights.³⁵

For the homogeneous concept, one of the basic criteria to identify this national identity is religion, and therefore particularistic “constitutional essentials” associated with it will emphasize religion as an important element of the cultural identity. From the point of view of the universalist “constitutional essentials”, the religion practiced by the citizens of the state is irrelevant for determining the national affiliation based on the idea of democracy. The language criterion indicated by Kelles-Krauz may be interpreted as a requirement for a common communication tool that can be used to deal with disputes within democratic institutions and procedures.

6 THE SECOND POLISH REPUBLIC: IN SEARCH OF HOMOGENEITY WITHIN HETEROGENEOUS ENVIRONMENT

The key question for our analysis is how the lawmakers of Poland reborn in 1918, managed to govern the relations between the state and the church (and other religious associations), and how this relationship influenced the political activity of that time. The Constitution of March adopted in 1921,³⁶ was one of the many democratic basic laws that arose at that time in the countries that gained in-

³² DMOWSKI, R. Kościół, naród, państwo (The Church, Nation, State). In DMOWSKI, R. Wybór pism (Selection of Writings), Vol. 1. Poznań : Zysk i S-ka Wydawnictwo, 2014, p. 765. In his book *The Crosses of Auschwitz* (chapter 2) G. Zburzycki proves that the above-mentioned way of thinking is still valid for the part of the right-wing politics and representatives of the Catholic Church.

³³ KELLES-KRAUZ, K. W kwestii narodowości żydowskiej (On the issue of Jewish Nationality). In KELLES-KRAUZ, K. *Naród i historia. Wybór pism* (Nation and History. Selection of Writings). Warszawa : Państwowy Instytut Wydawniczy, 1989, p. 316.

³⁴ KELLES-KRAUZ, K. Niepodległość polski a materialistyczne pojmowanie dziejów (Polish Independence and Materialistic Understanding of History). In KELLES-KRAUZ, K. *Naród i historia*, op. cit., p. 348 – 353.

³⁵ See KELLES-KRAUZ, K. W kwestii narodowości żydowskiej (On the issue of Jewish Nationality). In KELLES-KRAUZ, K. *Naród i historia*, op. cit., p. 330. As B. Anderson points out “language is not an instrument of exclusion: in principle, anyone can learn any language. On the contrary, it is fundamentally inclusive, limited only by the fatality of Babel: no one lives long enough to learn all languages”, ANDERSON, B. *Imagined Communities*, op. cit., p. 134.

³⁶ Constitution of the Republic of Poland of 17 March 1921 [Dz.U.R.P. Nr 44, poz. 267 (Journal of Laws of the Republic of Poland No. 44, It. 267)].

dependence after the collapse of the great powers of Central Europe. It drew on the French model and, unfortunately, soon consolidated in the Polish law also the flaws of the Third French Republic's system, such as the instability of cabinets based on fragile multi-party alliances. Certainly, this constitution was open, liberal in tone and displayed a broad catalogue of civic rights (an extensive chapter V). According to the preamble, which stressed the continuity of the constitutional tradition, the aim of the new order was to consolidate "independence, power, security and social order" on the basis of the rule of law and freedom, to ensure "the development of all moral and material forces for the benefit of the entire reviving humanity", and to ensure equality "for all citizens". The regulation of the March Constitution therefore seems to express the concept of a heterogeneous nation. However, the constitutional provisions regarding the attitude of the state towards religious associations, the Catholic Church in particular, are not unequivocal.

Although the preamble opened with an invocation to God, and Article 114 referred to the bizarre formula of the "leading position" of Catholicism among "faiths of equal rights".³⁷ The subsequent articles (115 – 116) guaranteed to religious associations "whose devices, science and system are not contrary to public order or public morality" (Article 116), separate statutes adopted by parliament after consultation with legal representatives of churches. Associations that were not recognized (without a separate act) operated on the basis of general provisions (Articles 111 – 113) that guaranteed freedom of conscience and religion, the right to freely profess religion in public and private, the freedom from forcing to participate in religious activities and rites, the right to organize public services, the right to own property, run foundations, scientific and charity institutions. For minority churches, Article 95 and 109 could also be of importance since it introduced a prohibition of discrimination against minorities living in the territory of the Republic.³⁸ Pursuant to Article 120, religious education was compulsory until the age of 18, with "the management and supervision" entrusted to the proper religious associations, subject to the supervision of the state school authorities.

In its formal aspects, the text of the constitution contains an unexpected attempt to combine a universalist and particularistic approach to one of the key "constitutional essentials". Undoubtedly, in the extensive chapter on civil rights, the legislator puts a special emphasis to highlight the presence of the principle of equality. This chapter has a universal character on the whole. Particularism, however, is revealed in one of the articles in which the Roman Catholic Church was awarded a "dominant position" since it was the "religion of the majority of the nation". That specific formulation is also an expression of appreciation of the attitude of many Catholic clergypersons during the partitions when they undertook various forms of actions for the preservation of Polish identity and national culture. It is certain, however, that such a solution should be interpreted as a form of a favour to a particular religion.

³⁷ The "leading role" in practice was reflected in the precedence, i.e. the formal priority of the Catholic clergy during state celebrations. Entrusting the function of the Dean of the Diplomatic Corps to the Nuncio Apostolic in Warsaw may be seen as another expression of the implementation of this constitutional assumption. LESZCZYŃSKI, P. A. *Centralna administracja wyznaniowa II RP. Ministerstwo Wyznań Religijnych i Oświecenia Publicznego* (Central religious administration of the Second Polish Republic. Ministry of Religious Denominations and Public Education). Warszawa : Wydawnictwo Naukowe Semper, 2006, p. 67.

³⁸ At that time, Poland was a multinational state (according to the census of September 1921, Poles made up about 69% of the population, Ukrainians ["Ruthenians"] 14%, Jews 8 – 10%, Belarusians about 4%) and multi-denominational (Catholics made up 64%, Greek Catholics 11 %, the followers of the Orthodox Church 10%, the followers of Judaism 10%, Protestants less than 3%). *Pierwszy powszechny spis Rzeczypospolitej Polskiej z dnia 30 września 1921. Tablice państwowe* (The first general census of the Republic of Poland of September 30, 1921. State tables) *Statystyka Polski* wydawana przez Główny Urząd Statystyczny, 1927.

It is also impossible to advance the thesis on the separation of the state from the church in the interwar period, and as the analysis of constitutional regulation proves, it was not clearly expressed by the legislators themselves. The main political parties had very divergent views on the church-state relationship, different even within certain political groups. At the same time, the mutual relations of the church and state institutions were not harmonious and from time to time deep tensions were generated. Nevertheless, the essence of these specific relations between the state and the Catholic Church may be presented in this case only by giving some selected examples. On the other hand, these examples will show the influence of the dominant religion (of religious institutions and clergy) on legislation. In the longer term, this influence translated into the consolidation of the nation understood as a homogenous one.

First of all, it should be noted that the details of the relations between the Catholic Church and the state were regulated in the Concordat agreed between Poland and the Holy See in 1925,³⁹ which warranted “free exercise of spiritual authority and jurisdiction”, “free administration” and property management for the Catholic Church (Article I). Pursuant to Article V of the Concordat, the clergy was to enjoy “special legal protection” in the exercise of their duties. It is worth mentioning that in the period of the Second Republic of Poland a significant group of priests became members of the parliament. In the first Legislative Sejm, elected in 1919, there were already 23 priests.⁴⁰ In the first parliamentary term (since 1922) there were clergymen of various denominations, making up even 10% of the permanent delegation of the Senate.⁴¹

The issue of the unification of the marriage law in the interwar period may be given as a clear example of the influence of the religious circles on some specific decisions of the state authorities. Due to different legal status in different territories of the Second Republic of Poland, which was the legacy from the days of the partitions (1773/1795 – 1918), in 1919 the authorities decided to establish the Codification Committee. The committee was entrusted with the task of ordering and unifying the law in Poland.⁴² It was a violation of the principle of equality since different legal systems were in force in different territories of the country, i.e. post-Prussian, post-Russian and post-Austrian systems. It was particularly vexing for citizens as far as the marriage law was concerned because those three systems had different requirements and forms of contracting marriage, handling divorces (marriage annulment proceedings) and jurisdiction in marriage cases.⁴³

³⁹ The Concordat between the Holy See and the Republic of Poland, signed in Rome on 10 February 1925 (ratified in accordance with the Act of 23 April 1925), [Dz.U.R.P. Nr 72, poz. 501 (The Journal of Law of 1925, Number 72, Item 501)].

⁴⁰ In the right-wing club of the National Democracy, in the parliament as the ZLN (Związek Ludowo-Narodowy; Popular National Union), they were the most numerous professional group. AJNENKIEL, A. *Historia Sejmu Polskiego (The History of the Polish Sejm)*, Vol. II, Part II: *Druga Rzeczpospolita (The Second Republic of Poland)*. Warszawa: Państwowe Wydawnictwa Naukowe, 1989, p. 28 – 30.

⁴¹ *Ibid.*, p. 89.

⁴² The Act of 3 June 1919 on the Codification Commission (The Journal of Law of 1919, Number 44, Item 315). Cf also: GRODZISKI, S. *Komisja Kodyfikacyjna Rzeczypospolitej Polskiej (The Codification Committee of the Republic of Poland)*. In *Czasopismo Prawno-Historyczne*. Vol. XXXIII, No. 1 (1981), p. 47 – 81; MOHYLUK, M. *Porządkowanie prawa w II Rzeczypospolitej: Komisja Kodyfikacyjna i Rada Prawnicza (The Ordering the Law in the Second Republic of Poland: The Codification Committee and the Juridical Council)*. In *Czasopismo Prawno-Historyczne*. Vol. 51, No. 1 – 2 (1999), p. 285 – 300.

⁴³ In the former Prussian territories, there was a secular system with a civil form of contracting marriage and with the admissibility of divorce. Only denominational systems with a minimal role of state judicature were in force in the Russian partition. The system in the Austrian territories was of the so-called mixed character, i.e. it was based on religious marriages for religions recognized by the state and civil marriages for others, and at the same time the system forbade Catholics to divorce and entrusted the custody of the marriage to state courts. Thus, all the rights and obligations in the field of marital law differed significantly depending on where a citizen lived. KRASOWSKI, K. *Próby unifikacji osobo-*

In 1924, on request of the Council of Ministers, the Codification Committee began work on marriage law. In 1931 a draft⁴⁴ of a compromise character was published. The way of contracting marriage was to depend on a bride and groom who could choose between marrying in front of an official or having a religious wedding. Jurisdiction over marriage matters was to be exercised only by common courts. However, the draft was strongly criticised by the religious circles. In his urgent ordinance the Primate Cardinal August Hlond commented on the threat of Bolshevization and legal sanctioning of indecency.⁴⁵ There were also numerous petitions from religious associations expressing strong criticism of the project. Finally, the draft was not even submitted to the parliament, nor was it thought to be issued as a President's decree, (as it had been the case with other laws proposed by the Codification Committee). The draft did not get any support from the government. What is more, the lack of unification in the field of civil registry acts made the Church the only authority to order these files, which in turn preserved the *status quo*, and therefore the problems that had been identified since the partitions were not tackled. Reforms failed to be carried out before the outbreak of the Second World War. It was obviously the case when the authorities were influenced by the criticism of the religious circles, giving up the unification and improvement of the existing legislation.

However, not always disputes between the Catholic Church and the state were settled in favour of the Church. The ideas of the so-called "Sanacja" ("Sanation") political movement, which took power in 1926 as a result of the coup d'état by its leader Józef Piłsudski, were based on the key role of a strong state that is at the same time ethnically and religiously inclusive. In the light of this policy, it was the state that was to supervise nominating for the offices in the Church and shape only the policy of education of children and youth.⁴⁶ In particular, loyalty to the reborn motherland was expected.

Also, the provisions of the April Constitution,⁴⁷ finally adopted in 1935, did not meet the far-reaching demands of the authorities of the Catholic Church which called for the removal of a fragment of the quoted formula: "among all the equally treated religions". The new constitutional act emphasized the key role of the state, indicating that social life is shaped within the state "framework and on the basis thereof" (Article 4(1) of the Act). "The rights of the citizen to influence public affairs" could not be limited because of their origin, religion, gender or nationality (Article

wego prawa małżeńskiego w II Rzeczypospolitej (Attempts to unify personal marriage law in the Second Republic of Poland). In *Kwartalnik Prawa Prywatnego*. No 3, Year III (1994), p. 467 – 487.

⁴⁴ Projekt prawa małżeńskiego uchwalony przez Komisję Kodyfikacyjną w dniu 28 maja 1929 (The Draft marriage law adopted by the Codification Committee on 28 May 1929), Komisja Kodyfikacyjna, Podsekcja I Prawa Cywilnego, Vol. I, Nr I, Warszawa 1931, together with: Projekt ustawy o aktach stanu cywilnego uchwalony przez Komisję Kodyfikacyjną w dniu 9 marca 1931 (The Draft Act on Civil Status Records adopted by the Codification Commission on 9 March 1931), Komisja Kodyfikacyjna, Podsekcja I Prawa Cywilnego, Vol. I, Nr II, Warszawa 1931. Cf. also: *Zasady projektu prawa małżeńskiego uchwalonego przez Komisję Kodyfikacyjną w dniu 28 maja 1929*. Opracował główny referent projektu, Prof. Karol Lutostański (The Rules for the draft of marriage law adopted by the Codification Committee on 28 May 1929. Developed by the chief of the project, Prof. Karol Lutostański.). Komisja Kodyfikacyjna, Podsekcja I Prawa Cywilnego, Vol. I, Nr 3, Warszawa 1931.

⁴⁵ Zarządzenie J. Em. Ks. Kardynała w powyższej sprawie, z 13 listopada 1931 r. (The Ordinance of His Eminence Cardinal in the aforementioned case, of 13 November 1931) (No. 176). *Miesięcznik Kościelny Archidiecezji Gnieźnieńskiej i Poznańskiej*, Year 46, No. 11, Poznań, November 1931, 208 – 209. The criticism of the Roman Catholic Church regarding the project was analyzed by, among others, KRASOWSKI, K. *Próby unifikacji osobowego prawa małżeńskiego w II Rzeczypospolitej (Attempts to unify personal marriage law in the Second Republic of Poland)*, op.cit. 492 – 502, or recently by SZCZEPANIAK, D. *Stanowisko Kościoła Katolickiego w Polsce wobec projektu osobowego prawa małżeńskiego Karola Lutostańskiego (The Attitude of the Catholic Church in Poland towards Karl Lutostański's draft on personal marriage law)*. In *Kortowski Przegląd Prawniczy*. No 2 (2015), p. 96 – 104.

⁴⁶ LESZCZYŃSKI, P. A. *Centralna administracja wyznaniowa II RP*, op.cit., p. 28 – 29.

⁴⁷ Ustawa konstytucyjna z 23 kwietnia 1935 (The Constitutional Act of 23 April 1935) [Dz.U.R.P. Nr 30 Pos. 227 (The Journal of Law of 1935 Number 30, Item 227)].

7). The president, the key element of the new system, made a sacred oath “before God and history”. With regard to religious associations, the following Articles of the March Constitution remained applicable: Article 111 (on the freedom of conscience and religion), Article 112 (freedom from forcing to participate in religious activities), Article 113 (on administrative independence of recognized religious associations), Article 114, 115, 116 and 120. It is undoubtedly the constitution of the authoritarian system, however, it is undeniable that the constitution was of an inclusive and universal character since the legislator deliberately did not use the term “the Nation” but the universal term “citizens”. According to Article 1, which opens the so-called decalogue expressing 10 key socio-political principles, the Polish state was to be “the common good of all citizens”.

After Piłsudski’s death in 1935, the attitude of the ruling camp towards the Church changed slightly. The successors of Marshal Piłsudski had a much closer relationship with the Church, which can be explained by the search for a new unifying idea and legitimacy of this camp.⁴⁸ This rapprochement was temporarily endangered due to a controversy connected with Józef Piłsudski’s place of burial in the seat of Polish kings on the Wawel Cathedra in Cracow. In June 1937, Archbishop Adam Sapieha decided to transfer the coffin of the Marshal from the inside crypt of Saint Leonardo to the crypt under the Tower of Silver Bells with outside entrance. A large crowd worshipping the Marshal at his coffin hindered the celebration of the holy mass in the cathedral. Delegations from outside Cracow also expected that the crypt, to which the only entrance led from the interior of the cathedral, would be available from morning to evening. Archbishop Sapieha, complaining about the progressive dampening of the crypt and the need for its renovation, decided to move the coffin to the outdoor crypt under the Tower of Silver Bells. The transfer of the coffin took place despite the negative opinion of the Commemoration Committee of Marshal Józef Piłsudski, the apostolic nuncio Filippo Cortesi and even the President Ignacy Mościcki. On 23 June 1937, the Council of Ministers was convened immediately, and the bishop’s decision was considered an insult to the Republic, disregarding the President and insulting the head of government, as a result of which the latter resigned, along with his entire cabinet. The Sanacja MPs demanded to take over the management of the cathedral. Mass protests were organized during which bishop Sapieha was criticized, and people were called for breaching the concordat and for the full separation of the Church and State. As stated by Tadeusz Schaetzel, Deputy Speaker of the Sejm, at the extraordinary session of the Sejm, “Poland has shaken due to the transfer of this coffin”.⁴⁹

In conclusion, it should be pointed out that the provision of Article 114 of the March Constitution stood out from the universal regulations in the field of rights and freedoms, giving *expressis veris* a priority to the largest religious association in Poland, i.e. the Catholic Church. At the same time, however, the attitude of the state towards the Church was not unequivocal and there were a lot of tensions. The Sanacja, being in power after 1926, was in favour of creating a strong state with a recognized authority. The authority was to be expressed in greater control over religious associations and based on decision-making exclusivity in the field of the educational policy. As its own success, the Church could perceive the state’s refraining from work on the draft on marriage law. In other cases, however, such as the formula of “the equally treated religions” left unchanged in the text of the following constitution, the political ambitions of the Catholic Church were not fulfilled and its demands were not met. The state, expecting greater loyalty, was able to enforce specific decisions concerning staffing from the Vatican. The reappearance took place again after Piłsudski’s death. During

⁴⁸ LESZCZYŃSKI, P. A. Centralna administracja wyznaniowa II RP, op.cit., p. 36 – 38.

⁴⁹ The verbatim report from the 57th meeting of the Sejm on 20 July 1937. The documents illustrating the course of the described events were collected by GAJEK, B. Konflikt wawelski (The Wawel Conflict). In Karta 96 (2018), p. 40 – 55.

the interwar period, which was very difficult to assess, the Church was undoubtedly a political figure. It contributed to the creation of specific legal regulations, while it blocked those regulations that favoured the implementation of the heterogeneous concept of the nation present in both constitutions.

7 BREAKING DEMOCRACY: A HOMOGENEOUS NATION IN A HETEROGENEOUS COVER?

Undoubtedly, all the political changes initiated in 1989 were made with the strong influence of democratic ideas. Due to the amendment of the Constitution, the name of the state was renamed from the Polish People's Republic to the Republic of Poland. Henceforth, Poland was to be "a democratic state ruled by law". Those democratic changes took place in the society that was ethnically homogeneous, with a clear dominance of the Catholic religion.⁵⁰ The Constitutional Tribunal played an important role in the course of the political transformations, as well as in the process of constituting democratic politics. Its case-law had a major impact on determining the nature of the relationship between the state and religion, the Catholic Church in particular, and consequently, it had an influence on the way the concept of the nation was interpreted. It is also possible to look at those events from a slightly different perspective. Perhaps the way in which the Polish constitutional court ruled was influenced by one of the ideal types of nation adopted, consciously or unconsciously as a "natural and proper" one. The material content of the chain of law-making delegation can be interpreted differently when we acknowledge the homogeneous or heterogeneous nature of the nation. In a situation when a nation is perceived as a homogeneous unity, being a member of such a nation, one is able to "deduce" its will. Whereas the will of a heterogeneous nation is shaped in the course of a dispute and debate, and therefore it is of a dynamic and changeable character. In the first case, the constitutional principles may be interpreted in a narrow manner, associating the principles with the "good of the nation" or its "essence". Accordingly, when this particular "essence" belongs to a particular religion, a position of this religion would be distinguished, if not on the constitutional level, then on the level of the constitutional practice (constituted by it the legislation process, the case-law of the Constitutional Tribunal, etc.).

The provisions of the Act (adopted before the first, partly-free⁵¹ elections) on the freedom of conscience and religion⁵² and the Act on the State's relation with the Catholic Church in the Republic of Poland,⁵³ all refer to the universal "constitutional essentials". In accordance with the intention of

⁵⁰ The first census after the political changes was taken in 2002. See: https://stat.gov.pl/cps/rde/xbcr/gus/raport_z_wynikow_nsp_ludnosci_i_mieszkan_2002.pdf (p. 35). According to its findings, 36983.7 thousand people (96.74%) declared to be of the Polish nationality. Other nationalities declared were as follows: German – 152.9 thousand people, Belarusian – 48.7 thousand and Ukrainian – 31.0 thousand. Among the social groups, 2 groups dominated: Silesians – 173.2 thousand and Romani – 12.9 thousand people. Subsequently, there were smaller ethnic groups or other communities: Russians – 6.1 thousand, Lemkos – 5.9 thousand, Lithuanians – 5.8 thousand, Kashubians – 5.1 thousand, Slovaks – 2.0 thousand, Jews – 1.1 thousand, Armenians – 1.1 thousand and Czechs – 0.8 thousand people. According to statistics for the period 2009 – 2011, the number of the faithful of the Catholic Church was estimated to be between 86.7% and 95.5%. See: http://stat.gov.pl/cps/rde/xbcr/gus/oz_wyznania_religijne_stow_nar_i_etn_w_pol_2009-2011.pdf, p. 17.

⁵¹ A. Dudek points out that the intention of the authorities of the Polish People's Republic was to ensure the neutrality of the Catholic Church in the June elections which, under the so-called Round Table agreements concluded by the authorities with the democratic opposition, introduced free elections regarding 35% of the seats in the Sejm and completely free elections to the Senate. See: DUDEK, A. *Historia polityczna Polski 1989 – 2015* (The Political History of Poland 1989 – 2015). Kraków : Wydawnictwo Znak Horyzont, 2016, p. 35.

⁵² Dz. U. 1989 Nr 25 poz. 155 (The Journal of Law of 1989, Number 25, Item 155).

⁵³ Dz. U. 1989 Nr 29 poz. 154 (The Journal of Law of 1989, Number 29, Item 154).

the legislator, expressed in the Preamble to the first of these Acts, the Act was adopted “with reference to the tradition of religious tolerance and freedom, worth of respect and continuation, the tradition which was clearly demonstrated in the cooperation of Poles of different faiths and worldviews to ensure the growth and prosperity of the Motherland, recognizing the historical contribution of different churches and other religious associations to the development of national culture as well as the propagation and consolidation of basic moral values”. The Act ensures basic religious freedoms and equal rights for different churches and religious associations, prohibits discrimination based on religion, and introduces (friendly) separation of the state and different churches and religious associations. Similarly, in the Preamble of the Constitution of 1997, we may find a clear reference to the heterogeneous concept of the nation⁵⁴: “We, the Polish Nation – all the citizens of the Republic, both those who believe in God as the source of truth, justice, good and beauty, as well as those not sharing such faith but respecting those universal values as arising from other sources”. The understanding of a national belonging is not based either on the fact that one believes or does not believe in God, or that one is a person of a particular religion or political beliefs. However, since 1989, there has been a tendency to strengthen policies favouring the Church,⁵⁵ because religious education was introduced to schools, restrictive abortion laws were adopted and Christian values were given special protection, while issues contrary to the doctrine of the Catholic Church, such as *in vitro* or same-sex civil partnerships, so to say, “get stuck” in the legislative process. P. Borecki states that “there is an obvious tendency among Polish bishops, to use state law as a tool to implement the religious and moral standards of the Catholic Church”.⁵⁶ Apparently, this activity seems to disagree with the axiology on which the Constitution of the Republic of Poland was founded. How then to combine the declared heterogeneity of the nation and the universalist “constitutional essentials” with the legislator’s favour to a particular religion? It seems that the guidelines for providing answers to this question can be found in the case-law of the Constitutional Tribunal regarding the relations between the state and religion.⁵⁷

In the text of the Constitution of the Republic of Poland, we may find a few fragments that give the possibility for a restrictively interpreted concept of a nation, which would bind it to a particular religion only. In the Preamble, we can find the expression of gratitude to the ancestors “for our culture rooted in the Christian heritage of the Nation and in universal human values”. However, there is no reference to other religions practiced in the territories of the Republic, for example to Judaism. As a consequence, the citizens with their culture rooted in another religion are not fully included in the heritage of the nation. They may become a part of the heritage because of universal human values, but not due to their religion, for example Judaism mentioned above. On the one hand, regarding churches and religious associations, the Constitution lays down their equality in

⁵⁴ On the subject of disputes regarding the understanding of the concept of a nation in the process of adopting the Polish constitution, ZUBRZYCKI, G. “We, the Polish Nation”: Ethnic and Civic Visions of Nationhood in Post-Communist Constitutional Debates. In *Theory and Society*. Vol. 30, No. 5 (2001), p. 629 – 668. On the subject of shaping the model of relations between the state and the churches, see BORECKI, P. *Geneza modelu stosunków państwo-Kościół w Konstytucji RP* (The Genesis of the Model of State-Church Relations in the Constitution of the Republic of Poland). Warszawa : Wydawnictwo Sejmowe, 2008.

⁵⁵ However, it does not necessarily mean strengthening social policies – striving to increase the political significance is to compensate for the weakening of the social importance of the Catholic Church, see ZUBRZYCKI, G. *The Crosses of Auschwitz*, p. 80 – 81.

⁵⁶ BORECKI, P. *Respektowanie polskiego konkordatu z 1993 roku – wybrane problemy* (Respecting the Polish Concordat of 1993 – Selected Problems). Warszawa : Instytut Spraw Publicznych, 2012, p. 19.

⁵⁷ Below we present some theses from selected writings. It is impossible to address fully all the theses as it goes beyond the scope of this article.

Article 25(1), and on the other hand, in Section 4 it favours in a certain way the Catholic Church by stating that “the relations between the Republic of Poland and the Roman Catholic Church shall be determined by the international treaty concluded with the Holy See, and by statute”. Relations with other churches and other religious associations are laid down only in statutes.⁵⁸ Of course, it does not mean that the Constitution introduces religious intolerance or discrimination based on religion. Nevertheless, in its text we may find a certain expression of favour to Christianity and the Catholic Church. We do not find, however, a similar favour to religions other than Christianity and to churches other than the Catholic Church. It can be claimed that in that way the real domination of Christianity and the Catholic Church in the denominational structure of the Polish society was confirmed in the Constitution.⁵⁹ According to the Constitutional Tribunal, “impartiality of public authorities in the Republic of Poland (...) and equal rights for churches and other religious associations (Article 25(1)) cannot (...) mean the actual institutional equality between the Roman Catholic Church, dominant in the Polish society in terms of the number of followers, and other churches and religious associations. At the same time, it cannot mean the consent for such actions of the state (public authorities) that would approve the dominant position of one church while discriminating against other churches or religions. The state’s acceptance of the existing *status quo* in terms of the religious structure of the society, cannot, therefore, lead to strengthening the position of the dominant church as a result of the actions of the state itself (public authority)”.⁶⁰ However, the question arises of whether the state’s acceptance of the *status quo* does not at the same time strengthen the figures who are the actual beneficiaries of this *status quo*?

To give the examples of strengthening, determined by the specific “acceptance of the *status quo*”, we can point to special protection of the Christian system of values in radio and television broadcasts and making religious education a part of the curriculum in public schools. Article 18(2) of the Broadcasting Act⁶¹ provides that “broadcasts or other messages should respect the religious beliefs of the recipients, especially [Pol. a zwłaszcza] the Christian system of values”. In the ruling K 17/93, the Constitutional Tribunal stated that “the indication of the Christian system of values is purely exemplary. Therefore, it does not violate in any way the constitutional principle of equality because it refers to the protection of religious feelings, regardless of religion.” The Tribunal made a kind of neutralization of the phrase “a zwłaszcza” (“in particular” or “especially”). According to the Polish Language Dictionary of PWN, “zwłaszcza” (“especially”) is an expression “put next to the sentence component to indicate that some of the statements refer to this very component, for example *Heat was bothering us, especially at noon.*” “Especially” is to emphasize the meaning (the importance) of the element used with it, rather than to just give an example. Therefore, it is clear that the legislator in the above-mentioned Article favours a particular religion. The Tribunal also includes a substantive rationalization indicating that the above “exemplary enumeration” is “justified by the fact that the deep roots of these values have put in the tradition and culture of Polish society, regardless of

⁵⁸ In the Polish system of sources of law, “an international agreement ratified upon prior consent granted by the statute shall have precedence over statutes if such an agreement cannot be reconciled with the provisions of such statutes” (Art. 91 (2)). The Concordat between the Holy See and the Republic of Poland was ratified pursuant to the Act of January 1998, expressing the consent for the Concordat itself. Dz. U. 1998 Nr 12 poz. 42 (The Journal of Law of 1998, Number 12, Item 42).

⁵⁹ According to M. C. Nussbaum, the democratic principle of equality would require a legal appreciation of religious minorities rather than a religion which already has a dominant position in the society. It is when the law would remove all the inequalities. See. NUSSBAUM, M. C. The New Religious Intolerance, op. cit., Chapter 3.

⁶⁰ The Ruling of the Constitutional Tribunal, U 10/07.

⁶¹ Dz. U. 1993 Nr 7 poz. 34 (The Journal of Law of 1993, Number 7, Item 34).

people's attitude towards religion". The Constitutional Tribunal makes another attempt to neutralize the meaning of the words used, referring to the point 6 of Article 21(2): "programs and other public radio and television services should respect the Christian system of values, adopting the universal principles of ethics". The Tribunal states that "the intention of the legislator, expressed in the parliamentary debate, was to point to those values belonging to the Christian culture, and which at the same time constitute basic, universal principles of ethics". However, it also follows from the text of the Act that there is something else there, namely, on the principles of universal ethics, certain entities should respect the Christian system of values.⁶² One could wonder why it is only a Christian system. Do the "universal principles of ethics" not apply to all religions? Would it not be more rational to emphasize the respect for minority denominations (e.g. Islam, Buddhism or non-Christian beliefs in general) in a democratic state dominated by one of the Christian denominations? Or would it not be better not to point to any specific religion at all and introduce a general "religious system of values"? However, this very distinction of the "Christian system of values" gets a different meaning when it is associated with the above-mentioned fact "that the deep roots of these values have put in the tradition and culture of Polish society". It seems that the reasoning of the Tribunal is to bring together the conviction of a deep connection between the Polish identity and Christianity with the principle of neutrality and impartiality of the state regarding churches and religious associations. This may finally justify this specific support of the state for one particular religion by using its special meaning for the "Polish nation" as an argument for. If the systemic practice really moved in this direction, we would see deviating from the universalist democratic principles contained in the Preamble to the Constitution.

The Polish Constitutional Tribunal did not find any contradiction between public school secularism and religious education. In the Instruction⁶³ introducing religious education into the school curriculum, we can read that "religious education is the vehicle of fundamental values in the educational process, which means that opening up to religion and Christian ethical values will be a significant enrichment of the educational process and will help to shape the right attitudes of the young generation of Poles". The Tribunal stated that it is not some much about the opportunity for the state to include religious education in the curriculum in public schools but rather the state's obligation to "provide such religious upbringing and in such a place that it reflects parents' will".⁶⁴ Therefore, there is a close link between teaching religion in public schools and shaping the "attitudes of young Poles" – religion at school has a formative character.⁶⁵ At the same time, "the Tribunal realizes that it may happen that, in some specific cases, parents' or students' choice of an additional school subject may not be completely free when facing the domination of the Roman Catholic religion in the denominational structure of the Polish society, and that the choice will

⁶² The Constitutional Tribunal goes even further by secularizing the "Christian values", when it states that according to the Constitutional Tribunal, religion and the notion of "Christian values" referred to in this provision, cannot be considered equivalent. On the other hand, the notion expresses the universal principles of "ethics of the Mediterranean culture". It can be said that these "Christian values" in the above interpretation are synonymous with the "ethics of Mediterranean culture". Were then Plato and Aristotle Christians or is there no other ethics than that in the Bible or in the doctrine of Christian churches? Is it possible to feel attached to the "ethics of Mediterranean culture" without being a Christian? Or if we feel that we accept the ethical rules, do we automatically become Christians? The Constitutional Tribunal goes further than just to comment on the legislator's distinguishing the "Christian values".

⁶³ Instrukcja Ministerstwa Edukacji Narodowej z 3 VIII 1990 r. (The Instruction of the Ministry of National Education of 3 August 1990).

⁶⁴ The Ruling of the Constitutional Tribunal, K 11/90.

⁶⁵ BORECKI, P. *Respektowanie polskiego konkordatu z 1993 roku – wybrane problemy*, p. 33.

have to be taken under the pressure of the “local” public opinion. The free choice of an additional school subject depends to a large extent on respecting the principles of social pluralism and on the tolerance for different beliefs and denominations in local communities. In some specific cases, if there was external pressure, violating the right to choose freely, it would be the result of a low level of democratic culture”.⁶⁶ It is therefore assumed that a society with high democratic culture will tolerate deviations from the generally accepted norm of belonging to a dominant religion. However, this does not change the fact that inequalities exist: the majority is to decide whether and to what extent the minority will be tolerated. As stated by P. Bourdieu, the main task of school institutions “is to construct the nation as a population endowed with the same ‘categories’ and therefore the same common sense”.⁶⁷ A close connection between shaping religious opinions and public education⁶⁸ may lead to a belief that a particular religion is closely related to nationality. This belief, stronger even due to the attitude of the educational system and the state, may become something “self-evident” and taken as a “natural and obvious” thing.

8 CONCLUSION

In the paper we pointed out the elements of homogeneity in the understanding of the nation present in the constitutional practice. This practice can take place on a strictly political level where the Church becomes a political figure that establishes its own agenda. This *modus operandi* was characteristic for the interwar period (the Second Republic of Poland). On the legal level, the practice may be slightly different, which can be seen in the case-law of the Constitutional Tribunal (the Third Republic of Poland). In this situation, internalizing the role of religion becomes a characteristic feature of the way the constitution is interpreted and applied. We do not claim, that the elements of homogeneity are dominant. However, they lead to some reinterpretation of constitution, based on open and pluralistic axiology. In our opinion, such reinterpretation may be dangerous for democracy. The heterogeneous concept of the nation and the universalist “constitutional essentials” can be narrowed down in the political practice. The particularistic elements of the constitution and the homogenizing tendencies present in the application of the constitution might, if intensified, lead to polarization, dividing the society between the so-called “real members of the nation” (“true” members) and “nominal members” (“untrue” ones). In such a case, there would be a radical reinterpretation of the entire chain of delegation, i.e. the legislator would express the will of a “real nation” that could be identified by ethnic, cultural or religious criteria. The place of “the Polish Nation – all citizens of the Republic” would be now occupied by a new homogeneous formation, and that would mean an informal change of the constitution because the entity holding the highest authority would change as well.

⁶⁶ The Ruling of the Constitutional Tribunal, U 10/07.

⁶⁷ BOURDIEU, P. *Pascalian Meditations*. Stanford: Stanford University Press, 2000, p. 98.

⁶⁸ P. Borecki claims that it is possible to have religious instruction at school without it being included in the state educational system and without violating the Concordat. It is also possible at the same time to implement the principles of equal rights for churches and religious associations, as well as to respect the autonomy and independence of the state and churches and religious associations. BORECKI, P. *Respektowanie polskiego konkordatu z 1993 roku – wybrane problemy*, p. 34.

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