CONCORDAT AS A SOURCE OF BOTH CHURCH LAW AND STATE LAW. CONSIDERATIONS WITH SPECIAL EMPHASIS ON POLISH CONCORDATS

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Abstract: The legal nature of concordats has sparked debate among lawyers for centuries. According to one concept, known as the Privilege Theory (*Privilegientheorie*), developed particularly until the 18th century, a concordat is a unilateral act of the Pope. Another concept, known as *Legaltheorie*, considered a concordat a unilateral act of a sovereign state authority. In the 19th century, the view gained adherents that a concordat had no legal character at all, but only a moral one. Today, because the subjectivity of the Holy See under international law is universally recognized, there is no doubt that a concordat is bilateral in nature. A concordat is most often considered an international treaty. The legal classification of a concordat under domestic law, and therefore the manner in which its provisions are implemented and whether they are directly applicable, depends on the constitutional regulations of a given state. The paper discusses the legal nature of a concordat, using the examples of two concordats between the Republic of Poland and the Holy See: one from 1925 and one from 1998.

Keywords: Concordat, Polish constitutional law, Church law, sources of law.

Introduction

The legal nature of a concordat has raised doubts among lawyers since the emergence of nation-states in the modern era. One theory, called the privilege theory (*Privilegientheorie*), which was developed particularly until the 18th century, but had its followers until the end of the 19th century, viewed a concordat as a unilateral privilege granted by the Pope (the Holy See). Another theory, called the legal theory (*Legaltheorie*), argued that a concordat was a unilateral act of a sovereign state authority. Johann Nikolaus von Hontheim (1701–1790), known as Justinus Febronius, was a forerunner of this view. In the 19th century, some authors – particularly German lawyers, including Paul Hinschius (1835–1898) and Ulrich Stutz (1868–1938) – held the view that a concordat had no legal nature, and that the

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obligations it contained were of purely moral character.[2] When the Holy See was universally recognized as a subject of international law, this implied an acceptance that it possessed so-called *ius tractatorum*, meaning that the agreements it concluded were treaties under international law. The approach to the concordat by canon law specialists in the 20th century was presented by a Polish author as follows: "According to canonists, the Concordat is not only an international agreement, but also a particular ecclesiastical law, binding on the Church and the faithful, regardless of whether it is binding as an international agreement".[3]

In interwar Polish public law doctrine, the prevailing view was that a concordat was a sui generis public law agreement and could not be classified as an ordinary international treaty. This position was presented by scholars associated with the University of Lviv: Professor Leon Halban (1893–1960) and Associate Professor Wilhelm Edmund Rappé (1883–1975). This view was based on the concept of coordination, according to which both parties to the concordat – the state and the Catholic Church – voluntarily wished to be bound by the law. This concept led to the conclusion that the concordat could not be unilaterally interpreted by either party, and that its interpretation was governed by the principle of *rebus sic stantibus*.[4] Stanisław Piekarski (1868–1943) stated that the concordat was "an interstate agreement in which the central authority of the Catholic Church takes the place of an equal contractor".[5] Only the Evangelical theologian and Professor Edmund Bursche (1881–1940), a professor of the University of Warsaw, was an advocate of legal theory, which seemed to stem from his attitude toward the Catholic Church. Bursche, however, presented his view in a moderate way.[6] Today, concordats are considered bilateral international agreements.[7] The legal nature of a concordat within national

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[2] S. FERRARI: Concordats. In: Max Planck Encyclopedia of Public International Law [MPEPIL]. Retrieved (September 10, 2025) from https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e1382/.

[3] J. WISŁOCKI: Konkordat polski z 1925 roku. Poznań: Wydawnictwo Naukowe Uniwersytetu im. Adama Mickiewicza, Poznań 1977, p. 35. (Series: Prawo – Uniwersytet im. Adama Mickiewicza w Poznaniu, ISSN 0083-4262).

[4] W. E. RAPPÉ: Zagadnienia administracyjne konkordatu. Lwów: Pierwsza Związkowa Drukarnia, 1935, p. 3; cf. L. HALBAN: Konkordat ze Stolicą Apostolską. Odbitka z Nr. 9-go Encyklopedji Podręcznej Prawa Prywatnego. Warszawa: Instytut Wydawniczy „Bibljoteka Polska", 1934, pp. 1–3. In German legal scholarship, this concept was advocated by Paul Schoen (1867–1941); cf. P. SCHOEN: Die Rechtsgrundlagen der Verträge zwischen Staat und Kirche und der Verträge der Kirchen untereinander. In Archiv des öffentlichen Rechts, Vol. 60, No. 3 (1932), pp. 317–363.

[5] S. PIEKARSKI: Wyznania religijne w Polsce. Warszawa: Wydawnictwo M. Arcta, 1927, p. 12.

[6] E. BURSCHE: Historia konkordatów. Kraków: Universitas, 1996, pp. 11–12. ISBN: 978-83-242-2775-4.

[7] Cf. M. WASZAK: Konkordat jako umowa międzynarodowa. Łódź: Wydawnictwo ArchaeGraph, 2017, pp. 84–102. ISBN: 978-83-948263-7-6. J. KRUKOWSKI: Konkordaty współczesne. Doktryna. Teksty (1964–1994). Warszawa: Wydawnictwo Civitas Christiana, 1995, pp. 24–29. ISBN: 83-86368-03-9.

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law, the manner of implementing its provisions, and whether these provisions are directly applicable, depends on the constitutional law of the given state. This conference article examines the legal nature of a concordat using the examples of two concordats concluded by Poland: of 1925 and of 1998.

The Second Polish Republic

After Poland regained independence in 1918, the Catholic Church operated under different legal regulations in force in the in parts of the territory that previously belonged to Austria, Prussia (Germany) and Russia. The Constitution of March 17, 1921 (March Constitution) defined a uniform legal framework for the state's relationship with churches and other religious associations. This legal framework was in force until the end of the Second Polish Republic. Article 114 of the March Constitution indicated the legal position of the Catholic Church, the role of the concordat and the assumptions regarding the procedure for its adoption. This article stated: "The Roman Catholic religion, being the religion of the preponderant majority of the nation, occupies in the state the chief position among enfranchised religions. The Roman Catholic Church governs itself under its own laws. The relation of the State to the Church will be determined on the basis of an arrangement with the Apostolic See, which is subject to ratification by the Sejm [the lower chamber of the parliament]".[8] The term "among enfranchised religions [denominations]" was introduced as a result of an amendment by the Union of Deputies of Jewish Nationality and the parliamentary club of the Polish People's Party (an agrarian party). The word "concordat" ('konkordat') was not used in this provision. The name "agreement" was used in the draft constitution, which was a translation of the term *concordat* (French) / *concordatum* (Latin). In further work, this term was changed to "arrangement". The formulation that the agreement with the Holy See was to be subject to ratification by the Sejm also resulted from the amendment by the agrarian party (Polskie Stronnictwo Ludowe).[9] The provisions of the March Constitution regarding churches and other religious associations remained in force under the next constitution, i.e. the authoritarian constitution of April 23, 1935.

Article 114 of the March Constitution was open to various interpretations. Stanisław Piekarski and Władysław Leopold Jaworski (1865–1930) argued that Article 114 meant that the constitution recognized canon law as the proper law of the Catholic Church, while other churches and religious associations could apply their own

[8] In Polish: "Wyznanie rzymsko-katolickie, będące religją przeważającej większości narodu, zajmuje w Państwie naczelne stanowisko wśród równouprawnionych wyznań.
Kościół Rzymsko-Katolicki rządzi się własnemi prawami. Stosunek Państwa do Kościoła będzie określony na podstawie układu ze Stolicą Apostolską, który podlega ratyfikacji przez Sejm.".

[9] J. WISŁOCKI: Konkordat polski z 1925 roku, p. 78.

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internal law only when the state (acting through its organs) determined that it was not contrary to state law.[10]

According to the interpretation of Article 114 of the March Constitution advocated by conservative circles and those associated with the Catholic clergy, the phrase: "The Roman Catholic Church is governed by its own laws," and the provision that the state's relationship to this Church would be determined by an international treaty, were interpreted to mean that the Catholic Church is governed by canon law which also included the treaty between the state and the Holy See. As far as state law was concerned, it was bound only by the constitution, not by other statutes. As emphasized by the eminent canon law expert, Professor Władysław Abraham (1860–1941), such an opinion prevailed especially among the Catholic clergy from territories previously under Russian rule, because these clergy, "having endured severe persecution and trials during the Tsarist regime, fear any state interference and are ready to mark any, even the slightest, state influence in ecclesiastical matters as Josephinism".[11] Professor Abraham disagreed with this interpretation and presented a different one, according to which Article 114 of the March Constitution stipulated that ecclesiastical matters previously regulated by Prussian, Russian, and Austrian legislation in force in Poland were to be settled by a concordat. Until the conclusion of the concordat, this legislation remained in force. However, due to the content of the indicated article, all directly unconstitutional legal regulations enacted by the Prussian, Austrian, and Russian authorities (especially provisions privileging the Orthodox Church in the former Russian partition) and those concerning relations between the faithful and church authorities were to be deemed null and void.[12] Professor Abraham argued that the rapid conclusion of the concordat was in the interests of both the Catholic Church and the state authorities. He emphasized that it was impossible to strictly distinguish between the Church's internal relations, which were delegated to the Church's own authorities for regulation, and external relations, which pertain to the sphere of state authority. Matters such as the execution of ecclesiastical penalties or the conclusion of marriage, although they belong to the Church's internal sphere, are of significance to the state. Furthermore, some judgments of ecclesiastical authority, such as those dismissing a clerical office, could only be enforced with the assistance of secular authorities (as indicated by canon 2198 of the 1917 Code of Canon Law). Therefore, the concordat was necessary to eliminate doubts regarding the demarcation of the spheres of action of state and

[10] S. PIEKARSKI: Wyznania religijne w Polsce, pp. 12, 16. Cf. W. E. RAPPÉ: Zagadnienia administracyjne konkordatu, p. 3.

[11] W. ABRAHAM: Studja wstępne o konkordacie Stolicy Apostolskiej z Rzecząpospolitą Polską. In Nova Polonia Sacra, no. 2 (1925), p. 140.

[12] Ibid., p. 141.

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ecclesiastical authority.[13] Abraham believed that the state had the right to demand that candidates for ecclesiastical office not display an attitude hostile to the state.[14] According to the Holy See, the Republic of Poland, established in 1918, and other states established after World War I, did not have the rights and privileges of state authorities defined in concordats concluded with the authorities of states that ruled the territories concerned before World War I (primarily the right to appoint bishops, which was granted to certain monarchs). Pope Benedict XV expressed this position in the consistory of November 15, 1921, recognizing that only those provisions of the concordats that did not grant any privileges to secular authorities remained in force.[15] Work on the concordat began in 1921, with the participation of Professor Władysław Abraham and Bishop Adolf Szelążek (1865–1950). The Church side believed (and this was expressed in the private project of Archbishop Władysław M. Zaleski) that the model concordats on which the Polish concordat was based were the concordat with Colombia of 1887 (supplemented six times until 1918) and the concordat with Serbia of 1914. The government project was adopted in April 1922. During the work in the Presidium of the Council of Ministers, the inclusion of references to articles of the Code of Canon Law of 1918 was opposed. The final project was ready in June 1924. Negotiations on the concordat ended in January 1925. The concordat concluded on February 10, 1925 was approved by the parliament (Act of April 23, 1925 on the approval of the agreement with the Holy See defining the relationship of the State to the Church Roman Catholic, Journal of Laws No. 47, item 324) and signed by President Stanisław Wojciechowski on May 30, 1925.[16]

Although Article 114 of the March Constitution explicitly referred only to the concordat concerning the Roman Catholic Church, i.e., the Latin Rite, the concordat regulated matters concerning all three rites present in the Polish-Lithuanian Commonwealth: the Latin, the Greek Catholic ("Greek-Ruthenian," as it was called in the concordat), and the Armenian Rite.[17] This was due to the fact that the Armenian and Greek Catholic Churches were not recognized as having their own legal personality, but as operating within the framework of the Catholic Church (a state of affairs that persists in Polish law today). The Concordat regulated many

[13] Ibid., pp. 141–142.

[14] Ibid., p. 140.

[15] Ibid., pp. 143–144. It should also be added that Polish kings also concluded concordats with popes before the fall of the Polish-Lithuanian Commonwealth in 1795. Sigismund I the Old concluded two concordats: with Leo X in 1519 (*Romanus Pontifex*) and with Clement VII in 1525 (*Cum singularem*). King Augustus III and Pope Clement XII concluded a concordat concerning abbeys in 1736. When Poland regained independence, these acts had only historical significance..

[16] Cf. J. WISŁOCKI: Konkordat polski z 1925 roku, pp. 78–92.

[17] I would like to thank Prof. ICDr. Cyril Vasiľ, PhD. of the Faculty of Law of the Comenius University for his comment on this issue.

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matters in 27 articles. I will mention the most important ones for both the Catholic Church and the Polish state: brachium saeculare, i.e., assistance from state authorities in the execution of the Church decisions and decrees (Article IV); the territorial organization of church administration for the three rites of the Catholic Church: the Latin Rite, the Greek Catholic Rite, and the Armenian Rite (Article IX); the procedure for appointing archbishops and bishops and the requirement that they take an oath of allegiance to the Republic of Poland (Articles XI–XII); religious instruction in schools (Article XIII), and issues related to Church property (Article XIV). The Concordat stipulated that the boundaries of church administration – division into provinces and dioceses – would coincide with the borders of the Polish state. The Holy See agreed to consult with the President of the Republic of Poland on the election of bishops, archbishops, and the military bishop (Article XI). The Concordat is considered in the literature to be beneficial for the Catholic Church.[18]

The 1925 Concordat was directly applicable only to provisions of international law concerning the relations between the authorities of the Republic of Poland and the Holy See. With respect to all other matters, it was recognized that implementing the provisions of the Concordat required the issuance of implementing acts in the form of laws and regulations. This concerned religious education in schools, the benefices of parish priests and Catholic associations, Catholic cemeteries, the protection of cultural and artistic monuments owned by the Church, and land and churches formerly owned by Greek Catholic parishes and confiscated by the tsarist authorities. A dispute arose between the Polish authorities and the Holy See concerning the implementing regulations of the Concordat regarding religious education in schools.[19] The imprecision of some of the terms used in the Concordat meant that the implementation of the Concordat's provisions required the establishment of two

[18] Cf. R. JASTRZĘBSKI: Polskie konkordaty w XX wieku. In: Przegląd Prawa Wyznaniowego, vol. 13 (2021), pp. 151–154. ISSN: 2080-3788. Adam Gerstmann (1873–1940), a priest and professor at the University of Lviv, wrote that the provision of the concordat which did not give the President of the Republic of Poland the right to appoint bishops, but only the right to express an opinion about the candidate, was appropriate because "the Church cannot have a guarantee that each President will be guided by concern for the good of the Church" and will select the most suitable candidates for episcopal positions: A. GERSTMANN: Na marginesie konkordatu. In: Konkordat Polski ze Stolicą Apostolską. Lwów: Towarzystwo „Bibljoteka Religijna", 1925, p. 22.

[19] Religious instruction in public schools was a hot political topic. This issue was frequently discussed during parliamentary sessions, during which left-wing members of parliament spoke out against the agreements reached with the Episcopate. Disputes between the Episcopate and the government – quite heated especially in the 1930s – concerned primarily the qualifications for teaching religion and frequent reductions of the salaries of religious teachers, especially priests, by school administration bodies. For a detailed presentation of these issues, cf. J. SZCZEPANIAK: Konflikt pomiędzy państwem a Kościołem dotyczący rozporządzeń wykonawczych do konkordatu z 1925 roku w sprawach nauczania religii w szkołach. In: Krakowskie Studia Międzynarodowe, no. 3 (2006), pp. 69–97. ISSN: 1733-2680.

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commissions: the government commission (comprising representatives of the Ministry of Religious Denominations and Public Education) and the Pontifical Commission. Disputes between the commissions concerned, in particular, the appointment of Church positions and the return of Church property confiscated by the tsarist authorities. The provisions of the concordat regarding the allocation of some Church-owned lands for agricultural reform were also not implemented. In 1938, the Polish government (when Felicjan Sławoj Składkowski was the prime minister) stated that the concordat was not beneficial to the state.[20] It is also worth noting that in interwar literature, Edmund Bursche emphasized that the concordat was not directly applicable, but the state – after its ratification – was required to issue legal provisions consistent with the concordat.[21] In the literature, the concordat with Poland is considered one of the most favorable for the Church among the agreements concluded by the Holy See in the interwar period.[22]

The communist government ("Provisional Government of National Unity") declared the concordat no longer in force by resolution of September 12, 1945. The pretext for adopting this resolution was the entrusting of the administration of the Chełmno Diocese to Bishop Carl M. Splett of Gdańsk during World War II, and the appointment of German priest Hilarius Breitinger as an apostolic administrator of the Gniezno-Poznań Diocese. The government considered these actions a violation of Article IX of the concordat, which pertains to the territorial organization of Church administration. Contemporary literature generally considers the government's arguments to be merely a pretext for unilaterally terminating the concordat.[23] However, the Polish government did not submit any official notice of termination to the Holy See, so the government's unilateral declaration was irrelevant from the perspective of international law. [24] Postwar judicial decisions – including those of the Poznań Court of Appeal – in individual civil-law cases concluded sometimes that the concordat had not been terminated.[25] During the communist era, the Polish authorities expressed their willingness to conclude an agreement with the Holy See

[20] R. JASTRZĘBSKI: Polskie konkordaty w XX wieku, pp. 154–156.Cf. J. WISŁOCKI: Konkordat polski z 1925 roku, pp. 53–56.

[21] E. BURSCHE: Historia konkordatów, p. 11.

[22] Cf. W. GÓRALSKI: Postanowienia konkordatu polskiego z 1925 roku i problem ich recepcji i realizacji. In: Biuletyn Stowarzyszenia Kanonistów Polskich, vol. 28, no. 31 (2018), pp. 21–38. ISSN: 1731-1438.

[23] R. JASTRZĘBSKI: Polskie konkordaty w XX wieku,, pp. 156–157.

[24] D. WANIEK: Uwarunkowania prawno-polityczne i międzynarodowe wygaśnięcia konkordatu z 1925 r. (próba odkłamania tezy o „bezprawnym i jednostronnym" zerwaniu konkordatu przez „komunistyczny rząd" we wrześniu 1945 r.). In. M. WINIARCZYK-KOSSAKOWSKA – C. JANIK – P. BORECKI (eds.): Konkordat Polski 1993, Warszawa: Wolters Kluwer, 2019, pp. 33–34. ISBN: 978-83-8107-991-4.

[25] R. JASTRZĘBSKI: Polskie konkordaty w XX wieku, p. 157.

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in 1956–1957 (during the liberalization period following the end of Stalinism) and in 1987–1988. In 1974, the authorities of the Polish People's Republic established permanent working relations with the Holy See.[26]

The Third Polish Republic

The Concordat which is now in force was signed on 28 July 1993, but was ratified only after the adoption of the Constitution of 2 April 1997. The ratification documents of the currently binding Concordat were exchanged in the Vatican on March 25, 1998. Article 25 section 4 of the Constitution of the Republic of Poland states: „Relations between the Republic of Poland and the Catholic Church shall be determined by an international agreement concluded with the Holy See and by statutes". According to some eminent representatives of the doctrine of constitutional law and state–religious law – including the former justice of the Constitutional Court, Leszek Garlicki, and Rev. Professor Józef Krukowski[27] – Article 25 section 4 of the Constitution of the Republic of Poland imposes the obligation to conclude the Concordat. In the comentary to the Constitution Marcin Olszówka rightly considers this view as going too far and being be too categorical.[28] The quoted provision should be interpreted as enabling the regulation of relations between the Catholic Church and the state in a concordat, in statutes or in a concordat and statutes.

Certainly, Article 25 section 4 of the Constitution of the Republic of Poland may raise questions about whether singling out the Catholic Church by indicating that relations between this Church and the state are regulated not only by statute but also by international agreement is not a departure from the principle of equal entitlements of churches and religious associations under Article 25 Section 1 of the Constitution of the Republic of Poland. Polish public law doctrine clearly states that "the possibility of concluding a concordat stems from respect for the subjectivity of the Holy See in international law".[29] This is not, therefore, a result of recognizing the historical role

[26] P. BORECKI: Idea umowy państwa ze Stolicą Apostolską w okresie Polski Ludowej. In: M. WINIARCZYK-KOSSAKOWSKA – C. JANIK – P. BORECKI (eds.): Konkordat Polski 1993, Warszawa: Wolters Kluwer, 2019, pp. 41–51.

[27] Professor Garlicki even writes about the "guarantee of the concordat form of regulation" of the relations between the state and the Catholic Church, contained in Article 25 section 4 of the Constitution of the Republic of Poland; cf. L. GARLICKI: Artykuł 25. In: L. GARLICKI – M. ZUBIK (eds.): Konstytucja Rzeczypospolitej Polskiej. Komentarz. Tom I: Wstęp, art. 1–29. Warszawa: Wydawnictwo Sejmowe, 2016, p. 623. ISBN: 978-83-7666-449-1. Cf. J. STĘPIEŃ: Stosunki państwa i Kościoła katolickiego w konstytucyjnym porządku III Rzeczypospolitej Polskiej. Łódź: Wydawnictwo Uniwersytetu Łódzkiego, Łódź 2025, pp. 122–131. ISBN: 978-83-8331-577-5.

[28] M. OLSZÓWKA: Komentarz do art. 25. In M. SAFJAN – L. BOSEK (eds.): Konstytucja RP. Tom I. Komentarz. Art. 1–86. Warszawa: C.H. Beck, 2016, p. 678. ISBN: 978-83-255-7365-2.

[29] W. BRZOZOWSKI: Glosa do wyroku Trybunału Konstytucyjnego z dnia 2 grudnia 2009 r. (sygn. akt U 10/07). In Przegląd Sejmowy, no. 4 (99) (2010), p. 200. ISSN: 1230-5502.

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of the Catholic Church. As Wojciech Brzozowski duly writes: "The Constitution did not have to provide for a concordat as a form of establishing relations between the state and the Catholic Church and could have limited itself to formulating the requirement for statutory regulation. However, if the constitution-makers addressed the legal distinctiveness of this religious association, for obvious reasons they could not have done the same with other associations which did not have a *sui generis* representative in international relations".[30] The stipulation that relations between the state and the Catholic Church may be regulated by a concordat cannot, therefore, be interpreted in a way that discriminates against other religious associations. However, in its judgment regarding religious education in schools of December 2, 2009 (file ref. no. U 10/07), the Polish Constitutional Court stated: "Article 25 section 4 of the Constitution and the concordat define the special institutional position of the Catholic Church in the legal system of the Republic of Poland, reflecting its dominant position in the religious structure of the Republic of Poland". The Court further stated: "the special regulation of the institutional position of the Catholic Church is limited by the equality of followers of all religions and denominations". Wojciech Brzozowski aptly pointed out that the Constitutional Court interpreted Article 25 section 4 of the Constitution of the Republic of Poland in the spirit of the March Constitution, which, in Article 114, recognized the Roman Rite Catholic religion as "the foremost position among equally entitled denominations".[31] Such an interpretation is questionable from the point of view of Article 25 section 1 of the Constitution of the Republic of Poland, which defines equal entitlement of churches and other religious associations. Furthermore, the author emphasizes that the interpretation adopted by the Constitutional Court amounts to the statement that "one of the religious associations is privileged, and at the same time, followers of different religions enjoy equal rights".[32] This interpretation – as Brzozowski emphasizes – means adopting a different understanding of the two dimensions of freedom of religion: the collective and the individual, while the collective dimension is closely linked to the individual: "In principle, it is impossible to privilege a religious association in such a way that it does not affect the sphere of equality of individuals; this may exceptionally be possible in the states which are religious states only from a formal point of view, while at the same time they maintain high standards of ideological neutrality (e.g., Great Britain)".[33] Brzozowski accurately notes the inconsistency in the position of the Polish Constitutional Court on the institutional position of the Catholic Church.

[30] Ibid., s. 200.
[31] Cf. W. BRZOZOWSKI: Glosa do wyroku Trybunału Konstytucyjnego z dnia 2 grudnia 2009 r. (sygn. akt U 10/07), p. 201.
[32] Ibid., p. 201.
[33] Ibid., p. 201.

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Shortly after the Constitution of the Republic of Poland entered into force, the concordat's place in the catalogue of international agreements listed in the Constitution was questionable. Classifying the concordat as an international agreement ratified with consent expressed by statute, a category of agreement listed in Article 90 section 2 of the Constitution of the Republic of Poland, would mean that in the event of a conflict with statutory provisions, the concordat would take precedence over statutory provisions. Classifying the concordat as an international agreement, whose ratification by the head of state (the President of the Republic of Poland) does not require consent expressed by statute, would mean, however, that in the event of a conflict (inconsistency) between the provisions of the concordat and statutory provisions, the provisions of the concordat would not have precedence. Therefore, conflicts between the provisions of the concordat and statutory provisions would have to be resolved based on principles established in legal theory. Ultimately, the prevailing view was that a concordat is an international agreement ratified upon consent expressed by statute, and that a concordat does not require the special ratification procedure provided for in Article 90 of the Constitution of the Republic of Poland, concerning the transfer of certain state competences to international organizations and international organs.[34] This special procedure applies to international agreements transferring to an international organization or body "the competences of state authorities in certain matters" (Article 90 section 1 of the Constitution of the Republic of Poland) and requires that a statute granting consent to the ratification of such an international agreement be adopted by the Sejm by a qualified two-thirds majority vote, with a quorum of at least half of the statutory number of Deputies, and by the Senate by a two-thirds majority vote, with a quorum of at least half of the statutory number of Senators (Article 90 section 2 of the Constitution of the Republic of Poland). A concordat, like any other ratified international agreement, is – in accordance with Article 91 section 1 of the Constitution of the Republic of Poland – is part of the national legal order and is directly applicable, with the exception of those provisions whose application requires the enactment of a statute.

In the already cited judgment of December 2, 2009 (file ref. no. U 10/07), the Constitutional Court expressed a rather specific view that "the provisions of the ratified concordat not only became part of the legal order of the Republic of Poland, with higher binding force than statutory provisions, but were, pursuant to Article 25

[34] J. SZYMANEK: Tryb ratyfikacji konkordatu z 1993 roku – główne problemy. In C. JANIK – P. BORECKI (eds.): Dziesięć lat polskiego konkordatu. Warszawa: Stowarzyszenie Absolwentów Wydziału Prawa i Administracji Uniwersytetu Warszawskiego, 2009, pp. 39–50. ISBN: 9788392786429. The author criticized the method of ratifying the Polish concordat. Cf. P. WINCZOREK: Komentarz do Konstytucji Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 r. 2nd ed. Warszawa: Liber, 2008, p. 69. ISBN: 9788372060822.

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section 4 of the Constitution, actually incorporated into the constitutional matter". This view, which was subsequently no longer emphasized by the Constitutional Court, was rightly criticized by the already cited Wojciech Brzeziński, who pointed out that the mere inclusion of a reference to a specific act in the constitution cannot lead to the conclusion that the content of that act has been incorporated into the constitution.[35]

The Concordat, ratified in 1998, is a legal act containing numerous clauses referencing both canon law and Polish law, as well as future agreements between state authorities and the Polish Episcopal Conference. An example of such a referencing clause is Article 4 section 2 of the Concordat, where the state declares its recognition of the legal personality of ecclesiastical institutions that have acquired their legal personality based on canon law.[36] Therefore, the Concordat can be considered a special source of law, constituting a link between the system of state law and the system of canon law.

Conclusion

In Polish interwar legal literature, the public-law and bilateral nature of the concordat was rarely questioned. The concordat was considered part of international law, simultaneously part of ecclesiastical law. The conclusion of the concordat was stipulated in the March Constitution of 1921. At the same time, the concordat was not directly applicable and was not considered a source of domestic law, so its provisions had to be transposed into domestic law. The manner of their implementation was a subject of dispute between the episcopate and the government, and in 1938, the Polish government of Prime Minister Felicjan Sławoj Składkowski negatively assessed the relations with the Catholic Church based on the concordat.

Under the Constitution of April 2, 1997, a concordat is considered an international agreement requiring consent for ratification expressed in a statute. This positioning of the concordat within the system of sources of law means that the concordat is also considered a source of domestic law and is directly applicable, provided its provisions are sufficiently detailed to enable this. Furthermore, in the event of a conflict between the provisions of the concordat and statutory provisions, the concordat takes precedence. Many constitutional law experts argue that Poland's conclusion of the concordat is obligatory due to the wording of Article 25 section 4 of the

[35] W. BRZOZOWSKI: Glosa do wyroku Trybunału Konstytucyjnego z dnia 2 grudnia 2009 r. (sygn. akt U 10/07), p. 202.

[36] B. TRZECIAK SJ: Klauzule odsyłające w konkordatach z Hiszpanią i z Polską. Lublin: Towarzystwo Naukowe Katolickiego Uniwersytetu Lubelskiego Jana Pawła II, 207, pp. 105–150. ISBN: 978-83-7306-349-5.

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Constitution of the Republic of Poland, but this view is overly restrictive. Certainly, the implementation of the provisions of the Polish concordat, signed in 1993 and ratified in 1998, did not generate as many disputes as the implementation of the pre-war concordat. However, such disputes do arise – most recently, one concerning the number of hours of religious instruction per week in public schools and also whether the grade for religion should be included in the grade point average on the certificate.[37]

Bibliography

1. ABRAHAM, Władysław: Studja wstępne o konkordacie Stolicy Apostolskiej z Rzecząpospolitą Polską. In Nova Polonia Sacra, no. 2 (1925), pp. 135–189.
2. BORECKI, Paweł: Idea umowy państwa ze Stolicą Apostolską w okresie Polski Ludowej. In: WINIARCZYK-KOSSAKOWSKA, Małgorzata – JANIK, Czesław – BORECKI, Paweł (eds.): Konkordat Polski 1993, Warszawa: Wolters Kluwer, 2019, pp. 41–51.
3. BRZOZOWSKI, Wojciech: Glosa do wyroku Trybunału Konstytucyjnego z dnia 2 grudnia 2009 r. (sygn. akt U 10/07). In Przegląd Sejmowy, no. 4 (99) (2010), pp. 196–206. ISSN: 1230-5502.
4. BURSCHE, Edmund: Historia konkordatów. Kraków: Universitas, 1996, pp. 100. ISBN: 978-83-242-2775-4.
5. FERRARI, Silvio: Concordats. In: Max Planck Encyclopedia of Public International Law [MPEPIL]. Retrieved (September 10, 2025) from https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e1382/.
6. GARLICKI, Leszek: Artykuł 25. In: L. GARLICKI, Leszek – ZUBIK, Marek (eds.): Konstytucja Rzeczypospolitej Polskiej. Komentarz. Tom I: Wstęp, art. 1–29. Warszawa: Wydawnictwo Sejmowe, 2016, pp. 594–630. ISBN: 978-83-7666-449-1.
7. GERSTMANN, Adam: Na marginesie konkordatu. In: Konkordat Polski ze Stolicą Apostolską. Lwów: Towarzystwo „Bibljoteka Religijna", 1925, pp. 5–33.

[37] In its judgment of May 22, 2024 (file ref. no. U 11/24), the Polish Constitutional Tribunal found that amending the Minister of Education's regulation regarding the inclusion of religious education grades in grade point averages without consultation and agreement with the authorities of the Catholic Church (the Polish Episcopal Conference) violated the provisions of the Concordat. However, this judgment is being challenged by some constitutional lawyers due to doubts about the correctness of the election of one of the judges involved in the ruling. For general overview of the issue of religious instruction in Polish schools in the context of the provisions of the Concordat, cf. J. STĘPIEŃ: Stosunki państwa i Kościoła katolickiego w konstytucyjnym porządku III Rzeczypospolitej Polskiej, pp. 184–206.

doi: 10.46282/bpf.2025.44

8. GÓRALSKI, Wojciech: Postanowienia konkordatu polskiego z 1925 roku i problem ich recepcji i realizacji. In: Biuletyn Stowarzyszenia Kanonistów Polskich, vol. 28, no. 31 (2018), pp. 21–38. ISSN: 1731-1438.
9. HALBAN, Leon: Konkordat ze Stolicą Apostolską. Odbitka z Nr. 9-go Encyklopedji Podręcznej Prawa Prywatnego. Warszawa: Instytut Wydawniczy „Bibljoteka Polska", 1934, pp. 24.
10. JASTRZĘBSKI, Robert: Polskie konkordaty w XX wieku. In: Przegląd Prawa Wyznaniowego, vol. 13 (2021), pp. 147–179. ISSN: 2080-3788.
11. KRUKOWSKI, Józef: Konkordaty współczesne. Doktryna. Teksty (1964–1994). Warszawa: Wydawnictwo Civitas Christiana, 1995, pp. 495. ISBN: 83-86368-03-9.
12. OLSZÓWKA, Marcin: Komentarz do art. 25. In SAFJAN, Marek – BOSEK, Leszek (eds.): Konstytucja RP. Tom I. Komentarz. Art. 1–86. Warszawa: C.H. Beck, 2016, pp. 649–683. ISBN: 978-83-255-7365-2.
13. PIEKARSKI, Stanisław: Wyznania religijne w Polsce. Warszawa: Wydawnictwo M. Arcta, 1927, pp. 158.
14. RAPPÉ, Wilhelm Edmund: Zagadnienia administracyjne konkordatu. Lwów: Pierwsza Związkowa Drukarnia, 1935, pp. 31.
15. SCHOEN, Paul: Die Rechtsgrundlagen der Verträge zwischen Staat und Kirche und der Verträge der Kirchen untereinander. In Archiv des öffentlichen Rechts, Vol. 60, No. 3 (1932), pp. 317–363.
16. STĘPIEŃ, Jakub: Stosunki państwa i Kościoła katolickiego w konstytucyjnym porządku III Rzeczypospolitej Polskiej. Łódź: Wydawnictwo Uniwersytetu Łódzkiego, Łódź 2025, pp. 461. ISBN: 978-83-8331-577-5.
17. SZCZEPANIAK, Jan: Konflikt pomiędzy państwem a Kościołem dotyczący rozporządzeń wykonawczych do konkordatu z 1925 roku w sprawach nauczania religii w szkołach. In: Krakowskie Studia Międzynarodowe, no. 3 (2006), pp. 69–97. ISSN: 1733-2680.
18. SZYMANEK, Jarosław: Tryb ratyfikacji konkordatu z 1993 roku – główne problemy. In JANIK, Czesław – BORECKI, Paweł (eds.): Dziesięć lat polskiego konkordatu. Warszawa: Stowarzyszenie Absolwentów Wydziału Prawa i Administracji Uniwersytetu Warszawskiego, 2009, pp. 39–50. ISBN: 9788392786429.
19. TRZECIAK SJ, Bogusław: Klauzule odsyłające w konkordatach z Hiszpanią i z Polską. Lublin: Towarzystwo Naukowe Katolickiego Uniwersytetu Lubelskiego Jana Pawła II, 207, pp. 204. ISBN: 978-83-7306-349-5.
20. WANIEK, Danuta: Uwarunkowania prawno-polityczne i międzynarodowe wygaśnięcia konkordatu z 1925 r. (próba odkłamania tezy o „bezprawnym i jednostronnym" zerwaniu konkordatu przez „komunistyczny rząd" we wrześniu 1945 r.). In WINIARCZYK-KOSSAKOWSKA, Małgorzata – JANIK, Czesław –

BORECKI, Paweł (eds.): Konkordat Polski 1993, Warszawa: Wolters Kluwer, 2019, pp. 23–40. ISBN: 978-83-8107-991-4.
21. WASZAK, Marcin: Konkordat jako umowa międzynarodowa. Łódź: Wydawnictwo ArchaeGraph, 2017, pp. 181. ISBN: 978-83-948263-7-6.
22. WINCZOREK, Piotr: Komentarz do Konstytucji Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 r. 2nd ed. Warszawa: Liber, 2008, pp. 321. ISBN: 9788372060822.
23. WISŁOCKI, Jerzy: Konkordat polski z 1925 roku. Poznań: Wydawnictwo Naukowe Uniwersytetu im. Adama Mickiewicza, Poznań 1977, pp. 295. (Series: Prawo – Uniwersytet im. Adama Mickiewicza w Poznaniu, ISSN 0083-4262).

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