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PARENTS' RIGHTS TO RAISE THEIR CHILDREN
IN ACCORDANCE WITH THEIR OWN CONVICTIONS
AND THE RELIGIOUS FREEDOM OF MINORS

INTRODUCTION

When observing present-day relations between parents and their minor children, or between parents and children and the Roman Catholic clergy,¹ certain tensions can be sensed that arise in connection with the religious education of the young generation and their belonging to the ecclesial community. Such tensions surface, for example, when parents choose religion for their children; when children choose their own preferred religion; as well as with regard to the accessibility (of inaccessibility in point of fact) of the procedure of apostasy to minors, which is sometimes regarded as an infringement of the religious freedom of minors and of the parents' right to rear their offspring in accordance with their outlook.

1. FREEDOM TO CHOOSE YOUR RELIGION

Speaking of parents' freedom to choose religion for their minor children, first of all, reference should be made to the Constitution of the Re-

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¹ Hereinafter: "Church."

public of Poland of 2 April 1997,² which is the supreme positive law of the Republic of Poland (see Article 8(1) thereof). Under Article 48(1) of the Constitution, parents have the right to rear their children in accordance with their own convictions. The upbringing should respect the degree of maturity of a child as well as their freedom of conscience and belief and also their convictions.

Article 53 of the Constitution provides that everyone should be ensured freedom of conscience and religion (para. 1); freedom of religion includes the freedom to profess or to accept a religion by personal choice as well as to manifest such religion, either individually or collectively, publicly or privately, by worshipping, praying, participating in ceremonies, performing of rites or teaching. Freedom of religion also includes possession of sanctuaries and other places of worship for the satisfaction of the needs of believers as well as the right of individuals, wherever they may be, to benefit from religious services (para. 2); parents have the right to ensure their children a moral and religious upbringing and teaching in accordance with their convictions. The provision of Article 48(1) applies accordingly (para. 3); the religion of a church or other legally recognized religious organization may be taught in schools, but other peoples' freedom of religion and conscience should not be infringed in this way (para. 4); the freedom to publicly express religion may be limited only by means of statute and only where this is necessary for the defence of state security, public order, health, morals or the freedoms and rights of others (para. 5); no one may be compelled to participate or not participate in religious practices (para. 6); no one may be compelled by organs of public authority to disclose their philosophy of life, religious convictions or belief (para. 7).

While exercising freedom of conscience and religion, citizens may rear their children in accordance with their religious convictions (Article 2(4) of the Act of 17 May 1989 on Guarantees of Freedom of Conscience and Religion³).

Freedom of conscience, worship, and religion manifests itself mainly in the free expression of philosophical, political or religious views by the individual as an independent person. The internal correlation of freedom of conscience and religion affords the individual an opportunity to express

² Journal of Laws No. 78, item 483 as amended [hereinafter: "Constitution"].

³ Journal of Laws of 2017, item 1153.

their outlook both in conscience and religion. Therefore, this right allows a person to make a free decision on, for example, their affiliation with the Church or participation in religion classes. The aforesaid laws ensure citizens' freedom to profess their religion and allow them to express their religion publicly among other people; they allow joint prayers, religious practices and teaching, which is also an expression of the parents' right to provide their children with appropriate moral and religious education that respects their outlook and convictions.

The question of parental authority is addressed in the Act of 25 February 1964 the Family and Guardianship Code.⁴ The notion of "parental authority" has not been defined in the law and is considered insufficiently specified [Kroczek 2017, 186-89].

Parental authority basically extends from the child's birth until their age of majority (Article 92 FGC). The age of majority (adulthood) is defined in the Act of 23 April 1964 the Civil Code.⁵ A child becomes an adult after they have attained the age of 18 (Article 10(1) CC). A minor becomes adult on marriage, and they do not lose this status if the marriage has been annulled (Article 10(2) CC). This case applies to a female who, after reaching the age of 16, enters into marriage upon court's consent. According to Article 11 CC, a minor acquires full capacity for acts in law upon becoming an adult. Minors who have reached 13 years of age and persons partially incapacitated have a limited capacity for acts in law (Article 15 CC). Persons who have not attained the age of 13 and persons completely incapacitated do not enjoy the capacity for acts in law (Article 12 CC).

Parental responsibility covers parents' rights and duties with regard to exercising care over the child and their property as well as the child's upbringing, respecting their dignity and rights (Article 95(1) FGC). Parents have the right to require their child to be obedient and offer them opinions and recommendations for their own welfare (Article 95(2) FGC). Parental authority should be carried out as required for the welfare of the child and in the social interest (Article 95(3) FGC). As regards major issues concerning the child or their property, the parents should listen to the child, as long as the mental development, state of health, and maturity of the child permit this. They should take the child's wishes into ac-

⁴ Journal of Laws of 2020, item 1359 as amended [hereinafter: "FGC"].

⁵ Journal of Laws of 2022, item 1360 as amended [hereinafter: "CC"].

count, as far as reasonable (Article 95(4) FGC). The obligation to listen to the child corresponds to Article 72 of the Constitution which requires persons responsible for children to consider the views of the child when determining their rights. In general, the parent-child relations should be marked by the mutual right and obligation to show respect on the basis of a rational partnership. All these requirements generally apply to all parents, regardless of whether they are married.

Parents should exercise their parental authority in such a way that is aligned with the child's welfare, i.e. parents' actions should be consistent with the child's interest. Child's interest should be assessed objectively, i.e. considering their age, health status, skills and talents, personal traits, family characteristics, and the living environment. In one of its judgments, the Supreme Court stressed that parents' interest must give way to the child's only when it cannot in any way be reconciled with the legitimate interests of the latter.⁶ In another decision, the Supreme Court found that the concept of the child's welfare, on the one hand, embraces the entire domain of the child's most important personal matters, for example, physical and spiritual development, appropriate education and upbringing, and preparation for adult life, and, on the other hand, it has a clearly tangible dimension.⁷

Parents are obliged to care for the physical and spiritual development of the child and prepare them adequately to work for the social interest in accordance with their talents (Article 96(1) FGC). Similarly, the Convention on the Rights of the Child⁸ imposes common responsibilities on parents for upbringing and development of the child (Article 18) and for providing the child with appropriate direction and guidance (Article 5). The legislator fails to specify what upbringing is, yet it defines its purpose as to properly prepare a child to work for the interest of society by making the best of their talents. As for physical education, parents should take care of the child's health and life and their full physical fitness. Spiritual upbringing covers the teaching of morals and principles of social coexist-

⁶ Resolution of the Full Panel of the Civil Chamber of the Supreme Court of 9 June 1976, ref. no. III CZP 46/75, OSNCP (9)1976, item 184.

⁷ Decision of the Supreme Court of 11 February 1997, ref. no. II CKN 90/96, *Legalis* no. 333272.

⁸ Adopted by the General Assembly of the United Nations on 20 November 1989, *Journal of Laws* No. 120, item 526.

ence to the child; developing their a righteous character; conscientiousness, diligence, a sense of duty, and love for the country; teaching the habit of respecting other people's property; providing the child with education corresponding to their talents, and preparing the child for professional work. The influence of parents' personality and their example must not be overlooked in the effort of upbringing. Parents should be the child's highest authority. They should demonstrate the greatest interest in the child as well as showing devotion and offering direction, guidance, and help. Safeguarding a child against dangers refers both to physical and spiritual dangers, regardless of the source [Piasecki 2011, 751-54].

Both parents are entitled and obliged to exercise parental authority in person and individually (Article 97(1) FGC). Exercising parental authority means that parents take care of the child's affairs personally. In other words, they should perform all parental duties that will help bring up the child in a manner that ensures their proper development. Even if parents seek assistance of another person (babysitter, housemother, or institution), they must also exercise general supervision over how parental authority is asserted on a daily basis in their stead. Parental authority is still theirs and not their replacement's, anyways. According to law, parents decide on important matters of the child together (Article 97(2) FGC), and none of them may claim to be the "head of the family." However, the law does not define the term "important matters." Evidently, it covers matters that go beyond the scope of everyday life or the current upbringing process, such as the choice of an educational institution, undergoing risky medical procedures, moving to another place of residence [Ignaczewski 2010, 54-55], but also the choice of religion in which the child grows and matures.

When examining a review request submitted by a group of MPs claiming⁹ that including the grade in religion classes in the average perfor-

⁹ The doubts voiced by the MPs concerned, but not only, compliance of the Regulation of the Minister of National Education of 13 July 2007 amending the regulation on the terms and methods of evaluation, classification, and promotion of students and auditing students and on conducting tests and examinations in public schools, Journal of Laws No. 130, item 906, with Article 25(1) and (2), Article 32(1) and (2), Article 53(3) in connection with Article 48(1) and Article 92(1) of the Constitution. In the opinion of the requesting group, the amending regulation was inconsistent with the constitutional right of parents to offer their children such religious and moral upbringing and

mance record at school exerts pressure on a student who attends the class through their parents' and not their own choice, which upsets "the balance between the parents' rights and the student's freedom of conscience, religion, and outlook" and violates Article 53(3) in connection with Article 48(1) of the Constitution, the Constitutional Tribunal found that there was no misalignment between the examined legal provisions and the Constitution. In the justification of the judgement of 2 December 2009,¹⁰ the judges stressed the parents' right to rear their children in accordance with the parents' convictions, "whether a school subject is compulsory or optional is irrelevant, provided that the optional subject is chosen freely and voluntarily and, which is important in the case of religious education, that the subject is not contrary to the parents' (students') outlook or religious beliefs." This position of the Constitutional Tribunal is aligned with the second sentence of Article 2 of Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms,¹¹ which says in the exercise of its functions, the state respects the right of parents to ensure such education and teaching that is in conformity with their own religious and philosophical convictions.

Interestingly, it was already the Act of 7 September 1991 on the System of Education¹² that furnished a legal basis for the teaching of religion classes in public kindergartens and elementary schools at the request of parents and in public secondary schools at the request of parents or students, at the same time providing that after reaching the age of majority, students may decide their further religious education on their own (Article 12(1) thereof). The law on education was followed by the Regulation of the Minister of National Education of 14 April 1992 on the conditions and method of organizing religious education in public kindergartens and schools.¹³ Under the regulation, the teaching of religion and ethics must be organized in public elementary schools if parents so request; in secondary schools, the decision is the parents' or students'; and after reaching the

teaching that are in accordance with their own convictions and should take account of the child's level of maturity and freedom of conscience, religion, and outlook.

¹⁰ Ref. no. U 10/07, *Journal of Laws* No. 210, item 1629.

¹¹ Done at Paris on 20 March 1952, *Journal Laws* of 1995, No. 36, item 175.

¹² *Journal of Laws* of 2020, item 1327 and of 2021, item 4.

¹³ *Journal of Laws* of 2020, item 983.

age of majority, students make their own decision as to attending religious or ethical education (para. 1(1) thereof).

The analysis of existing legal solutions, especially the Family and Guardianship Code, permits to infer that parental authority is a set of parental obligations and rights that parents should exercise towards the child in order to take care of the child and their property in a due manner [Piasecki 2001, 561]. Based on the resolution of the Supreme Court, parental authority can be said to be primarily a set of parents' obligations towards the child. It covers all matters relating to the child: custody, management of the child's property; representing the child; and directing the child upbringing.¹⁴ The key criterion to determine the content and exercise of parental authority is the child's welfare. The fundamental function of parental authority should be that of protection [ibid., 736].

Parents are the legal representatives of the child who is under their parental authority. Each parent has the right to act alone as the legal representative of the child (Article 98(1) FGC). A minor does not enjoy full legal capacity or this capacity is curtailed. Consequently, parents, as legal representatives, engage in acts in law on behalf of the child, which produces direct effects for the child (Article 95(2) CC), e.g. they purchase a real property for the child or baptize them. Therefore, if a child is not yet eligible to make an independent choice due to the young age, the parents, who exercise full parental authority, decide on the child's membership in the Church community or their participation in religion classes [Tymieniecka 2015, 92-96].

It is viewed by Polish law that the choice of religion for a minor child made by their parents falls within their parental authority as parents have the right to rear their children in accordance with their convictions, including the religious ones, and to ensure their moral and religious upbringing and teaching in the same way.

In principle, a minor cannot choose religion that they wish to profess freely or independently by appealing to the right to religious freedom because he or she is subject to parental authority. When parents decide to hear their minor child out, if the child's mental development, health status and the level of maturity so allow, and take into account, in so far as possible, the child's reasonable wishes, then the child might be in a position

¹⁴ Resolution of the Full Panel of the Civil Chamber of the Supreme Court of 9 June 1976, ref. no. III CZP 46/75, OSNCP (9)1976, item 184.

to choose religion independently, however, the *sine qua non* condition is the parents' consent expressed while respecting their parental authority and the right to rear children in accordance with their religious convictions.

Given the aforesaid, full parental authority appears to play a superior role in relation to the religious freedom of minors and justifies the choice of religion made by parents for minor children under their parental authority.

2. RIGHT TO APOSTASY

The problem of accessibility (or inaccessibility) of the procedure of apostasy to minors and the assessment of whether it infringes the religious freedom of minors or the right of parents to rear their children in accordance with their convictions is to be resolved under Polish law and ecclesiastical law.

First, it should be stressed and emphasized that Polish law and ecclesiastical law are two separate and autonomous systems with distinct and independent sources of legislation. Baptized Polish citizens are subject to both these laws.

The secular law principles of "religious freedom" or "the right of parents to rear their children in accordance with their convictions" are not embedded in church law. In turn, secular law does not govern the Sacrament of Baptism or the procedures of joining or leaving the Church community. Hence, the absence of apostasy for minors is an exclusive, internal, autonomous, and system-dependent decision of the divine and human institution of the Church. The independent status of the Roman Catholic Church in Poland was confirmed in the 28 July 1993 Concordat between the Holy See and the Republic of Poland,¹⁵ and in Article 25(4) of the Constitution; and respect for the mutual autonomy and independence of state and Church is prescribed in Article 25(3) of the Constitution.

By the way, the absence of the apostasy procedure for minors does not imply any limitations to their constitutionally guaranteed religious freedom: they can be baptized and, at the same time, refuse to profess faith and engage in worship. Moreover, they may actually seek affiliation with and even be a radical member of any religious sect.

¹⁵ Journal of Laws of 1998, No. 51, item 318.

Nor does the inaccessibility of the procedure of apostasy to minors violate the right of parents to rear their children in accordance with their convictions. Parents of minors baptized in the Church may actually raise them contrary to the covenants made during baptism, e.g. in the spirit of neutrality and even hostility towards God and the Church.

Since the secular legislator designed the generally applicable law regarding the religious freedom of minors and the right of parents to rear their children in accordance with their convictions in a manner discussed above, and the ecclesiastical legislator does not provide for the apostasy of minors (Can. 98 § 1 and § 2 CIC/83¹⁶), one of the prerequisites for an act of apostasy to be effective is to submit a declaration of will by an adult (Resolution no. 20/370/2015 of the Polish Episcopal Conference of 7 October 2015 regarding the issue of the General Decree of the Polish Episcopal Conference on leaving and rejoining the Church community – Clause 1.1 thereof), there are no justified reasons for supporting a claim about a conflict or violation of any applicable standards in the two independent legal systems. The Church remains a faithful guardian and advocate of the mission announced by Christ himself: go therefore, and teach all nations, baptizing them in the name of the Father, of the Son, and of the Holy Ghost (cf. Matthew 28:19-20). Hence, any departure from this service under the guise of ensuring “religious freedom of minors” or “parents’ right to rear their children in accordance with their convictions,” or attempts to dovetail with the principles of secular law, are ungrounded and even unacceptable.

CONCLUSION

In conclusion, a minor’s declaration of will to leave the Church does not produce any legal effects as ecclesiastical law does not provide for such a procedure for non-adults. Moreover, if the same declaration is submitted by the minor’s legal representatives in exercise of their parental authority, such a declaration does not produce any legal effects, either, and remains void because church law do not accept such declarations made on behalf of minor children.

¹⁶ *Codex Iuris Canonici auctoritate Ioannis Pauli PP. II promulgatus* (25.01.1983), AAS 75 (1983), pars II, p. 1-317.

The analysis outlined in this paper leads to a conclusion that today only parents (on behalf of their minor children) or adult students decide whether to attend religion or ethics classes or none of them. Although in formal terms, a minor or their parents may not submit a legally binding declaration of will to leave the Church, not only do applicable laws not infringe but, quite the contrary, they even protect the parents' right to raise their offspring in accordance with their philosophy of life, without limiting the actual religious freedom of minors.

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Parents' Rights to Raise Their Children in Accordance with Their Own Convictions and the Religious Freedom of Minors

Abstract

The article addresses the issue of the freedom of parents to choose religion for their minor children and to raise their offspring in accordance with their own worldview. The author also refers to the issue of the legal possibility of formal withdrawal of minors from the Roman Catholic Church (apostasy) in Poland. A brief analysis of these issues leads to the conclusion that parents have a legally guaranteed right to raise their children in accordance with their worldview, whereas the lack of procedures enabling minors to formally leave the Church, or for this act to be performed by their parents who have full parental authority over the children, does not violate the right to religious freedom.

Keywords: freedom of conscience and religion; religious freedom of minors; right of minors to leave the Church; apostasy.

Prawo rodziców do wychowania potomstwa zgodnie ze swoim światopoglądem a wolność religijna małoletnich

Abstrakt

W artykule autor porusza zagadnienie wolności wyboru religii przez rodziców dla ich małoletnich dzieci i wychowania potomstwa zgodnie z własnym światopoglądem. Odnosi się także do kwestii prawnej dostępności formalnego wystąpienia małoletnich z Kościoła rzymskokatolickiego (apostazji) w Polsce. Zwięzła analiza tych zagadnień prowadzi do wniosku, że rodzice mają zagwarantowaną prawem możliwość wychowania dzieci zgodnie ze swoim światopoglądem, zaś brak procedur umożliwiających formalne wystąpienie z Kościoła przez małoletnich lub dokonanie tego aktu przez ich rodziców mających względem dzieci pełną władzę rodzicielską nie narusza prawa do wolności religijnej.

Słowa kluczowe: wolność sumienia i religii; wolność religijna małoletnich; prawo małoletnich do wystąpienia z Kościoła; apostazja

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