Catholic Church and religious minorities in March Constitution

di Alessandro Tira

Abstract: The paper examines the constitutional profiles of Polish ecclesiastical law that result from the March Constitution. Freedom of conscience and religion was adequately guaranteed by the constitutional text, while maintaining the pre-eminent position of the Catholic Church, also on the basis of Polish historical experience.

Keywords: Constitution of 1921, concordatarian model, freedom of conscience, religious minorities, Catholic Church.

1. A field yet to explore

As an Italian point of view, the issue of law and religion in the Polish «March Constitution» (17th March 1921) is still a barely known matter. In general, Polish ecclesiastical law is a little explored field and, for the most part, the cultural exchange between Italian and Polish doctrine focuses on canon law. Mainly Giovanni Barberini and Mario Tedeschi devoted some of their essays to the relations between State and Catholic Church in Poland, with particular regard to the ages of communism and democracy and to the outstanding figure of Pope John Paul II[1].

Therefore, what happened in Poland in this field before the Second World War is still a promising issue for comparative and historical studies and my brief remarks about the relevance of religion in 1921 Constitution will aim to provide just an overview about some topics of comparative or common interest with the Italian case.

2. The institutional role of religion in 1921 Constitution

About the institutional role of religion, Piotr Szymaniec wrote that the first constitution of the re-established Poland «contained several religious elements, even though it was modelled after the Constitutional Laws of the Third French Republic of 1875»[2]. In fact, in the framework of 1921 Constitution we can find two main references, which denote the importance of faith as an issue of public relevance.

In the first case, the preamble to the Constitution evokes God and the divine Providence. «The first constitution after the partitions», wrote Michal

[1] G. Barberini, *Stato socialista e Chiesa cattolica in Polonia*, Bologna, 1983 and (*inter alia*) Id., *I concordati di Giovanni Paolo II nell'Europa centrale e orientale*, in *Quad. dir. pol. eccl.*, 1999, 1, 49-72; M. Tedeschi, *Chiesa e stato in Polonia negli anni 1944-1968*, in *Dir. eccl.*, 1970, 369-406; G.J. Kaczyński-M. Tedeschi, *La Chiesa del dialogo in Polonia*, Soveria Mannelli, 1986.
[2] P. Szymaniec, *The Notion of God and Christian Heritage in Polish Constitutions*, in «BYU Law – Internat. Center of Law & Religion Studies» (talkabout.iclrs.org), Oct. 31, 2020.

DPCE online
ISSN: 2037-6677

Rynkowski, «contained only a short *Invocatio Dei*: "In the name of the almighty God", by way of a compromise in recognition of the Jewish and Muslim communities»[3].

Then, article 54 provides that, before assuming his office, the President of the Republic takes his oath in the National Assembly, in the following terms:

> I swear to Almighty God, One in the Holy Trinity, and I vow to Thee, Polish Nation, that while holding the office of President of the Republic I will keep and defend faithfully the laws of the Republic and above all the constitutional law; that I shall serve devotedly, with all my power, the general good of the nation; that I will avert, watchfully, from the State all evil and danger; that I will guard steadfastly the dignity of the name of Poland; that I will hold justice toward all citizens without distinction as the highest virtue; that I will devote myself individually to the duties of office and service. So help me God and the Holy Martyrdom of His Son. Amen[4].

For sure, these two statements «make it difficult to determine the Second Polish Republic as ideologically neutral and therefore fully secular» State[5]. But assuming that a State is not a secular and neutral State is not enough, by itself, to define its religious attitudes – in this case, as a Catholic State – nor to determine the level of constitutional guarantees in the matter of freedom of belief and religious identity.

Although it is clear that the preamble and the presidential oath refer both to the Christian religion, in the first part of the text we cannot find any precise indication about *which* Christian denomination they refer to. It is only article 114 of the Constitution, which transposes in legal terms the relevance of Catholicism for the nation. The article does not explicitly define Poland as a Catholic State, but says, «the Roman Catholic religion» is «the religion of the preponderant majority of the nation». This is why Catholicism «occupies in the State the chief position among *enfranchised* [or *equated*] religions». Therefore, for the new Constitution the prominent position of Catholicism was not directly a matter of faith, but a matter of demography and major representativeness of that religion among the others. In any case, «the Constitution of 1921 made no place for the Primate in the executive councils of the Republic»[6].

It could be a little bit surprising, that the Constitution of a Country where Catholicism has always been part of the national identity and played a relevant role in political history[7] is so wary of words about the religious

[3] M. Rynkowski, *State and Church in Poland*, in G. Robbers (ed.), *State and Church in the European Union*, Baden-Baden, 2019, 464.
[4] The translation of the Constitution's articles is taken from the website of Polish Sejm Library: libr.sejm.gov.pl. The first Italian translation of the 1921 Constitution was published with and introduction by Casimiro Wronowski, brother-in-law of Giacomo Matteotti (the socialist leader who was killed in 1924 by fascist squads): *La Costituzione della Repubblica di Polonia*, Milano, 1921. In his introduction, Wronowski spends a few words praising the new constitutional guarantees for national and religious minorities, which he describes as a proof of the «steady, wondrous» spirit of religious tolerance of Polish people.
[5] P. Petasz, *The crime of blasphemy in the Polish penal code of 1932*, in «Gdańskie Studia Prawinicze», 2017, 690.
[6] T.N. Cieplank, *Church and State in People's Poland*, in *Polish Am. Studies*, 1969, 2, 15.
[7] Even in those years: according to Barberini, «il Concordato, la cui necessità era stata evidenziata già nell'abile azione diplomatica svolta dal Nunzio Apostolico Achille Ratti (poi

connotation of the State. The fact looks less surprising, if we consider that the new Republic of Poland, fighting for the settlement of its boundaries especially during the war with Soviet Russia, incorporated many regions where Poles lived side by side with different ethnic groups[8]. In fact, in 1921 almost 31% of the Polish population belonged to some ethnic minority and, because of this, during the years of its second Republic Poland was also a nation of many religions. In 1921, 62.5% of Poles were Roman Catholics, 11.8% were Eastern Rite Catholics (mostly Ukrainian Greek Catholics and Armenian Rite Catholics), 10.95% were Greek Orthodox, 10.8% were Jewish, and 3.7% were Protestants (mostly Lutheran)[9].

So slightly more than 74% of Polish population was Catholic and this percentage was high, indeed, but not enough to define Poland as just a Catholic nation. For a comparison, a few years later, according to 1931 census the Italian population was more than 98% Catholic[10].

3. The constitutional guarantees of religious freedom and the legal status of Christian Churches or religious minorities

The relevance of the issue of minorities is furthermore clear, if we consider that, almost at the same time the Polish Republic was born, the new-established State signed the *Little treaty of Versailles* with «the principal allied and associated Powers» that won the First World War, especially the USA and the British Empire. The treaty was specifically devoted to the matter of legal status of minorities in Polish law; it was signed at Versailles on 28th June 1919, and ratified by the *Sejm* on 31st July of the same year. The treaty committed Poland to recognise the stipulations contained in its articles as fundamental laws of the State: no law, regulation or official action should conflict or interfere with those stipulations, nor could any law, regulation or official action prevail over them. Art. 2 of the treaty stated that «Poland undertakes to assure full and complete protection of life and liberty to all inhabitants of Poland without distinction of birth, nationality, language, race or religion. All inhabitants of Poland shall be entitled to the free exercise, whether public or private, of any creed, religion or belief, whose practices are not inconsistent with public order or public morals».

From a typical point of view of 19th Century constitutionalism, this approach matched with the main constitutional guarantee in the field of religion: the individual right of freedom of religion and belief[11]. This was, consequently,

Papa Pio XI), aveva rappresentato pure un segno della riconoscenza dei dirigenti dello Stato polacco verso la Chiesa cattolica per il sostegno prestato durante la guerra del 1921 contro la Russia per la conquista di territori dell'Ucraina e della Bielorussia: una guerra che la Chiesa e la sua gerarchia avevano visto con prospettive *missionarie* di conquista di milioni di anime dall'ortodossia»; G. Barberini, *Stato socialista e Chiesa cattolica*, cit., 18.

[8] A useful map, with overlapped historical boundaries, is published in A. Rykała, *National, ethnic and religious minorities in contemporary Poland*, in T. Marszal (ed.), *Society and Space in Contemporary Poland*, Łódź, Łódź University Press, 2014, 140. See also A. Gieysztor, *Storia della Polonia*, Milano, Bompiani, 1983, 506-509.

[9] For a detailed overview, see *Le premier recensement général de la République Polonaise du 30 septembre 1921*, Varsovie, 1927, 44-57.

[10] Cf. S. Mastroluca-M. Verrascina, *L'evoluzione dei contenuti informativi del censimento della popolazione*, in *I censimenti nell'Italia unita. Le fonti di stato della popolazione tra il XIX e il XXI secolo*, Roma, ISTAT, 2012, 99.

[11] Cf. F. Ruffini, *Religious Liberty*, London-New York, 1912, 1-17.

DPCE online
ISSN: 2037-6677

the matter of article 111 of the Polish Constitution, which provides, «Freedom of conscience and of religion is guaranteed to all citizens. No citizen may suffer a limitation of the rights enjoyed by other citizens, by reason of his religion and religious convictions». Then the same article goes further and says, «All inhabitants of the Polish State have the right of freely professing their religion in public as well as in private, and of *performing the commands of their religion or rite*, in so far as this is not contrary to public order or public morality». The first statement is quite a common formulation for the individual right of religious freedom, at least since art. 10 of 1789 *Déclaration des Droits de l'Homme et du Citoyen*[12]. The second section, instead, contains an interesting point, because the public acknowledgement of the relevance of religious precepts is something more than a simple faculty for citizens to act according to those precepts. Furthermore, its extent regards every religion, not only the recognized and *equated* groups (except for the public order and morality clause).

The idea of religious rules as something relevant in society – a kind of statute, capable of establishing ad ruling social bodies – appears also in article 110. It states that «Polish citizens belonging to national, religious, or linguistic minorities have the same right as other citizens of founding, supervising, and administering at their own expense, charitable, religious, and social institutions, schools and other educational institutions, and of using freely therein their language, and observing the rules of their religion».

These articles comply with the commitment to the Minority Treaty, but art. 112 remarks that there was no room for any kind of "religious exemption", in Polish law. Although it pointed out that «no one may be compelled to take part in religious activities or rites unless he is subject to parental or guardians' authority», article 112 stated that, «religious freedom may not be used in a way contrary to statutes. No one may evade the performance of public duties because of his religious beliefs». The territorial principle and the predominance of State law is clearly affirmed here.

These articles about religious freedom put an item about how to protect minorities not just under the individual regard, but also as minority groups with their own identities. This is the point where it seems to emerge a different legal tradition in the Polish model of State and religions relations, and more specifically a Middle-European one. Articles 115 and 116 confirm the relevance of religious laws and the aim to protect religious minorities against discrimination. «The Churches of the religious minorities and other legally organized religious communities govern themselves by their own laws, which the state may not refuse to recognize unless they contain rules contrary to law» (art. 115, 1st paragraph). «The recognition of a new, or hitherto not legally recognized religion, may not be refused to religious communities whose institutions' teachings and organization are not contrary to public order or public morality» (art. 116). Again art. 115 (2nd paragraph) disciplines how to establish relations between the State and religions, and this sounds very close to an engagement to agree on matters of common interest: «The relation of the State to such churches and religions will be determined from time to time by legislation after an understanding with their legal representatives».

[12] «Nul ne doit être inquiété pour ses opinions, même religieuses, pourvu que leur manifestation ne trouble pas l'ordre public établi par la loi».

So religions, for the March Constitution, are entities ruled by their own laws and they have some kind of legal subjectivity *specifically as religions*, not as private societies or groups. Nowadays, this understanding of the matter sounds familiar to the current Italian Ecclesiastical law and to many other Western legal systems, but, at that time, the most relevant example of that was the Austro-Hungarian system of ecclesiastical law. We can find in the *Basic Law of 21 December 1867 on the General Rights of Nationals in the Kingdoms and Länder represented in the Council of the Realm* the following provisions. According to art. 15, «every Church and religious society recognized by the law has the right to joint public religious practice, arranges and administers its internal affairs autonomously, and retains possession and enjoyment of its institutions, endowments and funds devoted to worship, instruction and welfare, but is like every society subject to the general laws of the land». On the other hand, art. 16 states, «The members of a legally not recognized confession may practice their religion at home, in so far as this practice is neither unlawful, nor offends common decency». The Polish Constitution guaranteed a significantly wider protection to religious freedom – especially with regards to minorities because of the solemn engagement of the treaty – but the system of recognizing religious groups was similar to the Habsburg system.

The idea of legally recognized Churches or religions diverged mainly from the concept of «cult» that derived from the French revolutionary tradition[13] and was adopted also in Italy[14]. With Patrice Rolland's words, «Le terme de culte exprime ainsi une politique religieuse à la fois réticente quant au rôle joué par la religion dans la sphère publique et interventionniste par rapport à son organisation»[15]. Quite a different approach, in face to the recognition of religious laws made by the Polish constitution. About this point, by adopting such a perspective, the March Constitution seems to pay a tribute to a well-known model – the Austro-Hungarian one – and added its legacy of a public and institutional recognition of religions to the model of individual religious freedom, based on the equal condition of every citizen[16].

Under this regard, it is quite interesting that article 113 of the Polish Constitution provides for the «enfranchised religions» the right to organize according to their own statutes, but it also requires a public recognition. «Every religious community recognized by the State has the right of organizing collective and public services; it may conduct independently its internal affairs; it may possess and acquire movable and immovable property, administer and dispose of it; it remains in possession and enjoyment of its endowments and funds, and of religious, educational, and charitable institutions. No religious community may, however, be in opposition to the statutes of the state». Once again, here, the Polish Constitution sounds quite

[13] J. Volff, *Le droit des cultes*, Paris, 2005, 1-3.
[14] Cf. *ex multis* A. Galante, *Manuale di diritto ecclesiastico*, Milano, 1923, 444-448.
[15] P. Rolland, *Qu'est-ce qu'un culte aux yeux de la République?*, in *Arch. sc. sociales relig.*, 2005, 51.
[16] On a small scale, something similar happened in Italy in the very same ages. By conquering the last Provinces of Trento and Trieste, the Italian system of Ecclesiastical law faced the legacy of the Austrian Ecclesiastical Law, which was in force in those lands. This gave rise to an interesting debate about the two different models, just a few years before the *Patti Lateranensi* were subscribed. Cf. C. Caterbini, *Il diritto ecclesiastico italiano e la legislazione ecclesiastica nelle Terre redente*, Vicenza, 1920.

DPCE online
ISSN: 2037-6677

similar to the Austrian system, especially to the Basic law of 1867 (*Staatsgrundgesetz über die allgemeinen Rechte der Staatsbürger*). In the matter of relations between State and Churches, this bill was enforced in the Imperial *Länder* by a series of legislative acts, starting with the Recognition act of 1874 that brought to the recognition of Catholic Church. Then similar acts followed for the Old Catholic Church in 1877 and other Churches and religious communities; separate legal acts were devoted to Jewish Religious Association (Jewish Act, 1890) and Islamic Religious Communities (Islam Act, 1912).

In Austria, under the 1874 law, religious societies have a «public corporation» status. It could be interesting, in a comparative perspective, to analyse how the constitutional provisions about non-Catholic religions were enacted in Poland. Even if it would be a hard work, especially because of the language barrier, from an Italian point of view it could be most interesting to see how the system was actually implemented in the following years.

4. The position of the Catholic Church

At this point, we come back to the prominent issue: the dominant position of the Roman Catholic Church, which is stated in article 114 of the Constitution, but not as strongly as one could imagine. Indeed the formulation of the article was the result of a parliamentary balance. During the discussion for the new Constitution, «The right wingers favoured the notion of emphasising the privileged position of the Catholic religion, as the dominant one in the whole society, but eventually the concept proposed by the parliamentary Jewish minority was adopted. The leading role of Catholicism *among equal religions* was emphasised»[17]. However, article 114 introduced in the Polish legal system one more model of relation between State and religions: the traditional, Catholic system of concordats. This one was still presented by the Catholic Church itself as a model in *jus publicum ecclesiasticum externum* as a privilege and an instrument for a peaceful regulation of relations between the State and the Church itself[18].

The background of this solution is contained in the second part of article 114 that says, «The Roman Catholic Church governs itself under its own laws». The Constitution of Poland recognized the Catholic Church as a juridical subject, capable of ruling itself by its own laws (Canon law), but at a first sight – reading this statement side by side with the following article 115 – it may seem that there is little difference between the internal «law» of Catholic Church and the «laws» of other religious denominations («The churches of the religious minorities and other legally organized religious

[17] P. Abryszeński, *The March Constitution of 1921. Compromise and modernity*, in polishhistory.pl (visited 18th June 2021).

[18] «Finis. – *Proxime* est negotiorum ecclesiasticorum compositio, *remote* concordia inter utramque potestatem vel stabilienda vel restituenda; qui finis discognoscitur potissimum ex materia ipsius concordati.
Sane Ecclesia, ut iurium suorum recognitionem et plenam libertatem in sua missione exercenda obtinere possit a Statu, ei nonnulla concedit, quae concedere valet, et renuntiat usui quorundam mediorum, quae non sunt stricte necessaria; Status vero obligationem assumit recognoscendi iura Ecclesiae eiusque libertatem atque indipendentiam tuendi.
Practice, igitur, finis concordati est mutua pax et concordia inter ecclesiasticam et civilem auctoritatem»; F.M. Cappello, *Summa iuris publici ecclesiastici*, Romae, 1943, 293.

communities govern themselves by their own laws», art. 115). Indeed saying that the Catholic Church has its own law, is not quite the same thing of affirming the full idea of the Catholic Church as a *societas juridice perfecta*, as the Catholic Church defines itself in Canon law[19].

Anyway, the concrete difference between the two cases lies in the way the State choose to discipline their relations. Whereas the relation with non-Catholic Churches and religions was determined *by legislation* – that means, ultimately, by the State itself, even if on some kind of «understanding with their legal representatives» – the relation with the Catholic Church relation «will be determined on the basis of an agreement with the Apostolic See, which is subject to ratification by the *Sejm*» (art. 114). So, it is a *concordat*, an act that lies on international relations – or, at least, a peculiar kind of external relations, according to the positivistic jurisprudence of 19th Century. A concordat is more similar to an international treaty than to a previous agreement about a specific bill or statute, and the role of the Apostolic See (so the Pope, an authority external to the boundaries of Poland) and, later, of the *Sejm* confirm that the Constitution regarded the Catholic Church as a special entity[20].

It could be interesting to follow how Poland reached the Concordat, which actually came in 1925 after six years of negotiation. Indeed, the idea of a concordat with the Holy See started from the beginning of the debate on a new Constitution (we can find that since the *Draft Constitutional Declaration* of 3rd May 1919). Studying the case of the Polish Concordat could be relevant under two regards: for the importance that the agreement had for internal Polish law, and in a comparative perspective.

First, the Concordat was the core of the Polish constitutional model of relations between State and Church. Not just because the Constitution itself provided for it and because the agreement with the Catholic Church interested the majority of Polish people. It was important also because it played a central role in unifying the legislation in ecclesiastical matters for the first time at least since 18th Century. The specific contents of the Concordat reflect the typical agreements of 20th Century Concordats (education, ecclesiastical and religious juridical persons, Church properties, and so on). These contents do not seem to have a direct relevance for the constitutional system, but in this field, the efforts of the Polish Governments reached some important results in unifying the national legal system. As Wojciech Góralski wrote, «Starting in 1925, laws, regulations, statutes, instructions and circulars began to appear as executive acts for individual articles of the concordat agreement or its specific parts. The pace at which those instruments were submitted did not weaken after the 1926 coup. While in 1928 the compilation of legislative acts covered 21 articles of the concordat [on 27 total], in 1934 there were 66 such acts (including 53 laws and regulations and 13 ordinances and circulars), and several were still in preparation»[21]. The unifying role of the concordat was relevant because, in cooperation with the most powerful and widespread

[19] Cf. F.M. Cappello, *Summa iuris publici*, cit., 83-85.
[20] See W. Góralski, *The Polish Concordat of 1925*, in J. Krukowski (ed.), *Concordats between the Holy See and Poland. History and the present*, Lublin, Katolickiego Uniwersytetu Lubelskiego Jana Pawła II, 2020, 63-89.
[21] W. Góralski, *The Polish Concordat of 1925*, cit., 84.

DPCE online
ISSN: 2037-6677

institution of the country, the Catholic Church, in this field the Polish State went beyond the juridical heritage of three different dominations.

Second, from an Italian point of view, the Polish concordat was a direct precedent of 1929 concordat between the Holy See and the Kingdom of Italy. Moreover, Pious XI, Achille Ratti, was the former apostolic visitor (so an unofficial papal representative) in Poland, at his first experience of diplomatic duties[22]. His office there started in 1918, more or less at the same time when the first soundings of a concordat came from the Regency Government of Austro-German-occupied Poland. When the Holy See recognized the new Polish State, in 1919[23], Achille Ratti was named papal *nuncio* and, in the same year, new negotiations with the Polish government began. In a short time, bishop Ratti was created cardinal and became Pope (6th February 1922). Not surprisingly, from the beginnings of his pontificate, the new Pope looked for an agreement with the Polish Republic, even because he saw in the concordat a shield against the danger of Communism. Both the fear for Communism and the importance of concordats are the legacy of his experience in Poland[24]. It could be relevant, therefore, to fully understand how deeply the question of the Polish concordat influenced the subsequent papal action in the field of relations between the Holy See and the States. After decades of isolation of the Papacy, in fact, during the seventeen years of his pontificate Pius XI (assisted by his Secretaries of State, Pietro Gasparri and Eugenio Pacelli, later Pius XII) concluded concordats or similar agreements with about twenty States[25].

In conclusion, we could say that the challenge for the Second Republic, in the field of religious policy, was double: unify the Polish system of ecclesiastical law according to the national tradition, and balance new issues in the constitutional guarantees. Up to that time, in partitioned Poland existed three different legal systems of State and Church relations: Russian cesaropapism, Prussian territorialism and Austrian Josephinism, as a kind of jurisdictionalism. The first and the second models were dismissed, but it seems that something of the third model was kept by the new Constitution, side by side with the traditional Catholic system of the concordat.

In addition to these traditional models, the Versailles treaty defined constitutional guarantees for religious freedom and minorities, so the 1921 Constitution was bonded to liberal principles of individual freedom and equal liberty of conscience, religion, worship and so on. The liberal approach underlying the treaty in this matter was a third "model". The result was a hybrid system, and its implications are a promising field of studies still today to understand the circulation of juridical models of law and religion in Europe after the First World War.

[22] Cf. D.I. Kertzer, *Il patto col diavolo. Mussolini e papa Pio XI*, Milano, Rizzoli, 2014, 18-23.
[23] See N. Pease, *Poland and the Holy See, 1918-1939*, in «Slavic Review», 1991, 521-530.
[24] See R. Morozzo della Rocca, *Achille Ratti e la Polonia (1918-1921)*, in *Achille Ratti, Pape Pie XI. Actes du colloque de Rome (15-18 mars 1989)*, Rome, Publications de l'École Française de Rome, 1996, 95-122.
[25] R. Regoli, *Considerazioni sui concordati di Pio XI a partire dal volume di Igor Salmič, "Al di là di ogni pregiudizio"*, in in «Archivum Historiae Pontificiae», 2012, 199-212.