

Regulating the legal status of the Evangelical Church of the Augsburg Confession real estate in the Third Republic of Poland

(summary)

This dissertation aims to: (1) analyse the historical and legal processes of regulating the legal status of the real estate of the Evangelical-Augsburg Church, including both its property taken over by the State Treasury (with no legal title) after the Second World War and the property belonging to the Evangelical parishes incorporated as a part of the church in 1947; (2) assess the practices of the Regulatory Commission and the judicial system in the Third Republic of Poland related to the compliance of the administration of justice with the normative model adopted. Achieving the first goal is a prerequisite to reaching the second. In other words, without an in-depth knowledge of the historical processes it would be impossible to conduct a thorough analysis of today's Evangelical property restitution proceedings, which as a rule disregard the legal regulations adopted in the law providing for the restitution of property of the Evangelical-Augsburg Church.

In 1947 the parishes of the Evangelical churches functioning in the Second Polish Republic were incorporated into the Evangelical Church of the Augsburg Confession. Although these parishes had been in practice liquidated back in 1945, and their property (with no legal title) had fallen into the possession of either the State and its organizational units, or the Catholic Church and other religious denominations, they *de jure* still existed.

The property of the Lutheran parishes formerly functioning on the territory of the Second Polish Republic, appropriated in 1945 by the State authorities and later incorporated into the Evangelical Church of the Augsburg Confession, included over 4,000 pieces of real estate, more than 2500 sacred buildings and accompanying structures, thousands of cemeteries as well as about 100,000 ha of agricultural and forest land. Church buildings and other real estate functionally belonging to them were transferred to the Catholic Church and to a lesser extent to other religious denominations. As far as the property incorporated into the parishes in 1947 is concerned, the Evangelical-Augsburg Church was given only a few pieces of real estate which it in fact had owned on October 31, 1946 before the incorporation. The appropriation of Evangelical property (with no title) in 1945 was legalized in the following years.

When the People's Republic of Poland was heading towards its collapse, the communist authorities, soliciting support from the Catholic Church in the parliamentary election to the so-called 'contractual Sejm', gave the Church titles to thousands of pieces of sacred property which had already been at its disposal, together with the buildings and structures functionally related to them, i.e. churches and chapels, presbyteries, parsonages, etc. located on the territory of the former Second Republic of Poland. The legal status of the remaining property of these parishes was regulated by the Act of 13 May 1994 on the position of the State concerning the Evangelical Church of the Augsburg Confession in the Republic of Poland, which defined the principles of its restitution to this Church.

The solution adopted in this act empowered the Evangelical-Augsburg Church to apply for the restoration of property or for compensation for the thousands of pieces of real estate appropriated after the Second World War without a legal title to them, which posed a serious threat to the State budget. Making concessions for that, the Evangelical-Augsburg Church reduced its claims *inter alia* by not seeking compensation for 2,300 pieces of sacred property appropriated by the Catholic Church. This did not suffice, however. As a result of an intense pressure from the state authorities, not only was a wrong legal basis adopted for the proceedings on the claims of the Evangelical-Augsburg Church submitted to the Regulatory Commission but it was interpreted *contra legem* as well.

Faced with the threat of paralysing the activities of the Regulatory Commission, the Evangelical-Augsburg Church accepted the rules imposed for many years. This allowed for the recovery of at least part of the lost real estate but at the same time resulted in the irretrievable loss of many of its most valuable pieces. Moreover, the claims for the restitution of its property lost in the period of totalitarian rule met with resistance and objections from the local branches of the state administration and local government, all of which adhered to the position of the party representing the government in the Regulatory Commission. Local branches would not only frequently dispose of real estate subject to regulatory proceedings, which in the case of Western and Northern Poland resulted in the proceedings deemed groundless leading to their consecutive cancellation, but would also go as far as concealing the existence of relevant documents or sometimes even providing the Regulatory Commission with false information.

The restitution process for Evangelical real estate was also fraught with difficulties posed by the judiciary. The Supreme Court ruled that the purchase by the State Treasury of the title to Evangelical real estate by virtue of a court order issued on the basis of the decree of 1946 on abandoned and post-German assets, excluded the possibility of restoring the title to

such property. Moreover, the court allowed the possibility of the acquisition of the ownership of Evangelical real estate by the State Treasury through usucaption by adding the period of totalitarian rule to the necessary lapse of time beyond which the real estate could be gained, which contradicted the essence of the regulatory proceedings. It may safely be said that the Supreme Court's administration of justice regarding claims for the restitution of property formerly owned by the Evangelical Church of the Augsburg Confession has become an instrument for reducing and rejecting these claims.