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PERSONAL DATA REVEALING RELIGIOUS BELIEFS WITH A FOCUS ON THE RIGHT TO BE FORGOTTEN (GDPR ART. 17) IN THE CONTEXT OF POLAND

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Introduction

The right to religious freedom constitutes a fundamental human right derived from the inherent dignity of the human person. This right is universally recognized in Western civilization and enjoys elaborate protection. The right to religious freedom, as set out in Art. 18 of the Universal Declaration of Human Rights, is widely protected by instruments of international law, European law, constitutions, as

well as laws at the national level of the Member States of the European Union (Covenant 1977; Convention 1950a; Charter 2012).

Religious freedom is closely linked to another human right, namely the right to privacy, set forth in Art. 12 of the Universal Declaration of Human Rights and protected within the aforementioned normative acts. This right to privacy includes information concerning an individual's religious beliefs and practice of religious worship. Such information forms part of the private sphere of an individual. The information also falls within the category of personal data, which is itself subject to legal protection (Declaration 1948).

The subject of this article is personal data revealing religious beliefs, considered within the framework of regulations deriving from European law with particular emphasis on Regulation (EU) 2016/679 of the European Parliament and of the Council (GDPR), and a corresponding normative act belonging to the legal order of the Catholic Church in Poland, namely the General Decree on the protection of individuals with regard to the processing of personal data in the Catholic Church, issued by the Polish Bishops' Conference in 2018 (Decree 2018; GDPR; KEP 2018). The issue of EU jurisdiction over the processing of personal data by religious organizations for religious purposes has been the subject of numerous rulings by administrative courts in Poland, including the Supreme Administrative Court, which provides the context for the present discussion.

The aim of this study is to demonstrate that, under the Polish legal system, the realization of the right to be forgotten regarding data concerning religious beliefs faces specific limitations arising from the autonomy of churches and other religious associations, as well as from EU regulations which refer to national law and the internal laws of religious associations.

The analysis has been conducted using the dogmatic-legal method, with consideration of systemic, linguistic, and comparative interpretation, against the background of case law and the practice of supervisory bodies over personal data processing, that is, the President of the Personal Data Protection Office and the Church Data Protection Officer.

The novelty of this study lies in its comprehensive approach to the clash between the autonomy of the Catholic Church, and, *mutatis mutandis*, other religious associations operating in Poland, and the imperative of protecting personal data revealing religious beliefs, with particular reference to the “right to be forgotten”. This issue is gaining topicality in the face of an increasing number of conflicts at the intersection of canon law, national law, and EU law.

1. Data Revealing Religious Beliefs (Art. 9 GDPR)

The right to the protection of personal data has been programmatically indicated in primary EU law, for example, in Art. 16(1) of the Treaty on the Functioning of the European Union, stating that “Everyone has the right to the protection of personal data concerning them.” Similar regulation is found in Art. 8(1) of the Charter of Fundamental Rights of the European Union: “Everyone has the right to the protection of personal data concerning him or her.” Detailed regulation in this area is provided by the GDPR.

1.1. Sensitive Data as a Subcategory of Personal Data

Personal data, according to Art. 4(1) GDPR means any information relating to an identified or identifiable natural person (“data subject”).

A subset within this category is data revealing religious beliefs. This type of data is enumerated in Art. 9(1) GDPR. These are data revealing “racial or ethnic origin, political opinions, religious or philosophical beliefs, trade-union membership, and the processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, or data concerning health, sex life, or sexual orientation.” These particular categories of personal data are also called “special category data” or “sensitive data” (GDPR recital 10, 51-54).

Since special categories of personal data are a subset of personal data, the provisions relating to personal data in general apply in the first instance to the processing of sensitive data, but considering the specificity of processing such sensitive data, especially Art. 9 GDPR.

The special categories of personal data in Art. 9(1) GDPR, according to the principle *enumeratio ergo limitatio*, constitute a closed list. The legislator of an EU Member State is not competent to extend it. Notably, the list under the GDPR, compared to Art. 8(1) of Directive 95/46/EC, has been significantly broadened. Each EU Member State may, in accordance with Art. 9(4) GDPR, specifically regulate the processing conditions for genetic data, biometric data, or data concerning health. This power, however, does not include data revealing religious beliefs (Directive 95/46/EC; Fajgielski 2025, art. 9; Litwiński, Barta, and Kawecki 2018, 330, no. 2; Kuba 2018, art. 9).

Processing this kind of personal data may seriously interfere with an individual's privacy. Such interference may present far greater danger than the processing of so-called ordinary data. Processing sensitive data also involves increased risk of infringement of the rights and freedoms of those whom the data concern. Legal doctrine indicates that the risk of disclosure of such data may, in particular, be associated with discrimination. The distinction of special categories of data from personal data was to single out a subset of personal data for stronger protection. GDPR provides additional restrictions regarding the permissibility of their processing and involves mechanisms mandating and enabling their stronger protection (Kuba 2018, art. 9; Fajgielski 2025, art. 9).

Legal mechanisms ensuring more intensive protection of special categories of personal data include, among others, the general prohibition on their processing (GDPR art. 9[1]), the obligation to keep a record of processing activities (GDPR art. 30[5]), restrictions on the admissibility of automated decision-making based on sensitive data (GDPR art. 22[4]), and the obligation to appoint a Data Protection Officer in the case of large-scale processing of special categories of data (GDPR art. 37[1] [c]).

1.2. The meaning of “data revealing religious beliefs”

The key interpretive challenge (*crux interpretum*) may be the term found in Art. 9(1) GDPR, namely “religious beliefs.” The difficulty arises in interpreting the second part of this phrase. Religious beliefs

are beliefs relating to “religion.” The term “religion” is not defined by Polish law. Neither the Polish Constitution nor other laws provide a basis for establishing its scope. Thus, pursuant to the principles of interpretation, one should refer to extralegal sources, particularly those from religious studies (Winczorek 2000, 73).

The literature suggests interpreting “religious beliefs” as encompassing both “religion” and “denomination” owing to their differing semantic range. This perspective might benefit from reconsideration. Firstly, in religious studies, “religion” and “denomination” – sometimes used interchangeably with “faith” – are defined such that “denomination” is a concrete option within a given “religion.” The meaning of “denomination” is therefore narrower than “religion.” Each “denomination” falls within the framework of a particular “religion”. Secondly, in Polish legal terminology, “denomination” has become synonymous with “religion” of the 1952 Polish Constitution or the 1997 Polish Constitution (Konstytucja 1952, art. 67[2], 81[1], [2], 95; 1997, art. 53[7], 233[2]; Kuba 2018, art. 9).

Interpreting the meaning of the phrase “religious beliefs” also requires reference to the verbal element present in Art. 9(1) GDPR. As noted in the literature, the EU legislator used the term “data revealing” beliefs. This legislative technique means that the special category of data includes not only information that directly and independently confirms “a specific status or attributes” but also information from which such status or attributes may be indirectly deduced because it “reveals them”. This view directly corresponds with Art. 4(1) GDPR, which specifies that personal data is data that enables a person to be identified directly or indirectly (Fajgielski 2025, art. 9).

When discussing information that reveals religious beliefs, it may concern any facts indicating an association with a given religion. This may include declarations of affiliation to a religious association, official documents confirming membership in a religious association, or certificates of receiving sacraments whose content is not disputed by the person concerned.

Other data revealing religious beliefs are those from which an average recipient may deduce such beliefs based on certain facts or

circumstances. For instance, participating in a public worship service may lead to the inference that a person has beliefs consistent with a particular religion. Of course, such inference carries a risk of error, as someone may attend a service for political, cognitive, or social reasons rather than religious ones.

Other indirectly revealing data may include participation in religious practices of a private nature, that is other than official worship, fasting and penitential practices, belonging to groups existing within a religious association, adherence to religious commands, religious clothing, visiting places of worship, use of religious symbols, celebration of religious holidays, and refusal to perform some activities invoking religious grounds.

In legal literature, the unequivocal classification of data remains debatable. It is difficult to definitively determine whether data must directly indicate a specific community or whether it suffices for their indirect revelation through public behavior characteristic of a religion. Whether information provided voluntarily by the data subject remains sensitive also causes interpretive challenges.

It is therefore correct to note that “[there remain] difficulties in precisely defining the boundary between sensitive data and neutral data, which in turn lead to disputes regarding the application of provisions” (Fajgielski 2025, art. 9).

1.3. Exceptions to the general prohibition on processing sensitive data

As indicated above, processing data revealing religious beliefs is in principle prohibited under Art. 9(1) GDPR. However, Art. 9(2)(a-j) GDPR lists circumstances that provide exceptions to this prohibition. According to the principle *exceptiones non sunt extendendae*, these exceptions should be interpreted narrowly. The following are situations where processing is allowed:

- The data subject has given explicit consent for the processing of those personal data for one or more specified purposes.
- Processing is necessary for carrying out obligations and exercising specific rights of the controller or the data subject in

the field of employment, social security, and social protection law.

- Processing is necessary to protect the vital interests of the data subject or another person, where the data subject is physically or legally incapable of giving consent.
- Processing is carried out in the course of legitimate activities with appropriate safeguards by a non-profit body with religious aims, provided the processing relates solely to members or former members of the body or to persons who have regular contact with it in connection with its purposes, and the personal data are not disclosed outside that body without the data subjects' consent.
- Processing relates to personal data that are manifestly made public by the data subject.
- Processing is necessary for the establishment, exercise, or defence of legal claims or whenever courts are acting in their judicial capacity.
- Processing is necessary for reasons of substantial public interest, because of Union or Member State law, proportionate to the aim pursued, respecting the essence of the right to data protection, and providing for suitable and specific measures to safeguard the fundamental rights and interests of the data subject.
- Processing is necessary for preventative or occupational medicine, assessment of the working capacity of the employee, medical diagnosis, provision of health or social care or treatment, or the management of health or social care systems and services.
- Processing is necessary for reasons of public interest in the area of public health, such as protecting against serious cross-border threats to health or ensuring high standards of quality and safety of healthcare and medicinal products or medical devices.
- Processing is necessary for archiving purposes in the public interest, scientific or historical research purposes, or statistical

purposes in accordance with Art. 89(1) GDPR, on the basis of Union or Member State law, proportionate to the aim pursued, respecting the essence of the right to data protection, and providing for suitable and specific measures to safeguard the fundamental rights and interests of the data subject.

These situations are autonomous, independent, and equivalent, meaning that meeting one condition suffices for the processing to be permissible.

It should be added that regarding the legal status before the GDPR, the Constitutional Tribunal in Poland in the Judgment of 20 March 2006 (case no. K 17/05) noted that even personal data deemed “sensitive,” including those concerning religious beliefs, cannot enjoy the protection afforded to sensitive data if they pertain to public office-bearers and are retained by appropriate public institutions. Moreover, making such data available increases the transparency of public life and thus supports the protection of third-party rights. It is appropriate to assume that under the current legal status shaped by the GDPR, this view retains its validity (Judgment 2006).

1.4. Condition indicating a specific entity acting as the controller

One of the exceptions listed above, set forth in Art. 9(2)(d) GDPR, states that the prohibition on processing does not apply if the processing is carried out as part of the legitimate activities undertaken by a non-profit entity with religious aims. From the perspective of the subject-matter scope of the article, this is a key condition allowing a departure from the ban on processing sensitive data.

This condition is extensive in terms of the scope of entities it covers. For the purposes of this article, it undoubtedly includes churches and other religious associations, and therefore also the Catholic Church.

The conditions attached to this exception are as follows. Firstly, such activity must be conducted with the appropriate safeguards in place. Secondly, the processing must concern only members or former members of that entity, or individuals who are in regular contact with it in connection with its purposes. Thirdly, personal data may not be

disclosed outside that entity without the consent of the individuals to whom the data pertain.

2. Special Protection of Data Revealing Religious Beliefs Under Polish Law

To present the specific protection of data revealing religious beliefs under Polish law, one should begin with the Constitution of the Republic of Poland of 1997 (Konstytucja 1997), which holds the highest rank in the system of universally binding sources of law in Poland (Art. 8(1) of the Constitution 1997). Article 53(2) of the Constitution 1997 guarantees every citizen freedom to profess and manifest religious beliefs. This provision protects both the positive aspect of religious freedom expressed in the right to adhere to a chosen religion and practice worship, as well as the negative aspect encompassing the right to remain outside any religious associations. Additionally, Art. 53(7) of the Constitution 1997 provides: “No one may be compelled by public authorities to disclose their worldview, religious beliefs, or religious denomination.” According to the established position of the Constitutional Tribunal (case no. K 55/07), Article 53 of the Constitution does not operate in isolation from Article 25(3) of the Constitution (Judgment 2009). These provisions form a coherent system of guarantees for religious freedom and the autonomy of religious associations, which directly affects the interpretation of the scope of personal data protection in this context.

As part of EU law, the GDPR constitutes the largest element of the data protection system in EU Member States in terms of the number of provisions. Nevertheless, Member States also have their provisions relating to the scope permitted by the GDPR.

In Poland, data revealing religious beliefs are subject to special treatment precisely due to constitutional guarantees, the implementation of which is specified in Art. 107(2) of the Act on the Protection of Personal Data of 2018. This provision stipulates stricter criminal liability for unlawful processing of such data, up to three years of imprisonment, compared to two years for the processing of ordinary data. Other elements of this protection include Art. 23 and 24

of the Civil Code 1964, which concern personal rights (Ustawa 1964; 2018;). Other elements of the protection system may arise implicitly from various branches of law, including inter alia labor law – for example, the prohibition of discrimination on the basis of religion under Art. 11³, Art. 18^{3a}, and Art. 94^{2a} of the Labor Code (Ustawa 1974) – as well as disciplinary rules and other regulations of a similar character.

3. Protection of Data by the Catholic Church in Poland

3.1. The Basis for the Separate Regulation of Data Protection in Religious Associations

Art. 17(1) of the Treaty on the Functioning of the European Union (Treaty 2012) states that “The Union respects and does not prejudice the status under national law of churches and religious associations or communities in Member States.” This means that EU Member States retain autonomy regarding the legal status of religious associations in their national legal systems. This solution results from the diversity in traditions of state–religion relations and, consequently, legal traditions and regulations (Treaty 2012; Doe 2011, 14).

This principle is reflected in Recital 165 of the GDPR and Art. 91 of the GDPR. Under Art. 91(1) of the GDPR, the EU legislator recognised the possibility of a departure from unified personal data protection: “1. Where in a Member State, churches and religious associations or communities apply, at the time of entry into force of this Regulation, comprehensive rules relating to the protection of natural persons with regard to processing, such rules may continue to apply, provided that they are brought into line with this Regulation. 2. Churches and religious associations that apply comprehensive rules in accordance with paragraph 1 of this article shall be subject to the supervision of an independent supervisory authority, which may be specific, provided that it fulfils the conditions laid down in Chapter VI of this Regulation.”

The exception to the general application of the GDPR contained in Art. 91 makes the right to protection of personal data contribute to emphasizing the right to religious freedom. It should be noted that

the right to religious freedom has both an individual and institutional dimension. Thus, both individuals and religious communities may invoke this right. Thanks to Art. 91 GDPR, data protection in the EU does not undermine the organizational autonomy of religious associations in Member States but may be regarded as an element of religious freedom protection. “However, misinterpretation of Art. 91(1) of the GDPR may indeed be a threat to this fundamental freedom of every human being and religious institution” (Brzozowski, Krzywoń, and Wiącek 2023, 240; Tosoni 2020, 1261; Kroczek 2025, 11).

3.2. Endogenous Regulations of the Catholic Church in Poland

The provision of Art. 91(1) GDPR was utilized by the Catholic Church in Poland by introducing its own endogenous regulation in the form of a church law, that is the General Decree on the Protection of Individuals with Regard to the Processing of Personal Data in the Catholic Church issued by the Polish Bishops’ Conference in 2018 (KEP 2018).

This decree applies to all activities of the Church, i.e., it covers three principal areas of operation. The first is the Church’s activity as a religious association, carried out “on its own terms” (Konstytucja 1997, art. 25 [3]) and “in its own domain” (Konkordat 1993, art. 1). These are internal matters such as maintaining parish records, administering sacraments, or appointing clergy, which are subject exclusively to canon law and church autonomy, without interference from the State. The second area includes church–state matters, which fall within the competence of both canon law and State law, e.g., education, schools, cemeteries. In these cases, both church regulations and secular law apply. The third area comprises activities of the Church that are almost exclusively subject to secular regulations, such as taxes, business activity, or spatial planning (Konkordat 1993; Kroczek 2020, 53).

Whether the Catholic Church met the requirements set out in Art. 91(1) GDPR was widely analyzed and discussed in Poland. The arguments can be traced in the legal literature. Ultimately, it should be recognized that the Catholic Church in Poland has fully substantiated its compliance with the conditions given in GDPR. This stance

is confirmed by numerous judgments of administrative courts, including the Supreme Administrative Court (Judgment 2022a; 2022b; 2022c; 2025; Kroczek 2025, 4-7).

The solution permitted by the GDPR and adopted by the Church clearly reflects the principle of autonomy and independence of religious associations. The principle is recognized in Polish law, e.g., Art. 25 (3) of the Constitution of 1997, Art. 1 of the Concordat between the Apostolic See and the Republic of Poland of 1993 as well as the provisions of some laws, that is: Art. 1–2 of the Act on guarantees of freedom of conscience and religion of 1997, or Art. 2 of the Act on the relationship between the State and the Catholic Church in Poland of 1989 (Ustawa 1989a; 1989b).

It is worth noting that out of ca. 190 religious associations officially recognized by the Polish State, only 15 formally notified the supervisory authority, i.e., the President of the Personal Data Protection Office, of their compliance with the requirements of Art. 91. Consequently, other religious associations that did not file such a notification are subject to the uniform protection provided by the GDPR in all their activities (Decision 2019a).

To illustrate the European context, similar adjustments of their personal data protection rules to GDPR have been undertaken by Episcopal conferences of the Catholic Church in other European countries, enacting specific legal acts, e.g., Italy, Austria, Luxembourg, Germany, Spain. Some countries, however, did not issue church laws, but only guidelines for applying European law in church activities. This occurs in the case of France, and Belgium (CEI 2018; Hollerich 2018; VDD 2017; CEE 2018; CEF 2018; CEB 2018).

3.3. Protection of Data Revealing Religious Beliefs

In Art. 5(9) of the 2018 Decree, “data revealing religious beliefs” are classified as so-called “sensitive data.” In canonical doctrine, it has been observed that in the context of the Church appearance of “religious beliefs” in article in question should “be considered a misunderstanding” and “misses the point”. The category of “religious beliefs” cannot be regarded as “special category” or “sensitive data” within

the Church, where all members are believers and share the same faith (can. 204-205). This data category is so self-evident within the Church community that it is, in fact, constitutive of it. Therefore, under *de lege lata*, it should be accepted that data revealing religious beliefs are sensitive data only in relation to individuals who do not belong to the Catholic Church. Otherwise, this category would make no sense (CIC; KroczeK and Skonieczny 2022, 232-233, 236).

To remedy the legislative flaw found in Art. 5(9) of the Decree 2018, canonists have called for a *de lege ferenda* amendment, suggesting the addition of the following sentence to Art. 5(9) of the Decree 2018: "Membership in the Church does not constitute a special category of personal data (or: sensitive data)." Similar solutions have been adopted by the Catholic Church in other EU states. For example, the German decree (§ 4(2) second sentence) or the Spanish decree (Art. 4 § 14) (VDD 2017; CEE 2018; KroczeK and Skonieczny 2022, 236).

The Church Data Protection Officer practice permits the indication of examples of information that the supervisory authority has identified as revealing religious beliefs. In case Z.33.9.2020, these included publicly disclosed information such as participation in catechesis and membership in the parish altar servers' group, which revealed the religious beliefs of a minor. In another case, Z.7.9.2019, DPOCC found that posting on a diocesan website the termination of an employment contract between the employer, which was a diocesan curia (can. 469) and a person employed in a post that required affiliation with the Catholic Church constituted disclosure of data concerning that person's religious beliefs (CDPO 2020; Decision 2019b).

Furthermore, it should be noted that sensitive data processed within Church activities in accordance with Art. 9(2)(d) GDPR cannot be disclosed outside the religious association without the consent of the data subject. Despite the literal wording of this provision suggesting its absolute character, it should be recognized that, in practice, such disclosure is permissible in certain situations. For example, this occurs where such disclosure is permitted by the norms of canon law or required by a decision of Church authority, such as

a diocesan bishop, for example. In such a circumstance, the ground for processing the data is not Art. 9(2)(d) GDPR, but, pursuant to Art. 91(1) GDPR, the autonomous law of the religious association itself (Chojara-Sobiecka, Karsten, and KroczeK 2019, 39-40).

The same requirement for the data subject's consent appears in Art. 7(2) of the 2018 Decree. According to the rules of interpretation of canon law as set out mainly in canon 17 of the CIC, this provision can be applied in a way that does not make it absolute. The Church Data Protection Officer took this interpretive stance in case O.12.03.2023, which involved a request made to a parish by the Polish Tax Authority. That authority was conducting proceedings to verify the legality of a parish organist's income and demanded data on the individuals ordering music services for their relatives' funerals. DPOCC opined that the parish's disclosure of such data was lawful, as the demand found basis in Polish law and was connected with ongoing proceedings. From the standpoint of canon law, the parish as data controller could provide the requested information, even though it revealed the religious beliefs of those individuals (Decision 2023).

A different opinion was issued by the Church Data Protection Officer in case O.2.12.2025. In this case, a company operating in the waste management sector requested from the parish a list of data about individuals living in the parish territory and appearing in the parish file. The company argued that the purpose of the data was to determine the actual number of residents subject to waste management fees. In this case the legitimacy of the data requester and the legal basis for data processing by the parish in response to a third party's demand were crucial. The decision in this case ruled that data from the parish file serve religious, pastoral, and other statutory purposes of the Church and should under no circumstances be used or disclosed for the needs of private entities. Any such disclosure of data would violate the purposes, the principle of data minimization, and the storage limitation principle (Art. 6[1] of the 2018 Decree). Additionally, in the absence of explicit statutory norms requiring the parish to provide such data to external entities, disclosure was deemed inadmissible (Decision 2025).

4. Example of the Church's Specific Regulation

4.1. The Right to be Forgotten

Among the rights provided by EU law regulating data protection is the right of the data subject to request the erasure of data, the so-called "right to be forgotten." The exercise of this right is subject to prerequisites specified in Art. 17(1) GDPR: 1. personal data are no longer necessary in relation to the purposes for which they were collected or otherwise processed; 2. the data subject withdraws consent on which the processing is based and there is no other legal ground for the processing; 3. the data subject objects to the processing; 4. the personal data have been unlawfully processed; 5. the personal data have to be erased for compliance with a legal obligation under Union or Member State law to which the controller is subject; 6. the personal data have been collected in relation to the offer of information society services.

This right is subject to limitations. Article 17(3) GDPR sets out negative prerequisites, that is, circumstances in which the request for data erasure does not apply. These include situations where data are processed: 1. for exercising the right of freedom of expression and information; 2. for compliance with a legal obligation requiring processing by Union or Member State law or for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller; 3. for reasons of public interest in the area of public health; 4. for archiving purposes in the public interest, for scientific or historical research purposes, or for statistical purposes; or 5. for the establishment, exercise, or defence of legal claims.

Not only do provisions of the GDPR limit the right in question. According to Recital (4) GDPR, "The right to the protection of personal data is not an absolute right; it must be considered in relation to its function in society and be balanced against other fundamental rights, in accordance with the principle of proportionality." The principle is to be applied to the right to be forgotten as well (Judgment 2010; Jabłoński and Węgrzyn 2021, 247).

4.2. Application of the Right to Be Forgotten

In matters relating to the right to be forgotten regarding data revealing religious beliefs processed by religious associations, two fundamental rights are competing or overlap conflictingly: 1. the right to the protection of personal data (Charter 2012, art. 8) and 2. the right to freedom of thought, conscience, and religion (Charter 2012, art. 10). Both these rights are also protected as general values on which the European Union is founded (Treaty 2012, art. 16-17).

Furthermore, in accordance with Art. 52(3) of the Charter of Fundamental Rights, the rights contained in the Charter are in principle identical to those guaranteed by the European Convention on Human Rights, safeguarded by the European Court of Human Rights. Thus, Art. 8 of the European Convention on Human Rights (right to respect for private and family life), and Art. 9 (freedom of thought, conscience, and religion) also apply (Charter 2012; Treaty 2012; Convention 1950b). The protection of personal data is thus related to religious freedom, and resolving the conflict between these values requires taking into account the hierarchy of constitutional values. In Poland, enshrined in Article 30 of the Constitution (human dignity as the source of freedoms and rights), which confers on religious freedom and the right to privacy a similar, though not identical, axiological status.

Religious associations are generally subject to the right to be forgotten. In application the right, two situations must be distinguished, the existence of which is determined by the application of Art. 91 GDPR. The first situation occurs when a religious association is directly subject to the GDPR, as it has not invoked the option under Art. 91 GDPR for exemption from unified European protection. In such cases, the right to be forgotten is governed in full by Art. 17 GDPR. The second situation occurs where the religious association has its data protection regulations adapted to the GDPR pursuant to Art. 91. In this case, the right to be forgotten applies as granted by the internal law of the religious association.

The practical exercise of the right to be forgotten in EU Member States, such as, for instance, the Netherlands, Belgium, Ireland, Slovenia, France, and Poland, has revealed a certain problem. Data subjects

submit requests for data erasure also data reveals religious beliefs, including affiliation with a religious association. These requests typically occur when the data subjects wish to sever their identification with the religious association and have taken some formal step of separation, as most often regulated by the religious association's own law.

In the Catholic Church, such situations most commonly arise under two circumstances. The first is when the data subject commits apostasy or schism; that is canonical offenses defined in canon 751 of the CIC. The second is when a person submits a declaration of leaving the Church. Notably, in canon law, apostasy, and the declaration in question are not identical either in their definition or canonical consequences, but in legal commentary these distinctions are not always noticed (CDPO 2020; KroczeK 2024, 53-54; Jagiełło 2016, 411; Dettlaff 2016). It is also crucial to note that the so-called "formal act of withdrawal with the Church," sometimes referenced by authors, does not exist in universal canonical law as a legal institution that affects Church affiliation, as it did until its abrogation in 2009 by Benedict XVI by the Apostolic Letter *motu proprio Omnium in mentem* (OM).

The *modus operandi* of this issue in the mentioned countries is as follows. Church entities, such as parishes or dioceses, as "controllers" under Art. 5(7) GDPR or their internal Church law, receive GDPR-based requests from data subjects for the erasure of data processed in Church registers, e.g., parish registers: registers of baptisms, confirmations, and marriages (can. 535 §1). Requests to erase data, including ordinary data and data revealing religious beliefs, including also historical facts such as baptism, reception of other sacraments, or other facts and circumstances affecting a person's canonical status, are typically denied. Church entities argue that the right to be forgotten is not absolute and that certain key information can be processed by religious associations regardless of erasure requests.

Returning to the distinction of the two situations. In the first situation (religious associations directly subject to the GDPR), the continued processing of data of former members can be justified in certain circumstances. For example, a decision by the President

of the Personal Data Protection Office of 20 August 2019 (reference ZSPU.440.486.2019) held that processing the data of a former member is permissible if it relates to the fulfilment of obligations arising from applicable law, thus legalizing processing under Art. 9(2)(d) GDPR. Accordingly, the erasure request of a former religious association member does not mandate action by the supervisory authority. Similarly, the Supreme Administrative Court of Poland (decision of 3 September 2024, case III OSK 769/23) determined that religious associations directly subject to the GDPR may lawfully process personal data of former members for possible legal claims (under Art. 6[1] [f] of the GDPR). In both these scenarios, the right to data erasure is limited by the exceptions listed in Art. 17(3) GDPR (Decision 2019a; Judgment 2024).

In the second situation, when churches and other religious associations use their data protection regulations, as with the Catholic Church in Poland, erasure requests are not based on GDPR but solely on the internal law of the religious association. The legal basis is Art. 14(1) of Decree 2018, which allows for data subjects to request erasure in certain circumstances, which mirror GDPR. However, Art. 14(4) of the Decree 2018 establishes exclusion. The right to request erasure does not apply to data recording the reception of sacraments or matters relating to the person's canonical status. Nevertheless, such a request must be noted in the data set, and the controller is obliged not to use the data concerned without the consent of the local ordinary or a higher superior.

4.3. Appeal Against Denial of Erasure of All Data Revealing Religious Beliefs

The denial of the exercise of the right to erasure enables the data subject to lodge a complaint about the controller to the supervisory authority.

If a religious association has not availed itself of exemption from unified protection enabled by Art. 91(1) GDPR, or has only adopted its regulations without appointing a supervisory authority under Art. 91(2) GDPR, the complaint in question is considered by the national

supervisory authority. In Poland, this is the President of the Personal Data Protection Office (PPDPO).

Conversely, if a religious association has enacted data protection law „brought into line with” the GDPR (GDPR art. 91[1]) and established its own supervisory authority, that authority has jurisdiction over the matter. In Poland, the Catholic Church’s competent body is the Church Data Protection Officer.

In the latter case, the national public administration authority is certainly not competent. The President of the Personal Data Protection Office has repeatedly emphasized that data collected by the Catholic Church for religious purposes does not fall within his supervisory competence. This position is also confirmed by case law. Legal doctrine supports this as well (Decision 2019a; Judgment 2019; 2020; Judgment 2024; Łukańko 2021, 297-310).

After the case is examined by the national supervisory authority, under Art. 78(1) GDPR, both the controller and the data subject may pursue their rights and lodge appeals against the supervisory authority’s decision with the courts. In Poland, the competent court for matters involving the President of the Personal Data Protection Office is the Provincial Administrative Court in Warsaw.

Where the supervisory authority is the Church Data Protection Officer, under Art. 41 of the 2018 Decree, an appeal against their decision is heard by the “appropriate dicastery of the Apostolic See, in accordance with the provisions of the Code of Canon Law.” This provision of the 2018 Decree is flawed in terms of its solution and makes its application difficult, as it is unclear from this or other provisions of the 2018 Decree whether the appeal procedure is administrative or judicial, and this determines the appellate authority. Additionally, contrary to the statement in Art. 41 of the 2018 Decree, the Code of Canon Law contains no guidance regarding such a procedure.

Due to this flaw, the Church Data Protection Officer on 31 May 2019 referred a question to the Secretariat of State of the Holy See about which dicastery appeal should be brought to. A reply dated 9 January 2020 indicated that, as a rule, the Supreme Tribunal of the Apostolic Signatura is the appropriate dicastery and, in problematic cases,

the Secretariat of State of the Holy See, Section for Relations with States. However, this response did not resolve the difficulty, leaving ambiguity around the assignment of cases to the individual appellate routes (Letter 2019; SS 2019).

In the context of the situation of the Catholic Church in other EU Member States, reference should be made to cases in Slovenia and France, where court decisions highlighted the ability of the Church to retain data on individuals. In contrast, in Belgium, an alternative was adopted in the case *Bisdom Gent VZW v. Gegevensbeschermingsautoriteit*, C-12/25. In this case the diocese, as controller, refused a request for erasure from the baptismal register, resulting in appeals to state supervisory authorities and, ultimately, an order to erase the data. This Belgian authority's decision was appealed to the court. Court of Appeal in Brussels (*Hof van beroep Brussel*) on 1 December 2024 referred the case to the Court of Justice of the European Union in Luxembourg requesting for a preliminary ruling and asking preliminary questions. These are: 1. Can an adult request erasure of the baptismal record under the GDPR? 2. Does the Church's religious freedom affect assessment of the erasure request? 3. Is it relevant that the baptismal register is paper-based, not electronic? 4. Does the historic register meet the criteria for archiving in the public interest, precluding the erasure obligation? 5. Is annotation of having left the church sufficient instead of total erasure? The case is currently pending (EDPB 2021; CE 2024; CJEU 2025).

With regard to this case, the President of the Personal Data Protection Office position communicated to the Polish government was that "the office does not see the necessity for participation in the proceedings. However, it is justified to monitor the case." This approach is correct, In Poland, due to the distinct legal position of Churches and other religious associations, data erasure requests relating to religion fall under the provisions of Art. 91 GDPR, in connection with internal religious law. In Poland, a ruling by the national data protection authority or by a national court in such cases is not possible (Letter 2025).

Having regard to this, it is unequivocal that the Catholic Church in Poland may process data on “former members,” regardless of the canonical law or statutory qualification of such persons’ membership in the Church. This point should not be open to doubt. As a result, claims for the erasure of all data from church registers, e.g., baptismal registers, have no legal basis (Fajgielski 2025, art. 9).

Conclusions

Data revealing religious beliefs, by their inherent nature, rightfully belong to a special category of personal data requiring enhanced protection under the General Data Protection Regulation. It is equally commendable that processing such data necessitates adherence to heightened protection standards, reflecting the profound sensitivity of religious information and its fundamental connection to human dignity and personal autonomy. Nevertheless, rights pertaining to the protection of personal data, including sensitive data such as religious beliefs, are qualified rather than absolute. These rights must be balanced against other legitimate interests and legal obligations, particularly where they intersect with the institutional autonomy of religious associations.

In Poland, within the constitutional framework guaranteeing religious freedom, Churches and other religious associations enjoy a distinctive legal status grounded in the principles of autonomy and organizational independence. This constitutional positioning is equally reflected in their approach to processing personal data revealing religious beliefs and affiliation, as explicitly recognized in the right to erasure provisions of data protection law. The autonomous character of religious entities, stemming from their constitutionally protected status, enables them to establish internal regulatory frameworks that govern data processing in accordance with their theological principles and ecclesiastical governance structures.

Consequently, religious entities may lawfully process data revealing religious beliefs to a broader and more nuanced extent than non-religious entities, subject to the parameters of their institutional autonomy and internal regulatory regimes. This entitlement stems

directly from the constitutionally protected autonomy of religious associations and their capacity to self-regulate in matters touching upon their fundamental mission and organizational integrity. Such an approach remains not only consistent with Union law, including the GDPR, but indeed flows from the Regulation's explicit recognition of Member State competence in matters of church-state relations, as enshrined in Art. 17 of the 2012 Treaty.

The interplay between data protection rights and religious autonomy thus exemplifies the delicate balancing exercise inherent in modern European legal systems, where fundamental rights must coexist in mutual respect rather than absolute hierarchy. This analysis demonstrates that the right to erasure, while fundamental, operates within a constitutional framework that acknowledges the special position of religious associations and their legitimate interest in maintaining comprehensive records of their members' religious affiliation and participation. The practical application of these principles, as illustrated through the examination of specific regulatory frameworks and case law, reveals a nuanced legal landscape where both individual privacy rights and collective religious freedom receive appropriate protection and recognition under European Union law.

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Abstract

The problem addressed: The tension between the right to be forgotten (GDPR art. 17) and the autonomy of religious associations in processing personal data revealing religious beliefs, with particular reference to the Catholic Church in Poland.

The aim of the research conducted: To examine the legal relationship between the right to privacy and the right to religious freedom under Polish and European law, and to assess the scope and limits of the right to be forgotten in the context of church data processing.

Methods: Doctrinal-legal method of interpretation, supported by analysis of case law and supervisory practice.

The results of the research: The article identifies the specifics of data processing regulations within the Catholic Church in Poland, clarifies the legal and supervisory practice context, and establishes the significance of the exception provided by Article 91 GDPR concerning the autonomy of religious associations in the realm of data protection.

The conclusions drawn from the research: The right to be forgotten is not absolute; its application in the religious context must take into account constitutional frameworks, the specificity of canon law, and the need to balance individual rights with the institutional rights of religious communities.

Keywords: personal data, religious beliefs, right to be forgotten, GDPR, church autonomy

**DANE OSOBOWE UJAWNIAJĄCE PRZEKONANIA RELIGIJNE
W KONTEKŚCIE PRAWA DO BYCIA ZAPOMNIANYM (ART. 17 RODO)
W POLSCE**

Abstrakt

Poruszony problem: Napięcie między prawem do bycia zapomnianym (art. 17 RODO) a autonomią związków wyznaniowych w zakresie przetwarzania danych osobowych ujawniających przekonania religijne, ze szczególnym uwzględnieniem Kościoła katolickiego w Polsce.

Cel przeprowadzonych badań: Zbadanie relacji prawnej między prawem do prywatności a prawem do wolności wyznania w świetle prawa polskiego i europejskiego oraz ocena zakresu i granic prawa do bycia zapomnianym w kontekście przetwarzania danych przez Kościół.

Metody: Metoda doktrynalno-prawna interpretacji, poparta analizą orzecznictwa i praktyki nadzorczej.

Wyniki badań: Artykuł wskazuje specyfikę regulacji dotyczących przetwarzania danych w Kościele katolickim w Polsce, wyjaśnia kontekst prawny i praktykę nadzorczą oraz określa znaczenie wyjątku przewidzianego w art. 91 RODO dotyczącego autonomii związków wyznaniowych w obszarze ochrony danych.

Słowa kluczowe: dane osobowe, przekonania religijne, prawo do bycia zapomnianym, RODO, autonomia Kościoła