

Piotr Majer

WORKS OF THE POLISH EPISCOPAL CONFERENCE ON A NEW REGULATION ON PREPARATION FOR CANONICAL MARRIAGE (PART I)

Introduction

On 14 March 2017, the Polish Episcopal Conference (“PEC”) adopted a new General Decree on Conducting Canonical and Pastoral Dialogue with the Parties Prior to Concluding Canonical Marriage.¹ The Decree, which is intended to replace the Instruction on Preparation for Marriage in the Roman Catholic Church² of 5 September 1986 and valid to date, is not yet applicable law because it needs verification and recognition (*recognitio*) by the Holy See and promulgation in accordance with the law.³

Prior to final decisions or without determining the final version in which the document will be promulgated and will become effective (as part of the *recognitio* procedure, the Holy See may propose amendments to the general decree⁴), this article will address the most relevant facts of the new

Rev. PIOTR MAJER, Hab. J.C.D., University Professor, Head of the Department of Law on the Church Mission of Teaching and Sanctification, Faculty of Canon Law, the Pontifical University of John Paul II in Krakow; ul. Kanoniczna 9/408, 31-002 Kraków, Poland; e-mail: pmajer@diecezja.krakow.pl; <https://orcid.org/0000-0002-9516-8839>

¹ Henceforth cited as: Decree.

² “Akta Konferencji Episkopatu Polski” 1 (1998), no. 1, p. 85-137 [henceforth cited as: Instruction]. The Instruction was adopted at the plenary meeting of the Polish Episcopal Conference in Tarnów on 5 September 1986 and announced as binding in all Polish dioceses (after obtaining the Holy See’s recognition) pursuant to a decree of 13 December 1989. The latter date is often incorrectly thought of as the date of adopting the Instruction.

³ *Codex Iuris Canonici auctoritate Ioannis Pauli PP. II promulgatus* (25.01.1983), AAS 75 (1983), pars II, p. 1-317 [henceforth cited as: CIC/83], can. 455 § 2.

⁴ See Pontificio Consiglio per i Testi Legislativi, *Nota esplicativa sulla natura giuridica e l’estensione della «recognitio» della Santa Sede*, “Communicationes” 38 (2006), p. 10-17.

regulation,⁵ so that entities responsible for the formation of individuals involved in preparation for marriage can get ready for the upcoming changes. Evidently, these changes will not be “revolutionary,” yet, in some respects, can be considered significant.

At the outset, it should be noted that the previous 1986 Instruction regarding preparation for marriage will be replaced by the General Decree of the PEC. This shift aims to ensure a better alignment with the provisions of CIC/83. In can. 1067, the ecclesiastical legislator recommends (not only allows) the Episcopal Conference to lay down norms concerning the examination of spouses,⁶ the publication of marriage banns, and the other appropriate means of enquiry to be carried out before marriage [Szytchmiler 1991-1992, 67-76]. Without going into detail on the subject of extensively debated legislative powers of Episcopal Conferences [Góralski 1989, 45-57; Di Carlo 2001, 149-74; Stępień 2014, 63-115], it should be stressed that “general decrees,” referred to in can. 455 § 1-3 are legislative acts [Krukowski 2005, 325-29], “laws in the strict sense,” [Sobański 2003, 88] and differ fundamentally from “instructions” referred to in can. 34 which “set out” the provisions of a law while not being laws themselves. The still binding 1986 Instruction is in fact a general decree of the Polish Episcopal Conference, despite a different name.

It should also be emphasised that it was the intention of the ecclesiastical legislator that the Decree covered the norms indicated in can. 1067, i.e. regarding “examination of spouses,” i.e. essentially pertaining to formal and canonical requirements, excluding the issues of pre-marital teaching and other aspects of pastoral care for preparation for marriage

⁵ The first part of the article will discuss some general issues of the pre-marital inquiry as well as obstacles and prohibitions regarding assistance at marriages. Other issues (defects of matrimonial consent, mixed marriages and similar, canonical form of contracting marriage, civil-law effects of marriage) are discussed in the article by L. Adamowicz.

⁶ This is how the phrase “examen sponsorum” (can. 1067) is translated into English. Other canons define these activities as “investigationes” (can. 1070 and 1131, 1^o) or “inquisitiones” (can. 1121 § 3), which can be translated differently: investigation, research, inquiry or inquiries, test, canonical dialogue.

regulated in other documents of the Polish Episcopal Conference.⁷ This means that the new normative act does not set out provisions regarding further, closer and direct preparation for marriage but is focused on the pastor's task to make sure that nothing stands in the way of a valid and lawful celebration of marriage (can. 1066),⁸ i.e., first of all, to determine unmarried status, to exclude other impediments to marriage and bans, to verify the authenticity of matrimonial consent, to obtain the required permissions and dispensations, if required, to oversee everything regarding the canonical form and civil-law effects of marriage and its proper registration.

1. Contracting parties' oath

A noteworthy novelty in the practice of drawing up the pre-marital report is joint prayer⁹ of the pastor and the engaged before the canonical and pastoral dialogue and the oath to be sworn by the future spouses.¹⁰ In this case, it is an assertory oath (*iuramentum assertorium*), i.e. calling God to be the witness and endorsing the truthfulness of the answers to pastor's questions with God's authority. This is not a promissory oath (*iuramentum*

⁷ See Polish Episcopal Conference, *Dyrektorium Duszpasterstwa Rodzin. The document was adopted during the 322 Plenary Meeting of the Polish Episcopal Conference in Warsaw held on 1 May 2003*, Fundacja VITA FAMILIAE, Warszawa 2003, especially no. 18-36; Idem, *Służyć prawdzie o małżeństwie i rodzinie* (1.09.2009), Wydawnictwo Diecezji Tarnowskiej Biblos, Tarnów 2009, especially no. 97-104.

⁸ It does not imply that a General Decree is to be a "legal" document and the content of the other documents is more "pastoral," as these two aspects of the Church service cannot be separated: canon law is internally pastoral, which is why what does not meet the requirements of the law is not a truly pastoral activity. See Address of His Holiness John Paul II to the Tribunal of the Roman Rota, *Relationship between Pastoral Ministry and Law in the Church* (18.01.1990), in: *Jan Paweł II. Dzieła zebrane*. Vol. V: *Orędzia. Przesłania. Przemówienia okolicznościowe*, Wydawnictwo „M”, Kraków 2007, p. 678-81, especially no. 4.

⁹ The proposed pre-marital canonical and pastoral dialogue form indicates that the taking of the dialogue records should begin with the Sign of the Cross and the joint saying of the Lord's Prayer.

¹⁰ The text of the oath is provided in the report form, "I call God as my witness and swear that I shall tell the truth when responding to questions about the marriage I intend to contract. So help me God Almighty. Amen."

promissorium), that is, invoking God's name to strengthen the promises to be honoured in the future.

The oath is a means to strengthen the parties' credibility when answering the pastor's questions. In today's de-Christianised society, the value of a religious oath has certainly declined, and the mere fact of taking such an oath cannot clearly determine the truthfulness of answers to the pastor's questions. However, it gives grounds for presuming that the parties' declarations correspond to reality [Bianchi 2002, 361-64],¹¹ especially given their natural right to marry (*ius connubii*).¹²

Prayer and oath, as religious acts, emphasise that the preparation of a prenuptial report is not a bureaucratic or strictly official activity,¹³ although it should always be remembered that ministry in the parish office is of a pastoral nature [Dyduch 1985, 47-53], but it completes the entire "personal preparation for entering marriage, so that the spouses are disposed to the holiness and the obligations of their new state" (can. 1063, 2°).

2. The need to conduct a canonical and pastoral dialogue with each party separately

The draft Decree reminds that a pastor should ask questions separately to each of the parties, at least in matters other than collection of personal data.

This requirement was already laid down in the previous 1986 Instruction where it was justified by the need to act with discretion and respect for the dignity and intimacy of the persons involved (no. 40). Although it does not

¹¹ On the institution of oath in canon law, see Spirito 1988, 807-15; Majer 2011d, 421-27; Bartczak 2015, 63-77. On the role of oath, also religious, in Polish law, see Mezglewski 2011, 5-22; Maroń 2015, 51-76; Maciaszek 2018, 35-48.

¹² P. Bianchi wonders how to assess a frequent contradiction between sworn declarations made during the drawing up of the pre-marital report sworn testimony (see can. 1532) given in a process concerning the declaration of nullity of marriage [Bianchi 2002, 362-63].

¹³ Pope Benedict XVI underlined that in his address to the Roman Rota of 22 January 2011, *Judiciary pronouncements must reflect the truth about marriage*, "L'Osservatore Romano" (Polish edition) 32 (2011), no. 2, p. 20-23. See also comments to this papal address, Góralski 2011, 62-75; Wętkowski 2011, 413-23; Bartczak 2011, 25-31.

ignore this aspect, while highlighting the obligation to act with discretion and in a genteel manner, respect the dignity and intimacy of the persons, especially when asking certain questions, the new Decree stressed that the interview be held separately with each of the parties because one of more important purposes of the canonical inquiry is to safeguard the couple from contracting an invalid marriage. Separate dialogues are conducive to sincerity and openness, which certainly facilitates the assessment of the degree of preparation of the parties for marriage and reduces the risk of deceit (can. 1098), force (can. 1103) and simulation of consent (can. 1101 § 2), as well as mental incapability (can. 1095, 1^o-3^o). In particular, some of the questions contained in the report need to be asked in private by their very nature.

The requirement to interview each of the parties separately is of utmost importance. Failure to observe it in pastoral practice would entail a complete distortion of the meaning and purpose of the pre-marital inquiry [Bianchi 2002, 360-61] because only by creating favourable conditions the process will help elicit honest answers to verify the integrity of matrimonial consent. The presence of the other party makes it very difficult, if not impossible, not only to provide truthful answers but also makes some of the questions more than awkward to ask.¹⁴ The argument that at this stage of engagement the parties have no secrets between them is less than convincing as life and pastoral experience seem to prove otherwise. Various conditions (family, environmental, personal) may have an impact on the level of sincerity in the presence of a third party, even if this is the fiancé or fiancée. It is not uncommon that as late as during the process to declare nullity of marriage one party confesses that some circumstances had occurred before contracting marriage that should have cause some concern (e.g. the use of violence, addiction to alcohol, criminal conduct), or

¹⁴ For example, concerning possible pressure from the family or the environment; concealment of certain circumstances that could potentially disrupt the community of married life; cases of mental illness in the family or psychiatric treatment or psychological therapy of the party; and, in particular, questions about whether the party notices in the other some disturbing conduct or features that may raise concerns about the success of the marriage or whether someone close relatives seriously advised the party against the conjugal relationship.

some third parties had issued warnings against marrying the other party that were not disclosed at all during the pre-marital inquiry.

Some Episcopal Conferences employ special templates of the pre-marital report in the form of two separate books: one for the fiancé and the other for the fiancée, so that one party is not aware of the answers provided by the other. The Polish Episcopal Conference had not implemented any such solution, although there is a recommendable practice of covering (e.g. with a piece of paper) a column with the answers of one party while having a dialogue with the other.

The requirement to hold a conversation with each of the parties separately is connected with the obligation imposed on the pastor to keep the content of the conversations confidential. This is clearly set out in the draft Decree, “The pastor of souls must not make the information collected during the interview public.” This requirement is indisputable and stems from the recently adopted provisions on the protection of personal data in the Roman Catholic Church¹⁵ but is also laid down in can. 220 which protects the fundamental right of the faithful to protect their own intimacy [Majer 2002, 83-123]. The draft Decree also provides that, in accordance with can. 535 § 4, the pre-marital report containing the canonical and pastoral dialogue and all records related to contracted marriage should be kept in the parish archive and safeguard against unauthorised persons. For the sake of protection of pastoral secrecy, they must not be disclosed to any secular bodies and institutions without the consent of the local bishop.¹⁶ This applies, above all, to cases when access to the report might be requested by a common court of law or the prosecutor’s office but also by a natural person (including the spouse) for use, e.g. in divorce proceedings. However, there are no restrictions, quite the contrary, it is even recommended, on allowing access to the report to an ecclesiastical tribunal for

¹⁵ Polish Episcopal Conference, *Dekret ogólny w sprawie ochrony osób fizycznych w związku z przetwarzaniem danych osobowych w Kościele katolickim* (13.03.2018), <http://episkopat.pl/wp-content/uploads/2018/06/DekretOgolnyKEPWSprawieOchronyOsobFizycznychWZwiazkuZPrzetwarzaniemDanychOsobowychWKoscieleKatolickim.pdf> [accessed: 9.07.2018].

¹⁶ On recommendations concerning the legal protection of pastoral secrecy under Polish law, see Tomkiewicz 2012, 50-64; Pieron 2016, 131-53; Chojara-Sobiecka and Kroczyk 2019.

use in a process for the declaration of nullity of marriage. Similarly, the local ordinary and other curial officials responsible for granting dispensations or permissions to marry are authorised to review the content of the report.

The question is whether the pastor's official secret also applies to the other party, i.e. whether he can refer to what the other party confessed in the pre-marital dialogue with the other party and vice versa. In the opinion of P. Bianchi, in such a situation, the pastor of souls is obliged to keep secret and cannot reveal to one party what the other said [Bianchi 2002, 364]. It seems, however, that this opinion cannot hold if the pastor's silence resulted in the subsequent nullity of marriage. If, for example, the fiancée confessed that she was pregnant with another man, while her partner was convinced that he was the father, the pastor, in order not to allow the marriage to be invalid due to deceitful misrepresentation (can. 1098), is obliged to make the fiancé learn the truth even though it may be difficult for him to accept. The pastor should do the same if he finds that one of the parties conceals some important matter that could be regarded as deceit.

If answers given by the parties to the pastor's questions are divergent, especially concerning the most vital matters, and when there is a danger of nullity of marriage (e.g. deceit, force, pregnancy), he may confront both parties to clarify the matter. Since one of the key purposes of canonical examination before marriage is to make sure that nothing stands in the way of a marriage being contracted validly and lawfully (can. 1066), the obligation of official secrecy may be circumvented if circumstances threatening the validity of marriage have occurred. However, any action taken in this respect must be careful and thoughtful. It is not always the pastor who has to disclose information obtained from one party to the other. A good solution, it seems, would be to oblige one party to disclose the truth of the other. To do so, the drawing up of the report may be suspended for the time sufficient to allow the future spouses to clarify important matters between them and re-consider their decision to marry in view of the new facts and circumstances.

3. Time of dialogue

The time indicated for the pre-marital canonical and pastoral dialogue does not change in the draft Decree, “No later than three months before the wedding day.” The 1986 Instruction recommends the same time limit. Following the entry into force of the regulations on concordat marriage, keeping the above time limit became challenging or even impossible. On the one hand, in accordance with applicable law, the pastor was not able to take official action towards preparation for marriage without the parties submitting the relevant “certificate” from the Registry Office on the absence of impediments to marriage under Polish law.¹⁷ On the other hand, the validity of that certificate was three months,¹⁸ so it would have expired if the time limit set out in the Instruction had had to be kept. After amendment of the pertinent provisions of Polish law, the certificate, which is a prerequisite for the parties to make a declaration on their canonical marriage to take effect also under Polish law, expires after six months. Consequently, the challenge of keeping the three-month deadline for the future spouses to contact a competent pastor of souls has been overcome. Anyway, during the first meeting, no pre-marital report is drawn up. This is when the pastor is supposed to inform the parties of any requirements for preparation for marriage and of documents that they should prepare; then, they make a follow-up appointment to draw up the report.¹⁹

The draft Decree also highlights that the competent pastor of souls (parish priest or assistant priest in his place) should apply for any relevant

¹⁷ Polish Episcopal Conference, *Instrukcja dla duszpasterzy dotycząca małżeństwa konkordatowego* (22.10.1998), “Biuletyn Katolickiej Agencji Prasowej” of 13 November 1998, no. 46, p. 15-17, no. 13: “The parish priest is not able to proceed with the formalities related to marriage unless he is presented with a valid certificate from the competent head of the Registry Office.”

¹⁸ See Art. 4¹ § 2 of the Act of 25 February 1964, the Family and Guardianship Code, Act of 17 November 1964 in its version effective from 1 March 2015 prior to amendment in conjunction with the Act of 28 November 2014 Law on Civil Status (Journal of Laws, item 1741, Art. 115).

¹⁹ The Decree allows the certificate from the Registry Office authorising the conclusion of a concordat marriage to be submitted to the parish priest no later than two months before the planned date of entering marriage. Thus, if this act enters into force, the provision cited in footnote 17 will be repealed, in line with can. 20 CIC/83.

dispensations and permissions to the appropriate diocesan curia in advance (no later than two months before scheduled marriage). The purpose of this provision is to avoid situations where applications for dispensations or permissions are submitted to the curia a few days before the scheduled wedding date (often the day before!), which obviously prevents careful investigation of the case and puts the curial officials under time pressure, but above all, exposes the parish priest and the parties to a very embarrassing and stressful situation if it turns out that the granting of dispensation or permission is not possible, either within such a short period or at all. For the same reason, in several places, the draft Decree also recommends the pastor not to set the date of the wedding ceremony with the parties or make any other binding promises until the required dispensation or permission has been received. Therefore, if it is necessary to obtain a dispensation or permission, it is not allowed to keep the future spouses convinced that the marriage can be contracted validly, and obtaining dispensation or permission is only a formality. This will avoid later disappointment and moral and financial losses if it turns out that the parties cannot marry due to an existing impediment or prohibition.

Another time limit set out in the Decree is the period of validity of the pre-marital report. If marriage is not concluded within a year of its preparation, the canonical inquiry must be repeated while paying attention to the reasons for which the originally planned marriage was not entered into.

4. Parish jurisdiction

The draft Decree offers some clarification regarding where pre-marital inquiries can be carried out and marriages celebrated. The general rule derived from can. 1115 CIC/83 remains the same. It says that marriages are to be celebrated in the parish in which either of the contracting parties has a domicile or a temporary (not registered) domicile²⁰) or a month's re-

²⁰ The Decree reminds that the criteria for acquiring permanent or temporary residence are defined in can. 102; it may not be the same as the officially registered place of residence of the person.

sidence.²¹ This also applies to parties living abroad.²² However, the Decree sets out the procedure that applies when the couple wants to marry in a different parish than that indicated in can. 1115.

First, the draft Decree indicates that the parish priest cannot refuse the parties a canonical inquiry if they meet the criteria of residence under canon law. Similarly, if the couple have good reasons to marry in a parish other than the parish referred to in can. 1115, their own parish priest should

²¹ It is worth noting that the Decree no longer contains the controversial rule of preference for the fiancée's parish. Article 36 of the 1986 Instruction reads, "The Polish Episcopal Conference does not object to preserving the immemorial custom of celebrating marriage in the fiancée's parish, which does not violate the provisions of can. 1115." This wording should be assessed negatively. First, celebrating marriage in the fiancée's parish was not derived from custom, but it was imposed by Art. V § 5 of the Decree of the Holy Congregation of the Council, *Ne temere*, of 2 August 1907 and can. 1097 § 2 of the 1917 Code of Canon Law, as well as by earlier regulations dating back to the Middle Ages [Pelczar 1898, 60; Abraham, 1913, 23 (footnote 3), 118]. However, this was not an *ad validitatem* requirement. Second, the statement that custom is "immemorial" means, according to can. 26 and 28, that in Poland it is a source of applicable law and, given that, it cannot be reconciled with can. 1115 which, however, gives the parties the right to choose the parish to marry, at least among those parishes in which they have permanent or temporary residence or a month's residence. On the other hand, the former law empowered, at least in the opinion of some canonists, the parish priest of the fiancée to assist in marriage (and consequently *iura stolae* in this respect), provided there was no just and opposite reason [Miguélez Domínguez 1963, 662 (note 27)] , although the provision of can. 1097 § 2 of the 1917 Code of Canon Law, often discussed on in the context of *iura stolae*, was approached as disputable. Some authors considered it not to be a binding norm but only to contain a non-binding recommendation [Bender 1960, 258-61]. If the "immemorial custom" in force in Poland were thought to determine the fiancée's parish as the preferred place of marriage celebration, it would be *contra legem*, i.e. contrary to can. 1115. The controversial provision of Art. 36 of the 1986 Instruction was a source of misunderstanding and conflicts between parish priests and the faithful, and its elimination is by far positive.

²² It often happens that parish priests in Poland insist, although they are not authorised to, on carrying out the pre-marital inquiry with couples who left for another country many years ago. Not only is it unlawful but also not very prudent. When additional explanations or documents need to be obtained, it often turns out that the couple is abroad and will come to the parish shortly before the wedding ceremony. Therefore, in such a situation, the pre-marital report should be drawn up, in accordance with the law, in the country of the couple's residence and submitted (report or permission) the diocesan curia in Poland at least one month before the wedding date in order to verify the (unmarried) status of the parties, verify the validity of prepared documentation and clarify any issues related to the effects of the contracted marriage under civil law.

not deny the permission without a justified reason or make it conditional on the fulfilment of some extra requirements not provided for in canon law (e.g. a financial offering or submission of additional documents). Any parish priest's any arbitrariness in this matter must be ruled out: he should observe the applicable provisions and may not make decisions outside his remit as it may trigger disedifying conflicts.

Second, and this seems to be a novelty that will have a direct impact on parish practice, the draft Decree lays down a rule that the pre-marital report is to be drawn up in the parish where the marriage is to be celebrated. Thus, the parish priest who agrees to the parties residing elsewhere to be married in his parish assumes the obligation to carry out a canonical inquiry. It seems that the adoption of such a rule will exclude problematic situations when the parties travelled from one parish to another requesting the pre-marital report to be prepared because the parish priest, who otherwise agreed to marriage in his parish, refused to do so.

There are, however, exceptions to this rule. The first one is when the parties wish to marry in a non-parish church (operated by a rector of a religious order) which is in a different parish than the one specified in can. 1115. This being the case, it is improper to expect the other parish priest to perform the inquiry of somebody else's faithful who decided to marry in a different church. The other exception is when drawing up the pre-marital report in the place of celebrating marriage would be very difficult for the parties (e.g. because of a long distance to travel). The, the pre-marital inquiry is carried out by the parish priest having jurisdiction over their place of residence, and the results of the inquiry are communicated to the parish of marriage in an official document known in Polish law as a licence.²³

Independently of the foregoing, the parish priest of the parties' place of residence may always decide to carry out a canonical inquiry voluntarily and prepare them for marriage. However, when the parties wish to have the

²³ The term is used incorrectly. *Licentia* means "authorisation" or "permission" in canon law [Majer 2009b, 90-97], whereas in the discussed situation the parish priest does not grant "permission" (he had to grant it earlier, in accordance with can. 1115), but he notifies the other parish priest about the result of the canonical inquiry in an "official document" (*per authenticum documentum*); see can. 1070 CIC/83.

report made in the location where they intend to marry, their own parish priest should not force them to do it in their own parish, since he gives them permission to marry in another.

As regard the parish jurisdiction for concluding marriage, the draft Decree lays down some new procedural rules for the engaged couple who (at least one of them) live abroad. Their permission is needed from the local ordinary to assist in the celebration of marriage. Such permission is also required when the parties who reside in Poland express their desire to marry abroad. This requirement is justified by the need for perform a thorough verification of documents, especially with a focus on the effects of marriage under civil law.

The draft Decree also reminds that a sacramental marriage should be contracted in a sacred place. Permission to celebrate a marriage outside a sacred place may be granted by the local ordinary (can. 1118 § 2) or the diocesan bishop if the celebration is connected with the Eucharist.²⁴ However, a marriage should not be allowed outside a sacred place without a justified reason, that reason being anything but commercial or extravagant, driven by vanity or a desire to imitate customs from outside the Roman Catholic tradition.²⁵

5. Marriage bans

The bans of marriage, i.e. announcements of an impending marriage between two specific parties, are required under Article 95 of the still effective 1986 Instruction. The draft Decree does not introduce any major changes in this respect. The bans are still to be made in writing and made public by placing them on the parish notice board within eight days, so that they are on display for at least two consecutive Sundays or one Sunday and one public holiday. The same obligation can be fulfilled by oral announcements during the most frequented services over two consecutive

²⁴ Congregatio de Cultu Divino et Disciplina Sacramentorum, *Instructio de quibusdam observandis et vitandis circa sanctissimam Eucharistiam Redemptionis Sacramentum* (25.03.2004), AAS 96 (2004), p. 549-601, no. 108.

²⁵ Polish Episcopal Conference, *Stanowisko biskupów polskich w sprawie małżeństwa katolickiego zawieranego poza miejscem świętym* (16.04.2016), “Akta Konferencji Episkopatu Polski” 18 (2016), no. 28, p. 100-105.

Sundays or on one Sunday and a public holiday. The bans are to be communicated in the parish or parishes of the current residence of each of the parties. If they have lived in one parish for less than six months, the bans should also be made in the previous place (or places) of permanent residence of the parties after they have reached adulthood.

However, the new Decree is more precise as it requires the bans, both in oral and written form, to include only the first and last names and the parish of residence of the future spouses.²⁶ This practice, resulting from the new law on the protection of personal data,²⁷ was introduced in Poland some time ago by a document made by the General Secretariat of the Polish Episcopal Conference,²⁸ although the legal value of such a document was questionable,²⁹ which is why the matter is now being sorted out in the draft Decree, at least as far as the binding force of the said document is concerned. However, some subject-matter doubts are still there. Since the purpose of the bans is to inform the parish community public about a planned marriage, as well as creating the opportunity for the faithful to reveal any impediments to the conclusion of the marriage, it is necessary for the data provided in the announcements to allow identification of the parties. Yet, providing only the first and last names and the parish of residence of the parties makes their actual identification much more difficult or even impossible in large urban areas.³⁰ This means that the

²⁶ For example, Jan Kowalski, domiciled in the parish of Assumption of the Blessed Virgin Mary in Kraków and Anna Nowak, domiciled in the parish of St Hyacinth in Katowice.

²⁷ For more on the subject, see Janczewski 2007, 51-66; Majer 2013, 3-4. Regarding the publication of the bans in parish newspapers or on the parish website, according to a recent opinion of the Church Data Protection Officer, it can be published there only with the parties' consent. See "Wiadomości KAI. Biuletyn Katolickiej Agencji Informacyjnej" of 1 July 2018, no. 26, p. 8.

²⁸ See *Informacja Konferencji Episkopatu Polski na temat zapowiedzi przedmażeńskich i ochrony danych osobowych* (17.09.2010), "Notificiones e Curia Metropolitana Cracoviensi" 148 (2010), no. 10-12, p. 150-51.

²⁹ The General Secretary of the Episcopal Conference (can. 452 § 1 and 458) has no authority to make laws or issue administrative decisions.

³⁰ However, the General Decree of the Italian Episcopal Conference on Canonical Marriage provides otherwise. It says that the bans should include the full name, place and date of birth, place of residence, marital status and profession of the parties. See *Decreto generale sul matrimonio canonico* (5.11.1990), in: *Enchiridion della Conferenza Episcopale Italiana*, vol. IV, p. 1312-340, Art. 12.

purpose of the banns may not be reached; therefore, a question arises whether the practice of the banns should be maintained.³¹

The new Decree reminds that the ordinary may offer dispensation from the obligation to publish marriage banns. This option can and should be used if the documents submitted do not raise doubts as to the unmarried status of the parties and confirm absence of other impediments to marriage between the couple, while announcing the banns would inconvenience them significantly (e.g. fear of controversy if the couple has been considered husband and wife in the community of the faithful in which they live).

In the case of non-Catholic Christians living in Poland, their respective pastors should be inquired as to marriage banns if their own law so provides.³² However, no banns are published in the place of residence of non-baptised parties or ones who have abandoned the Roman Catholic Church. Nor banns are required also when Catholic parties have their canonical residence in a diocese abroad where no such announcements are practised according to the local particular law.³³

6. Documents

The Decree contains a list of documents to be submitted by the parties along with some guidance. The new provisions do not introduce any major

³¹ Today, the basic purpose of the banns of marriage, which was originally to exclude marriage between the prohibited degrees of kinship, is met by the obligation to provide a baptism certificate. That is why some Episcopal Conferences in the legal regulation of banns (see can. 1067) emphasize prayer for those preparing for marriage and the determination of the parties' unmarried status.

³² This is provided, for example, in § 117 of the Official Policy of the Evangelical Church of the Augsburg Confession in the Republic of Poland, <https://bik.luteranie.pl/files/Prawo/2017-01-01PragmatykaSubowa-tekstujednolicony.pdf> [accessed: 9.07.2018].

³³ For example, The Episcopal Conference of England and Wales decided that although marriage banns should be made in the parish of the current residence of Catholic parties, the parish priest may decide whether there is need to do so [Martin de Agar and Navarro 2009, 580]. The regulation of the German Episcopal Conference is similar: although, in principle, a single announcement of the banns is required, each pastor of souls can give dispensation from it if, on the basis of submitted documents, he is certain about the unmarried status of the parties [Reinhardt and Althaus 2014, 53-54, 125-26].

changes compared with the existing ones, although some novelties do appear. One of them is the requirement to make a note on issuing a baptism certificate for marriage purposes in the “Remarks” section of the certificate. Such notes have already been made in some dioceses, either by custom or particular law. Upon entry into force of the new Decree, it will be obligatory in all dioceses.

It is also provided that if the same person requested a baptism certificate for marriage purposes again, he or she should not be refused the document, however, they should be ready to explain the reason for failure of the original marriage arrangements. If in doubt, the parish priest who will be drawing up a pre-marital report or the local ordinary should be notified.

The draft Decree also contains a reminder that a baptism certificate submitted by baptised non-Catholics (this document should always be required) only documents the fact of baptism, yet it is not proof of unmarried status, which must always be confirmed by sworn testimony of the person concerned and at least two witnesses.³⁴ The Decree requirement to swear an oath also appears in other cases when unmarried status cannot be determined reliably on the basis of a baptism certificate: the inability to submit a recently issued baptism certificate, the marriage between a non-baptised person and a person who was baptised after reaching the age of majority.

It is also worth paying attention to the decretal indications regarding the circulation of documents in cases where the parties dwell abroad and the pre-marital report was made there, and in a situation where the report was made in Poland and the marriage is to be concluded in another country. Should this be the case, marriage documentation should always be delivered not directly to the parish but to the diocesan curia which can grant its *nihil obstat* after a thorough verification of the documents. Similarly, if the parish receives marriage documentation from abroad, apart from the local diocesan curia, the documents should always be delivered to the parties’ own curia at least one month before the planned marriage ceremony in order to enable the verification of their unmarried status,

³⁴ On determination of unmarried status of non-Catholics - and the Decree attached much importance to it in several provisions, see Adamowicz 2008, 39-62; Majer 2009a, 543-63; Nowicka 2012; Jakubiak 2013, 25-72; Nowicka 2014, 119-35; Majer 2011a, 207-12.

check the quality of the documentation prepared and clarify any matters related to the effect of the marriage under civil law. Also, a licence form in Latin has been prepared if it is to be granted abroad.

7. Impediments and prohibitions of assistance

With regard to diriment impediments and permissions to assist at a marriage, the Decree does not introduce anything new in general, although some issues have been sorted out while others are highlighted as deserving pastors' special attention.

As mentioned elsewhere, there is a need for the parties who wish to contract marriage abroad or do it in Poland while residing in another country to obtain permission of the local ordinary. This requirement, motivated by the necessity to verify marriage-related documents thoroughly, is new. Although, the 1986 Instruction permitted assistance as marriages by migrants and *vagi*, the pertinent regulations raised interpretation issued [Majer 2011d, 183-84].

More and more often, people entering canonical marriages have some past experiences of living together or with other persons *more uxorio* (cohabitation, civil relationships). This requires pastor's special attention not only in terms of determination of unmarried status (especially for non-Catholics) and the parties' intentions to marry in the Church but also in relation to the natural and legal obligations assumed during the previous union or unions. Can. 1071 § 1, 3° requires permission of the local ordinary to assist at the marriage of persons who are bound by such obligations; however, the existing Instruction does not devote as much space to this issue as expected by the grave nature of the problem, which was assessed critically [Idem 2008, 78-81]. This translated into ignoring the issue of natural obligations towards the offspring and, possibly, the partner from a previous relationship and focusing only on whether that previous union had not been validated canonically. It is positive that the new Decree draws more attention to the problem and requires that the party concerned be thoroughly questioned about what obligations he or she has assumed (e.g. alimony) and how they are met. It is recommended to verify any documents on this matter and even, if necessary, to consult the person with whom the party was in a relationship before. To facilitate this procedure, the relevant

questions are provided in the canonical and pastoral dialogue form used with the parties.³⁵ This would be contrary to the elementary sense of justice to allow such a person to enter canonical marriage while ignoring their existing and natural obligations towards their own children and, in some cases, also towards the person with whom he or she was previously in a relationship.

After gathering all relevant information and making sure that the party meets any previously assumed obligations (usually towards their own children), the local ordinary should be approached for permission required under can. 1071 § 1, 3°. Approaching this matter so seriously in a dialogue with the engaged couple shows that the Church, even if she does not recognise the previous relationship as a valid marriage, does not ignore the obligations arising from natural law that were incurred in such a former relationship.

The draft Decree also contains a norm already issued in the past by the Congregation for the Doctrine of the Faith³⁶ and regarding attempted marriages by persons after a gender reassignment surgery or the change of legal gender. Transsexual marriages is a highly complicated matter³⁷ and even its brief discussion goes beyond the scope of this paper on the new Decree. The Decree reminds that if one of the parties underwent the so-called “gender reassignment,” no pre-marital report should be drawn up or the date of the wedding ceremony set, nor should any promises be made in this respect until the final decision of the Congregation for the Doctrine of the Faith, which, after examining the medical records, makes a decision about the official gender change in ecclesiastical records. For there can be no conclusion of marriage between person of the same sex (from the

³⁵ A special attachment was prepared for the report of the canonical and pastoral dialogue; it will be completed whenever one of the parties (or both) was previously in a marriage union, civil-law union or cohabitation with another person.

³⁶ See *Komunikat Nuncjatury Apostolskiej w Polsce*, N. 11.170/04 (4.10.2004); *Komunikat* (25.11.2004), “Notificiones e Curia Metropolitana Cracoviensi” 142(2004), no. 10-12, p. 183-84.

³⁷ See Congregazione per la Dottrina Della Fede, *Appunti circa i risvolti canonici del transessualismo in ordine alla vita consacrata*, Prot. N. 442/54-15710 (28.09.2002), <http://www.crisalide-azionetrans.it/adista.html> [accessed: 9.07.2018]; Navarrete 1997, 101-24; Wenz 2001, 165-77.

biological and genetic point of view). In such cases, the impediments of impotence (can. 1084 § 1) and severe psychosexual disorders (can. 1095, 1°-3°) should also be considered.

The Decree also lays down a norm that has recently been incorporated into Polish particular canon law³⁸ and regarding the exclusion of void marriages of relatives by adoption unaware of the kinship existing between them. To prevent marriages contracted, for example, by siblings who were separated in early childhood and then adopted by various foster parents, the pastor, without informing the person concerned who may not know that he or she was adopted, should send full information about biological parents, in confidence and by registered mail, directly to the parish where the canonical pre-marital inquiry is to be carried out. The cleric who draws up the pre-marital report should verify, with due discretion, whether the parties are not related by natural kinship.

REFERENCES

- Abraham, Władysław. 1913. *Forma zawarcia zaręczyn i małżeństwa w najnowszym ustawodawstwie kościelnym*. Lwów: Gubrynowicz i Syn.
- Adamowicz, Leszek. 2008. “Stwierdzenie stanu wolnego niekatolików i nieochrzczonych przed zawarciem małżeństwa kanonicznego.” *Annales Canonici* 4:39-62.
- Bartczak, Adam. 2011. “Przygotowanie do zawarcia małżeństwa w świetle przemówienia Benedykta XVI do Roty Rzymskiej z 2011 r.”. *Łódzkie Studia Teologiczne* 20:25-31.
- Bartczak, Adam. 2015. “«Iusiurandum de veritate dicenda»” w kanonicznym procesie o nieważność małżeństwa.” *Annales Canonici* 11:63-77.
- Bender, Ludovicus. 1960. *Forma iuridica celebrationis matrimonii. Commentarius in canones 1094-1099*. Romae. Desclée & C.i – Editori Pontifici.
- Bianchi, Paolo. 2002. “L’esame dei fidanzati: disciplina e problemi.” *Quaderni di diritto ecclesiale* 15:354-94.

³⁸ See Polish Episcopal Conference, *Dekret ogólny dotyczący sporządzenia i modyfikacji aktu chrztu w związku z przysposobieniem* (14.03.2017), <http://episkopat.pl/wp-content/uploads/2018/06/DekretOgolnyKEPDotyczacySporzadzenieIModyfikacjiAktuChrztuWZwiazkuZPrzysposobieniem.pdf> [accessed: 9.07.2018]. The regulative law adopted by the Polish Episcopal Conference in response to the recommendations in the doctrine [Majer 2011d, 223-46].

- Chojara–Sobiecka, Małgorzata and Piotr Kroczek. 2019. “O możliwości wprowadzenia do polskiego systemu prawnego ochrony (kanonicznej) tajemnicy duszpasterskiej.” Article submitted for printing in a journal *Prawo Kanoniczne*.
- Di Carlo, Simonetta. 2001. “Il potere normative delle conferenze episcopali.” *Ius Ecclesiae* 13:149-74.
- Dyduch, Jan. 1985. “Kancelaria parafialna miejscem duszpasterzowania.” *Notificationes e Curia Metropolitana Cracoviensi* 123:47-53.
- Góralski, Wojciech. 1989. “Władza ustawodawcza konferencji episkopatu według Kodeksu Prawa Kanonicznego z 1983 r.” *Prawo Kanoniczne* 32, no. 1-2:45-57.
- Góralski, Wojciech. 2011. “Przygotowanie i kwalifikowanie do małżeństwa oraz właściwe rozpoznawanie spraw o nieważność małżeństwa w przemówieniu Benedykta XVI do Roty Rzymskiej z 22 I 2011 roku.” *Biuletyn Stowarzyszenia Kanonistów Polskich* 21, no. 24:62-75.
- Jakubiak, Tomasz. 2013. “Procedury kanoniczne zmierzające do stwierdzenia stanu wolnego.” *Ius Matrimoniale* 18:25-72.
- Janczewski, Zbigniew. 2007. “Zapowiedzi przedmałżeńskie a prawo do ochrony danych osobowych.” *Ius Matrimoniale* 12:51-66.
- Krukowski, Józef. 2005. “Konferencje biskupów.” In *Komentarz do Kodeksu Prawa Kanonicznego*. Vol. II/1: *Księga II. Lud Boży. Część I. Wierni chrześcijanie. Część II. Ustrój hierarchiczny Kościoła*, ed. Józef Krukowski, 314-33. Poznań: Pallottinum.
- Maciaszek, Piotr. 2018. “Znaczenie zawarcia w rocie ślubowania niektórych funkcjonariuszy publicznych słów «Tak mi dopomóż Bóg» w prawie polskim i prawie kanonicznym.” *Przegląd Sejmowy* 26, no. 2 (145): 35-48.
- Majer, Piotr. 2002. “Ochrona prywatności w kanonicznym porządku prawnym.” In *Ochrona danych osobowych i prawo do prywatności w Kościele*, ed. Piotr Majer, 83-123. Kraków: Papieska Akademia Teologiczna.
- Majer, Piotr. 2008. “Zawarcie małżeństwa kanonicznego a obowiązki naturalne wynikające z poprzedniego związku.” *Annales Canonici* 4:63-82.
- Majer, Piotr. 2009a. “Nowe decyzje Sygnatury Apostolskiej w sprawie małżeństw zawieranych między katolikami a prawosławnymi.” In *Finis legis Christus. Księga pamiątkowa dedykowana Księdzu Profesorowi Wojciechowi Góralskiemu z okazji siedemdziesiątej rocznicy urodzin*, ed. Józef Wroceński, and Jan Krajczyński, vol. 1, 543-63. Warszawa: Wydawnictwo UKSW.
- Majer, Piotr. 2009b. *Zawarcie małżeństwa kanonicznego bez skutków cywilnych (kan. 1071 § 1, 2° Kodeksu Prawa Kanonicznego)*. Kraków: Wydawnictwo Naukowe Papieskiej Akademii Teologicznej w Krakowie.

- Majer, Piotr. 2011a. "Małżeństwa mieszane. Wybrane zagadnienia z praktyki kurialnej." *Studia Oecumenica* 11:199-218.
- Majer, Piotr. 2011b. "Przysięga." In *Komentarz do Kodeksu Prawa Kanonicznego. Vol. III/2: Księga IV. Uświęcające zadanie Kościoła. Część I. Sakramenty. Część II. Pozostałe akty kultu Bożego. Część III. Miejsca i czasy święte*, ed. Józef Krukowski, 421-27. Poznań: Pallottinum.
- Majer, Piotr. 2011c. "Tajemnica przysposobienia a przeszkoda pokrewieństwa: odnotowanie adopcji w księdze ochrzczonych (kan. 877 § 3)." *Prawo Kanoniczne* 54, no. 3-4:223-46.
- Majer, Piotr. 2011d. "Zakaz asystowania przy małżeństwie tułaczy (kan. 1071 § 1, 1° KPK)." *Annales Canonici* 7:149-87.
- Majer, Piotr. 2013. "Ogłaszanie zapowiedzi przedślubnych na stronie internetowej parafii." *Monitor Prawny Proboszcza* 24:3-4.
- Maroń, Grzegorz. 2015. "Instytucja przysięgi (ślubowania) a poszanowanie wolności sumienia i religii." *Przegląd Prawa Konstytucyjnego* 16, no. 4 (26): 51-76.
- Martín de Agar, José Tomás, and Luis Navarro, ed. 2009. *Legislazione delle Conferenze Episcopali complementare al C.I.C.* Ed. 2. Milano: Coletti a San Pietro.
- Mezglewski, Artur. 2011. "Przysięga, ślubowanie oraz przyrzeczenie w prawie polskim." *Przegląd Prawa Wyznaniowego* 3:5-22.
- Miguélez Domínguez Lorenzo. 1963. "El matrimonio." In Arturo Alonso Lobo, Lorenzo Miguélez Domínguez, and Sabino Alonso Morán, *Comentarios al Código de Derecho Canónico con el texto legal latino y castellano*, vol. 2, 425-738. Madrid: La Editorial Católica.
- Navarrete, Urbano. 1997. "Transsexualismus et ordo canonicus." *Periodica* 86:101-24.
- Nowicka, Urszula. 2012. *Stwierdzenie stanu wolnego wiernych prawosławnych na forum Kościoła katolickiego*. Warszawa: Wydawnictwo UKSW.
- Nowicka, Urszula. 2014. "Stwierdzenie stanu wolnego przed zawarciem małżeństwa w Kościele katolickim." In *Kanoniczno-liturgiczne aspekty zawierania małżeństw mieszanych i im podobnych*, ed. Urszula Nowicka, 119-35. Warszawa: Gaudentinum.
- Pelczar, Józef S. 1898. *Prawo małżeńskie katolickie z uwzględnieniem prawa cywilnego obowiązującego w Austrii, w Prusach i w Królestwie Polskiem*. Vol. 2. Kraków: Spółka Wydawnicza Polska.
- Pieron, Bartłomiej. 2016. "Tajemnica zawodowa (duszpasterska) duchownego." *Annales Canonici* 12:131-53.
- Reinhardt, Heinrich J.F., and Rüdiger Althaus. 2014. *Die kirchliche Trauung, Ehevorbereitung, Trauung und Registrierung der Eheschließung im Bereich*

- der Deutschen Bischofskonferenz. Texte und Kommentar.* Essen: Ludgerus Verlag.
- Sobański, Remigiusz. 2003. "Dekrety ogólne oraz instrukcje." In *Komentarz do Kodeksu Prawa Kanonicznego*. Vol. I: *Księga I. Normy ogólne*, ed. Józef Krukowski, 87-93. Poznań: Pallottinum.
- Spirito, Pietro. 1988. "Il giuramento nel diritto canonico." *Apollinaris* 61:807-15.
- Stępień, Marek. 2014. *Pozycja prawna Konferencji Episkopatu Polski. Studium prawnohistoryczne*. Łomża: Wydawnictwo Spes.
- Szychmiller, Ryszard. 1991-1992. "Kompetencje Konferencji Episkopatu dotyczące przygotowania do małżeństwa." *Roczniki Nauk Prawnych* 1-2:67-76.
- Tomkiewicz, Małgorzata. 2012. "«Tajemnica spowiedzi» i «tajemnica duszpasterska» w procesie karnym." *Prokuratura i Prawo* 9, no. 2:50-64.
- Wenz, Wiesław. 2001. "Transseksualizm a prawna zdolność osoby transseksualnej do zawarcia małżeństwa w polskim prawodawstwie cywilnym i porządku kanonicznym." *Wrocławski Przegląd Teologiczny* 9:165-77.
- Wętkowski, Krzysztof. 2011. "Kanoniczno-duszpasterskie przygotowanie do zawarcia małżeństwa w świetle przemówienia Benedykta XVI do Roty Rzymskiej z 22 stycznia 2011 roku." *Studia Gnesnensia* 25:413-23.

Works of the Polish Episcopal Conference on a New Regulation on Preparation for Canonical Marriage (Part I)

Summary

The article discusses some issues of the new decree of the Polish Bishops' Conference regarding the canonical and pastoral investigations with fiancées before the conclusion of a canonical marriage. The decree passed on March 14, 2017 and still awaits for *recognitio* of the Apostolic See. The author focuses on the topics which are a novelty in the Polish particular church law on the preparation for marriage. These topics are as follows: common prayer of the pastor with the fiancées, the oath to be taken by the nupturients, the emphasis on conducting canonical investigation before the marriage with each fiancé separately and the obligation to keep the secret, deadlines required during the proceedings, parish jurisdiction with regard to conducting the canonical and pastoral investigations, the announcements, required documents, the need to obtain the consent of the local Ordinary of the place of the conclusion of marriage by persons residing abroad, natural obligations at the conclusion of marriage by persons who have previously had a relationship with another partner, the proceedings in the situation of an attempt to conclude marriage by persons after surgical and civil change of sex.

Key words: canonical marriage, preparation for marriage, publication of marriage bans, permission to assist, marriage of foreigners, marriage of persons after civil divorce, marriage of transsexual persons

Prace Konferencji Episkopatu Polski nad nową regulacją przygotowania do zawarcia małżeństwa kanonicznego (cz. I)

Streszczenie

W artykule zostają omówione niektóre zagadnienia nowego dekretu Konferencji Episkopatu Polski *dotyczącego przeprowadzania rozmów kanoniczno-duszpasterskich z narzeczonymi przed zawarciem małżeństwa kanonicznego*. Dekret uchwalony 14 marca 2017 r. oczekuje na *recognitio* Stolicy Apostolskiej. Autor zatrzymuje się na tematach, które są nowością w polskim prawie partykularnym o przygotowaniu do małżeństwa: wspólna modlitwa duszpasterza z narzeczonymi oraz przysięga, którą mają złożyć nupturieni, nacisk na przeprowadzenie rozmowy kanonicznej przed zawarciem małżeństwa osobno z każdym z narzeczonych i obowiązek zachowania tajemnicy, terminy wymagane w postępowaniu, właściwość parafialna w odniesieniu do przeprowadzenia rozmów kanoniczno-duszpasterskich przed ślubem, zapowiedzi, wymagane dokumenty, konieczność uzyskania zezwolenia ordynariusza miejsca przy zawieraniu małżeństwa przez osoby zamieszkujące za granicą, zobowiązania naturalne przy zawieraniu małżeństwa przez osoby, które dotychczas żyły w związku z innym partnerem, postępowanie w przypadku próby zawarcia małżeństwa przez osoby po chirurgicznej i cywilnej zmianie płci.

Słowa kluczowe: małżeństwo kanoniczne, przygotowanie do zawarcia małżeństwa, zapowiedzi, zezwolenie na asystowanie przy zawarciu małżeństwa

Informacje o Autorze: Ks. dr hab. PIOTR MAJER, prof. UPJPII, kierownik Katedry Prawa o Kościelnej Misji Nauczania i Uświęcania, Wydział Prawa Kanonicznego, Uniwersytet Papieski Jana Pawła II w Krakowie; ul. Kanoniczna 9/408, 31-002 Kraków, Polska; e-mail: pmajer@diecezja.krakow.pl; <https://orcid.org/0000-0002-9516-8839>