

# LIMITATION OF THE RIGHT TO REQUEST THE ERASURE OF PERSONAL DATA IN THE CONTEXT OF SACRAMENTAL MATTERS AND CANONICAL STATUS IN THE CATHOLIC CHURCH IN POLAND

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**Abstract.** The introduction of new rules for the protection of personal data in European law has caused increased interest in the issue of respecting the rights of persons resulting from the European regulation. Among these rights are the right to request erasure of personal data and/or the right to be forgotten. Due to the specificity of churches and religious communities, the European legislator also takes into account their autonomy in terms of the possibility of applying their own detailed rules for the protection of personal data. Therefore, the Catholic Church in Poland has adapted her data protection law to the European regulation so that she can continue to carry out her mission in the modern world while retaining the possibility of applying the law on the protection of personal data, taking into consideration the Catholic doctrine regarding the sacraments and the canonical status of the faithful who belong or belonged to her. In these two aspects, the right to delete data is not vested in the faithful but is only recognized as a request for confidentiality of data that cannot be used without the consent of the competent church authority.

**Keywords:** personal data protection, GDPR, right to be forgotten, sacraments, canonical status

## INTRODUCTION

The rights under current data protection legislation include the right to request erasure of personal data, also referred to as “the right to be forgotten.” There is also a view in the literature that these are two separate rights. However, this right does not in every case operate automatically or is unconditional towards the person who claims this right regarding his/her personal data. An example of this is the inability to enforce the right to “be forgotten” in cases that involve articles in newspapers or, more broadly, in the media. This is due to the fact that the latest data protection legislation does not affect

the way the Polish press law is applied (cf. Article 85 of the Regulation (EU) 2016/679<sup>1</sup>) and consequently the right to information.

Likewise, there are areas within the ecclesiastical space which by their very nature had to be excluded from the area of the right of erasure. This applies to two particular aspects of the personal data of individual believers: those that specify the sacraments the believers have received and those that otherwise contribute to determining their canonical status (cf. Article 14 of the General Decree on the protection of natural persons with regard to the processing of personal data in the Catholic Church<sup>2</sup>).

This seems a very important issue in terms of the relationship between the State and the Church, since the establishment of and respect for new principles flowing from the two legal orders but having their origin in the doctrine of the Church is essential for the life of the faithful and for the Church's ability to fulfil her salvific mission in the world.

## 1. THE RIGHT TO REQUEST ERASURE OF DATA

Both the GDPR and the Decree – two significant legal documents on personal data protection – provide for the right to request erasure of data. However, this is an issue that, in terms of Catholic Church law, is significantly different from the validity of this right on the level of European law.

### 1.1. In the area of civil law

Pursuant to Article 17 GDPR, it may be concluded that a natural person has the right to erasure of data, more specifically the “the right to obtain from the controller the erasure of personal data,” which the controller is obliged to erase “without undue delay,” when the grounds referred to in the same article apply. Namely, it concerns situations when “personal data are no longer necessary” for the purposes “for which they were collected or otherwise processed;” “the data subject withdraws consent;” “the data subject objects to the processing” and “there are no overriding legitimate grounds for processing;” “the personal data have been unlawfully processed;” “the personal data have to be erased”

<sup>1</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), O.J. L 2016 119/1 as amended [hereinafter: GDPR].

<sup>2</sup> *General Decree on the protection of natural persons with regard to the processing of personal data in the Catholic Church issued by the Polish Bishops' Conference on 13 March 2018 during the 378th Plenary Meeting in Warsaw, on the basis of can. 455 of the Code of Canon Law in connection with Article 18 of the Statute of Polish Bishops' Conference, after obtaining a special permit from the Holy See of 3 June 2017*, “Akta Konferencji Episkopatu Polski” 30 (2018), p. 31–45 [hereinafter: Decree].

in order to comply with “a legal obligation to which the controller is subject;” “the personal data have been collected in relation to the offer of information society services.” The occurrence of any of these circumstances gives the data subject the right to request erasure. When exercising such a right, the person should have recourse to the rule laid down in Article 12(3) GDPR, according to which the controller is obliged to provide the person with information on the action taken in response to the request without undue delay and at most within one month of receipt of the request, although this period may be extended by two further months due to the complexity of the request or the large number of such requests received. However, the controller should notify the data subject of this fact, giving reasons for the delay [Fajgielski 2022, 299].

The right of a data subject to request the erasure of data is by no means new in the legal system. It may be regarded as the development of the already existing right to erasure, which was provided for in the EU Directive<sup>3</sup> replaced by GDPR, as well as in the Act on personal data protection of 1997.<sup>4</sup> This is in line with the assumptions of the basic law, which provides for the necessity of introducing a mechanism limiting the processing of personal data, pursuant to Article 51(4) of the Constitution [Dubis and Daćków 2015, 177]. Only as a certain novelty can one consider the information obligation on the part of the controller (“right to be forgotten”), which arises from Article 17(2). This is a significant modification introduced to the relevant provision from the superseded EU directive [Czerniawski 2018, 523–24]. For this reason, this legal basis can be considered not one right, but two rights: the right to request erasure arising from Article 17(1) and the right to be forgotten arising from Article 17(2). “The primary right is the right to obtain erasure. The second right, i.e. the right to be forgotten, is available to the data subject only if the right to erasure is exercised and only if the data concerning him/her have been made public by the controller (e.g. published on a publicly accessible website)” [ibid., 523].

## 1.2. In the area of canon law

The Decree also mentions the right to request the erasure of personal data (Article 14 Decree). In the article dedicated to this right, positive circumstances are mentioned first, i.e. those in which the data subject has the right to request the erasure of the data. Such right is valid when the personal data are no longer necessary and processed, the consent to their processing has been

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<sup>3</sup> Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, O.J. L 1995 281/31 as amended.

<sup>4</sup> Act of 29 August 1997 on the protection of personal data, Journal of Laws of 2016, item 922 as amended, Article 32(1)(6).

withdrawn, the personal data have been processed unlawfully (Article 14(1) Decree). In addition, if the controller has provided personal data, which it is now obliged to erase in accordance with the law, the controller has obligations similar to those set out in Article 17 GDPR.

In the second part of this article there are provisions restricting the right to request the erasure of data. Such a right does not apply in the following cases: the exercise of the right to freedom of expression and freedom of information; the fulfilment of a legal obligation; a task carried out in the public interest or in the exercise of public authority; archival, scientific or statistical purposes; the establishment, assertion or defence of claims (Article 14(3) Decree). Also, with regard to the issue under question, the last paragraph of Article 14 states in a negative way, limiting such a right by stating that “the right to request the erasure of data does not exist when the data concern the sacraments administered or otherwise refer to the canonical status of a person” (Article 14(4) Decree). However, the absence of the right to request erasure does not mean that there are no legal consequences; such a request must be recorded in the data system and the controller is obliged not to use the requested data without the consent of the local Ordinary or a superior depending on his competence (Article 14(4) Decree). For this reason, the right to request erasure is not lacking but only limited.

In this aspect it is not a novelty, because in Church law the obligation to make records of sacramental life has existed since the late Middle Ages, and thus the data sets that the Church legislator calls parish registers have a centuries-old tradition [Trojanowski 2019, 49]. Even before the General Decree entered into force, Catholic Church law provided for the possibility of making changes to the parish registers due to errors, obsolescence of previous records, etc. In the case of the sacraments, however, the right to delete such data was never recognised [Domaszko 2010, 63]. Moreover, the Instruction prepared by the Chief Inspector for Personal Data Protection and the Secretariat of the Polish Bishops' Conference in 2009 clearly stated that in the case of data recorded in the parish registers, canon law was binding, and only in matters not regulated by this law, the Personal Data Protection Act had to be applied.<sup>5</sup>

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<sup>5</sup> *Protection of Personal Data in the Activity of the Catholic Church in Poland* (23 September 2009). Instruction prepared by the General Inspector for Personal Data Protection and the Secretariat of the Polish Bishops' Conference, “Akta Konferencji Episkopatu Polski” 16 (2009), p. 53–59, III/9.

## 2. THE CHURCH'S AUTONOMY WITH REGARD TO DATA PROTECTION LAW

The specificity of the salvific mission of the Church requires parish registers to be kept as a documentation of the most important events in the sacramental life of the individual persons belonging to the Church, as well as those who once belonged to it [Wenz 2008, 93–94]. Because of this unique nature of the Church and the need to treat personal data differently in the context of sacramental life and canonical status in general, in her activities the Church must enjoy, care for and defend autonomy to apply her own data protection law.

### 2.1. Legal basis in civil law

The autonomy of churches, religious associations and philosophical organisations is recognised in legal documents at the level of European and state law.

In European law, first mention must be made of the Treaty on the Functioning of the European Union, in Article 17 on relations with religious and philosophical organisations, the first paragraph stipulates that “the Union respects and does not prejudice the status under national law of churches and religious associations or communities in the Member States.”<sup>6</sup> As a consequence of this general law defining the functioning of the European Community, reminiscences of this law also had to appear in the GDPR. With regard to data processed by churches and religious associations, they may apply the rules they have previously done, provided that they are adapted to the European regulation (cf. Article 91(1) GDPR). However, the adaptation of these rules must not prejudice the status granted to churches under the constitutional law in force in the Member States (cf. GDPR, preamble (165)). This confirms that the GDPR respects the autonomy of the Catholic Church, as provided by state law, and does not violate these provisions.

There Polish fundamental law contains an article which provides for equal rights for churches and other religious associations, and public authorities in the Republic of Poland shall maintain impartiality in matters of religious beliefs. The relationship between the State and the churches are based on the principle of respect for their autonomy and the detailed provisions concerning the relations between the Republic of Poland and the Catholic Church are determined by international treaty concluded with the Holy See and relevant statutes.<sup>7</sup> It is therefore evident that the Polish Constitution adopted a model of

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<sup>6</sup> Treaty on the Functioning of the European Union, O.J. 2012 C 326/47; Treaty establishing the European Economic Community, Rome (25 March 1957), Journal of Laws of 2004, No. 90, item 864/2 as amended.

<sup>7</sup> Constitution of the Republic of Poland of 2 April 1997, Journal of Laws No. 78, item 483 as amended, Article 25(1–4).

coordinated separation, otherwise known as friendly separation. The principle of equal rights refers to the identical treatment of churches and religious associations, and not to equality on the plane of state-church relations [Tuleja 2019, 101–102]. It should be noted, however, that this principle has been restricted in two ways, firstly, by explicit constitutional regulations (cf. Article 25(4) and 25(5) of the Constitution), and secondly, legal differentiations may, and even should, be an expression of factual differences between individual churches and religious associations, due to their possession of characteristics relevant for the regulation being made [Garlicki 2016, 607–609]. Thanks to the reference in the Constitution to the agreement concluded with the Holy See and to the Act, it can be determined that the “status granted by constitutional law to churches” in the case of the Catholic Church is also contained in the Concordat of 28 July 1993 and in the Act of 17 May 1989 on the Relation of the State to the Catholic Church in the Republic of Poland (with subsequent amendments and changes).

Indeed, both documents emphasise the autonomy of the Catholic Church. The Concordat as a bilateral agreement signed by the Holy See with the highest authorities of the Polish state, on matters concerning the situation of the Church in Poland, has legal effects for both parties [Krukowski 2013, 231]. Thus, this agreement is valid in two legal orders, and at the same time it is a source of law in the ecclesiastical and state order [Idem 2000, 390]. In the 1993 Concordat there is an article in which the guarantee of the free exercise of jurisdiction by the Church is ensured: “Respecting the right to religious freedom, the State shall guarantee the Catholic Church, irrespective of rites, the free and public exercise of its mission, as well as the exercise of its jurisdiction, management and administration of its own affairs, in accordance with canon law.”<sup>8</sup>

In a similar way, the mutual relationship between the State and the Catholic Church, on the basis of respect for autonomy in jurisdiction, is provided for in the Act of 17 May 1989 on the Relation of the State to the Catholic Church in the Republic of Poland: “The Church shall be governed in her affairs by her own law, shall freely exercise clerical and jurisdictional authority and shall manage her affairs.”<sup>9</sup> Over the years there have been quite frequent doubts about what autonomy in terms of jurisdiction one can speak of and what scope these provisions have. Certainly, the state jurisprudence has not yet clearly delimited all areas of validity, while on the sacramental question there are clear statements in judgments and resolutions of the Supreme Court that it belongs without doubt to “her own affairs” of the Church and can therefore be governed by “her own law.”<sup>10</sup>

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<sup>8</sup> Concordat between the Holy See and the Republic of Poland, signed in Warsaw on 28 July 1993, *Journal of Laws of 1998*, No. 51, item 318.

<sup>9</sup> Act of 17 May 1989 on the relation of the State to the Catholic Church in the Republic of Poland, *Journal of Laws of 2019*, item 1347 as amended.

<sup>10</sup> Cf. resolution of the Supreme Court of 19 December 2008, ref. no. III CZP 122/08, OSNC

## 2.2. Legal basis in canon law

In terms of justifying the autonomy of the Church in the application of her own data protection regulations, it will be important to demonstrate that the Catholic Church had a legal system for the protection of personal data, and therefore can maintain her legal autonomy in this matter. This is because the possibility, guaranteed in European law, for churches to continue their existing system of personal data protection meets the need to respect the constitutionally regulated state-church relations in individual member states and creates the possibility to preserve the autonomy of individual churches [Mazurkiewicz 2016, 30].

The GDPR set out the conditions to be able to apply this legal autonomy for the protection of personal data: to have its own system for the protection of natural persons in relation to the processing of personal data and to bring it in line with the GDPR (cf. Article 91(1) GDPR), the moment of entry into force of the Regulation was 24 May 2016 (cf. Article 99 GDPR). Therefore, it cannot be concluded that the Church in Poland introduced the Decree before GDPR was in force, i.e. before 25 May 2018. However, the provisions of the European Regulation explicitly refer to the date the Regulation enters into force and not to the moment it became binding, these two dates are clearly separated in the Regulation, as *vacatio legis* has been applied (cf. Article 99 GDPR). Therefore, it seems justified to mention in the preamble of the Decree of the Polish Bishops' Conference all the relevant provisions of the Canon Law concerning the issue of personal data protection. In addition to selected provisions of the 1983 Code of Canon Law<sup>11</sup> and the Code of Canons of the Eastern Churches, the *motu proprio La cura vigilantissima* of 21 March 2005 is also mentioned, as well as regulations of particular law including the Polish Bishops' Conference on the keeping of parish registers of 1947, the Instruction prepared by the Polish General Data Protection Supervisor (GIODO) and the Secretariat of the Polish Bishops' Conference, the General Decree on apostasy from the Church and on return to the community of the Church of 2015, and generally mentioned other regulations of particular law (cf. Decree, preamble).

One document that could be called comprehensive or at least a prototype creating a legal system of personal data protection was the mentioned 2009 Instruction created with the cooperation of state and church bodies. Among authors discussing this document one can find opinions that “the processing of personal data in the Catholic Church is a fact. The Church has always been a precursor of those changes which serve man. Therefore, in the protection

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2009, No. 7–8, item 115; and ruling of the Supreme Court of 24 March 2004, ref. no. IV CK 108/03, OSNC 2005, No. 4, item 65.

<sup>11</sup> *Codex Iuris Canonici auctoritate Ioannis Pauli PP. II promulgatus* (25.01.1983), AAS 75 (1983), pars II, p. 1–317 [hereinafter: CIC/83].

of personal data the Church also sees a good that should be respected” [Przybyłowski 2012, 433].

However, it can also be stated that the Church has adopted the technique of dispersing the matter of personal data protection. However, in order to clearly and explicitly adapt the canon law in this matter, the Polish Episcopal Conference decided to issue the Decree, which is the implementation of the requirements imposed on churches and religious associations by the GDPR.

### 3. DOCTRINAL AND LEGAL REASONS REQUIRING A LIMITATION OF THE RIGHT “TO BE FORGOTTEN”

Because of her special mission – the continuation of Christ’s salvific work – the Church must also use the means available to society as a whole in the modern world.<sup>12</sup> However, in her activities it must remain faithful to the doctrine which it proclaims. Therefore, even at a time when particular emphasis is being placed on the protection of personal data, the Church, taking all aspects into account, cannot consent to the application of the right to be forgotten in matters concerning the sacramental life and the canonical status of the faithful who belong or belonged to the Church (cf. Article 14(4) Decree; can. 96 CIC/83). It is therefore necessary to clarify the doctrinal and legal reasons for such a limitation of the right to be forgotten.

#### 3.1. Sacramental character

The doctrine of the sacramental character has its foundations both in the Old Testament, where, by the custom of circumcision, man belonged to God and this sign reminded him of this fact (cf. Gen. 17:11) [Müller 2015, 682], as well as in the New Testament (cf. Gal. 6:17; 2 Cor 1:22, Eph 4:30, 2 Tim 2:19, Rev 3:12; 7:3; 13:16; 14:1–9; 20:4) in the teaching on the spiritual permanent indelible and eternal mark. This mark is imprinted by God on the soul and leaves the instalment of the Spirit in the human heart (cf. 2 Cor 1:22). The man who possesses it has a special ability to perform and receive sacred things [Bartnik 2003, 642]. The sacramental character was described by the Fathers of the Church and Old Christian writers (St Augustine and Tertullian), as well as medieval scholastics (St Thomas Aquinas). Hence, since the thirteenth century, in order to distinguish it from sanctifying grace, this intrinsic belonging of man to Christ due to baptism received is called the spiritual mark of the soul or sacramental character [Müller 2015, 651].

<sup>12</sup> This is not an attempt to justify the functioning of the Church in terms of the *societas perfecta* model, but only a claim that the Church fulfilling its mission in the modern world must use resources that are available to each community [Choromański 2012, 21–22].



The doctrine of sacramental character was solemnly reaffirmed at the Council of Florence and the Council of Trent. In Florence the Council Fathers taught that “Among these sacraments there are three, baptism, confirmation, and orders, which imprint an indelible sign on the soul, that is, a certain character distinctive from the others. Hence they should not be repeated in the same person.”<sup>13</sup> The Fathers of the Council of Trent made similar statements.<sup>14</sup>

As a consequence of this, in the binding Code of Canon Law there are canons which mention the sacramental character which the three sacraments imprint and therefore cannot be repeated (cf. can. 845 § 1 CIC/83) and a particular definition of the capacity to receive these sacraments for those who have not received them before (cf. can. 864, 889 § 1 CIC/83).

It is therefore a dogmatic and legal justification for the impossibility of forgetting the sacraments received, the sacramental character is imprinted on the soul and cannot be removed, and as a consequence of this, the very fact of receiving such a sacrament in the Church cannot be forgotten (demanded to be erased) either, which is confirmed in the parish register, and therefore such a record cannot be removed either.

### 3.2. Sacramental life in general

However, only three of the seven sacraments imprint a character, so it is important to note that for the other sacraments, annotations are made in the parish registers because this has legal consequences.

The keeping of parish registers is an essential aspect of the Church’s salvific service to those who are becoming or are already members of this community of the faithful. These registers document the most important events in the sacramental life of individual members of the Church. Hence the keeping of parish registers (of the baptised, the confirmed, the married and the deceased) is regulated by universal law. The register of the baptised holds a special place, even the most important. This is due to the essence of the sacrament of baptism, which imprints a sacramental character and thus changes the person ontologically both in the order of grace and in the order of law [Wenz 2008, 121].

For this reason, the universal legislator, stressing the importance of diligent maintenance of the baptismal register, imposes on the local pastor where this

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<sup>13</sup> Council of Florence, *The Bull Exultate Deo (the Decree for the Armenians)*, <https://sensus-fidelium.us/the-sources-of-catholic-dogma-the-denzinger/council-of-florence-1438-1445-decree-for-the-armenians/> [accessed: 26.01.2022].

<sup>14</sup> “If any one saith, that, in the three sacraments, Baptism, to wit, Confirmation, and Order, there is not imprinted in the soul a character, that is, a certain spiritual and indelible Sign, on account of which they cannot be repeated; let him be anathema.” Council of Trent, *Canons on the Sacraments in general*, can. IX, <http://www.thecouncilofrent.com/ch7.htm> [accessed: 26.01.2022].

sacrament is administered the obligation to promptly and accurately record the data of the baptised person, the godparents or witnesses and the minister, the date and place of birth and baptism (cf. can. 877 § 1 CIC/83). The same is true for the other two sacraments that imprint a sacramental character: confirmation (cf. can. 895 CIC/83) and ordination (cf. can. 1053 § 1 CIC/83).

However, not only these sacraments should be recorded in the parish registers. The second significant provision of the law concerning the parish registers is the canon which defines the duties and rights of the parish priest. Among the duties mentioned is the necessity to keep parish registers, namely, the register of the baptized, of marriages, of the deceased, and others determined by particular law established by the Episcopal Conference or the diocesan bishop (cf. can. 535 § 1 CIC/83). Among these other books, the most frequently required may include: the book of confirmation kept in the parish, the book of First Holy Communion, the book of the sick (Anointing of the sick).<sup>15</sup>

All these books contain information concerning the sacramental life of the faithful. The books required by the universal legislator are particularly important. Only the book of the deceased concerns canonical status, not sacramental life. The reception of the individual sacraments, and consequently the recording of this fact in the registers, influences the further spiritual life of the faithful, but also has important legal consequences. The sacrament of baptism is required for the reception of the other sacraments (cf. can. 842 § 1 CIC/83); the sacrament of Holy Orders prevents the reception of the sacrament of marriage (cf. can. 1087 CIC/83); the reception of marriage prevents a subsequent marriage as long as the marriage bond of the first union lasts (cf. can. 1085 CIC/83) and the reception of the sacraments of episcopal ordination and (in principle, except for Anglicans<sup>16</sup>) presbyterate in the Latin Church (cf. can. 1042, 1° CIC/83, *Anglicanorum coetibus*, VI § 1). The impossibility of re-reception of validly administered sacraments that imprint character was mentioned above.

### 3.3. Canonical status

Canonical status in the Church is not only determined by the sacraments. Because of the distinction between sacramental life and canonical status in the

<sup>15</sup> Cf. *Przepisy o prowadzeniu ksiąg parafialnych: ochrzczonych, bierzmowanych, małżeństw i zmarłych oraz ksiąg stanu dusz*, “Wiadomości Kościelne” 2/5–7 (1947), p. 92–99. See also Wenz 2008, 182–84.

<sup>16</sup> Benedict XVI, Apostolic Constitution *Anglicanorum coetibus* (04.11.2009), Article 6 § 1, [https://www.vatican.va/content/benedict-xvi/en/apost\\_constitutions/documents/hf\\_ben-xvi\\_apc\\_20091104\\_anglicanorum-coetibus.html](https://www.vatican.va/content/benedict-xvi/en/apost_constitutions/documents/hf_ben-xvi_apc_20091104_anglicanorum-coetibus.html) [accessed: 17.07.2021]. Also as amended by Francis, Apostolic Constitution *Anglicanorum coetibus* (19.03.2019), Article 6 § 1, [https://www.vatican.va/roman\\_curia/congregations/cfaith/documents/rc\\_con\\_cfaith\\_doc\\_20190319\\_norme-anglicanorum-coetibus\\_it.html](https://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_20190319_norme-anglicanorum-coetibus_it.html) [accessed: 17.07.2021].

Church's data protection legislation (cf. Article 14(4) Decree), other situations that affect canonical status should be mentioned here.

Among such situations, the acts of apostasy, schism or heresy should be mentioned, since they are threatened with the penalty of excommunication, which is binding by force of the law itself (cf. can. 751, 1364 CIC/83). Similarly, the incurring by the faithful of other ecclesiastical penalties affecting their canonical status, such as suspension, the interdict, or the already mentioned excommunication (cf. can. 1331–1333 CIC/83). The act of conversion also changes the canonical status.

Among the events in the life of the Church which significantly affect canonical status, mention should also be made of the perpetual vows (cf. can. 535 § 1 CIC/83).

Nor can we overlook the extraordinary situations which can arise, however sporadically, in parish pastoral practice. Namely, the changes in parish registers concerning children already baptised before adoption,<sup>17</sup> the canonical status of a person who has undergone a sex change operation after baptism changes; the determination of gender in the case of hermaphroditism. These issues are also reflected in the canonical status of the faithful concerned [Trojanowski 2019, 59–64].

#### 4. THE OBLIGATION TO RESPECT THE LAW

In pastoral practice, requests for the erasure of personal data are increasingly frequent, especially in the context of apostasies from the Church. In such situations, with the current data protection law, the faithful to whom the data pertains have the right to request the erasure of the data (cf. Article 14 Decree), however, in the case of the sacramental life and canonical status of these persons, this right is *de facto* limited to making the data confident, in such a way that they cannot be used without the consent of the local Ordinary, even by the person concerned (cf. Article 14(4) Decree). In view of this fact, it must be stated that the provisions of canon law provide for legal liability for the breach of personal data or non-compliance with data protection regulations.

##### 4.1. Legal liability

The controllers of such personal data are in most cases parishes, sometimes dioceses or other institutions which have the capacity to keep parish registers or to collect them (e.g. a diocesan archive). They are obliged to comply with canon law in this matter. It is the responsibility of the parish priests, who in

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<sup>17</sup> Cf. *General decree of the Polish Episcopal Conference on the preparation and modification of the act of baptism in connection with adoption*, "Akta Konferencji Episkopatu Polski" 30 (2018), p. 46–47, no. 9.

the light of the law on the protection of personal data are the representatives of the data controller, which is the parish, to keep the parish registers reliably and accurately and to take care of their proper storage (cf. can. 535 CIC/83). The lack of discipline in this matter already before the entry into force of the data protection legislation constituted a serious breach of the parish priest's duties and could be considered as a tort pursuant to can. 1378 § 2 CIC/83. In view of the current provisions on the protection of personal data in the Catholic Church in Poland, concern for the personal data contained in the parish registers has become even more important. Therefore, all the rights of data subjects must be respected, including the right to request erasure. In some cases this right can be fully exercised (e.g. deletion of personal data from parish records); in other cases it is not possible (sacraments and canonical status), these data, however, can by no means be used. Therefore, in this context, care should also be taken to store the parish registers in a suitable place so that third parties do not have access to them without a legitimate legal authorisation. Care must also be taken to ensure that there is no "personal data breach," which is defined in the Decree as "a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, personal data transmitted, stored or otherwise processed" (Article 5(8) Decree). Such a breach in relation to the abuse of ecclesiastical power or the failure to fulfil a duty arising from one's office may be punishable by an ecclesiastical sanction, defined as a just penalty (cf. can. 1378 CIC/83).

#### 4.2. Supervision

Due to the specific nature of the activities of churches and religious associations, in which doctrine and religious beliefs also influence the issue of personal data processing, the GDPR not only provides for the possibility to apply their own autonomous legal regime for the protection of personal data provided that it is "brought into line" with the European Regulation (cf. GDPR Article 91(1)), but also gives the possibility to set up an "independent supervisory authority" (cf. Article 91(2) GDPR). The literature states that such establishment of an independent supervisory authority by a church, religious association or community results in the exclusion of the jurisdiction of the national supervisory authority in relation to them, although this does not follow explicitly from this article [Litwiński 2018, 887].

In fact, the Catholic Church in Poland has decided to establish such an office, the rights and duties of which are set out in the *Decree* (cf. Article 35–40 Decree). Among its tasks are: "monitoring and ensuring compliance with data protection legislation within and in accordance with the activities of the Catholic Church and her structures" (Article 37(1)(1) Decree) and "to deal with complaints concerning compliance with the regulations established in the Church regarding the protection of personal data" (Article 37(1)(5) Decree).

And by the fact that the Church Data Protection Supervisor is independent in its action and is not subject to the instructions of other entities in the performance of its supervisory tasks, it can be concluded that it fulfils the required attributes of such a supervisory authority under European law [Fajgielski 2022, 756].

Apart from the possibility of supervision by the Church Data Protection Supervisor, canon law still applies with regard to the supervision of the keeping of books during canonical visitations both by the diocesan bishop or his delegate (cf. can. 396 CIC/83) and by the dean (cf. can. 555 § 1, 3° CIC/83); in this respect, the most recent data protection law does not change anything (cf. Article 40(1) Decree).

## 5. THE OBLIGATION TO OBSERVE CHURCH DISCIPLINE

It may be noted that, in view of the specific nature of churches, religious associations and philosophical organisations and communities, the European regulation respects the autonomy they enjoy in various Member States. It must therefore be concluded that respect for their autonomous rights, shown by individual churches and other organisations on an equal footing with them in law, is firmly established in both state and European law.

Therefore, one cannot rely on the right to request the erasure of personal data or even the right to be forgotten on the basis of Article 17 GDPR, because legal texts have to be read in text and context, since Article 91 grants the possibility to apply one's own legal system to the protection of personal data, this has certainly been influenced, among other things, by the impossibility of forgetting certain events, certain data, certain facts. In the Catholic Church, such issues are actually two issues defined as: sacramental life and canonical status.

On the other hand, raising various aspects concerning the impossibility for the Catholic Church in Poland to apply her own data protection rules must meet with a strong objection, since all the requirements set out in Article 91 GDPR have been met by the Catholic Church in Poland. Although it is sometimes argued in the literature that the data protection rules applied by the Church, at the time of the entry into force of the GDPR, "cannot be considered as detailed rules for the protection of individuals' data in relation to processing because they are fragmentary in nature" [Zawadzka 2018, 1114]. It is difficult not to notice the factual errors of such argumentation. In the first place, "fragmentary nature" does not exclude "detailed rules," which the author assumed *a priori*. The EU legislator did not require a comprehensive (all-encompassing) regulation contained in a single normative document [Fajgielski 2022, 754]. The author does not seem to recognise the method of dispersion of regulations, although it is also used in state law. It is enough to note how many laws had

to be amended in order to adapt them to GDPR in Polish law.<sup>18</sup> Secondly, it should be noted that the sources of norms on personal data protection cited by the author omit first of all the canons of the Code of Canon Law – the basic source of universal law in the Church. Therefore, other authors dealing with this issue do not approve this way of interpreting the EU law [ibid.].

Specific data protection rules were applied in the Catholic Church in Poland when the European Regulation came into force, and were later adjusted to it, resulting in a Decree issued by the Polish Bishops' Conference. These provisions regulate in detail the principles of protection of natural persons in relation to the processing of personal data, taking into account the specificity of the Church.

According to the principle *semel catholicus, semper catholicus*,<sup>19</sup> even apostasy from the Catholic Church does not result in a complete break with the Church, because it is impossible to erase the effects of baptism, which has spiritual as well as legal effects. Consequently, it is not possible to treat – as people who want to break off relations with the Church often expect – a religious community like other organisations. Withdrawal from such organisations is possible and, thanks to the right to be forgotten, there may be no trace of participation in them, but in the case of the Catholic Church this is not possible. Someone who expects such a solution is not aware that the consequences of legal actions taken may also have their consequences in the future. By way of an analogy, if a person leaves a country or even renounces its citizenship, this does not mean that they can avoid the consequences of their lawful or unlawful actions as a citizen of that country.

Therefore, the limitation of the right to request erasure in matters of sacramental life and canonical status should be considered within the category of fundamental human rights of religious freedom not only in the aspect of the individual but also in that of the community of the Church. This is to maintain public order in the Church and the good of its individual faithful, including former members.

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<sup>18</sup> Cf. Act of 21 February 2019 on amending certain acts in connection with ensuring the application of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC (General Data Protection Regulation), Journal of Laws item 730.

<sup>19</sup> *General Decree of the Polish Bishops' Conference on the apostasy from the Church and return to the Church Community* (7 October 2015), "Akta Konferencji Episkopatu Polski" 27 (2015), p. 101–104.

## CONCLUSIONS

The provisions of the European regulation recognise the autonomy of churches, religious associations and other similar communities to the extent that they have such autonomy in the individual Member States. Consequently, due to her specificity, the Catholic Church can apply her own specific data protection rules, as she has adapted them to the European regulation.

Complete adaptation is not feasible, since this would be regarded as “canonisation of civil law” (cf. can. 22 CIC/83), and this in turn opposes, especially in the matter of the sacraments, their essence, which is of divine institution (i.e. derived from divine law). Such canonisation, rather than adaptation, would also be contrary to the intention of the European Legislature, since the possibility of being guided by its own detailed rules includes the consideration of the specificity of individual churches and religious associations.

Therefore, the autonomy enjoyed by the Catholic Church also in applying her own data protection rules is far from being a privilege but stems from respect for religious freedom and for the Catholic doctrine, which does not allow the right to be forgotten in a sacramental matter or in certain aspects concerning canonical status.

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