

REQUIREMENT OF PRESERVE THE TECHNICAL
– JURIDICAL RIGOUR IN THE EXERCISE OF LEGISLATIVE
POWER IN THE CHURCH. SELECTED ITEMS*

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Summary. One of the aspects of authority of the diocesan bishop is to exercise legislative power through the issuing normative acts – legislative decrees and executory decrees governing the legal provisions of the Laws. Congregation for the Bishops in the Directory from 2004 *Apostolorum successores*, has defined general guidelines which should be complied with drafting normative acts. Also in working documents of II Polish Plenary Council, the Synod Fathers, drew attention to the fact, that all particular Laws should be drafted correctly in terms of the substance and the procedural. But until now, did not determined the specific requirements which should be guided by the diocesan bishop. Consequently, the Author in the article proposes to reach for a current and adopted legislative directives, developed on the basis of state law, however, according with the vocation and mission of the Church, which would serve the particular legislator, pointing him how to solve common problems of legislative. One of them seems appropriate to try to adapt it to the requirements of ecclesiastical legislator, it contains five types of criterion of division directives and it is as follows: 1) language; 2) the uniformity and completeness; 3) systematics; 4) the addressee; 5) the form of regulation.

Key words: lawmaking, legislator, legislative directives, II Polish Plenary Council

With regard to the correctly constructed normative act, the Congregation for Bishops in Directory *Apostolorum Successores* defined the elementary criteria for the exercise of the legislative authority in the following way:

the Bishop should take care that legislative and canonical texts are drawn up with precision and technical-juridical rigour, avoiding contradictions, useless repetitions, or a multiplication of rulings on a single matter. He should also ensure the necessary clarity so that it is obvious when an instruction [legal provision – M.S.] is obligatory and when it is merely a guideline, what type of conduct is prescribed and what is prohibited. For this purpose he should avail himself of the assistance of specialists in canon law, who should never be lacking in a particular Church. Moreover, a precondition for the just regulation of any aspect of diocesan life is precise knowledge regarding the situation of the diocese and the circumstances of the faithful, insofar as these have a significant influence on the way people think and act¹.

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¹ Congregazione per i Vescovi, Direttorio per il ministero pastorale dei vescovi *Apostolorum successores* (22.02.2004), Libreria Editrice Vaticana 2004 [short: AS] nr 67d.

It is necessary to notice that using this text the Congregation identified a series of requirements regarding the editorial aspect of the lawmaking. However, not all are explicitly named. Before undertaking the attempt to analyze them, characteristics of the typical normative acts should be defined, which are legislative decrees and executory decrees, governing the legal provisions of the Laws (can. 29)² and as the next step, it is necessary to summon indications on this topic in the Working Texts of Second Plenary Council in Poland³ and present the possibility of reception of the legal provision and doctrine of Polish legal system to the canon law (can. 22)⁴.

DEFINITION OF LAW

The legislature in the 1983 Code of Canon Law has not implied the definition of the Law, although it was placed in his schemes of 1980⁵ and 1982⁶. But the science of canon law uses the classic concept of the Law, gave by St. Thomas Aquinas in the Summa of Theology⁷. According to him „lex est ordinatio rationis ad bonum commune ab eo qui curam habet communitatis promulgata”⁸. Still relevant notion created by St. Thomas defines the elements of the Law,

² „General decrees, by which a competent legislator issues common prescripts for a community capable of receiving law, are laws properly speaking and are governed by the prescripts of the canons on laws”. *Codex Iuris Canonici auctoritate Ioannis Pauli PP. II promulgatus* (25.01.1983), AAS 75 (1983), pars II, pp. 1–317.

³ *II Polski Synod Plenarny. Teksty robocze*, Poznań–Warszawa 1991, pp. 413 +3 unnumbered pages. [short: II PSP Tr.].

⁴ „Civil laws to which the law of the Church yields are to be observed in canon law with the same effects, insofar as they are not contrary to divine law and unless canon law provides otherwise”.

⁵ „Can. 7 – Lex, norma scilicet generalis ad bonum commune alicui communitati a competenti auctoritate data, instituitur cum promulgatur”, in: Pontificia Commissio Codici Iuris Canonici Recognoscendo, *Schema Codicis Iuris Canonici iuxta animadversiones S.R.E. Cardinalium, Episcoporum Conferentiarum, Dicasteriorum Curiae Romanae, Universitatum Facultatumque ecclesiasticarum necnon Superiorum Institutorum vitae consecratae recognitum (Patribus Commissionis reservatum)*, Libreria Editrice Vaticana 1980.

⁶ Also can. 7 in identical sound, in: Pontificia Commissio Codici Iuris Canonici Recognoscendo, *Codex Iuris Canonici. Schema novissimum, post consultationem S.R.E. Cardinalium, Episcoporum Conferentiarum, Dicasteriorum Curiae Romanae, Universitatum Facultatumque ecclesiasticarum necnon Superiorum Institutorum vitae consecratae recognitum, iuxta placita Patrum Commissionis deinde emendatum atque Summo Pontifici praesentatum*, Civitas Vaticana 1982. It should be added, that the Commission for the Revision of Code of Canon Law was of the view to keep this definition in the new Code, also because of legal certainty, but as a result it has been deleted, see: W. Aymans, *Rozważania o wewnętrznych cechach istotnych kanonicznego pojęcia ustawy*, „Śląskie Studia Historyczno-Teologiczne” 25/26 (1992–1993), p. 197, note 1.

⁷ T. Pawluk, *Prawo kanoniczne według Kodeksu Jana Pawła II*, t. I: *Zagadnienia wstępne i normy ogólne*, Olsztyn 2002, p. 197.

⁸ *Summae Theologiae* I–II, q. 90, a. 4; polish text: Św. Tomasz z Akwinu, *Suma teologiczna*, t. XIII: *Prawo* (1–2. 90–105), transl. P. Belch, London 1985, p. 16.

such as: the objective, the nature, the author and the way of entry into force. However, beyond the general notes concerning the same normative act and its construction, we should also refer to the legal provisions contained therein – elementary propositional units, which are present in the Law in the form of an article, section, paragraph, or the canon. The legal norms such as: sentences of normative acts which set down to subjects, to whom they are addressed, the obligations and rights⁹, and also constitute a model of conduct which may have a character of an order, a prohibition or an authorization or a suggestion are brought out just from the legal provisions¹⁰. Moreover, the legal norm should also be correctly built. The most typical construction of it is the three-part concept, according to which the legal norm consists of: 1) the hypothesis – which indicates the addressee, the requirements and circumstances in which something is prescribed, prohibited or allowed; 2) the disposition – determining the model of desired behavior prescribed, prohibited or allowed; 3) the sanction – constituting the afflictions for unrealized commands contained in the disposition of the circumstances contained in the hypothesis¹¹.

INDICATIONS OF SECOND POLISH PLENARY COUNCIL

In 1991 the working documents of Second Polish Plenary Council were issued.

Each of the presented working documents has been developed according to the same criteria of division – into four parts: 1) theological, 2) sociological, 3) pastoral, 4) legal. [...] The fourth part – legal, provided in all the final decrees of the Plenary Council, at its current stage of the process has not been included in every document, it has only the value of suggestions for the ecclesiastical legislator, so that the Council can provide such regulations¹².

Out of seventeen documents constituting the draft decrees of the Council, in nine of them the part concerning legal regulations was drafted¹³. One document was completely devoted to canon law, and it includes “principles for the

⁹ J. Krukowski, *Wstęp do nauki o państwie i prawie*, II ed., Lublin 2004, pp. 85–86.

¹⁰ F. Prusak, M. Sitarz, *Propedeutyka prawa. Zagadnienia podstawowe*, Warszawa 2000, p. 27.

¹¹ *Ibid.*, p. 28.

¹² T. Pieronek, *Wprowadzenie*, in: II PSP Tr., p. 7.

¹³ 1) *Biblia – Sobór – życie*, in: II PSP Tr., p. 68: „Proponowane postanowienia prawne”; 2) *Życie liturgiczne w Polsce po Soborze Watykańskim II*, in: II PSP Tr., pp. 92–94: „Zarządzenia”; 3) *Chrystusowe kapłaństwo służebne w Kościele w Polsce*, in: II PSP Tr., pp. 156–159: „Projekty postanowień prawnych”; 4) *Życie konsekrowane w Kościele w Polsce*, in: II PSP Tr., pp. 182–183: „Postanowienia prawne”; 5) *Wychowanie katolickie we współczesnej sytuacji Kościoła*, in: II PSP Tr., pp. 251–253: „Postulaty o charakterze prawnym”; 6) *Dzieło misyjne Kościoła w Polsce*, in: II PSP Tr., pp. 273–275: „Struktury i zalecenia prawne dla budowania komunii misyjnej Kościoła w Polsce”; 7) *Kościół w Polsce wobec emigracji*, in: II PSP Tr., pp. 289–290: „Wskazania normatywne”; 8) *Formacja postaw moralnych w narodzie*, in: II PSP Tr., p. 394–395: „Propozycje prawne dla kształtowania postaw moralnych”; 9) *Prawo kanoniczne w Kościele partykularnym*, in: II PSP Tr., pp. 403–410: „Zarządzenia i zalecenia”.

establishment of the particular law”¹⁴. After getting acquainted with their contents resemblance to the guidelines in the lawmaking by the bishop may be noted, which was published by the Congregation for Bishops. Apart from the working texts it should be postulated that all particular Laws should be drafted correctly in terms of the substance and the procedural. It is important for this reason, that only a correctly drafted Laws may effectively contribute to raising the level of legal culture among the faithful¹⁵.

[...] before their promulgation should be consulted – if it possible, and it seems beneficial – a competent collegiate body or consultative in the diocese, and experts on the theological-pastoral and legal issues¹⁶.

It should be noted that this was not a new postulate. For example, it is worth mentioning that already on 25 October 1974 during the Main Commission work of the First Diocesan Synod in Katowice, S. Bista proposed creation of an auxiliary body, which will serve the counsel to diocesan legislator [...] in the issuance of legal provisions to fulfill the requirements for rational norms of ecclesiastical law, both from the substance and the procedural. Not only specialists in the field of legislative technique ie. ecclesiastical lawyers, but also pastors, who work in the area and know the area should be appointed¹⁷.

Considering the above, it is essential to ask the question if these postulates have been realized. Or maybe this proposal did not meet with acceptance, as requested in the working texts of II Polish Plenary Council, comprehensive assistance provided particular legislators by a special committee functioning at the Episcopal

¹⁴ *Prawo kanoniczne w Kościele partykularnym*, in: II PSP Tr., pp. 397–410. Too bad, that the structure of the working text does not reflect the thoughts of the synodal legislator, because in promulgated decrees of the Synod in 2001, only in one on the fourteen documents separated the legal part. See: *Duszpasterstwo polskie za granicą*, in: *II Polski Synod Plenarny (1991–1999)*, Poznań 2001 [short: II PSP], pp. 258–259: „Przepisy i zalecenia”. However, it does not mean, that the Synod does not contain any legal norms. See for example the legal provision referring to: propaedeutical years [*Kapłaństwo i życie konsekrowane jako wspólnota życia i posługi z Chrystusem*, in: II PSP, stat. 61, p. 175, although it was only a postulate introduced then by the Conference of the Polish Episcopate, see: *Okres propedeutyczny w diecezjalnych wyższych seminariach duchownych w Polsce. Dokument z 350. Zebrania Plenarnego Konferencji Episkopatu Polski (26.11.2009)*, „Akta Konferencji Episkopatu Polski” 2 (16) 2009, pp. 47–48]; the ministry of acolyte for men who are preparing for the sacrament of Holy Orders and identify them age (*Liturgia Kościoła po Soborze Watykańskim II*, in: II PSP, stat. 84, p. 205), admission of third-grade junior high school youth for Confirmation (ibid, stat. 112, s. 209), whether maintenance of custom relating to abstinence from meat on Christmas Eve (ibid, stat. 121, s. 210). However, it should be noted, that: „warstwa legislacyjna uchwał Polskiego Synodu Plenarnego jest bardzo wąta, a w niektórych rozdziałach nawet całkowicie nieobecna”. See: J. Krukowski, *Kanoniczne prawo powszechne i prawo partykularne w Polsce. Konferencja Episkopatu Polski i Synody*, in: *25-lecie promulgacji Kodeksu Prawa Kanonicznego. Obowiązki i stosowanie w Polsce*, ed. J. Krukowski, Z. Tracz, Łódź 2009, p. 74.

¹⁵ T. Pawluk, *Uwagi na temat ustawodawstwa diecezjalnego*, „Prawo Kanoniczne” 34 (1991), n. 1–2, p. 35.

¹⁶ *Prawo kanoniczne*, in: II PSP Tr., stat. 13, p. 403.

¹⁷ S. Bista, *Doradcze gremium legislacyjne*, „Śląskie Studia Historyczno-Teologiczne” 8 (1975), p. 183.

Conference of Poland?¹⁸ At the Conference, the Legal Council exists, but it does not provide any support for the different particular Churches, because its aim is „to support the Conference in its work and making its decisions”¹⁹.

Taking into account the compatibility of the proposals expressed in the working texts of II Polish Plenary Council with current guidelines of the Congregation for Bishops, the attempt to systematize them should be undertaken. Accordingly, the reaching for a current and adopted achievements of the legal culture is one of the ways, by which the Church tries to be a present and visible sign of grace – according to its vocation²⁰. Drawing with the achievements of the legal culture should be accompanied by the ability of distinguishing and choosing, because not all the achievements of the civil law idea are appropriate for the Church and we cannot manage to transform them to the ground of the canon law. Some of the concepts or ideas formed and adopted in secular law, in the Church will not be applied. And even the ones that could be used, without proper modification, could be led to the reduction of the ecclesial reality²¹. For this reason it seems advisable to confront the requirements relating to the editorial side of lawmaking the normative acts by the bishop with the guidelines which, in this area, have been developed on the ground of the secular law.

PRINCIPLES OF LEGISLATIVE TECHNIQUE

In Poland, the lawmaking should be carried out respecting enacted in 2002 „Principles of Legislative Technique”²². Also, in the doctrine the measures in the form of guidelines and directives for the text editor have been developed. The set of those directives called principles of a legislative technique and determined their main task, which is to indicate how to formulate other directival statements (norms), making the correct legal system. They do not constitute the rules of valid establishment of a normative act. They provide assistance to a text editor, showing him how to solve typical problems of legislation, with the awareness that a set of these indications can be neither exhaustive, nor without exception²³. Furthermore, their task is also to unify the formulating of normative acts²⁴.

¹⁸ *Prawo kanoniczne*, in: II PSP Tr., stat. 18, p. 404.

¹⁹ See: *Statut Konferencji Episkopatu Polski* (7.10.2009), „Akta Konferencji Episkopatu Polski” 1 (15) 2009, p. 14–19, art. 48.

²⁰ R. Sobański, *Merytoryczne i metodologiczne problemy wykładu podstaw prawa kościelnego*, in: *W kierunku chrześcijańskiej kultury. Praca zbiorowa poświęcona biskupowi Michałowi Klepaczowi*, ed. B. Bejze, Warszawa 1978, p. 167.

²¹ Idem., *Kościół – prawo – zbawienie*, Katowice 1979, p. 174.

²² Rozporządzenie Prezesa Rady Ministrów z dnia 20 czerwca 2002 r. w sprawie „Zasad techniki prawodawczej”, Dz. U. nr 100, poz. 908 [short: ZTP].

²³ M. Błachut, W. Gromski, J. Kaczor, *Technika prawodawcza*, Warszawa 2008, pp. 4–5.

Therefore, both under the regulation, and taking into account the achievements of professionals in the field of legislative technique in the several classifications of legislative directives literature have been presented. One of them seems appropriate to try to adapt it to the requirements of ecclesiastical legislator, it contains five types of criterion of division directives and it is as follows: 1) language (7–10 §§ ZTP); 2) the uniformity and completeness (2–3 §§ ZTP); 3) systematics (§ 4 ZTP); 4) the addressee (§ 6 ZTP); 5) the form of regulation (§ 5 ZTP)²⁵.

Directives of normative act language

According to this directive, the same terms should always be used in the same sense. The legislator should avoid using ambiguous terms, but he should take into account the terminology that is already in the existing acts. In turn, the itself (own) text of normative act should correspond with the principles of linguistic correctness. These directives are important because correct consideration of them at the stage of creating the law, will find the reflection in its interpretation²⁶. This wording of directives act language is in accordance with the Magisterium of the Church. Pope Paul VI already taught about the temptation of strive to

the change of established expressions, to the change of the word meaning in such a way to alleviate and sometimes even destroy the objective meaning of the doctrine, replacing it may erudite, but any translation, though capable of being incorporated into the current opinion of modern culture, but not always behaving unambiguous and authentic meaning of revelation lectured by the Church and authoritatively taught by him²⁷.

In turn, Pope John Paul II has analyzed this issue in a concrete example, explaining the correct meaning of the terms: *officium, ministerium and munus*. He noted that:

a language is shaky and unclear, and therefore useless to express the doctrine of faith, if in any way to mask the difference of essence, not just a degree, that exists between priesthood arising from baptism and the sacramental priesthood²⁸.

²⁴ S. Wronkowska, M. Zieliński, *Komentarz do zasad techniki prawodawczej z dnia 20 czerwca 2002 r.*, II ed., Warszawa 2012, pp. 14–15. For more on this see: S. Wronkowska, *O meandrach skuteczności nowych zasad techniki prawodawczej*, „Przegląd Legislacyjny” 4 (2004), pp. 9–26.

²⁵ M. Błachut i in., *Technika prawodawcza*, pp. 6–7; S. Wronkowska, M. Zieliński, *Komentarz do zasad*, pp. 27–50. Extended version of this division see: J. Wróblewski, *Zasady tworzenia prawa*, Warszawa 1989, pp. 134–146.

²⁶ Interpretation means all cognitive activities, which should be made in order to determine the correct meaning of a legal norm, with using a interpretation directives and based on a suitable interpretation material.

²⁷ Paweł VI, *Magisterium hierarchiczne – pewnością dla wierzących*, audiencja ogólna (15.04.1970), in: Paweł VI, *Trwajcie mocni w wierze*, ed. J. Ożóg, t. 2, Kraków 1974, p. 235.

²⁸ Ioannes Paulus PP. II, *Allocutio Partecipazione dei fedeli laici al ministero pastorale dei presbiteri* (22.04.1994), „Notitiae” 30 (1994), n. 4, p. 183–189; polish text: „L’Osservatore Romano” (polish edition.) 8 (165) 1994, pp. 21–23, n. 4. More see: A. Słowikowska, *Uczestnictwo wiernych świeckich w liturgii Kościoła łacińskiego. Studium kanoniczne*, Lublin 2014, pp. 168–174.

Therefore the law language has to be the means of conceptualization of a living faith in the Church and serve its message, instead of relating it to the identical concept in secular legal culture²⁹. In addition, these directive correspond to the will of the legislator, which commands ecclesiastical Laws to

understand in accordance with the proper meaning of the words considered in their text and context. If the meaning remains doubtful and obscure, recourse must be made to parallel places, if there are such, to the purpose and circumstances of the law, and to the mind of the legislator (can. 17)³⁰.

Directives of the uniformity and completeness of normative act

Based on these directives, as a rule, the normative act should be uniform and complete. In particular, the task of the legislator, on the basis of this directive, is to regulate in the act the whole range of cases for which it is created, as completely as possible. Thus, exceptions and matters of secondary importance not obscure the fundamental issues should be avoided in it. As a consequence, the normative act should not regulate the relations of different types, or alter and abolish legal provisions governing matters not belonging to its scope. It should be noted, that also this directives correspond to the nature of the Church. Leaving, by the common legislator, the autonomy in making particular law confirms that, the universal law does not regulate all the issues. However, the particular Church, so *portio populi Dei*, is formed on the model of the universal Church (can. 369)³¹. For this reason, the particular Law must exhaustively regulate the scope of matters. It is, therefore, appropriate Aquinas sentence: “human law should not deal with general issues but rather the specific”³², but should be characterized by generality and abstractness. Also, with hindsight we should approach cautiously to accuse canonists working on editing the 1917 Code³³ of the formalism and the juridicalism – the aspects which are contrary to the nature of the Church and pastoral care, because wrongly distinguishes the juridical Church from Church of Mercy. The church, which was legally estab-

²⁹ R. Sobański, *Kościół – prawo – zbawienie*, p. 174.

³⁰ See also: L. Gerosa, *Interpretacja prawa w Kościele. Zasady, wzorce, perspektywy*, Kraków 2003, p. 131–176.

³¹ Sacrosanctum Concilium Oecumenicum Vaticanum II, *Constitutio dogmatica de Ecclesia Lumen Gentium* (21.11.1964), AAS 57 (1965), pp. 5–67; polish text: Sobór Watykański II, *Konstytucje, dekryty, deklaracje*, pp. 104–166, n. 23. More see: M. Sitarz, U. Wasilewicz, *Termin portio populi Dei w Kodeksie Prawa Kanonicznego z 1983 roku i jego tłumaczenia na język polski i francuski*, „Roczniki Humanistyczne” 61 (2013), z. 8, pp. 163–175.

³² *Summae Theologiae* I–II, q. 96, a. 1; polish text: Św. Tomasz z Akwinu, *Suma teologiczna*, t. XIII, p. 76.

³³ *Codex Iuris Canonici Pii X Pontificis Maximi iussu digestus Benedicti Papae XV auctoritate promulgatus* (27.05.1917), AAS 9 (1917), pars. II, pp. 1–593.

lished with the pope as its head, is the same Church of Christ, the Church of love and universal family of Christians³⁴. Moreover,

if the people belonging to the Church do not sin juridicalism and formalism, even when they have to make laws and exercise of power, then the charges would fall only on the canonical science that hold to the old position of the juridical positivism or juridical historicism³⁵.

Directive internal and external systematic of normative act

Another criterion for division directives refers to the internal and external systematic of normative act. Internal systematics should be based on the correct division of the legal provisions contained in the act. Therefore – basing on the model adopted in the laws posed by the state – it must be ensured that the legislator constructed the act in such a way, on the basis of which will be contained in the specific set of legal provisions, for example: general, detailed, final, and separate specified elements such as: the author of the act, the date of issue, the genre and the title. On the other hand, the external systematics should be based on a correct separation of the legal provisions of the normative act from the legal provisions of the other acts. Consequently the diocesan bishop issuing the Law, should indicate an authorizing legal provision, under which it is competent to its issue. In case of council legislation the relevance, possibly necessary, the insertion of footnotes should be considered, if the council – according to the will of the legislator – has to be legal instrument. Taking into consideration the above mentioned directive, the particularly important is the disposition contained in the instructions about diocesan synods:

Using the terms „decrees” and „declarations” the Code of Canon Law envisages the possibility that texts emanating from Synods consist, on the one hand, of *true juridic norms* – that may be termed „constitutions” or otherwise – or *directives for future pastoral programmes* and, on the other hand, they could be useful *statements* relating to the truth of the Catholic faith and moral aspects, especially in relations to more important aspects of the life of the particular Church³⁶.

Directive relating to the addressee of a normative act

According to the directives of the addressee of a normative act, the act should be drafted in such a way that the addressee is able to find a hint /guideline in it how

³⁴ See: Pius PP. XII, *Sermo ad alumnos Seminariorum, Collegiorum et Institutorum utriusque cleri atque ex omni gente, qui Alma Urbe ad sacerdotium efformantur* (24.06.1939), AAS 31 (1939), p. 250; Z. Grocholewski, *Nauczanie prawa kanonicznego po promulgacji Kodeksu Prawa Kanonicznego z 1983 r.*, in: *25-lecie promulgacji Kodeksu Prawa Kanonicznego*, p. 26.

³⁵ Paulus PP. VI, *Allocutio ad clarissimum Virum Romanae Studiorum Universitatis Rectorem ceterosque Iuris Canonici peritos, qui Coetui internationali interfuerunt Romae habito* (20.01.1970), AAS 62 (1970), p. 110; polish text: Paweł VI, *Trwajcie mocni w wierze*, p. 464.

³⁶ *Congregatio pro Episcopis, Congregatio pro Gentium Evangelizatione, Instructio de synodis dioecesanis agendis* (19.03.1997), AAS 89 (1997), pp. 722–727; polish text: *Ustrój hierarchiczny Kościoła. Wybór źródeł*, 2, ed. M. Sitarz, A. Romanko, U. Wasilewicz [et aliae], Lublin 2013, pp. 517–557, n. V.2.

he should (or can) do in a specific situation. Moreover, the act has to be deeply understandable to its addressees, and its analysis should allow to clear up any doubts. Referring to these directives, it is necessary to notice their relation with the already indicated principle of autonomy, because the autonomy in the law-making entitled the bishop not only because of the guarantee external order, but also for the good of the faithful and of the whole community. This good „puts human dignity, freedom, responsibility and sanctification of all members of the Church, added together and each individual in the first place”³⁷. Furthermore, the bishop make a law, not because he has legislative power, but in order to respond objectively understand the needs of the diocese entrusted to him³⁸. Therefore, in order to be effective, it is essential to have a positive attitude of the faithful which can be gained, even giving recitals/reasons of issuing the new law (cf. can. 29 and 51) and advantages/benefits of/from its adoption by the community. Such motivation could be concluded in the act containing legal provisions introducing, or in a separate promulgating writing, attached to a new law or before it.

Directives of form a normative act regulating

The last group directives constitute directives of the normative act regulating form, on the basis of which, it is recommended that the text of the normative act will be as concise as possible. Basically, they aim at concise drafting of the specific provisions and avoidance of details which should be understood by casuistry. Prescribed and prohibited legal provisions should be expressed in a clear way. It should be noted that the directives of forms a normative act regulating comply with the requirements of canon law, which the legislator has formulated among of criteria for the exercise of the legislative power of the diocesan bishop (see: AS 67d). This is also why the term can be offered among trying to create a catalog of the principles of drafting normative act in the ecclesial community.

SUMMATION

Conducted analysis allows to drawing the following conclusions:

1. The diocesan bishop is the only authority in the particular Church competent to enact a normative acts concerning *munus docendi*, *munus sanctificandi* and *munus regendi*.
2. The Bishop is a formal legislator, but acting by the law he may be assisted by so called a real legislator, that means the person who will formulate a normative act.

³⁷ Paweł VI, *Władza w Kościele jest służbą braciom*, audienca ogólna (12.11.1969), in: Paweł VI, *Trwajcie mocni w wierze*, p. 226.

³⁸ T. Pawluk, *Uwagi na temat ustawodawstwa diecezjalnego*, pp. 33–34.

Therefore among the principles of legislative, there are some that should be taken into consideration when drafting normative act. Due to the lack in their conceptual terms it may be suggested a reception from directives of drafting with a secular law on the ground of canon law. Conducted analysis confirms this possibility, therefore among the principles relating to the editorial and formal side of normative act, the directives of: 1) the language; 2) uniformity and completeness; 3) systematics; 4) the addressee; 5) the form of regulation should be highlighted.

3. Due to the need for good law postulate appointment should be recalled in each particular Church consultative legislative body, consisting of pastors and experts in canon and secular law. This body would indicate the assistance to diocesan bishop in lawmaking. Furthermore, such a body should also exist at the Conference of the Polish Episcopate to help all dioceses in Poland in lawmaking in order to watch over a possibility of law unification – not only in the Conference of Bishops.

4. There is a close relationship between lawmaking and law application. That's why the legislator, by joining its regulation, should take into account all the circumstances which may affect the doubts interpretation or difficulties in applying normative act promulgated by him on the side of its addressees.

WYMÓG ZACHOWANIA RYGORÓW TECHNICZNO-PRAWNYCH W PEŁNIENIU
WŁADZY USTAWODAWCZEJ W KOŚCIELE PARTYKULARNYM.
WYBRANE ELEMENTY

Streszczenie. Jednym z aspektów władzy biskupa diecezjalnego jest sprawowanie władzy ustawodawczej poprzez wydawanie aktów normatywnych – dekretów ustawodawczych i dekretów wykonawczych, które rządzą się przepisami o ustawach. Kongregacja ds. Biskupów w dyrektorium z 2004 r. *Apostolorum successores*, określiła ogólne wytyczne, jakie powinny zostać zachowane przy redagowaniu aktów prawnych. Również w dokumentach roboczych II Polskiego Synodu Plenarnego ojcowie synodalni, zwrócili uwagę na to, aby wszystkie ustawy partykularne były redagowane poprawnie pod względem merytorycznym i formalnym. Jednak do tej pory nie udało się określić konkretnych wymogów, jakimi powinien się kierować biskup diecezjalny. W związku z tym Autor proponuje sięgnąć do aktualnych i przyjętych dyrektyw prawodawczych, wypracowanych na gruncie prawa świeckiego zgodnych jednak z powołaniem i misją Kościoła, które służyłyby pomocą prawodawcy partykularnemu, wskazując mu, w jaki sposób rozwiązywać typowe problemy legislacyjne. Jeden z podziałów dyrektyw wydaje się odpowiedni do próby dostosowania go do wymogów prawodawcy kościelnego i zawiera on pięć typów kryterium podziału dyrektyw: 1) język; 2) jednolitość i kompletność; 3) systematyka; 4) adresat; 5) forma regulacji.

Słowa kluczowe: stanowienie prawa, prawodawca, dyrektywy legislacyjne, II Polski Synod Plenarny