

## Legal entity of the Catholic Church as a participant in Land and Mortgage Register proceedings in Polish law – selected issues

Osoba prawna Kościoła Katolickiego jako uczestnik postępowania wieczystoksięgowego w prawie polskim – wybrane zagadnienia

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**Abstract:** This article evaluates the legal norms related to real estate trading by legal entities of the Catholic Church in the context of land and mortgage register proceedings. First, the issue of the legal entity of the relevant church legal entities is presented. Next, the principles of the representation of church legal entities by the competent authorities is analysed. This is important both for the capacity to undertake a substantive legal action, the subject of which is real estate, and for examining the effectiveness of procedural steps taken in the course of land and mortgage register proceedings. The last part is devoted to real estate trading with the participation of church legal entities in the context of the principles resulting from the regulations of land and mortgage register proceedings. The research leads to the conclusion that for land and mortgage register proceedings, it is of fundamental importance to assess the effectiveness of a legal act in the context of the specific requirements of canon law, examples of which are Canons 1281 § 1 of the Code of Canon Law with regard to acts exceeding the limits and manner of ordinary management, and Canons 1292 § 1–2 of this Code making the validity of alienation dependent on the consent or authorisation of the competent entity. The absence of the consent or authorisation required by the provisions of canon law should lead to dismissal of the application for entry, which can possibly be remedied by a subsequent confirmation of the legal act performed by applying the instruments of civil law, as exemplified by Articles 39 and 63 of the Civil Code. In addition, the implementation of the principle of the autonomy of the Catholic Church is expressed in leaving to the church authority regulation of the appointment of the competent bodies of church legal persons; the land and mortgage register court cannot question the effectiveness of the appointment of these bodies, the assessment of which is left to the Catholic Church and its organisational units.

**Key words:** church legal entity; legal personality; land and mortgage register proceedings; real estate trading; alienation

**Streszczenie:** Niniejszy artykuł dokonuje oceny norm prawnych związanych z obrotem nieruchomościami przez osoby prawne Kościoła Katolickiego w kontekście postępowania wieczystoksięgowego. W pierwszej kolejności przedstawione jest zagadnienie osobowości prawnej przedmiotowych kościelnych osób prawnych. Następnie analizie zostały poddane zasady reprezentacji kościelnych osób prawnych przez właściwe organy, co ma istotne znaczenie zarówno dla dopuszczalności zawarcia materialnoprawnej czynności prawnej, której przedmiotem jest nieruchomość, jak i dla badania skuteczności czynności procesowych dokonywanych w toku postępowania wieczystoksięgowego. Ostatnia część poświęcona jest obrotowi nieruchomości z udziałem kościelnych osób prawnych w kontekście zasad wynikających z regulacji postępowania wieczystoksięgowego. Przeprowadzone badania prowadzą do wniosku, że dla postępowania wieczystoksięgowego podstawowe znaczenie ma ocena skuteczności czynności prawnej w kontekście szczegółowych wymogów prawa kanonicznego, czego przykładem są kan. 1281 § 1 KPK w zakresie czynności przekraczających granice i sposób zwyczajnego zarządu czy też kan. 1292 § 1–2 KPK uzależniające ważność alienacji od zgody lub zezwolenia właściwego podmiotu. Brak wymaganego przez przepisy prawa kanonicznego zezwolenia lub zgody prowadzić powinien do oddalenia wniosku o wpis, który to brak może być ewentualnie sanowany przez późniejsze potwierdzenie dokonanej czynności prawnej przy zastosowaniu instrumentów prawa cywilnego,

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czego przykładem są art. 39 i 63 Kodeksu cywilnego. Dodatkowo, realizacja zasady autonomii Kościoła Katolickiego wyraża się w pozostawieniu władzy kościelnej regulacji szczegółowych zasad powoływania właściwych organów kościelnych osób prawnych, zatem sąd wieczystoksięgowy nie może kwestionować skuteczności powołania przedmiotowych organów, których ocena pozostawiona została Kościołowi Katolickiemu i jego jednostkom organizacyjnym.

**Słowa kluczowe:** kościelna osoba prawna; osobowość prawna; postępowanie wieczystoksięgowe; obrót nieruchomościami; alienacja

## Introduction

The Catholic Church may acquire property, including real estate, and is therefore a participant in the real estate market in the Republic of Poland. This is justified by the regulation of the relations between the State and churches and other religious organizations on the basis of respect for their autonomy and mutual independence.<sup>1</sup> The scope of activity of the relevant organisational units of the Catholic Church is regulated by specific provisions constitutionally based on Article 25 sections 4 and 5 of the Constitution of the Republic of Poland. The specific nature of the mutual relations between the State and the Catholic Church, based on respect for the independence of the Catholic Church, leads to internal canon regulations being provided with a wide scope of self-regulatory freedom with regard to issues having an effect on the activities of individual organisational units within the Catholic Church. This may sometimes lead to difficulties in interpreting legal provisions contained in legal acts that do not constitute sources of universally binding law within the meaning of Article 87 of the Constitution of the Republic of Poland. The court practice reveals difficulties in the interpretation of some provisions regulating the principles of representation of church legal entities and the consequences of internal norms being breached for assessment of the defectiveness of a substantive law legal act.

The goal of this article is to present the basic functioning principles of the Catholic Church organisational units in real estate trading, taking into account the participation of said units in land and mortgage register proceedings. The subject of the assessment will be selected provisions regulating the status of the church legal entities, with an indication of selected practical issues for real estate trading. In addition, an attempt will be made to indicate possible solutions enabling the land and mortgage register court to properly interpret selected provisions of canon law. On the one hand, the study is addressed to foreign readers as an introduction to the subject of real estate trading by church legal entities in Polish law; on the other hand, it is aimed at participants in Polish legal trading, especially real estate trading from the perspective of the land and mortgage register.

The first part will present the general principles governing the legal personality of the Catholic Church and its organisational units involved in real estate trading in the territory of Poland. Next, the analysis will cover the principles of representation of church legal entities, including the status of authorities of these legal entities authorised to act on their behalf, both when performing acts governed by substantive law and when

<sup>1</sup> See: Article 25 section 3 of the Constitution of the Republic of Poland of 2 April 1997, Dziennik Ustaw [Polish Official Journal, hereinafter: Dz. U.] item 483 as amended; see also: Walencik 2013, 14–18.

performing procedural acts. The last part will focus on practical problems of land and mortgage register proceedings, with proposals of solutions to these problems.

## 1. Legal personality of Catholic Church legal entities

Article 4 of the Concordat between the Holy See and the Republic of Poland contains the basic principles governing the legal personality of the Catholic Church and the church institutions.<sup>2</sup> In accordance with its content, the Republic of Poland recognises the legal personality of the Catholic Church (Article 4 section 1)<sup>3</sup> as well as all territorial and personal church institutions which have obtained such personality under the provisions of canon law (Article 4 section 2 sentence 1).<sup>4</sup> It is also possible for other church institutions to obtain legal personality under Polish law at the request of a church authority (Article 4 section 3).<sup>5</sup> It is correctly pointed out that the State does not create a church community by recognising the legal personality of the Catholic Church but expresses its will to treat the Church as the subject of reciprocal rights and obligations.<sup>6</sup> Consequently, within the meaning of the Concordat, the Catholic Church is provided with legal personality within public law meaning while church organisational units are provided with private law personality.<sup>7</sup>

A particular manifestation of an entity's endowment with legal personality is the capacity to incur obligations and acquire rights. As regards churches and other religious associations, this is confirmed in the content of Article 19 section 2 clause 7 of the Act on Guarantees of the Freedom of Conscience and Religion,<sup>8</sup> according to which, while performing their religious functions, churches and other religious associations may acquire, own, dispose of and manage movable and immovable property. In the case of the Catholic Church, these rights are specified in detail in Article 23 of the Concordat, according to which church legal entities may, in accordance with the provisions of Polish law, acquire, own, use and dispose of movable and immovable property and acquire and dispose of property rights.<sup>9</sup> It should be noted that in the latter provision there is no limitation to the performance of religious functions.

<sup>2</sup> Concordat between the Holy See and the Republic of Poland, signed in Warsaw on 28 July 1993, Dz. U. 1998, item 318, hereinafter: the Concordat; for Concordats between the Holy See and the Republic of Poland in historical perspective, see: Góralski 2020, 63–89; Szytk 2005a, 62–71; Uruszczak 2020, 33–62.

<sup>3</sup> See more broadly: Krukowski 2020, 174–179; Strzała 2019, 259–260.

<sup>4</sup> See: Krukowski 2020, 180–182; Strzała 2019, 260–263, 279–282. It should be emphasised that, in accordance with Article 4 section 2 sentence 2 of the Concordat, the ecclesiastical authority shall make appropriate notification to the competent state authorities; see: Instruction on how to notify state bodies of the acquisition of legal personality by territorial and personal church institutions (Article 4 section 2 of the Concordat) and notification on the appointment and dismissal of the holder of the function of the body of a legal person, see: *Relacje państwa z Kościołami – przydatne informacje, dokumenty i akty prawne*, <https://archiwum.mswia.gov.pl/pl/wyznania-i-mniejszosci/relacje-panstwa-z-kosci/13964,Relacje-panstwa-z-Kosciolami-przydatne-informacje-dokumenty-i-akty-prawne.html> [accessed: 28 June 2024].

<sup>5</sup> See: Gurgul 2024, 6; Krukowski 2020, 182–184; Rynkowski 2007, 180.

<sup>6</sup> Krukowski 1980, 7; see also: Krawczyk 2015, 128–132.

<sup>7</sup> Rakoczy 2008, 60–61.

<sup>8</sup> Act of 17 May 1989 on Guarantees of Freedom of Conscience and Religion, Dz. U. 2023, item 265, hereinafter: AGFCR.

<sup>9</sup> See: Borecki 2019, 39.

Articles 6–9 of the Act on the Relations between the State and the Catholic Church<sup>10</sup> explicitly list church entities to which the Act grants legal personality.<sup>11</sup> It should be noted that, depending on the moment when the church legal entity was established, the manner in which it acquires its legal personality differs. If the listed legal entities existed on the day the Act on the Relations between the State and the Catholic Church came into force, i.e. 23 May 1989, then the acquisition of legal personality occurred by virtue of law.<sup>12</sup> The evidence that the legal entities existing on the effective date of the Act have legal personality is their being listed in: 1) the last printed list of church entities and clergy (the diocesan directory) published by the diocese or archdiocese prior to the effective date of the Act; 2) the statistical questionnaire of the religious order or province submitted as at 31 December 1988 to the Office for Religious Affairs; 3) decisions not to raise objections to the establishment of a parish, issued pursuant to Articles 1 and 2 of the Decree of 31 December 1956 on the organisation and filling of church posts.<sup>13</sup>

Another procedure for the acquisition of legal personality applies to the entities listed in Articles 7 and 8 and Article 9 section 1 clause 7 ARSCC which were established or transformed after 23 May 1989. They acquire legal personality at the moment a competent state administrative authority is notified of their establishment by the church authority unless otherwise provided for in ratified agreements.<sup>14</sup> The acquisition of legal personality is evidenced by a copy of the notification addressed to the competent state administrative authority (a minister responsible for religious denominations and national and ethnic minorities or a provincial governor), with an acknowledgement of receipt affixed thereto.<sup>15</sup>

In addition to the entities listed in Articles 6–9 ARSCC,<sup>16</sup> other organisational units of the Church may also be granted legal personality by an ordinance of the minister responsible for religious denominations and national and ethnic minorities.<sup>17</sup> This group of church legal entities includes, among others, the Catholic Youth Associations of individual dioceses.<sup>18</sup>

A separate category of church legal entities are Catholic organisations within the meaning of Articles 35 and 58 ARSCC to which the provisions of the Law on Associations apply and foundations established by church legal entities.<sup>19</sup> In order for them to obtain legal personality, it is of constitutive importance to obtain an entry in the National Court Register, which results from the fact that Article 17 section 1 of the Law on Associations<sup>20</sup> or Article 7 section 2 of the Act on Foundations apply to these entities

<sup>10</sup> Act of 17 May 1989 on Relations between the State and the Catholic Church in the Republic of Poland, Dz. U. 2023, item 1966, hereinafter: ARSCC.

<sup>11</sup> Żurek 2023, 53; see also: Stanisław 2020, 66.

<sup>12</sup> See: Skubisz, Trzebiatowski 2002, 10; Zarzycki 2014, 73–76.

<sup>13</sup> Article 72 section 1 ARSCC.

<sup>14</sup> Article 13 section 1 ARSCC; see: Skubisz, Trzebiatowski 2002, 10; Zarzycki 2014, 76–79.

<sup>15</sup> Article 13 section 1 ARSCC.

<sup>16</sup> See more broadly: Strzała 2019, 246–251.

<sup>17</sup> Article 10 ARSCC; see: Rynkowski 2007, 180; Strzała 2019, 251–259.

<sup>18</sup> See: Zarzycki 2014, 80.

<sup>19</sup> Kaleta 2013, 133; Pietraszewski, Tyrakowska 2011, 265.

<sup>20</sup> Act of 7 April 1989 – Law on Associations, Dz. U. 2020, item 2261.

respectively.<sup>21</sup> An entry in the National Court Register is the evidence that legal personality has been obtained.<sup>22</sup>

## 2. Representation of Catholic Church legal entities

Pursuant to Article 28 AGFCR, churches and other religious organizations act through their legal entities in property matters. The legal entities of churches and other religious organizations and their authority, scope of competence and methods of appointment and representation are defined by internal law (hereinafter referred to as “statutes”).<sup>23</sup> It should be noted, however, that application of the aforesaid provision in relation to the Catholic Church is excluded by the content of Article 18 AGFCR.<sup>24</sup>

However, there is no doubt that the implementation of the autonomy of the Catholic Church in its relations with the State manifests itself in the acceptance of leaving a wide scope for self-regulatory freedom in the statutes. The question of the capacity to determine the authority of church legal entities, the scope of their competence and the method of their appointment, as well as the principles of representation of legal entities in internal law is particularly important. Hence, an assessment of the effectiveness of legal actions performed with the participation of church legal entities will require application of not only the norms of universally applicable law but also the norms of canon law.<sup>25</sup> The provisions of the Code of Canon Law<sup>26</sup> and the Code of Canons of the Eastern Churches,<sup>27</sup> in addition to the Act on the Relations between the State and the Catholic Church will be of fundamental importance for determining the rules of representation of the church legal entities of the Catholic Church.

Article 6 section 1 ARSCC grants the Polish Episcopal Conference the status of a legal entity. In property matters, the Polish Episcopal Conference is represented by the Presidium, while each of its members is authorised to make declarations of intent.<sup>28</sup> It should be emphasised that the legislator has adopted the concept of sole representation of this legal entity.<sup>29</sup> According to Article 30 of the Statutes of the Polish Episcopal Conference,

<sup>21</sup> Act of 6 April 1984 on Foundations, Dz. U. 2023, item 166; for church foundations, see: Skwirczyński 2018, 279–288; Warchałowski 2015, 337–339; see also: Article 26 of the Concordat.

<sup>22</sup> Skubisz, Trzebiatowski 2002, 10.

<sup>23</sup> See: Stanisław 2020, 67.

<sup>24</sup> This is pointed out by Malesa, Wawrzaszek 2014, 286.

<sup>25</sup> It is pointed out that this is an expression of the constitutional autonomy of the Catholic Church, see: Kaliński 2013, 30. For more on theories of the relationship between state law and canon law, see: Walencik 2013, 13–14.

<sup>26</sup> Consolidated text of the Code of Canon Law containing the legal status as of 8 August 2023, accessible at: [https://episkopat.pl/wp-content/uploads/2015/11/Kodeks-Prawa-Kanonicznego\\_t%C5%82umaczenie\\_przyj%C4%99te-przez-KEP-na-stronie-KEP\\_17.08.2023-1.pdf](https://episkopat.pl/wp-content/uploads/2015/11/Kodeks-Prawa-Kanonicznego_t%C5%82umaczenie_przyj%C4%99te-przez-KEP-na-stronie-KEP_17.08.2023-1.pdf) [accessed: 7 May 2024], hereinafter: CCL.

<sup>27</sup> *Kodeks Kanonów Kościołów Wschodnich promulgowany przez Jana Pawła II w dniu 18 października 1990 r.*, Lublin 2002. An example of the application of the Code of Canons of the Eastern Churches is the Ukrainian Greek Catholic Church working on the territory of Poland.

<sup>28</sup> Article 6 section 3 ARSCC.

<sup>29</sup> Rakoczy 2008, 71.

the Presidium of the Conference consists of: the President, the Vice President and the Secretary General.<sup>30</sup>

## 2.1. Representation of Catholic Church legal entities: Territorial organisational units

The group of church legal entities according to the territorial criterion of organisational units of the Church<sup>31</sup> is defined in Article 7 section 1 ARSCC and it includes: metropolises, archdioceses, dioceses, apostolic administrations and parishes. The authorities of the church legal entities in question are, respectively: for the metropolis of Gniezno – the Metropolitan of Gniezno, the Primate of Poland; for other metropolises – the Metropolitan; for archdioceses – the archdiocesan archbishop or archdiocese administrator; for dioceses – the diocesan bishop or diocese administrator; for apostolic administrations – the apostolic administrator; for parishes – the parish priest or parish administrator.

The foregoing deductions lead to a conclusion that metropolises, archdioceses, dioceses, apostolic administrations and parishes should be regarded as separate legal entities. Here, the legislator distinguished the metropolis of Gniezno with which the title of the Primate of Poland has been traditionally associated<sup>32</sup> among other metropolises which are headed by metropolitans. This distinction, apart from its symbolic significance, has no significant impact on real estate trading involving the metropolis.

Regarding land and mortgage register proceedings, a more significant problem is related to the fact that the function of the metropolitan (being an authority of the metropolis) is combined with the function of the archdiocesan archbishop.<sup>33</sup> Hence, it is not excluded that the same entity will represent both the metropolis and the archdiocese.<sup>34</sup> It is correct to assume that, despite the absence of an unambiguous provision introducing a prohibition to perform actions with oneself, Article 108 of the Civil Code<sup>35</sup> applies not only to the proxy but also to any principal, and so that a natural person acting as an authority of a legal entity may not be the other party to a legal action that he or she performs on behalf of that legal entity unless, due to the content of the legal action, the possibility of violating interests of that legal entity is excluded.<sup>36</sup>

It should be pointed out that Article 7 section 3 clause 2 ARSCC provides for the possibility of the archdiocese being represented not only by the archbishop but also by the archdiocese administrator. The diocesan administrator temporarily administers

<sup>30</sup> Statutes of the Polish Episcopal Conference in force since 7 October 2009, Records of Polish Episcopal Conference 2009, 1 (pp. 11–19).

<sup>31</sup> The subjective criterion covers the territory occupied by the territorial legal entity concerned, starting with the largest, see: Rakoczy 2008, 72–73.

<sup>32</sup> See more broadly: *Abp Muszyński: Powrót godności Prymasa do metropolitów gnieźnieńskich* [Archbp. Muszyński: Return of the dignity of the Primate to the Metropolitans of Gniezno], <https://www.ekai.pl/abp-muszynski-powrot-godnosci-prymasa-do-metropolitow-gnieznienskich/> [accessed: 7 May 2024].

<sup>33</sup> See: Canon 435 CCL.

<sup>34</sup> This is pointed out by Rakoczy 2008, 75.

<sup>35</sup> The Act of 23 April 1964 – the Civil Code, Dz. U. 2024, item 1061 as amended, hereinafter: CC.

<sup>36</sup> See: the resolution of the Panel of Seven Judges of the Supreme Court of 30 May 1990, III CZP 8/90, *Orzecznictwo Sądu Najwyższego Izby Cywilnej, Pracy i Ubezpieczeń Społecznych* 1990, no. 10/11, item 124; the resolution of the Supreme Court of 12 January 2022, III CZP 24/22, *Orzecznictwo Sądu Najwyższego Izba Cywilna* 2022, no. 7/8, item 76; the ruling of the Court of Appeal in Katowice of 10 March 2022, V AGa 346/21, *Legalis* no. 2741307.



the diocese during a vacancy, which should be filled within eight days of becoming informed of the vacancy of the see.<sup>37</sup>

It seems that the distinction between an archdiocese and a diocese as separate legal entities within the meaning of Article 7 section 1 clauses 2 and 3 ARSCC does not have greater significance with regard to proceedings before the land and mortgage register court. A similar remark should be made with regard to the content of Article 7 section 3 clauses 2 and 3 ARSCC which, in reference to this terminology, designate respectively the archdiocesan archbishop and the diocesan bishop as an authority of the relevant legal entities. It is significant that, in both situations, the authority of the legal entity may also be the administrator of an archdiocese, possibly of a diocese.<sup>38</sup>

Separate legal entities are apostolic administrations which constitute a specific part of the People of God which, for special and extremely serious reasons, has not been erected by the Pope as a diocese, and the pastoral care of which is entrusted to an apostolic administrator to administer it in the Pope's name.<sup>39</sup> This is confirmed in the content of Article 7 section 3 clause 4 ARSCC, which indicates the apostolic administrator as the apostolic administration authority. It should be emphasised that the practical significance of legal transactions involving apostolic administrators on the territory of Poland is hypothetical since no such legal entity operates on the territory of the Republic of Poland and, among neighbouring countries, it operates only in Belarus.<sup>40</sup>

The last entity among territorially defined church legal entities is the parish.<sup>41</sup> According to Article 7 section 3 clause 5 ARSCC, the parish authority is the parish priest or parish administrator. The term "parish priest" should be read in the context of canon law regulation, and therefore, assessment of the scope of his competence should also be made with the rules set out in the Code of Canon Law being taken into account.<sup>42</sup> This is emphasised in Canon 532 CCL, according to which, in all legal actions, the parish priest acts in the name of the parish in accordance with the provisions of the law; he should ensure that the parish property is managed in accordance with the provisions of Canons 1281–1288 CCL.

At this point, the situation of the collegial performance of the parish priest function should be emphasised. By virtue of Canon 517 § 1 CCL, wherever this is required by circumstances, the pastoral care of a parish or several parishes at the same time may be entrusted jointly to several priests, assuming, however, that one of them will be the pastoral moderator, that is, the one who will lead the joint action undertaken and will be

<sup>37</sup> Canon 421 § 1 CCL.

<sup>38</sup> See also: Canon 427 CCL.

<sup>39</sup> See: Canon 371 § 2 CCL.

<sup>40</sup> A list of apostolic administrations is available: Catholic Dioceses in the World, <https://gatholic.org/dioceses/data/type-apad.htm> [accessed: 7 May 2024].

<sup>41</sup> As a side note, it should be pointed out that parishes within the meaning of the Act on the Relations between the State and the Catholic Church in the Republic of Poland are considered to be the legal successors of the parishes of the Roman Catholic Church located on the territory of the Prussian partition, see: Resolution of a Panel of Seven Judges of the Supreme Court of 12 September 2018, III CZP 14/18, *Orzecznictwo Sądu Najwyższego Izba Cywilna* 2019, no. 3, item 24; see also: Borecki 2020, 23–36.

<sup>42</sup> See: the Supreme Court ruling of 24 March 2004, IV CK 108/03, *Orzecznictwo Sądu Najwyższego Izba Cywilna* 2005, no. 4, item 65; see also: Kalinski 2013, 30–32, 40.

responsible for it before the bishop.<sup>43</sup> It seems that the situation of joint representation is not the case in parish representation issue. In fact, the legislator uses the singular form in Article 7 section 3 clause 5 ARSCC. It can also be interpreted from the content of the aforesaid Canon 517 § 1 CCL that the entrustment of representation – in the case of the collegial exercise of the parish priest authority – is entrusted to the moderator.<sup>44</sup>

Instead of the parish priest, the parish administrator may be the parish authority.<sup>45</sup> This applies only to extraordinary situations, which is confirmed by the provisions of the Code of Canon Law.<sup>46</sup> According to Canon 539 CCL, when a parish is vacant or the parish priest, as a result of imprisonment, deportation or exile, incapacity or poor health or any other reason is unable to fulfil the pastoral ministry in the parish, the diocesan bishop must as soon as possible appoint a parish administrator, namely a priest who would replace the parish priest, in accordance with the provision of Canon 540 CCL.<sup>47</sup> Under the aforesaid provision, the parish administrator has the same duties and powers as the parish priest, unless the diocesan bishop decides otherwise.<sup>48</sup>

However, this raises the question of whether, in the absence of the appointment of a parish administrator, the parish authority within the meaning of Article 7 section 3 clause 5 ARSCC is the vicar. As a matter of fact, according to Canon 541 § 1 CLL, in the event of a parish vacancy as well as when the parish priest is prevented from exercising his pastoral ministry as a result of an impediment, before a parish administrator is appointed, the administration of the parish is taken over temporarily by the parish vicar or, if there are several of them, by the eldest one by appointment. If there is no vicar, a parish priest is determined by particular law. However, it seems that the vicar is not an authority of the legal entity of the parish. The provisions of the law clearly indicate the temporal limits of the administration of a parish, between an impediment to the parish priest's pastoral ministry and the appointment of a parish administrator. In the context of the content of Article 7 section 3 clause 5 ARSCC, this leads to a conclusion that the vicar is not an authority of the legal entity and that his duties are limited to actions of ordinary management which do not include legal actions related to the disposal or encumbrance of real estate.

## 2.2. Representation of Catholic Church legal entities: Organisational units from Article 7 section 2 ARSCC

Church legal entities also include rectory churches,<sup>49</sup> the authority of which is the rector.<sup>50</sup> According to Canon 556 CCL, churches rectors are understood here as priests entrusted with the care of a certain church which is neither parish nor capitulary nor integrated

<sup>43</sup> See: Kaleta 2017, 86.

<sup>44</sup> Renken 2000, 703–704; see more broadly: Rakoczy 2008, 77–80.

<sup>45</sup> See more broadly: Kaleta 2017, 84–86.

<sup>46</sup> See more broadly: Sitarz 2010, 188–190.

<sup>47</sup> See: Renken 2000, 713–714.

<sup>48</sup> Canon 540 § 1 CCL; see: Renken 2000, 714.

<sup>49</sup> Article 7 section 2 clause 1 ARSCC.

<sup>50</sup> Article 7 section 3 clause 6 ARSCC.



with a house of a religious community or association of common life, who perform sacred actions in it.<sup>51</sup> The general rule is that the rector is appointed by the diocesan bishop.<sup>52</sup>

Further, Caritas Polska<sup>53</sup> and Caritas of the dioceses<sup>54</sup> where the director is the authority are recognised as a legal entity.<sup>55</sup> Caritas conducts charitable activity which includes both nationwide activity and activity that is territorially limited to the area of individual dioceses. Caritas Polska was erected by the Polish Episcopal Conference,<sup>56</sup> and it is the Polish Episcopal Conference that appoints the director.<sup>57</sup> The director of Caritas in a diocese is appointed by the relevant bishop.<sup>58</sup> The forum for cooperation between Caritas Polska and Caritas of dioceses is the Assembly of Caritas Directors.<sup>59</sup>

The last legal entity mentioned in Article 7 ARSCC are the Pontifical Mission Societies. These include: Society for the Propagation of the Faith (SPF), Society of St. Peter the Apostle (SPA), the Pontifical Association of the Holy Childhood (PAHC) and the Pontifical Missionary Union (PMU).<sup>60</sup> Their common main and fundamental goal is to propagate the common missionary spirit within the People of God in such a way that their missionary testimony is expressed through spiritual and material cooperation in the work of evangelisation.<sup>61</sup> The authority of the Pontifical Mission Societies is the national director.<sup>62</sup> The appointment of the National Director is the responsibility of the Cardinal Prefect of the Congregation for the Evangelisation of Peoples after it has been first proposed by the local episcopal conference.<sup>63</sup>

### 2.3. Representation of Catholic Church legal entities: Personal organisational units

The next group of legal entities is mentioned in Article 8 section 1 ARSCC, indicating that these are personal organisational units of the Church. This means that the entities being discussed do not operate on a specific territory but the scope of their operation covers the area of the entire state.<sup>64</sup> The Act includes among them: the Military Ordinariate, chapters, personal parishes, the Conference of Male Religious Order Superiors General, the Conference of Female Religious Order Superiors General, institutes of consecrated

<sup>51</sup> Rakoczy 2008, 80.

<sup>52</sup> See: Canon 557 § 1 CCL.

<sup>53</sup> Article 7 section 2 clause 2 ARSCC.

<sup>54</sup> Article 7 section 2 clause 3 ARSCC.

<sup>55</sup> Article 7 section 3 clauses 7 and 8 ARSCC.

<sup>56</sup> § 1 of the Statutes of Caritas Polska of 25 September 2018, available: Status Caritas Polska, <https://caritas.pl/wp-content/uploads/2018/10/statut-cp-nowelizacja-25-26-09-2018.pdf> [accessed: 7 May 2024], hereinafter: the Statutes of Caritas Polska.

<sup>57</sup> § 11 section 1 of the Statutes of Caritas Polska.

<sup>58</sup> On the example of Caritas of the Lublin Archdiocese, see: § 10 section 2 of the Statutes of Caritas of the Lublin Archdiocese, see: Statut Caritas Archidiecezji Lubelskiej, <https://lublin.caritas.pl/wp-content/uploads/2022/10/Statut-CAL-2022.pdf> [accessed: 7 May 2024].

<sup>59</sup> See: Chapter VI of the Statutes of Caritas Polska.

<sup>60</sup> See: Article 1 of the Statutes of the Pontifical Mission Societies approved by John Paul II on 26 June 1980. The renewed Statutes have been in force since 26 June 2005, see: Papieskie Dzieła Misyjne. Statut, <https://www.synod-lublin.pl/wp-content/uploads/2020/12/Statut-Papieskich-Dziel-Misyjnych.pdf> [accessed: 7 May 2024], hereinafter: the Statutes of the Pontifical Mission Societies.

<sup>61</sup> See: Article 4 of the Statutes of the Pontifical Mission Societies.

<sup>62</sup> Article 7 section 3 clause 9 ARSCC.

<sup>63</sup> See: Article 58 sentence 1 of the Statutes of the Pontifical Mission Societies.

<sup>64</sup> The inconsistency of the criterion adopted is pointed out by Rakoczy 2008, 82.

life (religious institutes and secular institutes) and associations of apostolic life, provinces of religious orders, abbeys, independent monasteries, religious houses, higher and lower diocesan seminaries and higher and lower religious order seminaries if, pursuant to the regulations of the order in question, they are autonomous in nature. A legal construct should be pointed out here that makes it possible to change the names of groups of legal entities or individual legal entities by means of intra-church legislation, without the need to amend the law unless their essence has been changed.<sup>65</sup> Thus, the change of the name of the Conference of Male Religious Order Superiors General to the Conference of Superiors General of the Male Religious Orders in Poland<sup>66</sup> and the change of the name of the Conference of Female Religious Order Superiors General to the Conference of Superiors General of the Female Religious Congregations in Poland were made.<sup>67</sup>

As indicated above, it follows from Article 8 section 1 clause 1 ARSCC that the legal entity of the Catholic Church is the Military Ordinariate. It should be additionally pointed out that, according to Article 4 sentence 1 of the Statutes of the Military Ordinariate in Poland, the Military Ordinariate has the church legal personality under Canon 373 CCL and legal personality in the Polish legal order pursuant to Article 4 section 2 of the Concordat. In turn, Canon 373 CCL provides that the particular churches erected in accordance with the law acquire legal personality by the law itself.<sup>68</sup> The authority of the Military Ordinariate is the military ordinary.<sup>69</sup> According to Article 16 section 1 of the Concordat, pastoral care for soldiers of the Catholic faith in active military service, including professional service, is exercised within the Military Ordinariate by the military ordinariate bishop in accordance with canon law and statutes approved by the Holy See in agreement with the competent authorities of the Republic of Poland.<sup>70</sup> The Military Ordinariate is a church district made legally equal to a diocese, having its own bishop who has been entrusted with the pastoral care of a part of the People of God associated in various ways with service in the Polish Armed Forces and other uniformed services listed below.<sup>71</sup> The Military Ordinariate Bishop is appointed in an unrestricted manner by the Holy Father.<sup>72</sup> The Military Ordinariate Bishop, being its own Ordinary, has the rights and duties of a diocesan bishop unless the nature of things or the statutes indicate otherwise, and is a member of the Polish Episcopal Conference.<sup>73</sup>

<sup>65</sup> See: Article 73 section 1 ARSCC.

<sup>66</sup> See: the announcement of the Minister of Interior and Administration of 8 March 2017 on the change of the name of the Conference of Male Religious Order Superiors General to the Conference of Superiors General of the Male Religious Orders in Poland, *Monitor Polski* [hereinafter: M.P.] 2017, item 278.

<sup>67</sup> See: the announcement of the Minister of Interior and Administration of 24 August 2016 on the change of the name of the Conference of Female Religious Order Superiors General to the Conference of Superiors General of the Female Religious Orders in Poland, M.P. 2016, item 896.

<sup>68</sup> The status of the particular church is confirmed by Article 3 of the General Decree of 25 September 2023 on the Pastoral Structure of the Military Ordinariate in Poland, according to which the Military Ordinariate is the particular church made legally equal to a diocese, headed by the Bishop of the Military Ordinariate.

<sup>69</sup> Article 8 section 2 clause 1 ARSCC.

<sup>70</sup> See more broadly: Krukowski 2020, 291–298.

<sup>71</sup> Article 1 of the Statutes of the Military Ordinariate in Poland.

<sup>72</sup> Article 5 of the Statutes of the Military Ordinariate in Poland.

<sup>73</sup> See: Article 7 of the Statutes of the Military Ordinariate in Poland.

Another personal legal entity is the chapter, for which the authority is either the provost or the dean.<sup>74</sup> According to Canon 503 CCL, a chapter of canons, either cathedral or collegiate, is a college of priests whose task is to perform the more solemn liturgical functions in a cathedral or a collegiate church; a cathedral chapter is also responsible for fulfilling the tasks assigned to it by law or by the diocesan bishop.<sup>75</sup> Each chapter, both cathedral and collegiate, should have its own statutes, enacted by a lawful act of the chapter and approved by the diocesan bishop; these statutes may not be changed or abolished without the approval of the diocesan bishop.<sup>76</sup> One of the canons should preside over the chapter, and furthermore, in accordance with the provisions of the statutes, other offices should also be established, with local customs being taken into account.<sup>77</sup> In addition, according to Canon 509 § 1 CCL, it is up to the diocesan bishop, not to the diocesan administrator, to confer all and individual canonical offices, both in the cathedral church and in the collegiate church while revoking any privileges to the contrary, after hearing the opinion of the chapter; the same bishop approves the president of the chapter elected by the latter. The aforesaid provisions do not use any of the statutory names used in Article 8 section 2 clause 2 ARSCC. Canon 509 § 1 CCL *in fine* only contains a reference to the function of the chapter president. It is correctly pointed out that the terms “dean” and “provost” are only customary and should be referred precisely to the chapter president.<sup>78</sup>

A personal parish whose authority is the parish priest or the parish administrator also has a separate legal personality.<sup>79</sup> It should be noted that the authorities of personal parishes are designated similarly to those of a parish operating as a territorial organisational unit of the Church.<sup>80</sup> The distinction in question is justified by the content of Canon 518 CCL, according to which it is assumed as a general rule that a parish should be territorial, i.e. it is to include all the faithful within a certain territory; however, wherever advisable, personal parishes should be created, formed with regard to the rite, language, nationality of the faithful of a territory or yet another specific reason. Examples of a criterion for a personally separated parish may be the status of a student<sup>81</sup> (e.g. University Personal Parish in Częstochowa) or the status of a soldier (e.g. St Agnieszka Military Personal Parish in Kraków).

Next, the legislator distinguishes the so-called religious order legal entities which should include the Conference of Superiors General of the Male Religious Orders in Poland, the Conference of Superiors General of the Female Religious Congregations in Poland, institutes of consecrated life (religious institutes and secular institutes) and associations of apostolic life, provinces of religious orders, abbeys, independent monasteries, religious houses and higher and lower seminaries of religious orders if, subject to

<sup>74</sup> Article 8 section 2 clause 2 ARSCC.

<sup>75</sup> See: Cusack 2000, 663.

<sup>76</sup> Canon 505 CCL.

<sup>77</sup> Canon 507 § 1 CCL.

<sup>78</sup> Rakoczy 2008, 83–84; for example, the term “dean” is used in the Chelm Collegiate Chapter, while the statutes of the Gdynia Collegiate Chapter say “The first dignity in the Chapter is the Chapter Provost.”

<sup>79</sup> Article 8 section 2 clause 3 ARSCC.

<sup>80</sup> Article 7 section 3 clause 5 ARSCC.

<sup>81</sup> This is pointed out by Rakoczy 2008, 84.

the regulations of the given order, they are of an autonomous nature.<sup>82</sup> According to Article 8 section 2 ARSCC, the authorities of legal entities are: for the Conference of Superiors General of the Male Religious Orders in Poland – the president of the Consulta of Superiors General of Male Religious Orders in Poland; for the Conference of Superiors General of Female Religious Congregations in Poland – the president of the Consulta of Superiors General of Female Religious Congregations in Poland; for religious orders – a higher superior; for a religious province – a superior of the province; for an abbey – an abbot or an abbess – for an independent monastery and religious house – a superior; for higher religious seminaries – a rector; for lower religious seminaries – a director.<sup>83</sup>

Regarding land and mortgage register proceedings, it is important to turn one's attention to the significant differences in the scope of the special canon law regulation of property management, including the disposal and acquisition of church property by the so-called religious order legal entities<sup>84</sup>. Hence, the special regulation contained in Canons 634-640 CCL with regard to the temporal goods and their management exercised by religious order legal entities must be emphasized.<sup>85</sup> The regulation of Canon 635 CCL, according to which the temporal goods of religious institutes as church goods are governed by the provisions of Book V ("The Temporal Goods of the Church")<sup>86</sup> unless otherwise expressly reserved, is particularly noteworthy.<sup>87</sup> Each institute should establish appropriate rules for the use and management of goods by which the poverty adequate to the institute will be promoted, protected and expressed.<sup>88</sup> Hence, assessment of the scope of representation of a so-called religious order legal entity should be made not only in the context of the provisions of the Code of Canon Law but also in that of the own law of a specific so-called religious order legal entity.

The last group of legal entities are the higher and lower diocesan seminaries, whose authorities are the rector (for a higher seminary)<sup>89</sup> and the director (for a lower seminary).<sup>90</sup> Unlike the aforementioned religious seminaries which have a legal personality only when they are autonomous under their own law, diocesan seminaries always have legal personality under Polish law.<sup>91</sup> This is confirmed by Canon 238 § 1 CCL, according to which seminaries erected in accordance with the law acquire legal personality in the Church by virtue of the law itself.

At this point, attention should be drawn to Article 8 section 3 ARSCC, according to which the authorities of religious order legal entities may use other names in accordance with the tradition of the given legal entity. The solution in question is intended to enable the general wording (superior) to be flexibly adapted to the order's own law regarding

<sup>82</sup> See: Article 8 section 1 clauses 4 to 8 and 10 ARSCC; Rakoczy 2005, 275; Rakoczy 2008, 84–93.

<sup>83</sup> On the difference between higher and lower diocesan and religious order seminaries, see: Rakoczy 2008, 92–93.

<sup>84</sup> See: Rakoczy 2005, 274.

<sup>85</sup> See: Kałowski 1986, 165.

<sup>86</sup> See: Canons 1254–1310 CCL.

<sup>87</sup> See: Smith 2000, 799.

<sup>88</sup> See: Rakoczy 2005, 274–279; the separate nature and own tasks of institutes of consecrated life are pointed out by Kałowski 1993, 12–13.

<sup>89</sup> Article 8 section 2 clause 9 ARSCC.

<sup>90</sup> Article 8 section 2 clause 10 ARSCC.

<sup>91</sup> Rakoczy 2008, 92.

the name and competence of the superiors.<sup>92</sup> A case law example is the recognition of an authorised sister superior's right to represent the order.<sup>93</sup>

#### 2.4. Representation of Catholic Church legal entities: Scientific institutions and educational and scientific institutions

The last group of legal entities are scientific institutions and educational and scientific institutions.<sup>94</sup> It follows from the content of the Concordat that the Republic of Poland guarantees the Catholic Church the right to freely establish and operate higher education institutions, including universities, separate faculties and higher seminaries as well as scientific and research institutes.<sup>95</sup> The legal status of the aforementioned higher education institutions as well as the mode and scope of the State's recognition of church degrees and titles and the legal status of the Catholic theology faculties at state universities are governed by agreements between the Government of the Republic of Poland and the Polish Episcopal Conference authorised by the Holy See.<sup>96</sup> The Academy of Theology in Kraków<sup>97</sup> and the Catholic University of Lublin<sup>98</sup> are subsidised by the State. The State will consider providing financial assistance to the separate faculties listed in Article 15 section 1 of the Concordat.<sup>99</sup>

Pursuant to Article 9 section 1 ARSCC, the legal entities are: the Catholic University of Lublin, Pontifical University of John Paul II in Kraków, Pontifical Faculty of Theology in Poznań, Pontifical Faculty of Theology in Wrocław, Catholic Academy in Warszawa and its two sections: Collegium Joanneum and Collegium Bobolanum,<sup>100</sup> the Faculty of Philosophy of the Society of Jesus in Kraków,<sup>101</sup> canonically erected church scientific institutes and educational and scientific institutes. In its original version, Article 9 section 2 ARSCC referred to the Academy of Catholic Theology in Warszawa, which, by virtue of the Act of 3 September 1999 on the establishment of the Cardinal Stefan Wyszyński University in Warszawa, established the University concerned as a state university.<sup>102</sup>

The aforesaid provisions are supplemented by Canon 815 CCL, by virtue of which, in order to carry out its mission to proclaim the revealed truth, the Church has its own universities and church faculties in order to cultivate church disciplines in them or

<sup>92</sup> Rakoczy 2008, 93–94.

<sup>93</sup> See: the justification of the ruling of the Provincial Administrative Court in Kraków of 23 August 2012, II SA/Kr 832/12, LEX no. 1257889.

<sup>94</sup> See: Rakoczy 2008, 94–95.

<sup>95</sup> Article 15 section 1 of the Concordat.

<sup>96</sup> Article 15 section 2 of the Concordat; see: Krukowski 2020, 287–288.

<sup>97</sup> Currently Pontifical University of John Paul II in Kraków.

<sup>98</sup> Currently the John Paul II Catholic University of Lublin.

<sup>99</sup> Article 15 section 3 of the Concordat; see more broadly: Duda 2012, 36–41; Krukowski 2020, 288–289; Stanisław 2020, 143; Zmij 2002, 140–144.

<sup>100</sup> See: the announcement of the Minister of Internal Affairs and Administration of 20 January 2021 on the change of the name of the Pontifical Faculty of Theology in Warszawa and its two sections: of St. John the Baptist and of St. Andrzej Bobola “Bobolanum” to the Catholic Academy in Warszawa and its two sections: Collegium Joanneum and Collegium Bobolanum, M.P. item 113.

<sup>101</sup> Currently Ignatianum University of Kraków, see: the announcement of the Minister of Internal Affairs and Administration of 15 November 2023 on the change of the name of the Faculty of Philosophy of the Society of Jesus in Kraków to Ignatianum University in Kraków, M.P. item 1243.

<sup>102</sup> Dz. U. 2019, item 1012.

disciplines related thereto as well as for the scientific formation of students in this field.<sup>103</sup> It is noteworthy that no authorities representing the aforementioned scientific legal entities and educational and scientific legal entities are defined in Article 9 ARSCC. Hence, there should be no doubt that the authorities empowered to represent these legal entities should be decoded based on the relevant statutes.<sup>104</sup> It should be emphasised that the legal personality of the scientific institutions and educational and scientific institutions in question was confirmed by the announcement of the Minister of Foreign Affairs of 29 July 1999 on the implementation of the Concordat between the Holy See and the Republic of Poland.<sup>105</sup>

With regard to the church legal entities in question, the content of Article 8 of the Act of 20 July 2018 on Higher Education and Science is of significant relevance.<sup>106</sup> According to it, the provisions of divisions II–IV, Article 180, division VI of Chapter 1 and divisions VII–IX and XII–XIV do not apply to universities and higher seminaries operated by churches and other religious associations, with the exception of the John Paul II Catholic University of Lublin, unless an act or an agreement between the Council of Ministers and the authorities of a church or another religious association provides otherwise.

### 3. Entries in the Land and Mortgage Register as a consequence of real estate trading involving Catholic Church legal entities

There is no doubt that church legal entities have the power to acquire and dispose of immovable property as it explicitly results from Article 52 ARSCC.<sup>107</sup> In Article 54 section 1 ARSCC, the legislator explicitly refers to the notion of “real estate trading.” The particular difficulty in assessing the validity and effectiveness of legal actions performed in the light of civil law should be seen in the fact that it is necessary to take into account not only the norms of generally applicable law but also the internal norms of the Catholic Church. Consequently, the relevant provisions of the Code of Canon Law will also apply. This is emphasised by the content of Article 19 sentence 2 of the Concordat, according to which these associations are also subject to the Polish law if they penetrate the sphere governed by Polish law through their activities. The use of the conjunction “also” confirms that both civil law and canon law provisions will apply to Catholic associations.<sup>108</sup>

<sup>103</sup> See: McManus 2000, 973.

<sup>104</sup> Rakoczy 2008, 96.

<sup>105</sup> Dz. U. item 727.

<sup>106</sup> Dz. U. 2023, item 742 as amended.

<sup>107</sup> Critical of the content of the cited provision, see: Januchowski 2006, 197–205.

<sup>108</sup> Application of the internal law of churches and other religious organizations to assessments of the scope of competence and representation does not raise any doubts in the case law also on the grounds of the activity of churches and religious organizations other than the Catholic Church; see: the decision of the Supreme Court of 12 January 2011, I CSK 182/10, *Orzecznictwo Sądów Polskich* 2011, no. 12, item 125.



### 3.1. Impact of the canon law norms on the effectiveness of a legal action performed by a Catholic Church legal entity

At this point, it is important to emphasise the important restrictions imposed on the administration of the material goods of church legal entities of the Catholic Church that arise from the internal rules of canon law. The norms on the administration of the temporal goods<sup>109</sup> of the Church are contained in Canons 1254–1310 CCL, with special regulations regarding the temporal goods of institutes, provinces and religious order houses being contained in Canons 634–640 CCL.<sup>110</sup> The provisions governing the requirements for the authorisation of a competent authority to perform an action in question are particularly relevant in assessing the correctness of legal actions performed by church legal entities.<sup>111</sup> For example, the alienation<sup>112</sup> of real estate, the value of which does not exceed the lowest sum (see below), does not require the authorisation of another church authority. For the alienation of real estate, the value of which falls between the lowest sum and the highest sum, the permission of the diocesan bishop is required as a rule.<sup>113</sup> If, on the other hand, it is a matter of things, the value of which exceeds the highest sum, or of things given to the Church under a vow, or of things costly for artistic or historical reasons, the permission of the Holy See is also required for the alienation to be valid.<sup>114</sup> Subject to the decision of the Polish Episcopal Conference of 19 October 2006, accepted by the Holy See (Decree of the Congregation for Bishops Prot. 901/84), the requirement to obtain the consent of competent entities (diocesan bishop, college of consultors, council for economic affairs and interested persons) is in force in the case of alienation of assets of a church legal entity between the amount of EUR 100,000 and EUR 1,000,000.<sup>115</sup> By virtue of the General Decree of the Polish Episcopal Conference of 11 March 2021 on the increase of the maximum sum of alienation,<sup>116</sup> it was established that the maximum sum over which permission must be obtained from the Holy See for the alienation was increased from EUR 1,000,000 to EUR 1,700,000.

For land and mortgage register proceedings, attention should be drawn to Canon 1293 § 1 CCL, according to which, in order to alienate goods, the value of which exceeds the lowest specified sum, it is further required to provide: 1° a just cause, such as an urgent need, an obvious benefit, piety, charity or other serious pastoral reason;<sup>117</sup> 2° a valuation

<sup>109</sup> As a side note, it should be pointed out that Canon 494 CCL provides for the function of a treasurer who is responsible for administering the temporal goods of the diocese; see more broadly: Banduła 2022, 28; Domasz 2013, 83–94; Kaleta 2017, 52–56.

<sup>110</sup> Separate rules of alienation have been provided for in Canon 718 CCL for secular institutes and in Canon 741 CCL for associations of apostolic life; see: Mróz 2021, 124.

<sup>111</sup> Canon 1291 CCL; see: Kaleta 2016, 140–141; Strzała 2019, 492–493.

<sup>112</sup> For more on alienation, see: Kaleta 2016, 133–138.

<sup>113</sup> Canon 1292 § 1 CCL; see: Kaleta 2016, 141–142.

<sup>114</sup> Canon 1292 § 2 CCL; see: Dubiel 2016, 105; Kaleta 2016, 142; Kaleta 2021, 183; Rzepecki 2013, 180–183.

<sup>115</sup> See: clause 3.18 of the Instruction of the Polish Episcopal Conference on the management of the Church's temporal goods, available at: *Instrukcja Konferencji Episkopatu Polski w sprawie zarządzania dobrami doczesnymi Kościoła*, <https://episkopat.pl/doc/169745.instrukcja-kep-w-sprawie-zarzadzania-dobrami-doczesnymi-kościola> [accessed: 7 May 2024]; see also: Strzała 2019, 493–494.

<sup>116</sup> Accessible: *Dekret ogólny Konferencji Episkopatu Polski z dnia 11 marca 2021 r. w sprawie podwyższenia sumy maksymalnej alienacji*, <https://episkopat.pl/doc/185885.dekret-ogolny-konferencji-episkopatu-polski-z-dnia-11-marca-2021-r-w-sprawie-podwyzszenia-sumy-maksymalnej-alienacji> [accessed: 7 May 2024].

<sup>117</sup> Kaleta 2017, 164–165; Kennedy 2000, 1500.

of the alienated property, made in writing by experts.<sup>118</sup> It should be emphasised that the jurisdiction of the land and mortgage register court does not cover the rationale of the just cause for alienating the property nor to assessment of the declared value of the alienated real estate. Hence, it is good practice in notarial transactions to include appropriate declarations of knowledge in the notarial deed which will confirm that the prerequisites in question have been fulfilled. On the other hand, the land and mortgage register court can only reject the application for entry if the content of the notarial deed shows that the real estate value exceeds the amount of EUR 100,000 and the authority of the church legal entity performs the legal action without the permission of the competent supervising power.<sup>119</sup> If the declared value of the real estate in the notarial deed does not exceed the equivalent of the amount of EUR 100,000, there are no grounds for questioning the effectiveness of the legal act performed.

Separate rules apply to actions beyond the scope and manner of ordinary management administration, which are invalid unless the administrators have first obtained a written power of attorney from the Ordinary.<sup>120</sup> According to Canon 1281 § 2 CCL, actions beyond the scope and manner of ordinary management should be defined in the statutes; if, however the statutes do not govern this matter, it is up to the diocesan bishop, after hearing the opinion of the council for economic affairs, to define this type of action with regard to the personnel under his authority.<sup>121</sup> Hence, in some dioceses, separate rules are introduced for the requirement of consent to perform actions of an alienating nature.<sup>122</sup>

Different rules are related to the alienation of real estate by the so-called religious order legal entities. As indicated above, a so-called religious order legal entity may perform a legal action in accordance with the principles of representation arising from Article 8 section 2 ARSCC. There should not be any particular practical difficulties relating to the naming of the entity entitled to represent the legal entity in question in the context of Article 8 section 3 ARSCC, which authorises the use of a different naming of the legal entity authorities. However, attention should be drawn to the content of Canon 638 CCL. Its own law within the framework of universal law should determine the actions that are beyond the scope and manner of ordinary management and establish all that is necessary for the actions of extraordinary management to be validly undertaken.<sup>123</sup> Apart from the superiors, the expenses and legal actions of ordinary management are validly undertaken within the framework of the task entrusted to them also by the office-bearers whom the internal law designates for this purpose.<sup>124</sup> For the validity of an alienation or any other action by which the property of a legal entity may be affected, the written permission of the competent superior, given with the consent of his or her council, is required.

<sup>118</sup> See: Kaleta 2016, 146–157; Kaliński 2013, 49; Kennedy 2000, 1500–1501; Sitarz 2000, 109–110; Wenz, Skwierczyński 2014, 148–149.

<sup>119</sup> As a side note, it should be pointed out that Canon 1376 CCL provides for penalties for the alienation of church goods without the required consultation, consent or authorisation; see: Świto 2023, 305–310.

<sup>120</sup> Canon 1281 § 1 CCL; on the difference between the legal actions covered by Canon 1281 CCL and Canon 1291 CCL, see: E. Cichosz, P. Cichosz 2011, 57; Kaleta 2017, 166–167.

<sup>121</sup> See more broadly: Kaleta 2017, 104–106.

<sup>122</sup> See more broadly: Świto 2015, 112–113.

<sup>123</sup> Canon 638 § 1 CCL; see: Kaleta 2017, 132.

<sup>124</sup> Canon 638 § 2 CCL; see: Kaleta 2017, 129.

However, if it concerns an action of a value exceeding the amount determined for a particular region by the Holy See, or goods given to the Church by virtue of a vow, or valuable artistic or historical items, the permission of the Holy See is additionally required.<sup>125</sup> In the case of institutes operating under diocesan law, the written consent of the Ordinary of the place is also required.<sup>126</sup>

It should be emphasised that when determining the substantive legal basis for the performance of a specific legal action by the so-called religious order legal entity, a reference should be made to the order's own rules, in particular with regard to the obtaining of consent (authorisation) for the performance of a specific legal action.<sup>127</sup> By way of example, specific rules for the alienation of assets by independent monasteries can be provided. An independent monastery, which has no other superior apart from its own superior or is not integrated with a religious institute in such a way that the superior of this institute has an actual constitutional authority over the monastery, is entrusted to the special supervision of the diocesan bishop, in accordance with the provisions of the law.<sup>128</sup> As indicated above, Canon 638 § 4 CCL should be read in the context of the Executive Instruction to the Apostolic Constitution "Vultum Dei quaerere" on women's contemplative life "Cor orans" of 1 April 2018.<sup>129</sup> Hence, for the validity of the alienation or any other transaction by which the property of the monastery could be damaged, a written authorisation of the Superior General, issued with the consent of the Council or the Chapter of the monastery, is required depending on the value of the sale or transaction as well as the opinion of the President of the Federation (clause 52). With regard to the Federation of Monasteries, however, for the alienation of the goods of abolished monasteries to be valid, regardless of the value of the alienated goods, the President of the Federation and the Council of the Federation must always obtain only the written permission of the Holy See (clause 108).

### 3.2. Defectiveness of a legal action of a Catholic Church legal entity taken in breach of canon law

The question needs to be answered as to what is the effect of a legal action which is not in breach of universally applicable regulations but is in conflict with canon law, e.g. with regard to the requirement of consent to perform the legal action. This is because the case law<sup>130</sup> has indicated both the absolute invalidity of the legal action in question<sup>131</sup> and ascribed to it the nature of an incomplete legal action within the meaning of Article 63 CC.<sup>132</sup> This is of particular importance in the context of the content of Article 38 CC, according to

<sup>125</sup> Canon 638 § 3 CCL; see: Kaleta 2019, 136–140; Strzała 2019, 507–508.

<sup>126</sup> Canon 638 § 4 CCL; see: Strzała 2019, 508.

<sup>127</sup> See: Strzała 2016, 122–129, 136–137; for selected examples of special rules relating to the so-called religious order legal entities, see: Szytk 2005c, 31–33.

<sup>128</sup> Canon 615 CCL.

<sup>129</sup> See more broadly: Szewczul 2019, 73–75.

<sup>130</sup> A review of the positions is presented by Rzepecki 2013, 168–175.

<sup>131</sup> Supreme Court ruling of 27 July 2000, IV CKN 88/00, LEX no. 52448; Supreme Court ruling of 24 March 2004, IV CK 108/03, *Orzecznictwo Sądu Najwyższego Izba Cywilna* 2005, no. 4, item 65.

<sup>132</sup> Supreme Court ruling of 19 December 2008, III CZP 122/08, *Orzecznictwo Sądu Najwyższego Izba Cywilna* 2009, no. 7/8, item 115; see: Kaliński 2013, 51–54; Pietraszewski 2010, 222–227; Wolanin 2023, 34–35; Wybrańczyk 2018, 64–69.

which a legal entity acts through its authorities in the manner provided for in the act and in the statutes based on it. It is assumed that internal church law plays such a role as statute within the meaning of Article 38 CC.<sup>133</sup>

The position should be supported – especially in the context of the current wording of Article 39 § 1 CC – that a real estate sale by a church legal entity without the required consent of a competent church authority is an incomplete legal action and so, in the case of its confirmation, it becomes an invalid action, while in the case of refusal to confirm it, it should be qualified as absolutely invalid.<sup>134</sup> In fact, it is rightly pointed out that the generally applicable provisions do not provide for such a requirement, and the provisions of canon law do not constitute a source of Polish law within the meaning of Article 87 of the Constitution of the Republic of Poland;<sup>135</sup> hence, it is impossible to regard such an action as contrary to the Act within the meaning of Article 58 § 1 CC.<sup>136</sup> This is unequivocally confirmed by Article 23 of the Concordat, which makes the acquisition and disposal of real estate by church legal entities conditional on compliance with the provisions of Polish law.<sup>137</sup>

According to Article 626<sup>9</sup> of the Code of Civil Procedure,<sup>138</sup> the land and mortgage register court dismisses the application for entry if there are no grounds for making the entry or there are obstacles to doing so. It should be assumed that the jurisdiction of the court covers the assessment of whether a legal action in question is correct, while the legal action performed by a church legal entity without the required authorisation of a competent church authority results in its suspended ineffectiveness. This means that the legal act in question may be confirmed by a competent authority, which rectifies its defectiveness. Such an assessment is made in the course of the land and mortgage register proceedings at the moment the application for entry in the land and mortgage register is submitted. This means that the land and mortgage register court will reject the application if the legal action was performed without the authorisation of a competent authority, which is not tantamount to the given legal action being assessed as absolutely invalid. It should be noted that the dismissal of an application for entry due to a lack of competent authorisation does not cause the state of *res iudicata* to appear. This means that the applicant may reapply for the entry in the land and mortgage register if the legal act in question has been confirmed after its performance by the competent authority, in which case the application will be allowed, as the originally limping legal action (*negotium*

<sup>133</sup> Grzesiowski 2024, 90–92; Supreme Court ruling of 13 April 2012, I CSK 451/11, LEX no. 1168535; ruling of the Administrative Court in Warszawa of 5 April 2011, VI ACA 884/10, LEX no. 1120301; ruling of the Administrative Court in Warszawa of 30 March 2021, I ACA 400/20, LEX no. 3253563; a broader understanding of the statutes is pointed out by Kaliński 2013, 37–38, 41; the granting of the nature of the statutes within the meaning of Article 38 of the Civil Code to statutes of church legal entities is denied by Pawluk 2010, 151.

<sup>134</sup> Grzesiowski 2024, 92–97; Gurgul 2022a, 8; see also: Gurgul 2022b, 1032–1033; Świto 2022, 211–212.

<sup>135</sup> Gurgul 2022a, 7–8; see also: Plisiecki 2010, 155.

<sup>136</sup> This seems to be also indirectly confirmed by Canon 1296 CCL; see also: Głowacka 2014, 71–72; Szytyk 2005b, 85; however, a view has been expressed in the doctrine according to which the non-recognition of the sanction of the invalidity would mean that the Polish state does not provide the Church with free and public management and administration of its affairs under canon law; see: Chmiel 2000, 23.

<sup>137</sup> Gurgul 2022b, 1032.

<sup>138</sup> The Act of 17 November 1964 – the Code of Civil Procedure; Dz. U. 2023, item 1550 as amended, hereinafter: CCP.

*claudicans*) has been complemented as a result of the subsequent authorisation given by the competent church authority.

### 3.3. Documents attached to the application for entry in the Land and Mortgage Register in course of Land and Mortgage Register proceedings involving a Catholic Church legal entity

Undoubtedly, the basic document to be assessed by the land and mortgage register court is the agreement on the real estate sale in which at least one party will be a church legal entity. Such a document constitutes, in fact, the basis for the entry and is an obligatory element which should be attached to the application for the entry in the land and mortgage register, while its absence causes the application to be rejected. Such an agreement should be made in the form of a notarial deed.<sup>139</sup> The land and mortgage register court evaluates the legal action in question in the context of general provisions of civil law, concerning, for example, the capacity to perform legal actions or the existence of defects in declarations of intent. Hence, the subject of the assessment will be, for example, whether the representation of a church legal entity is correct. An additional substantive legal requirement that is important from the point of view of whether the legal act in question is effective is the requirement to obtain permission of a competent church authority as mentioned above. Possible defects in this respect will cause the application for an entry in division II of the land and mortgage register to be rejected pursuant to Article 626<sup>9</sup> CCP.

In land and mortgage register proceedings, it is particularly important to demonstrate the circumstances in which a specific natural person performs the function of an authority of a legal entity. Pursuant to Article 14 ARSCC, a church authority notifies the competent state administration authority of the appointment and dismissal of a person performing the functions of an authority of a legal entity unless ratified agreements provide otherwise. The notification includes the full name, citizenship and place of residence of the person concerned. However, it is correctly assumed in the case law that

[...] as stipulated in Article 7 clause 1 of the Concordat [...], church posts are filled by the competent church authority in accordance with the provisions of canon law. The provision of Article 14 of the Act of 1989 on the Relations between the State and the Catholic Church in the Republic of Poland, on the other hand, only provides for the notification to the competent authority of the state administration. There are no grounds for considering [...] the notification to be a constitutive element of the appointment of a specific person to the function of an authority of a legal entity (parish). This means that the notification to the competent public administration, of the appointment of a specific person to the function of an authority of the parish is not constitutive because the church authority is free to fill church posts. [...] the issuing of a relevant act by the church authority is a sufficient condition for the person appointed by the church authority to be recognised as an external representative of the parish.<sup>140</sup>

Therefore, the fact that the competent public administration authority has been notified of the appointment of a person to the function of an authority of a church legal entity of

<sup>139</sup> Article 158 CC.

<sup>140</sup> Supreme Administrative Court ruling of 25 August 2017, II GSK 1974/15, LEX no. 2380221.

the Catholic Church is not of constitutive significance,<sup>141</sup> and the land and mortgage register court is bound by the content of the documents (or statements contained in the content of the notarial deed) confirming that a specific person has been appointed to the function of an authority of a church legal entity.

It should be noted that documents confirming the legal personality of a given church legal entity or a power to represent the legal entity in question do not provide the basis for an entry in the land and mortgage register. It is good notarial practice to include appropriate declarations of knowledge in the notarial deed content which will confirm the power to act on behalf of the church legal entity because then the documents confirming the appointment to perform a certain function do not have to be attached to the application for entry.<sup>142</sup> By way of example, according to Canon 523 CCL, while maintaining in the diocesan bishop by free conferral unless someone has the the provision of Canon 682 § 1 in force, the appointment of the parish priest is vested right of presentation or election. Consequently, the general rule is that the parish priest post is filled by the diocesan bishop. It should be evident from the wording of the notarial deed that a specific natural person has been appointed to act as a parish priest, while it is not necessary to attach a document confirming the parish priest appointment to the application for entry. The land and mortgage register court does not have the power to question the correctness of a parish priest appointment, e.g. in the context of the prerequisites referred to in Canon 521 CCL.<sup>143</sup>

## Conclusions

The above considerations confirm the important practical significance of real estate trading involving legal entities of the Catholic Church. Undoubtedly, the universal law rules are an expression of the autonomy of the Catholic Church in the management and administration of material assets belonging to church legal entities. This is particularly reflected in the need to assess the effectiveness of legal actions involving real estate in the context of canon law norms.

The Act on the Relations between the State and the Catholic Church sets out the permissible framework for real estate trading by church legal entities, with the interpretation of the concepts expressed therein relating to the authorities representing the entities in question and the conditions for the effectiveness of the legal actions performed being left subject to the internal regulations of canon law. The practical difficulties in applying the aforesaid legal norms are undoubtedly related to the need to interpret the norms of the Code of Canon Law and other normative manifestations of the Catholic Church. In fact, it should be emphasised that specific provisions of Canon Law are supplemented in the statutes of individual church legal entities. This is particularly evident in legal transactions involving the so-called religious order legal entities to which

<sup>141</sup> See: Malesa 2022, 221–222; Strzała 2019, 424–426.

<sup>142</sup> See: Januchowski 2009, 53–54.

<sup>143</sup> See more broadly: Misztal 2017, 157–165. For a general discussion of the prohibition on state authorities' control of compliance with canon law, see: Walencik 2013, 22–23.



internal statutes apply, providing for requirements as to the effectiveness of the legal action, which is manifested in the requirement to obtain the consent or authorisation of a competent church authority.

Assessment of the effectiveness of a legal action in the context of specific requirements of canon law is essential in land and mortgage register proceedings. Examples of such regulations include Canon 1281 § 1 CCL regarding actions beyond the scope of ordinary management and Canon 1292 § 1–2 CCL by virtue of which the alienation is valid upon the consent or authorisation by a competent entity.<sup>144</sup> Undoubtedly, the land and mortgage register court is obliged to take into account the provisions of canon law in assessing whether the substantive legal requirements have been fulfilled for the legal action to be effectively performed, while a breach of the provisions in question will cause the application for entry in the land and mortgage register to be rejected. It should be admitted that a violation of specific provisions of canon law does not, however, lead to a conclusion that a legal action is invalid within the meaning of Article 58 § 1 CC since the aforesaid provisions are not constitutional sources of universally binding law referred to in Article 87 of the Constitution of the Republic of Poland. However, lack of the permission or consent required by the provisions of canon law should cause the application for entry to be rejected, the lack possibly being rectified by a subsequent confirmation of the legal action performed while involving instruments of civil law as exemplified by Articles 39 and 63 CC.

It should also be emphasised that implementation of the principle of the autonomy of the Catholic Church is expressed in leaving the regulation of the detailed rules for the appointment of the competent authorities of church legal entities to the church authority, and therefore, the land and mortgage register court cannot question the effectiveness of the appointment of the authorities in question, the assessment of which is left to the Catholic Church and its organisational units. Therefore, to assess the correctness of the representation of a church legal entity in the course of land and mortgage register proceedings, a statement of knowledge contained in the notarial deed should be sufficient from which the appointment of a given authority, e.g. a parish priest to represent a given parish, results, while the assessment of the prerequisites required to hold a specific post is beyond the jurisdiction of the land and mortgage register court.

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<sup>144</sup> See: Kaleta 2017, 74, 163–164.

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