

**Legal difficulties in establishing  
the canonical condition  
of conjugal family members**



**Fr. Tomasz Rakoczy**

**Legal difficulties in establishing  
the canonical condition  
of conjugal family members**

**Bydgoszcz 2024**

**Scientific peer review:**

Fr. prof. dr hab. Franciszek Longchamps de Bériér, Jagiellonian University in Kraków  
Dr hab. Elżbieta Szczot, Associate Professor of the John Paul II Catholic University in Lubin

**Translated by:**

dr Józef Jaskulski

**Proofreading, editing:**

Agnieszka Florczak

**Graphic design, computer typesetting:**

PIXEL FACTORY Piotr Nadolski

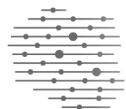
© Copyright by Akademia Kujawsko-Pomorska

*The project is co-financed from state budget funds allocated by the Minister of Education and Science, Republic of Poland, under the Program “Doskonała nauka II”. Reg. Np. MONG/SN/066/2023/01*



Ministry of Science and Higher Education  
Republic of Poland

---



**Doskonała  
Nauka**

ISBN 978-83-65744-22-7

The publication is affiliated with the Kujawy and Pomorze University in Bydgoszcz

**Address of the AKP editorial board**

Wydawnictwo Kujawsko-Pomorskiej Szkoły Wyższej w Bydgoszczy  
ul. Toruńska 55–57, 85-023 Bydgoszcz  
tel. 52 339 30 26, e-mail: [wydawnictwo@akp.bydgoszcz.pl](mailto:wydawnictwo@akp.bydgoszcz.pl)

**Printed and bound by:**

Agencja Kreatywna RE MEDIA Sp. z o.o.

# Table of Contents

<b>List of abbreviations</b> .....	11
<b>Introduction</b> .....	17
<b>1. The rationale behind establishing the canonical condition of the faithful</b> .....	29
1.1. The obligation to seek the truth .....	29
1.1.1. The obligation resulting from natural law .....	29
1.1.2. The concern for the public good of the Church .....	31
1.2. The necessity to establish the truth .....	33
1.2.1. The competition between material and formal truth in Polish law .....	33
1.2.2. The competition between material and formal truth in Polish family law .....	38
1.2.3. The preference of material truth in canon law .....	41
1.2.4. The probative value of secular documents in the canonical legal order .....	42
1.3. The right of the Catholic Church to process data concerning the faithful .....	46
1.3.1. The autonomy and independence of the Catholic Church .....	46
1.3.2. The right to keep parish registers as a special type of autonomy and independence of the Catholic Church .....	47
1.3.3. The obligation to update the data of the faithful in parish registers .....	51
1.4. The necessity to verify the jurisdiction of Church organs (domicile) .....	53
1.4.1. Conceptual apparatus .....	53
1.4.2. Two components of domicile: <i>corpus and animus</i> .....	58
1.4.2.1. <i>Corpus</i> .....	59

- 1.4.2.2. Place of common residence..... 61
- 1.4.2.3. *Animus*..... 61
- 1.4.2.4. The exclusion of the animus criterion: domicile  
of dependency..... 63
- 1.4.2.5. The revocation of *animus*..... 67
- 1.4.3. The verification of canonical domicile..... 68
  - 1.4.3.1. The lack of indication of domicile in identity cards..... 71
  - 1.4.3.2. Certificate of registration..... 72
- 1.4.4. An attempt to resolve problems when establishing  
one’s domicile..... 74

**2. Church documents as a source of insight into the canonical condition ..... 79**

- 2.1. The methodology of drafting Church documents..... 79
  - 2.1.1. Features of a public Church document..... 79
  - 2.1.2. The person in charge of keeping parish registers..... 82
  - 2.1.3. The time of entry in a parish register..... 85
  - 2.1.4. The technique for making a record in a parish register..... 86
  - 2.1.5. The obligation to keep duplicates ..... 90
  - 2.1.6. Archiving parish registers..... 91
  - 2.1.7. Certified copies of canonical status records..... 95
    - 2.1.7.1. Parties authorized to receive a certified copy..... 95
    - 2.1.7.2. Types of certified copies..... 99
    - 2.1.7.3. Forms of certified copies..... 101
  - 2.1.8. Data changes..... 102
- 2.2. The substantive scope of baptismal registers..... 106
  - 2.2.1. Establishing the child’s parentage..... 109
  - 2.2.2. The acknowledgment of paternity in civil law..... 112
  - 2.2.3. Post-adoption changes in baptismal records..... 118
  - 2.2.4. Establishing the child’s affiliation to the ecclesiastical  
community..... 122
    - 2.2.4.1. The child’s religious affiliation ..... 122
    - 2.2.4.2. The child’s rite affiliation..... 124
    - 2.2.4.3. The affiliation of an adopted child ..... 127
    - 2.2.4.4. The protection of Church affiliation in civil law..... 129
  - 2.2.5. The child’s name..... 130
  - 2.2.6. The child’s sex ..... 133
  - 2.2.7. Date of birth and baptism ..... 133
  - 2.2.8. Data concerning the minister of baptism..... 133
  - 2.2.9. Data concerning the sponsors..... 134
  - 2.2.10. Annotations in the baptismal register..... 134

---

2.2.10.1. Defection from the Church by a formal act .....	135
2.2.10.2. The annotation on sexual conversion .....	140
2.2.10.3. The annotation on the issuance of a baptismal record in the baptismal register .....	141
2.3. The substantive scope of the register of those incorporated in the Catholic Church .....	142
2.4. The substantive scope of the First Holy Communion register .....	143
2.5. The substantive scope of the Confirmation register .....	144
2.6. The substantive scope of the Marital register .....	145
2.7. The substantive scope of registers of the dead and cemetery registers.....	147
2.8. The substantive scope of the census of the faithful .....	152
2.9. Judicial sentences .....	154
2.9.1. Declaration of nullity of marriage .....	154
2.9.2. Declaration of canonical separation .....	155
2.9.3. Dissolution of the bond .....	157
2.9.3.1. The dissolution of marriage by means of the Pauline Privilege .....	158
2.9.3.2. Marriages covered in cans. 1148-1149 .....	160
2.9.3.3. Dispensations from <i>matrimonium ratum sed non consummatum</i> .....	161
2.9.3.4. The dissolution of marriage by the privilege of faith .....	164
2.9.4. Process in the presumed death of a spouse .....	166
<b>3. Secular documents as an insight into the canonical condition .....</b>	<b>171</b>
3.1. The methodology of drafting civil status records.....	171
3.1.1. The competent organ .....	171
3.1.2. The ICT register of civil status records .....	173
3.1.3. The place and time of drafting civil status records.....	175
3.1.4. The legal value of civil status records .....	177
3.1.5. A copy of a civil status record as an official document .....	179
3.1.6. Certificate of civil status .....	180
3.1.7. Certificate of data entered in the register .....	181
3.2. The problem of cooperation between the state and the Church with respect to the maintenance of parish registers .....	182
3.2.1. The criteria for collaboration between the state and the Church .....	184

3.2.2. Requesting data from public administration organs.....	185
3.3. Relevance and irrelevance of civil documents in establishing the canonical condition of the faithful .....	193
3.3.1. Civil documents irrelevant to establishing the canonical condition of the faithful .....	194
3.3.1.1. A certified copy of a birth record with regard to the child's parentage.....	194
3.3.1.1.1. A copy of a birth record of a marital child.....	196
3.3.1.1.2. A copy of a birth record of a unmarried woman's child.....	198
3.3.1.1.3. A copy of a birth record of an adopted child.....	199
3.3.1.1.4. A copy of a birth record of a child of unknown parents.....	201
3.3.1.1.5. A copy of a birth record of a child born using assisted reproductive technology (ART).....	201
3.3.1.1.6. A foreign copy of a birth record inconsistent with the basic law of the Republic of Poland.....	207
3.3.1.2. Documents concerning name change in Polish law.....	209
3.3.1.2.1. The decision to change the child's name soon after birth .....	210
3.3.1.2.2. Name change in the course of adoption.....	210
3.3.1.2.3. Administrative name change.....	211
3.3.1.3. A non-transcribable copy of a civil marriage record.....	213
3.3.1.4. A court judgment dissolving the marriage.....	218
3.3.1.5. A court judgment adjudicating spousal separation.....	225
3.3.1.6. A court judgment adjudicating sexual conversion.....	226
3.3.1.7. A certified copy of death record.....	232
3.3.2. Civil documents helpful in establishing the canonical condition of the faithful .....	234
3.3.2.1. A copy of the child's birth record with respect to the given name .....	234
3.3.2.2. Contracting a strictly civil marriage in the form of an extraordinary canonical marriage.....	238
3.3.2.3. A court judgment on the non-existence of marriage.....	240
3.3.2.4. A court judgment on the annulment of marriage.....	241



---

<b>Conclusions <i>de lege lata and de lege ferenda</i></b> .....	245
<b>References</b> .....	259
<b>1. Sources</b> .....	259
1.1. Canon law sources .....	259
1.1.1. Legal .....	259
1.1.1.1. Codes .....	259
1.1.1.2. Statements of the Congregations and Pontifical Councils .....	259
1.1.1.3. Particular law .....	260
1.1.2. Dogmatic sources .....	262
1.1.2.1. Catechism .....	262
1.1.2.2. Papal Magisterium .....	262
1.1.2.3. Teaching of the Second Vatican Council .....	262
1.2. International law .....	263
1.3. Polish law .....	264
1.3.1. Acts .....	264
1.3.2. Regulations .....	265
1.3.3. Case law .....	266
1.3.3.1. Judgments of the Supreme Court (SN) and common courts .....	266
1.3.3.2. Judgments of the Constitutional Tribunal (TK) .....	267
1.3.3.3. Judgments of the Supreme Administrative Court (NSA) and administrative courts (WSA) .....	267
1.4. Other sources .....	268
1.5. Foreign legislation .....	270
1.5.1. Acts .....	270
1.5.2. Decisions .....	270
<b>2. Literature</b> .....	271