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## Cross-Border Flow of Personal Data in the Context of Emigration of the Faithful of the Catholic Church from Poland

**Abstract:** The increased emigration of Poles has caused numerous problems of legal and canonical nature, also relating to the activity of the Catholic Church. The article concerns the cross-border processing of personal data carried out by the Catholic Church entities in the context of the emigration of the faithful. Processing of the data of believers takes place, for example, in the formalities related to preparation for entering marriage. From the point of view of canon law the article deals with such issues as: the legality of the process of cross-border data processing, the obligations of the data controller carrying out such a process and the role of the supervisory authority.

**Keywords:** GDPR, Decree on the protection of personal data, Catholic Church in Poland, personal data, emigration

### Introduction

The cross-border flow of personal data in the area of globalisation is an irremovable element of the contemporary world. This issue becomes particularly relevant in the case of Poland and the Catholic Church. It is because of the big number of Poles who go abroad as emigrants.<sup>1</sup> Cur-

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<sup>1</sup> The intensification of the emigration phenomenon took place after 2004 when Poland became a member of the European Union, see: M. CŹWIEK, P. ULMAN: “Emigracja Polaków po wstąpieniu Polski do Unii Europejskiej.” In: *Prawne i ekonomiczne aspekty migracji*. Eds. M. BUTRYMOWICZ, P. KROCZEK. Kraków 2016, pp. 31—49 or A. BOBROWSKA:

rently, this number is estimated at 2.5 million Poles living as emigrants outside Poland.<sup>2</sup> As statistical data allow to predict, most of them are Catholics.<sup>3</sup> Outside the home country, they want to practice their faith by also receiving the sacrament.

Canon law plays an important role in the activity of the Catholic Church. This law makes certain administrative demands for receiving or recording sacraments in the form of the necessity of various certificates (certificate of baptism or confirmation), permissions, or other documents. They all contain personal data. Sometimes, the data are, by their nature, particularly sensitive. It is because the data are concerning a natural person's sex life or sexual orientation, medical conditions, etc. It is especially so in the case of the inquiry carried out before marriage. Canon law requires to create a premarital protocol (can. 1067).

In law and literature on the subject, they are called "special categories of personal data" or "sensitive data." Their processing could create significant risks to the fundamental rights and freedoms, as well as *bona fama* of the faithful (see can. 220 CIC). The documents in question must be sometimes transferred, for example, from the baptismal parish to the parish of his or her canonical domicile or quasi-domicile, which is abroad. Without a doubt, this form of data processing must also be carried out in such a way as to ensure an adequate level of protection for individuals both during and after the process.

The issue the numerous canonical questions arise concerning, among others: 1) the conditions for the legality of the process, 2) extra duties of the Church data controller exercising such a process, and 3) the role of the supervisory authorities in the process of the data transfer abroad. These questions create an elaborate research problem of the present article. After this theoretical background has been presented, 4) some examples of data transfer problems in the parish will be offered.

The perspective for this research is a canonical one. It means that only canon law is involved. The element of civil law (state law regulating the persona data protection) is not included. In this context, one fact must be acknowledged. The main law that governs the subject in the Church in

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"Migracje Polaków po przystąpieniu do unii europejskiej." *Colloquium wydziału nauk humanistycznych i społecznych* 2 (2013), pp. 49—64.

<sup>2</sup> GŁÓWNY URZĄD STATYSTYCZNY [Central Statistical Office of Poland]: *Informacja o rozmiarach i kierunkach emigracji z Polski w latach 2004—2016*, <https://stat.gov.pl/obszary-tematyczne/ludnosc/migracje-zagraniczne-ludnosc/informacja-o-rozmiarach-i-kierunkach-emigracji-z-polski-w-latach-20042016,2,10.html?pdf=1> (accessed 2.01.2021).

<sup>3</sup> According to the Central Statistical Office of Poland, in 2012 ca. 87% of the population of Poland declared to be Catholic, *Rocznik demograficzny 2013* (GŁÓWNY URZĄD STATYSTYCZNY: Warszawa 2013), p. 76.

Poland is issued by the Polish Bishops' Conference. It is General Decree on the protection of individuals with regard to the processing of personal data in the Catholic Church issued in 2018.<sup>4</sup> Unfortunately, the law does not contain many provisions that regulate the transfer of data abroad. It means that in practice, a lot of norms are not taken directly from the text of the law, but they are built in the process of interpretation according to canon 19 CIC. The canon orders, that in the case when in a particular matter there is not an express provision of law, nor a custom, then, the question is to be decided by taking into account laws enacted in similar matters, the general principles of law observed with canonical equity, the jurisprudence and practice of the Roman Curia, and the common and constant opinion of learned authors. Of course, every law or every data protection system contains loopholes (*lacunae legis*), that is, no legal solution for a given factual situation. Unfortunately, in the case of the Decree, the *lacunae* are particularly numerous and fundamental rather than incidental.<sup>5</sup>

## 1. The conditions for the legality of the process

As the principle of legalism orders, the controller may not transfer data outside the territory of Poland, if there is no legal basis for this action.<sup>6</sup> The legal grounds for the procedure are given in the Decree.

Article 34 (1) of the Decree states that the transfer of data by the controller to another ecclesiastical data set can only take place upon request:

- 1) the data subject for any reason, or
- 2) the data controller when that requested data is to be used in its data set.

Additionally, according to Article 34 (2) of the Decree, the transfer of personal data, but only by the ecclesiastical public legal person (can. 116 § 1 CIC), to any other (that is also to non-canonical) legal person may take place in case when:

- 1) it is necessary to complete the tasks specified in the law;
- 2) the data subject has been informed about the transfer and has previously consented to the transfer in writing;

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<sup>4</sup> *Akta Konferencji Episkopatu Polski* 30 (2018), pp. 31—54; hereinafter: Decree.

<sup>5</sup> P. KROCZEK: *Przetwarzanie danych osobowych przez podmioty Kościoła katolickiego w Polsce: transfer pomiędzy państwami*. Kraków 2020), 26—27 and 97—99.

<sup>6</sup> The rule in question sometimes can be limited by the application of the supreme rule of the canon law, that is *salus animarum*.

- 3) the transfer is necessary for the performance of an agreement to which the data subject is a party;
- 4) the transfer is necessary for the interest of the data subject;
- 5) the transfer is necessary for important reasons of public interest.

The controllers which are private legal persons (can. 116 § 1 CIC) and other organisational units cannot transfer the data outside the territory of Poland based on the presented Article. However, they may invoke Article 34 (1) of the Decree and transfer the data not on their own initiative, but at the request of the data subject.

Other legal and canonical grounds for data transfer available to any controller is the transfer of data:

- 1) for research purposes, in compliance with the methodological and deontological criteria relating to historical research, and in particular those indicated in the regulations on the Church archives;
- 2) for statistical purposes, after the prior removal of personal identification data (Article 34 (3) of the Decree).

## 2. Extra duties of the data controller exercising the such process

Due to the risky nature of the data transfer outside the country, the Church legislator imposed some extra duties on the data controller exercising the process in question.

One of the extra duties is the extension of the right to information of persons whose data are transferred outside of Poland. This right generates duty on the side of a data controller. As the Decree orders, a controller always must offer to the data subject the standard information, such as 1) the data identifying the controller, 2) contact details of the data protection officer, 3) the aim or aims along with 4) the legal basis of the processing, 5) the information about the recipients, 6) the period for which the personal data will be stored, or, at least, the criteria used to determine that period; and finally 7) the rights of the data subjects (Article 8 (1) and (2) of the Decree).

In case of transferring data abroad, the controller must, first of all, manifest the intention to transfer the data to a public ecclesiastical legal person based outside the territory of Poland. The subject which is the target of the transfer should be described at least by the official name. Also, some other information about safeguards related to the transfer is to be given.

As a rule, the decree does not specify the deadlines within which a controller is to perform the actions in question. However, since the

Decree “specifies the provisions of CIC” (as it is stated in the Preamble to the Decree), it must be assumed that all the time limits not expressly provided for in the Decree are three months from the date of receipt of the letter by the administrator (see can. 57 CIC).

Another duty of a controller refers to the record of processing activities which in accordance with Article 21 (1)(5) of the Decree, each controller shall keep. This register must contain among many information almost the data about the transfer of data outside the territory of Poland.

### 3. The role of the supervisory authorities

In the full realm of all the activities of the Church, the Decree is to be applied. For these operations, a special supervisory authority is competent to supervise data processing. The authority is established under Article 91(2) of the GDPR,<sup>7</sup> which states that “Churches and religious associations which apply comprehensive rules in accordance with paragraph 1 of this Article shall be subject to the supervision of an independent supervisory authority, which may be specific, provided that it fulfills the conditions laid down in Chapter VI of this Regulation.” The Polish Bishops’ Conference established such authority, as an ecclesiastical office (see can. 145 CIC) in 2018. Its official name is the Church Inspector for Data Protection (hereinafter: ChIDP).

According to Article 37(1)(6) of the Decree, the tasks of ChIDP include “deciding on the admissibility of the transfer of data to a public ecclesiastical legal person established outside the territory of the Republic of Poland, if there are reasonable doubts about the protection of such data.”

In the cases of the member of EU and European Economic Area and some other countries like Israel, Argentina, Canada, New Zealand, Switzerland, Uruguay, Monaco, Andorra, Guernsey, Jersey, the Isle of Man, the Faroe Islands, to which the European Commission has granted, employing a decision, an adequate level of protection, safe country status, the transfer of personal data should be considered secure and may take place without the need to obtain a decision from the ChIDP authorising the transfer. When transferring data to another country, a controller should

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<sup>7</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation). Official Journal of the European Union, No. 119, 4 May 2016, L 119/1, p. 1.

make a special assessment, if the action will be safe for personal data. The assessment made by a controller should be reliable and, in accordance with the principle of accountability applicable to the controller (Article 6(2) of the Decree), documented.

There is a problem concerning the legal (canonical) nature of the “decisions on the admissibility of data transfers” mentioned above. It should be assumed that it is not a decision of an administrative nature, that is, binding on a controller. It is rather an opinion of the ChIDP and it is the implementation of the task of this organ indicated in Article 37(1) (3) of the Decree, which is to advise controllers on personal data protection. The decision to transfer data outside the borders of the Republic of Poland is made by a controller and it is a controller who is responsible for its consequences in the form of a possible breach of security of personal data processing.

Concerning a controller’s decision whether or not to transfer the data, whether, under or contrary to the opinion of the ChIDP, the data subject may lodge a complaint with the ChIDP regarding the failure of the controller to comply with the regulations established in the Church regarding the protection of personal data (Article 37(1)(5) of the Decree). In this case, the ChIDP will decide the case on an individual basis. The opinion of the ChIDP in the subject matter should be (for evidential purposes) given in writing.

#### 4. Examples of data transfer problems in parish operations

In the context of emigration, in the activity of the Catholic parishes, transferring personal data abroad usually would be in connection with the sacraments, especially marriage. It means that the norms of the Decree are applied in the situations created by another law, that is the Decree on Canonical and Pastoral Interviews with Fiancées before Canonical Marriage of 2019.<sup>8</sup> The Decree on preparation for marriage creates situations when data are to be transferred abroad — before or after the celebration of marriage.

One of the situations happens before the marriage celebration. The parish in which the documents necessary for marriage are prepared must

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<sup>8</sup> THE POLISH BISHOPS’ CONFERENCE: “Decree on Canonical and Pastoral Interviews with Fiancées before Canonical Marriage.” *Akta Konferencji Episkopatu Polski* 31 (2019), pp. 28—93.

send a license to a parish where the marriage will be celebrated. The license is needed because the general rule states that marriages are to be celebrated in the parish in which either of the contracting parties has a domicile or a quasi-domicile or a month's residence (can. 1115 CIC). With the permission of the proper Ordinary or the proper parish priest, marriages may be celebrated elsewhere. The form of permission is the license in question. The Decree on preparation for marriage states that abroad parish of domicile or a quasi-domicile of the fiancées, which is the parish of preparation of marriage, must send the license through its diocesan curia to the competent diocesan curia in Poland, which, will authorise the parish in Poland to perform the celebration of the marriage (No. 12 of the Decree on preparation for marriage).

In turn, after the celebration of the marriage, the parish of celebration, according to can. 535 § 2 CIC and can. 1122 § 2 CIC, must notify the parish of the baptism of the spouses that the marriage was concluded (can. 1070 CIC), and also must notify the parish from which the license was obtained. If the above notifications are to be sent abroad, they can be sent through the Polish diocesan curia (No. 113 of the Decree on preparation for marriage).

## Conclusion

Summarising the reflections in the article, it should be stated that cross-border transferring of persona data is a difficult and complicated task. The article offers a few glimpses in the problem from the canonical perspective, but — as it was said — there is also a perspective of the secular law. The Church subjects that transfer data in many cases (almost always) are to implement both the canonical norms and the norms of the secular law. It can be the starting point for another research.

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## Flux transfrontalier de données personnelles dans le cadre de l’émigration des fidèles de l’Église catholique de Pologne

### Résumé

L’intensification de l’émigration des Polonais a causé de nombreux problèmes d’ordre juridique et canonique, y compris dans les activités de l’Église. Cet article concerne le traitement transfrontalier de données personnelles par l’Église catholique dans le cadre de l’émigration des fidèles. Les données des fidèles sont traitées, par exemple, lors des formalités liées à la préparation au mariage. L’article traite des questions du point de vue du droit canonique ; ces questions sont : la légalité du traitement de données transfrontalier, les obligations du responsable d

**Mots clés** : GDPR, décret sur la protection des données personnelles, l’Église catholique en Pologne, données personnelles, émigration



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## Flusso transfrontaliero di dati personali nel contesto dell'emigrazione dei fedeli della Chiesa cattolica in Polonia

### Abstract

L'intensificarsi dell'emigrazione dei polacchi causò molti problemi di natura giuridica e canonica, anche nelle attività della Chiesa. Questo articolo riguarda il trattamento transfrontaliero dei dati personali da parte della Chiesa cattolica nel contesto dell'emigrazione dei fedeli. I dati dei fedeli sono trattati, ad esempio, durante le formalità legate alla preparazione al matrimonio. L'articolo affronta questioni dalla prospettiva del diritto canonico; tali questioni sono: la legalità del trattamento transfrontaliero dei dati, gli obblighi del responsabile di trattamento che attua tale trattamento e il ruolo dell'autorità di controllo.

**Parole chiave:** GDPR, decreto sulla protezione dei dati personali, Chiesa cattolica in Polonia, dati personali, emigrazione