



**Piotr Kroczek**

The Pontifical University of John Paul II in Kraków, Poland

<http://orcid.org/0000-0002-6872-2953>

## Sobański's Critique of the (Particular) Legislation

**Abstract:** Legislation is an art. Fr. Professor Remigiusz Sobański, who analyzed the particular legislation of the (Arch)diocese of Katowice in his scientific activity, was very well aware of this. These academic analyses allowed him to draw up numerous observations and comments, as well as postulates with regard to this law. This article focuses on the formal aspects of law addressed by the great canonist.

**Keywords:** Sobański, legislation, statute, particular law, canon law

### Introductory Remarks

The quality of legislation is very important for any entity that has its own endogenous law, including the Church. The canonists are familiar with this problem, however, it still has not been studied thoroughly in canonical literature.<sup>1</sup>

---

<sup>1</sup> See: Piotr Kroczek, *The Art of Legislation: The Principles of Lawgiving in the Church* (Kraków: Wydawnictwo UNUM, 2017); Geraldina Boni, *La recente attività normativa ecclesiale: finis terrae per lo ius canonicum? Per una valorizzazione del ruolo del Pontificio Consiglio per i testi legislativi e della scienza giuridica nella Chiesa* (Mucchi/Modena: Mucchi Editore, 2021); Piotr Kroczek, "Kilka uwag do znowelizowanych Wytycznych Konferencji Episkopatu Polski w kontekście zasad techniki legislacyjnej oraz znowelizowanego art. 240 § 1 kodeksu karnego," *Annales Canonici*, vol. 13 (2017): 91–107; Piotr Kroczek, "O niektórych uchybieniach legislacyjnych w nowym statucie Uniwersytetu Papieskiego Jana Pawła II w Krakowie," *Analecta Cracoviensia*, vol. 50 (2018): 269–280; Piotr Kroczek, "Ocena instrukcji *Dignitas conubii* z perspektywy sztuki legislacji," *Prawo Kanoniczne*, vol. 58, no. 1 (2015): 94–109.

This topic was also covered by Rev. Professor Remigiusz Sobański. His point of interest was mainly the area of particular legislation, mainly diocesan law. This scholar understood very well that through proper quality of particular law, autonomy of local churches can be promoted and centralization can be accomplished without any danger of harmful particularisms.<sup>2</sup> A good diocesan is essential for the community of the faithful to “vigeat, crescat, floreat.”<sup>3</sup> As Sobański wrote: “The law gives—or is supposed to give—our actions a certain support, it is the branch on which we sit.”<sup>4</sup>

This aim of the article is to present the views of the cited canonist on the particular legislation of the (arch)diocese of Katowice. Based on Professor Sobański’s comments, it is possible to formulate specific postulates in the field of ecclesiastical legislation which are probably useful at any level of canon law-making, including the level of the Church’s universal law.

Although, as Sobański noted, that “the characterization of the law can be done from the form or the content point of interests,”<sup>5</sup> the comments in this article mainly concern the form of the law, and in a lesser degree its content.<sup>6</sup> It is because the topic is hardly ever studied by the canonists; as Sobański wrote, “Formal aspects, however, should not be neglected. It is about the transparency of the legitimacy of church actions, decisions, orders.”<sup>7</sup>

## Form of Law in the Particular Legislation

Written law is “indeed a more developed form of law.”<sup>8</sup> This is also due to the tendency of custom to yield to the written form and the passage of law into the hands of specialists.<sup>9</sup> Among the written law, the most prominent place should be given to the general decree. It should constitute the main source of canonical

<sup>2</sup> Józef Krukowski and Remigiusz Sobański, *Komentarz do Kodeksu Prawa Kanonicznego*, vol. 1. Księga I, *Normy ogólne* (Poznań: Pallotinum, 2003), 27.

<sup>3</sup> *Prefatio. Codex Iuris Canonici auctoritate Ioannis Pauli PP. II promulgatus, Roma 1983: XXX.*

<sup>4</sup> Remigiusz Sobański, “Uwagi o prawodawstwie (Archi)Diecezji Katowickiej 1983–1993,” *Prawo Kanoniczne*, vol. 38, no. 1–2 (1995): 161.

<sup>5</sup> Sobański, “Uwagi o prawodawstwie (Archi)Diecezji Katowickiej 1983–1993,” 168.

<sup>6</sup> This I leave to other Authors of the volume, who will address the issue of theology and legal theory in Sobański’s scientific output.

<sup>7</sup> Sobański, “Uwagi o prawodawstwie (Archi)Diecezji Katowickiej 1983–1993,” 159.

<sup>8</sup> Krukowski and Sobański, *Komentarz do Kodeksu Prawa Kanonicznego*. vol. 1. Księga I, *Normy ogólne* (Poznań 2003): 78.

<sup>9</sup> Sobański, *Teoria prawa kościelnego* (Warszawa: Wydawnictwo UKSW, 1992), 91–101.

norms in the diocese, according to Sobański. The law should stand above any other form of law, especially the dispositions issued annually.<sup>10</sup>

According to Remigiusz Sobański, a law should contain an appropriately developed theological element, that is, a doctrinal one, preferably in the form of the first part of the law. This is because the point is that the legislator should indicate the motives that caused him to take same actions to enact the regulation and reasons for the content of the law. Unfortunately, “Diocesan laws rather rarely state the rationale for which they were passed. This is especially true of laws on clergy discipline,” as the professor noted.<sup>11</sup>

## The Subject of the Legislature

Referring to the subject of legislative authority, the people on which the law depends, it is necessary to notice, that for the correct exercise of legislative power, according to Sobański, is to be aware of the origin of authority in the Church,<sup>12</sup> and the basis of the binding force of Church law<sup>13</sup>. The professor cited the Constitution *Lumen gentium* indicating that diocesan bishops have a “sacred right and duty before the Lord of legislating.”<sup>14</sup> This is a task the diocesan bishops should perform within the limits set by the law whether it is code (can. 38 § 1) or other laws. The bishop “may legally regulate everything that general regulation requires.”<sup>15</sup> When he has a doubt about his competence, he can resolve it in his favor of legislative action. For in case of doubt, the presumption of law speaks for this solution.<sup>16</sup>

---

<sup>10</sup> Remigiusz Sobański, “Prawo partykularne diecezji katowickiej: 1922–1971,” *Śląskie Studia Historyczno-Teologiczne*, vol. 7 (1974): 35.

<sup>11</sup> Remigiusz Sobański. “Cechy charakterystyczne katowickiego prawa diecezjalnego,” *Śląskie Studia Historyczno-Teologiczne*, vol. 8 (1975): 170.

<sup>12</sup> Remigiusz Sobański, *Kościół jako podmiot prawa* (Warszawa: Wydawnictwo UKSW, 1983), 134–173.

<sup>13</sup> Sobański, *Teoria prawa kościelnego* (Warszawa: Wydawnictwo UKSW, 1992), 187–190.

<sup>14</sup> Vatican Council II, “Dogmatic Constitution on the Church *Lumen gentium*” (November 21, 1964), *Acta Apostolicae Sedis*, vol. 57, no. 27.1. (1965): 5–75.

<sup>15</sup> Remigiusz Sobański, “Uwagi o prawodawstwie (Archi)Diecezji Katowickiej 1983–1993,” *Prawo Kanoniczne*, vol. 38, no. 1–2 (1995): 141.

<sup>16</sup> Sobański, “Uwagi o prawodawstwie (Archi)Diecezji Katowickiej 1983–1993,” 141.

## Acts of Particular Laws

Looking at the problem of the names of acts of particular law, Sobański postulated that generally “a law is a law, an instruction is an instruction, an order is an order [...]”<sup>17</sup>

Professor Sobański noted the difficulties in this field due to the ambiguity of the term “general decree.” A decree of this type is either “law” (see can. 29) or “general executory decree” (see can. 32). It is not always easy to discern whether it is a decree in the nature of a law or an executive decree, to limit oneself to one. He explained that: “We are dealing with law when the act introduces new norms—either by entering areas not covered by the law or by amending or repealing norms previously in force. [...] If, on the other hand, the general decree does not change the existing legal norms and does not go beyond the boundaries set by law (or universal law), we are dealing with executive decree.”<sup>18</sup> For this reason, Sobański said that the legislator should limit himself to the term, namely law, not just general decree.<sup>19</sup> He wrote that “intending to promulgate a decree as law, the legislator should therefore make this clear.”<sup>20</sup> However, he was aware that the absence of mention that the legislator is promulgating a decree as law does not thereby mean that it is not a law [...].<sup>21</sup>

## Authority to Publish Particular Law

Sobański stressed the importance of clearly and precisely identifying the sources of knowledge of the diocesan law. He was primarily concerned with the official promulgation organ (the official journal of the diocese) in which diocesan laws are promulgated. Other forms of promulgation, law, although permitted by canon law and which, according to the professor, demonstrate the operability and awareness of lawmakers, can cause some confusion. Promulgation by sending a letter to parish priests or to the vicar foranes (deans), as the professor wrote, “does not facilitate a comprehensive grasp of diocesan law, and may also create difficulties in determining the legal value of certain acts of the legislator.”<sup>22</sup>

<sup>17</sup> Sobański, “Uwagi o prawodawstwie (Archi)Diecezji Katowickiej 1983–1993,” 161.

<sup>18</sup> Sobański, “Uwagi o prawodawstwie (Archi)Diecezji Katowickiej 1983–1993,” 144.

<sup>19</sup> Sobański, “Uwagi o prawodawstwie (Archi)Diecezji Katowickiej 1983–1993,” 143–144.

<sup>20</sup> Sobański, “Uwagi o prawodawstwie (Archi)Diecezji Katowickiej 1983–1993,” 143–144.

<sup>21</sup> Sobański, “Uwagi o prawodawstwie (Archi)Diecezji Katowickiej 1983–1993,” 143–144.

<sup>22</sup> Remigiusz Sobański, “Prawo partykularne diecezji katowickiej: 1922–1971,” *Śląskie Studia Historyczno-Teologiczne*, vol. 7 (1974): 32–33.

Another point must be stressed here. According to can. 8 § 2, particular laws take effect one month after the date of promulgation. Sobański noted that official publishing organs in which particular laws are promulgated should provide daily date. For otherwise, it is impossible to calculate a month (that is 30 days, can. 202 § 1). Without daily date, the legislator should each time specify the day upon which a law takes an effect.<sup>23</sup> In light of can. 8 § 2, such practice should not be the rule. This is indicated by the Latin word “nisi.” Sobański points out that initially *Wiadomości Diecezjalne* of the Archdiocese of Katowice carried the date, but now [it was 1995] only the month is shown. In this situation, every diocesan general decree (both of a statutory and executive nature) must [independently] indicate the effective date.<sup>24</sup> Sobański had the same critical comments on the official promulgation organ of the Polish Bishops' Conference [Akta Konferencji Episkopatu Polski; Norms of the Polish Bishops' Conference].<sup>25</sup>

Sobański postulated that the official promulgation organs should be published without any delay and should be provided with a publishing date on the title page, and that this date should coincide with the actual date of the issue's release. This punctuality is one of the features that distinguishes an official organ from non-official monthly magazines.<sup>26</sup>

In these places, it should be noted that Sobański prescribed to distinguish from the official promulgation organs some other official organs of the diocese of a pastoral nature, which serve to stimulate and coordinate pastoral work in the diocese, but are not intended to promulgate normative acts.<sup>27</sup> However, there is no obstacle to them being a venue for the popularization of laws.<sup>28</sup>

Regarding the editorial side of the official promulgation organ Fr. Sobański made several minor demands, which, when generalized, can be presented as follows. The first comment concerns the custom of using covers as a place for the table of contents. In the professor's opinion, this is a wrong practice. It is because, if the yearbook is bound, the magazine is deprived of its covers. “The table of contents is an integral component of each issue and goes with it into the bound yearbook.”<sup>29</sup> The second point is the demand for arranging the table of contents of each yearbook of the official promulgation organ according to blocks in formal aspect (e.g., in the Holy See section should be divided into: encyclicals, messages, homilies, etc.), or at least arranging the table of contents

<sup>23</sup> Sobański, “Uwagi o prawodawstwie (Archi)Diecezji Katowickiej 1983–1993,” 148.

<sup>24</sup> Sobański, “Uwagi o prawodawstwie (Archi)Diecezji Katowickiej 1983–1993,” 148.

<sup>25</sup> Krukowski and Sobański, *Komentarz do Kodeksu Prawa Kanonicznego*. vol. 1. Księga I, *Normy ogólne*, 48.

<sup>26</sup> Sobański. “Uwagi o prawodawstwie (Archi)Diecezji Katowickiej 1983–1993,” 148.

<sup>27</sup> Sobański, “Uwagi o prawodawstwie (Archi)Diecezji Katowickiej 1983–1993,” 155.

<sup>28</sup> Piotr Kroczek, *The Art of Legislation: The Principles of Lawgiving in the Church* (Kraków: Wydawnictwo UNUM, 2017), 184.

<sup>29</sup> Sobański, “Uwagi o prawodawstwie (Archi)Diecezji Katowickiej 1983–1993,” 154.

of each yearbook according to alphabetical order. And the third postulate is the compilation of a detailed index of the yearbook.<sup>30</sup> It can be seen that Professor Sobański was concerned also about relatively minor things, which, however, would facilitate queries.

## The Form of Expressing Canonical Norms

Sobański demanded that the will of the church legislator is to be properly communicated to the faithful and that canonical provisions must be properly formulated. He wrote that all injunctions, prohibitions, statements like “it is obligatory” are only informative, if they are not placed in laws. They exist only when they are actually established in a normative act.<sup>31</sup> A bon mot of Sobański can be cited here: “[...] it would be good if the word ‘obligation’ always really meant ‘obligation.’”<sup>32</sup>

If any legally established obligation is reminded in any other form other than a law, then, as Sobański writes, it should clearly be indicated from which law it came.<sup>33</sup> Without this, it is difficult to establish the source of this obligation. The point, then, is that claims of the obligatory nature of a given behavior should not be unfounded. Providing a clear source of the norm causes that the addressees of the norms have a better understanding of what they are obligated to do and can more consciously, obey the law and the legislators’ will. “Experience, in turn, instructs most emphatically that a factual appeal proves much more effective than an emphasis on duty.”<sup>34</sup>

Sobański pointed out that there is a serious rationale and importance of “a clear distinction between propositional, encouraging, stimulating dispositions and normative dispositions. The latter must be clear not only in formulation, but also as to their legitimacy.”<sup>35</sup> Moreover, in his view, more weight should be given to legislating laws that create opportunities for action than to regulations that prescribe action.<sup>36</sup>

Increasing the effectiveness of regulations, that is, a greater number of situations in which the law is obeyed can be built precisely by conveying to the ad-

<sup>30</sup> Sobański, “Uwagi o prawodawstwie (Archi)Diecezji Katowickiej 1983–1993,” 154.

<sup>31</sup> Sobański, “Uwagi o prawodawstwie (Archi)Diecezji Katowickiej 1983–1993,” 157.

<sup>32</sup> Sobański, “Uwagi o prawodawstwie (Archi)Diecezji Katowickiej 1983–1993,” 159.

<sup>33</sup> Sobański, “Uwagi o prawodawstwie (Archi)Diecezji Katowickiej 1983–1993,” 157.

<sup>34</sup> Sobański, “Uwagi o prawodawstwie (Archi)Diecezji Katowickiej 1983–1993,” 159.

<sup>35</sup> Sobański, “Uwagi o prawodawstwie (Archi)Diecezji Katowickiej 1983–1993,” 161.

<sup>36</sup> Remigiusz Sobański, “Cechy charakterystyczne katowickiego prawa diecezjalnego,” *Śląskie Studia Historyczno-Teologiczne*, vol. 8 (1975): 171.

дресsees of the norm *ratio* of the regulations that apply to them. Creative norms without explaining them to the faithful can achieve at most legalism. “And this very one is alien to church law.”<sup>37</sup>

Another issue raised by Sobański was that legal norms should be built on the achievements of legal science. The idea is that the hypothesis and the disposition should be unambiguous, that is, they should clearly indicate whom the norm applies to and what behavior the legislator expects.<sup>38</sup>

When it comes to the articulation of norms, Sobański stressed that the specifics of canon law fully forgive the use of obtuse forms, that is, expressions such as “The reverend clergy will consider” instead of “It is ordered as follows.” Such a soft and polite form does not harm the precision of the provision and is certainly more in line with the spirit of church law—Sobański wrote.<sup>39</sup>

## Multiplicity of Norms

An important point Father Sobański made in the following sentence: canon law would never regulate or encompass all the Church activity. “The desire to include all life in legal norms would lead to its ossification and atrophy of initiative to stagnation.<sup>40</sup> That is why Sobański’s scholarly works resound with an awareness of the danger of the inflation of norms. This is caused by an increasing number of very detailed norms. The outcome of this process negatively effects on the life of the faithful. This causes that those who are more active persons are perceiving the phenomenon in question as stifling their own dynamism, and a more passive persons become accustomed to being led by the hand, which in turn threatens the progressive dormancy of thinking and the disappearance of initiative.

Thus, the legislator should deduce to what extent it is necessary to legislate norms, and to what extent it is possible to leave matters to regulate themselves. Sobański wrote that the activity of the center of diocese [that is of the ecclesiastical authority—bishop] should be perceived not as a burden, but as a relief.<sup>41</sup> The aforementioned phenomenon also occurs when regulations are issued in matters already regulated.<sup>42</sup> By this process norms are unnecessarily duplicated.

---

<sup>37</sup> Sobański, “Cechy charakterystyczne katowickiego prawa diecezjalnego,” 177.

<sup>38</sup> Sobański, “Cechy charakterystyczne katowickiego prawa diecezjalnego,” 169.

<sup>39</sup> Sobański, “Cechy charakterystyczne katowickiego prawa diecezjalnego,” 169.

<sup>40</sup> Sobański, “Cechy charakterystyczne katowickiego prawa diecezjalnego,” 180.

<sup>41</sup> Sobański, “Uwagi o prawodawstwie (Archi)Diecezji Katowickiej 1983–1993,” 161.

<sup>42</sup> Sobański, “Cechy charakterystyczne katowickiego prawa diecezjalnego,” 169.



Summarizing this point, it can be stated that “law is not good when it regulates life in the most detailed and complete way possible, but when it creates a proper trough for this life.”<sup>43</sup>

## The Salvific Function of the Law

Professor Sobański evaluated the canon law of the (Archi)Diocese of Katowice from a metacanonial point of view, that is, he emphasized that the ultimate meaning and purpose of this law lies in service to the salvation of man. As he himself wrote: “Such a viewpoint presupposes an understanding of the salvific function of Church law.”<sup>44</sup> Hence the functions of law in the Church—although in many places analogous or even identical to the functions of secular law<sup>45</sup>—cannot be limited to providing discipline, order, but by regulating social relations, defining rights and duties to the community, thereby serving the supernatural life of that community.

As an example of the realization of this function of law, one can cite, following Sobański, the pastoral activities of the Church, such as a diocesan synod with a pastoral character. According to Sobański, in order to achieve its purpose, such a legal institution as a synod requires appropriate legal structures, namely, canonicity of regulation, since “the best initiatives will prove futile if they are not given the opportunity to flourish.”<sup>46</sup> And the law “must not be an inhibiting factor, but is to serve the pastoral and supernatural purpose of the Church. Legal structures are to express the theological, pastoral content and secure its practical implementation.”<sup>47</sup>

An element of the salvific function of the law is its *communio*. This element must be understood through the concept of *communio*, which is the formal principle of canon law.<sup>48</sup> Laws, therefore, are meant to build up the community, and can never break it up.

When the salvific function of canon law is considered, another feature of particular law is to be that the law, as “forming the historical setting of God’s

<sup>43</sup> Sobański, “Cechy charakterystyczne katowickiego prawa diecezjalnego,” 170–171.

<sup>44</sup> Sobański, “Cechy charakterystyczne katowickiego prawa diecezjalnego,” 167.

<sup>45</sup> Piotr Kroczyński, “Funkcja prawa” jako skutek wprowadzenia do systemu prawnego normy prawnej,” *Annales Canonici*, vol. 4 (2008): 173–188.

<sup>46</sup> Remigiusz Sobański, “Prawo partykularne diecezji katowickiej: 1922–1971,” *Śląskie Studia Historyczno-Teologiczne*, vol. 7 (1974): 33.

<sup>47</sup> Sobański, “Prawo partykularne diecezji katowickiej: 1922–1971,” 33.

<sup>48</sup> Remigiusz Sobański, “W sprawie zasady formalnej prawa kanonicznego,” *Prawo Kanoniczne*, vol., 30 no. 1–2 (1987): 3–30.



law,” is not arbitrary, but “arises in listening to the word of God.”<sup>49</sup> Sobański has repeatedly stressed that the principle of *Quod placuit principi, legis habet vigorem*<sup>50</sup> should not apply in canon law. This listening to God’s word is to be seen and the content of the norm is also to be reflected in form, for example in the form of editorial units in canon law. These are *canons*.<sup>51</sup>

The salvific function of canon law is reflected in its content. According to Sobański, diocesan law is to deal with: (1) the structures of the local Church, (2) the activities of the local Church, and (3) its material base.<sup>52</sup> Regulations in these areas are supposed to cause the Church to be able to carry out its mission effectively.

## Compatibility of Particular Law with Theology and Universal Law

An important postulated feature of law is its compatibility with theology. As Sobański writes: “Law does not precede theology, but puts theological postulates into practice.”<sup>53</sup> Therefore, when enacting church laws, the first thing to think about is the logical rationale of the new norms in addition to the practical ones sent.<sup>54</sup>

Sobański enumerated deficiencies in the particular law he studied and pointed out the incompatibility of many norms of this law with the universal law. He wrote, for example, about the obligation under particular law to obtain permission from the ecclesiastical authority to celebrate Mass outside a holy place, but in the year of issuance of this norm, such an obligation could not be issued, because can. 932 of new Code of Canon Law 1983 was already in force.

Professor Sobański found many similar failures and references to the old legal regime. For example, the diocesan norm that mandated obtaining the permission and blessing of the diocesan bishop to establish religious communities, while can. 215 of the new Code granted the faithful the right to freely establish associations and manage them.

---

<sup>49</sup> Sobański, “Uwagi o prawodawstwie (Archi)Diecezji Katowickiej 1983–1993,” 142.

<sup>50</sup> Dig. 1. 4,1; Cf. Inst. 1.2.6.

<sup>51</sup> Sobański, *Teoria prawa kościelnego*, 190–193.

<sup>52</sup> Sobański, “Cechy charakterystyczne katowickiego prawa diecezjalnego,” 170.

<sup>53</sup> Sobański, “Cechy charakterystyczne katowickiego prawa diecezjalnego,” 175.

<sup>54</sup> Sobański, “Cechy charakterystyczne katowickiego prawa diecezjalnego,” 176.

## Other Features of the Particular Law

From Sobański's texts, the postulates of various features of particular law shines through. Here are some of them, which the legislator should keep before their eyes and take under consideration carrying out their work. A feature of the law is its ability to stimulate creative, full dynamism in the life of the Church as an institution and in the lives of the faithful. This can be done by creating opportunities for the faithful to take part in parish and diocesan events, such as retreats and synods. Law that inhibits initiatives, even if it has a venerable tradition behind it, if it no longer serves the realization of religious values, should be changed.<sup>55</sup>

Another feature of law is that a law causes uniformity of behavior, which in pastoral regulations is made evident in the effort to give the work of the clergy a uniform direction.<sup>56</sup> Such uniformity can be a creative process or a process that inhibits the Church.

One more feature of law can be mentioned, that is, its changeability. Professor Sobański believed that although the survival of the test of time by a law is in fact the highest praise for the law, the characteristic of changeability of law is very desirable.<sup>57</sup> The legislator must show readiness to change his work and openness to new factors flowing from the dynamism of the community. Sobański understood that the law is never a finite creation, but postulated that one should always see "the necessity of looking at the existing law and rethinking what can be used from it, what can be alluded to, what can be developed and finally what can be boldly changed."<sup>58</sup> He wrote that: "One should not be afraid of reforming the law, even if it goes to regulations to which we have become so accustomed that we are inclined to regard them as belonging to the Christian deposit."<sup>59</sup>

An important feature of the law is its realism. Fr. Sobański warned not to issue "unrealistic regulations, not suitable for application at all"<sup>60</sup> because such ordinances can bury the soundest case. "Rather, promulgating regulations that do not take into account social and personal realities results in disregard for the law and can form an inappropriate attitude toward the law in general."<sup>61</sup> Thus, legislators must control their laws from the viewpoint of realism.

---

<sup>55</sup> Sobański, "Cechy charakterystyczne katowickiego prawa diecezjalnego," 176.

<sup>56</sup> Sobański, "Cechy charakterystyczne katowickiego prawa diecezjalnego," 173.

<sup>57</sup> Sobański, "Cechy charakterystyczne katowickiego prawa diecezjalnego," 177.

<sup>58</sup> Sobański, "Prawo partykularne diecezji katowickiej: 1922–1971," 33.

<sup>59</sup> Sobański, "Cechy charakterystyczne katowickiego prawa diecezjalnego," 176.

<sup>60</sup> Sobański, "Cechy charakterystyczne katowickiego prawa diecezjalnego," 177.

<sup>61</sup> Sobański, "Cechy charakterystyczne katowickiego prawa diecezjalnego," 178.

The last feature of canon law that Sobański dwells on is its effectiveness or efficiency. The law is then effective when it fulfills what it is the law to achieve.<sup>62</sup> Therefore, the legislator, when formulating a law, should pay attention to what law can achieve. In general, “law is where human relations take place. Therefore, legislation of the diocese is to include the relations of those called to the sacred ministries and other faithful, so mainly the activity of the clergy and other persons performing some function for the good of the public.”<sup>63</sup>

## Development of Particular Law

Sobański repeatedly stressed that “Church law is genuine law. This means that it must meet all the requirements for law from the point of view of legal theory.”<sup>64</sup> Canon law cannot be backward. Therefore, Sobański also referred to the secular theory of law and took into account the achievements of jurists in his considerations. The canonists should not be lagging behind their colleagues.<sup>65</sup> These borrowings can be clearly seen in the fact that Sobański distinguished behind the secular theory of law between the canon law language and the canonical language, analogously behind the legal language.

## Summary

Sobański believed that the law as a tool should not only be used, but it should be used wisely. The technical side of the law must not be neglected when legislating.<sup>66</sup> This necessitates a constant critical analysis of ecclesiological and pastoral canon law. This makes it possible to trace the picture of the Church

---

<sup>62</sup> Sobański, “Cechy charakterystyczne katowickiego prawa diecezjalnego,” 179; see Piotr Kroczek, “Kiedy prawo kanoniczne jest efektywne?,” *Annales Canonici*, vol. 2 (2006): 163–177.

<sup>63</sup> Sobański, “Cechy charakterystyczne katowickiego prawa diecezjalnego,” 180.

<sup>64</sup> Sobański, “Cechy charakterystyczne katowickiego prawa diecezjalnego,” 168.

<sup>65</sup> See Piotr Skonieczny, “La presunzione dell'imputabilità (can. 1321, § 3 CIC/83): commento ad un disposto da abrogare,” *Angelicum* vol. XC (2013): 391; Geraldina Boni. *La recente attività normativa ecclesiale: finis terrae per lo ins canonicum? Per una valorizzazione del ruolo del Pontificio Consiglio per i testi legislativi e della scienza giuridica nella Chiesa*. Mucchi/Modena 2021: 145, ft 200.

<sup>66</sup> Sobański, “Cechy charakterystyczne katowickiego prawa diecezjalnego,” 169.

and its activities, its self-awareness and the focus of pastoral actions, but also the possible improvement by the legislator of his technical workshop. It is also a question of studying the fit of norms to social and ecclesial realities, as well as the influence of the law on the community, the impact of norms once other repercussions that the law causes.<sup>67</sup> From the analysis of the scientific works of Rev. Professor Remigiusz Sobański, it is possible to extract certain postulates, comments formulated towards the legislator and the law itself. Here are some of them:

1. Use the law as the main source of norms.
2. Explain the theological rationale behind the bill.
3. Be aware of your role in the community including the legislature and do your job.
4. Use proper nomenclature for the acts issued.
5. Promulgate normative acts in the body designated for this purpose.
6. Take care of the publishing and editorial quality of the publishing body.
7. If you want to prescribe something, communicate your will through statutes.
8. He praises canonical norms in an ecclesiastical way.
9. Do not multiply norms beyond the need.
10. Remember the principle and purpose of the law you are making.
11. Let the law build *communio*.
12. Let the salvific function of canon law be reflected in the content of the norms.
13. Take care of the theological correctness of the norms established by you.
14. Let the particular law be consistent with the higher law.
15. Be ready for changes in the law.
16. Take care of the dynamism of community life under the support of the law you make.
17. Realistically assess the reality of norm addressees.
18. Let the law be effective.
19. Use the achievements of the science of law.

Acting according to these guidelines, it is possible to make legislation also a particularistic true art, the art of legislation. It seems that contemporary canonists should learn from Sobański and implement his ideas and concepts, or at least take them into account in their work and critically develop them. This will make canon law an effective tool in the life of the Church.

---

<sup>67</sup> Sobański, "Uwagi o prawodawstwie (Archi)Diecezji Katowickiej 1983–1993," *Prawo Kanoniczne*, vol. 38 no. 1–2: (1995) 159–160.

## Bibliography

- Bonim, Geraldina. *La recente attività normativa ecclesiale: finis terrae per lo ius canonicum? Per una valorizzazione del ruolo del Pontificio Consiglio per i testi legislativi e della scienza giuridica nella Chiesa*. Mucchi/Modena: Mucchi Editore, 2021.
- Kroczek, Piotr. "Kilka uwag do znowelizowanych Wytycznych Konferencji Episkopatu Polski w kontekście zasad techniki legislacyjnej oraz znowelizowanego art. 240 § 1 kodeksu karnego." *Annales Canonici*, vol. 13 (2017): 91–107.
- Kroczek, Piotr. "O niektórych uchybieniach legislacyjnych w nowym statucie Uniwersytetu Papieskiego Jana Pawła II w Krakowie." *Analecta Cracoviensia*, vol. 50 (2018): 269–280.
- Kroczek, Piotr/ "Ocena instrukcji *Dignitas connubii* z perspektywy sztuki legislacji." *Prawo Kanoniczne*, vol. 58, no. 1 (2015), 94–109.
- Kroczek, Piotr. *The Art of Legislation: The Principles of Lawgiving in the Church*. Kraków: Wydawnictwo UNUM, 2017.
- Kroczek, Piotr. "Funkcja prawa" jako skutek wprowadzenia do systemu prawnego normy prawnej." *Annales Canonici*, vol. 4 (2008): 173–188.
- Krukowski, Józef, and Remigiusz Sobański. *Komentarz do Kodeksu Prawa Kanonicznego*. vol. 1. Księga I, *Normy ogólne*. Poznań: Pallotinum, 2003.
- Preafatio. Codex Iuris Canonici auctoritate Ioannis Pauli PP. II promulgatus*, Roma 1983.
- Skonieczny, Piotr. "La presunzione dell'imputabilità (can. 1321, § 3 CIC/83): commento ad un disposto da abrogare." *Angelicum* vol. XC (2013): 378–398.
- Sobański, Remigiusz. "Cechy charakterystyczne katowickiego prawa diecezjalnego." *Śląskie Studia Historyczno-Teologiczne*, vol. 8 (1975): 167–180.
- Sobański, Remigiusz. "Prawo partykularne diecezji katowickiej: 1922–1971." *Śląskie Studia Historyczno-Teologiczne*, vol. 7 (1974): 29–142.
- Sobański, Remigiusz. "Uwagi o prawodawstwie (Archi)Diecezji Katowickiej 1983–1993." *Prawo Kanoniczne*, vol. 38, no. 1–2 (1995): 161.
- Sobański, Remigiusz. "W sprawie zasady formalnej prawa kanonicznego." *Prawo Kanoniczne*, vol. 30, no. 1–2 (1987): 3–30.
- Sobański, Remigiusz. *Kościół jako podmiot prawa*. Warszawa: Wydawnictwo UKSW, 1983.
- Sobański, Remigiusz. *Teoria prawa kościelnego*. Warszawa: Wydawnictwo UKSW, 1992.
- Vatican Council II. "Dogmatic Constitution on the Church *Lumen Gentium*" (November 21, 1964). *Acta Apostolicae Sedis*, vol. 57 (1965): 5–75.

Piotr Kroczek

### Critique de Sobański sur la législation particulière

#### Résumé

La législation est un art. Le Révérent Professeur Remigiusz Sobanski, qui a analysé la législation particulière du diocèse de Katowice dans ses travaux scientifiques, le savait très bien. Ces analyses savantes lui ont permis de formuler de nombreuses remarques et commentaires, ainsi que

des postulats concernant cette loi. Dans le présent article, l'attention est portée sur les aspects formels du droit légiféré abordés par le grand canoniste.

Mots-clés: Sobanski, législation, loi, droit particulier, droit canonique

Piotr KroczeK

## La critica di Sobański alla legislazione particolare

### Sommario

La legislazione è un'arte. Lo sapeva perfettamente il sacerdote professor Remigiusz Sobański, che nei suoi lavori scientifici ha analizzato la legislazione particolare della diocesi di Katowice. Queste analisi scientifiche gli hanno permesso di elaborare numerose osservazioni e commenti, nonché postulati in relazione a questa legge. Il presente articolo si focalizza sugli aspetti formali della legislazione sollevati dal grande canonista.

Parole chiave: Sobański, legislazione, statuto, diritto particolare, diritto canonico