

Piotr KROCZEK

Uniwersytet Papieski Jana Pawła II
Kraków

LEGISLATIVE INITIATIVE IN THE CHURCH AS A RIGHT OF CHRIST'S FAITHFUL

Legislative initiative is generally understood in jurisprudence as an electoral process by which a competent subject or a percentage of voters can propose legislation and make the legislating body (the legislature or the full electorate) examine the proposal, vote on it and, finally, decide to accept or reject it¹.

Legislative initiative is widely recognized as a legal institution and even a right in democratic political and social structures such as states², and overstates bodies, like, e.g., the European Union³. It is one of few methods of direct democracy in an otherwise representative system. It is a significant element in the democratic processes, and so the exercise of legislative initiative depends to a great extent on political culture.

The analysis of various constitutions demonstrates similarities and differences in the right of legislative initiative. Although the general conception of the right in question is quite similar in most European countries, the regulation may differ in some important aspects. For instance, some

¹ Cf. *Entry: Initiative*, [in:] *Black's Law Dictionary*, ed. B. A. Garner, St. Paul 2004, p. 845; S. Wronkowska, *Podstawowe pojęcia prawa i prawoznawstwa*, Poznań 2005, p. 31.

² Cf. *The Constitution of the Republic of Poland* of 2nd April, 1997, published in *Dziennik Ustaw* of 1997, No. 78, item 483, as amended, art. 118, section 1: "The right to introduce legislation shall belong to Deputies, to the Senate, to the President of the Republic and to the Council of Ministers"; section 2: "The right to introduce legislation shall also belong to a group of at least 100,000 citizens having the right to vote in elections to the Sejm. The procedure in such matter shall be specified by statute"

³ Cf. *The Treaty on the Functioning of the European Union (The Lisbon Treaty)*, "Official Journal of the European Union" C 115/47, 30.3.2010, art. 225: "The European Parliament may, acting by a majority of its component Members, request the Commission to submit any appropriate proposal on matters on which it considers that a Union act is required for the purpose of implementing the Treaties. If the Commission does not submit a proposal, it shall inform the European Parliament of the reasons"

times the prerogative includes the right of making a new law, amending, changing or even abolishing existing one. Usually, law gives the legislative initiative to certain number of citizens. Occasionally, the right is applied generally to certain political bodies like the president or a party, and also to non-political bodies, like: associations, organisations of citizens, trade unions, etc. It happens that the right to initiate legislation is granted with no limitations about the subject matter, but in some situations, it is restricted to specific cases. It means that some areas of legislation might be excluded from the exercise of popular initiative⁴. In sum, it can be said that scope of subject of the right, and the realm of the subject matter of the right, as well as, way of exercising the right, can vary.

The questions are as follows: Is legislative initiative present in the Church, and if yes, in what shape? The aim of the paper is to answer them.

UNIQUENESS OF THE CHURCH AS A COMMUNITY

To properly answer these questions one must realize that the Church is a community that differs from other communities. It is not just a society with its own rules built on sociological principles. It is true that the Church in some dimensions looks like a regular society, even a state⁵. It was even called: *societas perfecta* by the highest authority in the Church⁶. But looking at it closer, one can realize that the church community is a multilevel and a very complex reality of believers united in faith with God. It is a group of people united by faith, hope and charity; it is as an entity with visible delineation through which the Founder, Jesus Christ, communicated truth and grace to all (LG 8)⁷. The members do not create just a community, that is a group of people linked by mutual aims, but

⁴ Cf. *European Commission for Democracy Through Law* (Venice Commission), *Report on Legislative Initiative*, Adopted by the Venice Commission at its 77th Plenary Session (Venice, 12–13 December 2008), CDL–AD (2008) 035, Conclusions, n. 139–155.

⁵ Cf. R. Bellarmine understood the Church like a state, see: R. Bellarmine, *De consillis et Ecclesia*, 1, III, c. 2, [in:] R. Bellarmine, *Opera omnia*, Parisiis 1871, II, p. 75.

⁶ For instance by the Pope Benedict XV, see: Benedictus PP. XV, *Constitutio Apostolica Providentissima Mater Ecclesia* Codex Iuris Canonici promulgatur, 27.05.1917, “Acta Apostolicae Sedis” 9:1917, II, p. 5: “Providentissima Mater Ecclesia, ita a Conditore Christo constituta, ut omnibus instructa esset notis quae cuilibet perfectae societati congruunt, inde a suis primordiis, cum, Dominico obsequens mandato, docere ac regere omnes gentes incepit, aggressa est iam tum sacri ordinis virorum christianaeque plebis disciplinam datis legibus moderari ac tueri”

⁷ Concilium Oecumenicum Vaticanum II, *Constitutio dogmatica Lumen gentium* de Ecclesia, 21.11.1964, “Acta Apostolicae Sedis” 57:1965, p. 5–75 (hereafter: LG).

they are *communio*⁸. This term must not be understood only in sociological perspective. The essence of this is theological. It defines bonds between God and His people and among the people. The connections among believers are rooted in the relation to God⁹

The main factor uniting *communio* is faith. "Faith is first of all a personal adherence of man to God" (CCC 150)¹⁰ It is a personal act, but faith is not an isolated act. No one can believe alone, just as no one can live alone. Each believer is thus a link in the great chain of believers. I cannot believe without being carried by the faith of others, and by my faith I help support others in the faith (CCC 162).

As a result, canon law is a very unique law and must be treated differently from law of other societies. There is a methodical principle that requires, in analyzing almost any institution or regulation of the church law, to begin with consideration of the Church, that is "tradenda respiciatur ad Mysterium Ecclesiae" (OT 16)¹¹. It means that the canon law and the phenomenon of Church must always be seen in mutual harmony and should be fathomed out together. Only in the Mystery of the Church its law finds its identity.

All these lead to conclusion that trying to find out the role of legislative initiative one must not copy the way of thinking from the societies of the world. Still, some regulations and legal solution can be taken from "worldly" groups, because the Church is a reality, which coalesces from a divine, and a human element (LG 8). The uplifting of the community of believers to supernatural order does not eliminate the features typical for any congregation of people¹².

THE RIGHT TO LEGISLATIVE INITIATIVE OR THE RIGHT TO STIMULATION OF THE LEGISLATOR?

The formulation of the obligations and the rights of all Christ's faithful (can. 208–223), and the obligations and the rights of the lay members of Christ's faithful (can. 224–231), as well as the formulation of the obligations and the rights of the sacred ministers (can. 273–289), was a very

⁸ See more: J. H. Provost, *Structuring the Church as a Communio*, „Jurist” 36:1976, p. 191–245.

⁹ Cf. R. Sobański, *Kościół – prawo – zbawienie*, Katowice 1979, p. 76–77.

¹⁰ *Catechism of the Catholic Church*, New York 1995 (hereafter: CCC).

¹¹ Sacrosanctum Concilium Oecumenicum Vaticanum II, *Decretum Optatum totius de institutione sacerdotali*, 26.10.1965, "Acta Apostolicae Sedis" 58:1966, p. 713–727.

¹² Cf. R. Sobański, *Ustawa Kościelna – „orinatio rationis” czy „ordinatio fidei?”*, "Collectanea Theologica" 48:1978, fasc. 1, p. 28.

big achievement of the theology and the policy of the church hierarchy formulated at the Second Vatican Council, mainly in the dogmatic constitution “*Lumen gentium*”¹³

The quoted bills of rights contain no express formulation of the right to legislative initiative. What is more, there is no term legislative initiative in the documents issued by the highest legislator in the Church, such as: the Roman Pontiff, the College of Bishops with the Roman Pontiff as the head of the College of Bishops, the synod of Bishops in case when the Roman Pontiff has given it deliberative power in certain cases (can. 343), or the Roman dicasteries which can issue laws or general decrees having the force of law in individual cases and with the specific approval of the Supreme Pontiff¹⁴.

There is an opinion that the right to legislative initiative is accepted and plainly expressed by the Second Vatican Council¹⁵ There are two passages that speak about the right in question. Both are in no. 37 of LG:

Laici, sicut omnes christifideles, ius habent [...], hisque necessitates et optata sua ea libertate et fiducia, quae filios Dei et fratres in Christo decet, patefaciant. Pro scientia, competentia et praestantia quibus pollent, facultatem, immo aliquando et officium habent suam sententiam de iis quae bonum Ecclesiae respiciunt declarandi¹⁶

This right creates duty on the side of hierarchy:

Sacri vero Pastores laicorum dignitatem et responsabilitatem in Ecclesia agnoscant et promoveant; libenter eorum prudenti consilio utantur, cum confidentia eis in servitium Ecclesiae officia committant et eis agendi libertatem et spatium relinquunt, immo animum eis addant, ut etiam sua sponte opera aggrediantur. Paterno cum amore coepta, vota et desideria a laicis proposita attente in Christo considerent¹⁷

¹³ Sacrosanctum Concilium Oecumenicum Vaticanum II, Constitutio dogmatica *Lumen gentium* de Ecclesia, 21.11.1964, “Acta Apostolicae Sedis” 57:1965, p. 5–75.

¹⁴ For details, see: P. Kroczek, *The Art of Legislation. The principle of Lawgiving in the Church*, Kraków 2011, p. 62–64.

¹⁵ Cf. R. Sobański, *Kościół – prawo – zbawienie*, p. 319.

¹⁶ LG 37: “The laity has the right, as do all Christians, to [...] openly reveal to them their needs and desires with that freedom and confidence which is fitting for children of God and brothers in Christ. They are, by reason of the knowledge, competence or outstanding ability which they may enjoy, permitted and sometimes even obliged to express their opinion on those things which concern the good of the Church” Translations of the Second Vatican Council documents are taken from: *Documents of Vatican II*, in a new and definitive translation, with commentaries and notes by Catholic, Protestant, and Orthodox authorities, gen. ed. W. M. Abbott, New York 1966.

¹⁷ LG 37: “Let the spiritual shepherds recognize and promote the dignity as well as the responsibility of the laity in the Church. Let them willingly employ their prudent advice. Let them confidently assign duties to them in the service of the Church, allowing them freedom and room for action. Further, let them encourage lay people so that they may undertake tasks on their own initiative. Attentively in Christ, let them consider with fatherly love the projects, suggestions and desires proposed by the laity”

Undoubtedly, the fundamentals of can. 13 § 3 of *Lex Ecclesiae Fundamentalis* from 1969 served as the model for the cited above passages:

Pro scientia, competentia et praestantia, quibus pollent, ipsis est ius, immo et aliquando officium, ut sententiam suam de his quae ad bonum Ecclesiae pertinent sacris Pastoribus manifestent, immo, salva fidei integritate et attentis communi utilitate personarumque dignitate, christifidelibus notam faciant; id vero praestent adhibitis, ubi casus ferant, institutis ad hoc ab Ecclesia stabilitis, in veracitate semper et prudentia atque servata reverentia sacris Pastoralibus docentibus et regentibus debita.

The same meaning had the analogous canon from the following versions of *Lex Ecclesiae Fundamentalis*¹⁸

The formulation, almost unchanged, was included in CIC 1983¹⁹ in can. 212 § 2 and § 3²⁰: “Christifidelibus integrum est, ut necessitates suas, praesertim spirituales, suaque optata Ecclesiae Pastoribus patefaciant”²¹, and can 212 § 3: “Pro scientia, competentia et praestantia quibus pollent, ipsis ius est, immo et aliquando officium, ut sententiam suam de his quae ad bonum Ecclesiae pertinent sacris Pastoribus manifestent eamque, salva fidei morumque integritate ac reverentia erga Pastores, attentisque communi utilitate et personarum dignitate, ceteris christifidelibus notam faciant”²². There is no specific norm how the right must be exercised. The petition can be made orally or in writing. The provisions of the two canons simply established right to be heard. There is no wider obligation on the other side than to hear, and, surely, there is no obligation to grant the request, unless it involves a true right, that is right recognized or granted²³. The formulation of the right from can. 212 § 2 and § 3 entitles to express the need and to propose the way of fulfilling the need. There is no right to

¹⁸ See: O. G. M. Boelens, *Synopsis „Lex ecclesiae fundamentalis”*, Leuven 2001, p. 28–29.

¹⁹ *Codex Iuris Canonici* auctoritate Ioannis Pauli PP. II promulgatus, 25.01.1983, “Acta Apostolicae Sedis” 75:1983, vol. 2, p. 1–301. English translation: *Code of Canon Law Annotated*: Prepared under the Responsibility of the Instituto Martín de Azpilcueta, ed. E. Caparros, M. Thériault, J. Thom, H. Aubé, 2nd ed., rev. and updated of the 6th Spanish language edition, Montréal 2004 (hereafter: CIC 1983).

²⁰ *Nota bene* can. 212 of CIC 1983 has no correspondence to any canon of *Codex Iuris Canonici*. Pii X Pontificis Maximi iussu digestus, Benedicti Papae XV auctoritate promulgatus in 1917.

²¹ Can. 212 § 2: “Christ’s faithful are at liberty to make known their needs, especially their spiritual needs, and their wishes to the Pastors of the Church”

²² Can. 212 § 3: “They have the right, indeed at times the duty, in keeping with their knowledge, competence and position, to manifest to the sacred Pastors their views on matters which concern the good of the Church. They have the right also to make their views known to others of Christ’s faithful, but in doing so they must always respect the integrity of faith and morals, show due reverence to the Pastors and take into account both the common good and the dignity of individuals”

²³ Cf. J. Hervada, Can. 212, [in:] *Code of Canon Law Annotated...*, p. 164.

legislative initiative expressed in canon law. There is no legal fundament of making the legislator act according to will of the addressees of law, due to the fact that law gives these subjects no power over the legislator²⁴.

It is much adequate to say that there is right to stimulate the legislator. It means to act to encourage him to start the procedure of making law. It can be realized by presenting problems and situations, making petitions, but also by presenting ready projects of regulations and even of law. Of course, the proper formation of a law requires knowledge and skills. All in all, legislation is an art, and it is far more than just a technique of writing laws or the formal framework of legislative drafting²⁵. At the same time the right is a duty, because the responsibility for *communio* lies also on the shoulders of its members. The right in question can ensure that the action of stimulating legislator is legal, appropriate, and required.

It seems that the only situation when it is justified to talk about legislative initiative in *sensu stricto*, is when statutory law, e.g., law given by subjects as: the chapters of Canons, whether cathedral or collegiate, religious institutes, associations of Christ's faithful, universities and other institutes of higher studies regulations, expressly gives right to such an action²⁶. It is because the status is established in accordance with the law in aggregates of persons and binds only those persons who are lawfully members of it. The provisions of statutes are regulated by the provisions of the canons concerning laws (can. 94 § 1 – § 3).

BEARERS AND REALIZATION OF THE RIGHT

Who and when and how is legitimately entitled to exercise the right in question? Again, LG 37 gives a clue: "Hoc fiat, si casus ferat, per instituta ad hoc ab Ecclesia stabilita, et semper in veracitate, fortitudine et prudentia, cum reverentia et caritate erga illos, qui ratione sacri sui muneris personam Christi gerunt"²⁷. The means of carrying out legislative initiative can be, for instance, synods, councils, and associations²⁸. It is worth to

²⁴ Cf. the definition of power formulated by M. Weber, as the possibility of imposing one's will upon the behavior of other persons, see: M. Weber, *Grundriss der Sozialökonomik*, vol. 3, *Wirtschaft und Gesellschaft*, Tübingen 1922, p. 28.

²⁵ Cf. G. Bowman, *Art of Legislative Drafting*, "European Journal of Law Reform" 7:2007, fasc. 1–2, p. 4.

²⁶ For details, see: P. Kroczek, *The Art of Legislation...*, p. 66.

²⁷ LG 37: "When occasions arise, let this be done through the organs erected by the Church for this purpose. Let it always be done in truth, in courage and in prudence, with reverence and charity toward those who by reason of their sacred office represent the person of Christ"

²⁸ Cf. R. Sobański, *Kościół – prawo – zbawienie*, p. 320–324.

look at them a little bit closer. Although, “Unus in synodo dioecesisana legislator est Episcopus dioecesisanus, aliis synodi sodalibus voto tantummodo consultivo gaudentibus²⁹” (can. 466), the participants of synods have vast possibilities to influence the bishop. Next, the councils of, e.g., the finance matter (can. 492–494), the priests (can. 495–502), or the pastoral matter (can. 511–514) are to assist and help with advice to bearers of power, legislative power as well, in accordance with the law (cf. can. 495 § 1). Then, the associations are created on basis of both the natural law and the divine one. The right of association can be found in nature of man and supernatural dignity given by the sacrament of baptism. The possibility to constitute new association, join existing one is given not only to realize men's own aims but to foster the Christian vocation in the world (can. 215).

All enumerated above institutional ways of realization of the right in question are probably closer to everyday life of the faithful than legislator is. As a result, suggestions and advice of their members or participants are very valuable for the legislator. It is worth underlying that in all these initiatives the lay faithful can participate as well as the clerics.

It is good to emphasize that the expression “si casus ferat” (“when occasions arise”), from LG 37 cited above, means that there are other situations and possibilities for realization of the right to stimulate the legislator. Also individuals have the right and are entitled to its realization. The best way to do this, is to play a role of advisor, expert, and specialist who is eager to bring his knowledge and experience to the legislator for the sake of the community of the Church (cf. can. 228 § 1). Hierarchy, whose members usually are the legislators, is to willingly employ prudent advice and assistance.

The other conditions, ways or means of realization of the right are not regulated. It seems to be a good solution. It moves away from the danger of overregulation, that is, of putting a burden of rules, and, as a result, of tightening the right. Of course, as it was noticed, in some measure, from practical and technical points of view, there would be no harm if large numbers of Catholics were to take part in legislative process³⁰

Talking about the moment of realization of right in question, it seems that the best one, taking under consideration the stages of typical legislation process, is the beginning of the process, which is, usually a multi-stage proceeding³¹ The stage can be called a moment of consultations of

²⁹ Can. 466: “The diocesan Bishop is the sole legislator in the diocesan synod. Other members of the synod have only a consultative vote”

³⁰ Cf. P. Kroczeck, *The Art of Legislation...*, p. 83.

³¹ See, e.g., the models of stages of the legislative process: L. Örsy, *The Interpreter and His Art*, “The Jurist” 40:1980, p. 29–30; R. Sobański, Kanon 7, [in:] *Komentarz do Ko-*

legislator with the community. It can be realized in dialogical fashion³² Making law should not be restricted to higher hierarchy or only to clerics. The legislator's policy that rejects the consultation with addressees of law can do a lot of harm to the community and to law itself. It should be a standard pattern that consultations are held before making decisions. The relevant principle was articulated by Roman law and expressed in the medieval canonical rule: "Quod omnes tangit debet ab omnibus approbari" (cf. CIC 1983 can. 119 § 3). There is a reasons for that: "The principle of consulting the presbyters and people is far more than a pragmatic strategy, it is a theological imperative. It is based on the implications of membership in the Church and the active sharing of all members in its mission"³³ In the analyzed right, a consulting is not for validity of action taken by the legislator but it is a general counsel for a prudent action. Consulting also involves reminding those who have something to offer that they have an obligation to speak up (can. 127 § 3), especially if they disagree, because "Qui tacet consentire videtur"³⁴

LIMITATIONS OF THE RIGHT

The right in question, due to the fact that it is exercised in the Church, is limited in specific way. Above all, right must be exercised in boundaries designated by theology and it means two things: absolute necessity of theological correctness of proposed law and intransgressibility of competences of the bearers of sacred power.

The legislator is at the same time the teacher of faith. There is no division between making law and teaching faith because canon law is a regulation of life of faith. The function as lawmaker and teacher cannot be divided. There is no possibility in the Church of there being special agendas for legislation different from goals of the teaching office³⁵ Any legislative initiative or stimulation of legislative action of law must be first ex-

deksu..., vol. 1, p. 55; A. Pieniążek, M. Stefaniuk, *Socjologia prawa. Zarys wykładu*, Kraków 2003, p. 250–251, P. Kroczek, *The Art of Legislation...*, p. 176–186.

³² Cf. R. Sobański, *Idee przewodnie nowego Kodeksu Prawa Kanonicznego*, [in:] *Duszpasterstwo w świetle nowego Kodeksu Prawa Kanonicznego*, ed. J. Syryjczyk, Warszawa 1985, p. 49–54.

³³ J. A. Coriden, *Canon Law as Ministry: Freedom and Good Order for the Church*, New York–Mahwah 2000, p. 172.

³⁴ Bonifatio PP. VIII, *De regule iuris*, 3.03.1298, [in:] *Liber sextus decretalium*, [in:] *Corpus Iuris Canonici*, vol. 2, Lipsiae 1881, col. 1122–1124, n. 29: *Quod omnes tangit debet ab omnibus approbari*. For deep commentary, see: Y. Congar, *Quod omnes tangit ab omnibus tractari et approbari debet*, "Revue historique de droit français et étranger" 36:1958, p. 210–259.

³⁵ Cf. R. Sobański, *Kościół – prawo – zbawienie*, p. 181.

amined in terms of rules and truths of faith. There is no possibility of trying to enact law that would be in any measure theologically incorrect. In this sense, the right of asking for law creates another duty for the legislator. He must consider the matter in terms of its dogmatic correctness.

Another limitation is a unique character of power in the Church. The bearers of the power are only clerics (can. 129 § 1). They are capable of taking the power of governance that is: legislative, executive and judicial power (can. 135 § 1), which belongs to the Church by divine institution³⁶. Exercising the power is independent from will of believers but, as the Second Vatican Council teaches, the legislator who holds sacred power should recognize and promote the dignity as well as the responsibility of the laity in the Church. Further, they should encourage lay people so that they may undertake tasks on their own initiative. Attentively in Christ, they should consider with fatherly love the projects, suggestions and desires proposed by the laity. The laity has the right to openly reveal to them their needs and desires with that freedom and confidence which is fitting for children of God and brothers in Christ (cf. LG 37). It means that the Christ's faithful, the lay members and clerics *a fortiori*, have no influence on the legislator so as to make him start his legislative activity. Due to the fact that power belongs only to him, the final form of law depends on his will. But on the other hand, the legislator has the duty to listen to them and consider their request.

It seems that no other restrictions, for instance concerning form of legislative initiative or time of asking for legislative action, are to be applied in the Church. So, it can be said that the canon law gives a lot of leeway for the possibility of exercising the analyzed right.

EXCURSION: CUSTOM LAW

The problem of legislative initiative in the Church context can be discussed also in connection with customary law. A custom is befitting the character of the Church and not only does it show unity between members but also must be seen as a gift of the Holy Spirit who inspires the faithful to fulfill the mission of the Church (cf. LG 4, LG 12). Generally speaking custom is a long-standing practice within the Church communities. A more detailed definition of a custom describes it as a normative practice of a community that is adopted by the community itself. Custom is normative, that is, it is a practice that the community wants to be bind-

³⁶ Law allows lay members of Christ's faithful to cooperate in the exercise of this power in accordance with the law (can. 129 § 2).

ing; it wants to maintain the practice and observance of it³⁷ Custom, as it is widely known, is a legitimate source of legal norms, as written law is (cf. can. 23). It is a source of norms so it is normative. There are in can. 23–26 rules for establishing a legal custom.

But the key problem of legislative initiative is to make the legislator start legislative procedure that can possibly be finalized with a law on the specific matter. In case of custom law, the members of community are by their own way of living making norms for themselves. The issue here is the problem of participation of the legislator in the process. The tendency in canonical jurisprudence is that the legislator must have a role in formulation of the legal custom. The Church is not a democracy but rather a monarchy, so any norms must come through the legislator. But the role of legislator in formulation of legal custom is formal³⁸.

It can be said that when the legislator does not look favourable to legislative initiative and does not act, custom may supply law for the Church. It means that the faithful can make a norm for themselves. Of course, it is possible only when the legislator does not contradict the custom and revokes it by a contrary written law. But it seems it is enough that he remain silent. The legislator's silence cannot be categorized as *dissimulatio* or *tolerantia canonica*³⁹ They are quite similar instruments but not identical⁴⁰. Dissimulation happens when the superior of the community does not pay attention to the discipline. He pretends that he is not interested in observance of law by members of community. Canonical tolerance is a situation when the competent ecclesiastical authority expressively or silently allows disobedience to the act of law or allows application of a contrary law, for instance, a civil one. The effect of dissimulation and canonical tolerance is the same: act of law is not obeyed and the legislator plays a significant part in this situation. In both cases the norms from law exist. In case under consideration there are no norms but there is the need and demand for them.

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³⁷ Cf. J. M. Huels, *Back to the Future. The Role of Custom in a World of Church*, "CLSA Proceedings" 59:1997, p. 6.

³⁸ The stages of formulation of the stance, see: R. Sobański, *Nauki podstawowe prawa kanonicznego*, vol. 1, *Teoria prawa kanonicznego*, Warszawa 2001, p. 60–62.

³⁹ Cf. H. Socha, *Münsterischer Kommentar zum Codex Iuris Canonici unter besonderer Berücksichtigung der Rechtslage im Deutschland, Österreich und der Schweiz*, ed. K. Lüdike, Essen, since 1985, can. 13.

⁴⁰ Cf. G. Michiels, *Normae generales iuris canonici*, vol. 2, Parisiis–Tornaci–Romae 1949², p. 680–681. For further reference, see, e.g.: G. Olivero, *Dissimulatio e tolerantia nell'ordinamento canonico*, Milano 1953.

As a conclusion, it can be said that the right of legislative initiative can be understood in the Church in two ways. The first is *sensu stricto*, as an order formulated by bearers of the right to make the legislator start legislation process. It has its place in canon law but rather limited to laws of lower range and significance. The next way of understanding the right of legislative initiative can be seen in *sensu largo*, as a right to stimulate the legislator for acting.

Since the Second Vatican Council, the role of the members of community who are not legislators is, in the process of making law, very important. It can be even said that it is irreplaceable function of all members of *communio* to foster the present and take care of the future of community. It means that the right in question, especially in a wider sense must be understood not as a reception of democratic ideas come from institutions of the modern world, but as an outcome of theological understanding of the Church itself or a conclusion of self awareness of the Church.

Although all members are entitled to ask the legislator for action, there are some specific holders of the right in question. The enumeration of them is not to divide the community of the Church, but to underline that they are, according to his or her particular condition, obliged to exercise the mission which God entrusted to the Church to fulfill in the world (can 204 § 1). It is important to remember that: "Christifideles obligatione adstringuntur, sua quoque ipsorum agendi ratione, ad communionem semper servandam cum Ecclesia" (can. 209 § 1)⁴¹.

The contemporary understanding of the Church does not allow one to say that there are some blocs in the Church, e.g, the hierarchy (in role of legislator) and others, and among the others the more "right granted" or less. The Church is a communion, a unity of all who fulfill the requirements of the can. 204 and 205 that is: baptism, the bonds of profession of faith, the sacraments and ecclesiastical governance. Considering that, it is clear that the analyzed right is not a means of protection of one group against the other⁴²

In sum, it can be said that initiative of making new law, amend, change or revoke it must be seen as outcome of the life of community of believers. New situations, in which the believers are immersed, require new solution coherent with the rules and truths of faith. The subject responsible for this is legislator but any methods of helping him, such as right of initiative, must be welcome with approbation.

⁴¹ Can. 209 § 1: „Christ's faithful are bound to preserve their communion with the Church at all times, even in their external actions”

⁴² Cf. R. Sobański, *Kościół – prawo – zbawienie*, p. 323.

The life of community must be always an impulse for legislator to make rules for changed circumstances of life – *ius sequitur vitam*. It is way of acting of the Holy Spirit⁴³ The right to point that out to legislator is an important task of other members of the Church.

LEGISLATIVE INITIATIVE IN THE CHURCH AS A RIGHT OF CHRIST'S FAITHFUL

Summary

The right of legislative initiative is a widely recognized prerogative that entitles the users of law to make a legislating body undertake certain action connected with the content of a new law. The article presents the problem of legislative initiative in the perspective of the Catholic Church. The main conclusion flowing from the deliberations is as follows: the right in question has its place in church regulations and in life of the community of believers, but its range and the way of realization are specific to the Catholic Church.

⁴³ Cf. *ibidem*, p. 325.