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THE ESSENTIALS OF CANON LAW

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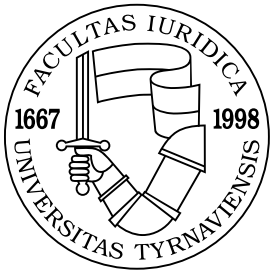

The Essentials of Canon Law

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Content

Foreword

The foundations of this textbook can be found especially in systematic characteristic of the Catholic Church as a legal-perfect society. This textbook also outlines typical attributes and particularities of its legal system. Further, it deals with the most important substantive-law institutes, conceptions and selected categories, following the propaedeutic goals of this subject. Since the canon law is considered as the border discipline between law and theology, this textbook explains some relevant theological terms, as well. The concept and contents of this textbook is based on renowned domestic and foreign monographs and textbooks (their list can be found in the bibliography). With regard to the extensiveness and complexity of this matter, the main goal of this textbook was to arrange it systematically into an organized unit, considering the analysis of certain pre-determined questions. Regarding the rites of the Catholic Church, the textbook principally focuses on the Western canon law (Latin Church), whilst the law of Eastern Catholic Churches *sui iuris* is taken into account through pointing out certain differences, as well as referring to parallel quotes of the relevant sources of the Eastern canon law. Except for analysing basic terms of canon law, special attention is also paid to matrimonial canon law and penal canon law. Especially for these two, it is most appropriate to point out influences of general theological and legal principles on particular legal rules, including their application on real cases. Emphasizing the fact that the most important (codex) sources of canon law are considered to be authentic (official) only in their original Latin version, the individual norms are stated in quotation notes besides their English translation in Latin language, as well. We believe that this textbook will be helpful at spreading knowledge of this legal system, that is, alongside with Roman law ("the classical legal systems"), considered to be one of the most important sources for modern state and international law.

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Authors

1 Introduction to Canon Law

1.1 Characteristic of the Catholic Church and its Legal System

Every legal-perfect society (*societas iuridica perfecta*), although based especially on what its members believe, is also an institution that consists of human beings. The traces of establishment of the Catholic Church date back to Jesus Christ (✞ cca 30 AD) in the first century of the era, and this institution considers itself to be in continuity with his teaching and that of his disciples. Although being a radically different kind of community than the state or other secular societies, the Catholic Church, as every human community, requires rules (*ubi societas*, *ibi ius*). The Catholic Church has accrued a lot of rules through the centuries. The generic English term for the body of rules of the Catholic Church is "canon law" (*ius ecclesiasticum seu canonicum*), and it is considered to be the oldest continuously functioning internal legal system in Western Europe, much later than Roman law but predating evolution of modern European civil law traditions. In relation to this, it is especially important to explain the term "canon" that was used to **describe the rules of the Church** from very early times. This word comes from the Greek word "*kanón*" (*κανών*), which means reed, rod, or ruler. It described the measure or ruler used by a carpenter or designer. It was a standard by which things were measured, a rule that straight lines should refer to. As one of the oldest evidence of using this term we may note the ancient compilation called "The Ecclesiastical Canons" (*Canones Ecclesiastici Sanctorum Apostolorum*, *Canones Apostolici Aegyptiaci*), that was compiled at the end of the third century AD in Egypt or Syria. The Catholic Church decided to name its rules "canons", because it recognized that these rules were different from the laws of the Roman Empire. This was to distinguish them from the term "*nomos*" that was used for the civil law. When the Byzantine Emperor Justinian I (*Flavius Petrus Sabbatius Justinianus Augustus*, 527-565) spoke about the disciplinary norms of the Eastern councils, he also used the word "canon" in opposition to the word "*nomos*", which was the term used for the civil law. Within this context, we can also find the reason why the Church still uses the name "canon law" for its legal system. In general, we may define it as the collection of rules that govern the public order of the Catholic Church and the public life of the faith community. It indicates all of the rules (*canones*, *leges*) that are proposed (*propositae*), promulgated (*constitutae*), or approved (*approbatae seu receptae*) by the ecclesiastical authority.

A lot of people understand by the term "canon law" a historical discipline. But within this context, we may talk only about the history of this legal system or about historical canon law. Almost twenty centuries old, this legal system has indeed a rich

history that can be characterized by the legal particularism for such a long time (almost nineteen centuries). But when talking about the canon law in the sense of our subject, we mean the present valid legal system of the Catholic Church. Nowadays, this legal system obliges about one billion Catholic Christians worldwide. Looking back at the history, we can state that from the Middle Ages, when the canonists – experts in the Church law, and legists – experts in the secular Roman law, were competing, there were tendencies to connect both of the disciplines. Thereby, the study of both laws was established. This has lasted until the latest times and finally found its external expression in the **academic title** "JUDr.", meaning "*iuris utriusque doctor*", "the doctor of both laws". That is also the main reason why every carrier of this title should have knowledge of the secular law (*ius saeculare seu civile*), as well as of the Church or canon law (*ius canonicum seu ecclesiasticum*). The first doctor of both laws was probably the glossator of Gratian's Decree (*Decretum Gratiani*) called Bazianus († 1197). The study of both above mentioned scientific branches has endured since that time until present and is still up-to-date not only on excellent theological faculties, but also on secular law faculties. The main reason for studying these two legal systems is especially propaedeutic, because it helps students to shape up the juridical reasoning and exercise appropriate using of legal terminology, as well as providing the notable view on the important role the law plays in life of such a peculiar society as the Catholic Church undoubtedly is.

Introducing the relationships between the theology and canon law, theology is concerned with God's Revelation (*Revelatio*) and the Church's teachings. Canon law is concerned with the patterns of practice within the community of the faithful. Simultaneously, we may state these two disciplines are closely related, yet distinct. Systematic and moral theologians teach about the Divinity of Christ and they may consult with canonists about the limits of the teaching office, or about the defence of someone accused of teaching falsehood. As the Church differs from all other human societies in its origin, history, inner dynamism, and mission, consequently, the system of the rules within the Church has to work differently from that of any other society. To mention at least some of the functions of the law in above-mentioned society, we may state the attainment of the purpose of common good of the society, which can be found in the last canon of valid Code of Canon Law of 1983 and it is the **ultimate salvation of souls** of its members (*salus animarum suprema lex*).[1] Within this context, we may mention also the principle of epiky (*ἐπιείκεια*), a part of justice, which enables the competent authorities to correct the deficiencies of general rules when being applied to particular situations. The main reason for this is to take account of the inherent inadequacy of all human laws by applying them sensibly and wisely to individual cases. Another goal of canon law is to afford stability to the society by providing good order, reliable procedures, and predictable outcomes. From the private law's point of view we may also mention that the purpose of every legal system is also to protect personal rights and provide avenues of recourse, redress of grievances, and means for the res-

[1] Can. 1752 CIC 1983: „*In causis translationis applicentur praescripta canonis 1747, servata aequitate canonica et prae oculis habita salute animarum, quae in Ecclesia suprema semper lex esse debet*." Translation: „In cases of transfer, the provisions of canon 1747 are to be applied, always observing canonical equity and keeping in mind the salvation of souls, which in the Church must always be the supreme law."

olution of conflicts. Another important task of canon law is to articulate the rights and duties of the faithful, and to provide means for their protection. Finally, the excellent role of canon law lies also in educating the community by reminding everyone of the values and standards of the society. Moreover, the Church's discipline is also meant to assist people to lead virtuous lives, not simply to compel an external compliance with rules. That is also the reason why it is important to understand its rules for everyone, who wants to learn more about the Church of the Christ.

Comparing other legal-perfect societies, especially the state, we may mention some typical **attributes of canon law** that differentiate it principally from all the other legal systems. Above all, it is necessary to state that the legal system of the Catholic Church does not know the institute of immediate compulsion, and, more than any other legal-perfect societies, expects voluntary observance of the rules by its recipients. The hardest sanction of all is the penalty of excommunication, which has to be remitted in case of rectification of the delinquent. As another important doctrine we may note the principle of personality of canon law representing the personal law of the Catholics. That means it does not reach its recipients in the way of particular geographic territory but by means of their membership in the Catholic Church. However, every secular legal system contains the most important rules of morality, there is another significant difference of canon law resulting from the transformation of God's law into its valid norms. Canon law does not accept only the rules of natural God's law (e.g. the protection of life and health, dignity of every human being, freedom of religion etc.), but also the norms of positive God's law (e.g. the apostolic succession, primacy of the Bishop of Rome etc.). Based on the equity (*aequitas*) of Roman law, biblical thinking, and the above mentioned Aristotle's (*Ἀριστοτέλης*, ✞ 322 before Christ) theory of epiky, canon law also operates with the specific principle of canonical equity (*aequitas canonica*), thus providing a wide range of possibilities for granting of dispensations, which represent the liberation from the general rules of law by a competent Church authority in particular cases. Its main goal is to moderate the rigidity often arising from the rigorous application of general laws to particular cases, and its essence is to preserve the law by suspending its operation in such cases. On this background, we may state that equity takes the form of mercy and pastoral charity, and seeks not a rigid application of law, but true welfare of the faithful.

The Catholic Church consists of human beings who are incorporated into it by two factors: baptism and communion. In the sacrament of baptism the men and the women are reborn as children of God, directed to Christ, and enter the Church.[2] To be in communion (*κοινωνία*, *communio*) with the Church is a very ancient way of expressing that one belongs to the Church and is accepted as its member. Full communion on the whole includes three elements: the profession of a common faith, taking part in

[2] Can. 849 CIC 1983: „*Baptismus*, *ianua sacramentorum*, *in re vel saltem in voto ad salutem necessarius*, *quo homines a peccatis liberantur*, *in Dei filios regenerantur atque indelebili charactere Christo configurati Ecclesiae incorporantur*, *valide confertur tantummodo per lavacrum aquae verae cum debita verborum forma*." Translation: „Baptism, the gateway to the sacraments, is necessary for salvation, either by actual reception or at least by desire. By it people are freed from sins, are born again as children of God and, made like to Christ by an indelible character, are incorporated into the Church. It is validly conferred only by a washing in real water with the proper form of words." Cf. can. 675, § 1 CCEO 1990.

sacramental celebrations, and the acceptance of the Church's governance.[3] Those persons who are baptized and in communion with the Catholic Church are the subjects of rights and obligations within this community. In other words, they have juridical personality, official standing in the Church's system of rules.[4] The Universal Catholic Church is governed by the successors of Peter and the Apostles, the Pope and the College of Bishops.[5] This Church is also a greater assembly of all those baptized into Christ. Hereby we have to mention that based on historical and geographical reasons, which go back to antiquity, the Catholic Church is **organized** as the Church of Latin rite or the Latin Church (incorrectly called the Roman Catholic Church), and the Eastern Catholic Churches of Eastern rites. Within this context, we mean the Eastern Churches which are unified with Rome and accept the primacy of the Bishop of Rome, on the contrary to the organizationally separate Eastern Churches, which are not in full communion with the Catholic Church. All of the twenty one above-mentioned Eastern Catholic Churches *sui iuris*,[6] along with the Church of Latin rite constitute one Universal Church. The Protestant ecclesiastical societies and denominations declare themselves as "the Church renovated by the word of God" and the Catholic Church considers itself to be united with them by the bond of faith. The Monophysite, Orthodox, Protestant, Anglican, Old Catholic and other Churches are therefore considered to be "the separate Churches and ecclesiastical societies". The Catholic Church considers itself to be united with them by the communion of prayer, God's word, faith, hope and love, and with some of them also by the communion of sacrament.

1.2 The Classification of Objective Canon Law

When talking about law, we usually mean the law in an objective sense of the word. It represents the collection of binding regulations determined by the competent law-

[3] Can. 205 CIC 1983: „*Plene in communione Ecclesiae catholicae his in terris sunt iii baptizati, qui in eius compage visibili cum Christo iunguntur, vinculis nempe professionis fidei, sacramentorum et ecclesiastici regiminis*." Translation: „Those baptized are in full communion with the Catholic Church here on earth who are joined with Christ in his visible body, through the bonds of profession of faith, the sacraments and ecclesiastical governance." Cf. can. 8 CCEO 1990.

[4] Can. 96 CIC 1983: „*Baptismo homo Ecclesiae Christi incorporatur et in eadem constituitur persona, cum officiis et iuribus quae christianis, attenta quidem eorum condicione, sunt propria, quatenus in ecclesiastica sunt communione et nisi obstet lata legitima sanctio*." Translation: „By baptism one is incorporated into the Church of Christ and constituted a person in it, with the duties and the rights which, in accordance with each one's status, are proper to Christians, in so far as they are in ecclesiastical communion and unless a lawfully issued sanction intervenes."

[5] Can. 204, § 2 CIC 1983: „*Haec Ecclesia, in hoc mundo ut societas constituta et ordinata, subsistit in Ecclesia catholica, a successore Petri et Episcopis in eius communione gubernata*." Translation: „This Church, established and ordered in this world as a society, subsists in the Catholic Church, governed by the successor of Peter and the bishops in communion with him." Cf. can. 7, § 2 CCEO 1990.

[6] Recognizing five ancient rites we classify to them: **Alexandrian rite**: Copts (Egyptians) and Ethiopians (Abyssinians); **Antiocene rite**: Malankerese, Maronites and Syrians; **Armenian rite**: Armenians; **Byzantine rite**: Albanians, Bulgarians, Russians, Byelorussians, Ruthenians, Greeks, Hungarians, Slovaks, Italo-Albanians, Ukrainians, Yugoslavs Serbs and Croatians, Melkites and Romanians; **Chaldean rite**: Chaldeans and Syro-Malbarese.

giver who is administering the certain community. The law in its objective meaning can be therefore understood especially as the legal system of an individual society. The theory of law often uses the term subjective law in order to define the capability of the subjects to behave in the way defined by the legal rules, which represent the components of the legal system. Concerning the Catholic Church, we may refer to an individual capability of the Church itself, its members, and other natural persons or corporate entities founded on the base of canon law.

1.2.1 Criterion of Law Knowledge Source

Under this criterion we distinguish the norms of natural law and positive law. The norms of **natural law** exist in consciousness of every human being by way of demiurgic God's activity. This means that the natural or moral law, expressing the Creator's will, is immutable in its nature, as well as the light emanating from the Divine light, and takes part in eternal law which dwells in the mind of God. Every person is able to rationally recognize these norms in his or her consciousness. As the main attributes of these norms we may note: the God's origin, inner perfection, natural recognition of its contents, indissolubility and general obligation. Every human being, regardless of believer or unbeliever, is naturally capable of recognizing these norms and to maintain the moral duties resulting from them. The most important content of natural law can be found especially in the basic human rules, eventually in interpersonal morality. From the Roman law point of view we may declare it by the words of the lawyer Ulpianus (*Domitius Ulpianus*, ✞ 228 AD): "… *suum cuique tribuere*" (from Latin: "…to give to every one his due").[7] The **positive law** was constituted by God (God's positive law) or a human (human positive law). Human positive law is constituted by the competent Church authority, whilst its norms are defined in the recognized sources of law. The norms of positive law mean the declaration of God's law or the constitutive act of will of a competent law making authority of the Catholic Church. These norms are revealed to humans and they are obligatory for each member of the Catholic Church.

1.2.2 Criterion of the Author of Law

According to this criterion we recognize the norms of God's law (natural or positive) and human (purely Church) law. God is the ultimate lawmaker of the **Divine law** (*ius divinum*) and that is also the reason why its norms are immutable. God himself promulgated the *ius divinum posivitum*, consisting of what God has made us know through Revelation or the Holy Scripture (*Scriptura Sacra*), and what can be found in the Old Testament. Distinct from this, as mentioned before, is the *ius divinum naturale*, or the laws that are obvious (*naturale*) to every reasonable human being. Additionally, Jesus Christ, the founder and the supreme lawgiver of the Church, has also proclaimed the *ius divinum positivum*, contained in the New Testament and within the oral Tradi-

[7] D. 1,1,10 Ulpianus 1 reg.: „*Iuris praecepta sunt haec*: *honeste vivere*, *alterum non laedere*, *suum cuique tribuere*." Translation: „The precepts of the law are the following: to live honourably, to injure no one, to give to every one his due."

tion (*Traditio*). Natural law and Divine law are correlative and exist in harmony. Divine law only completes and specifies the data of natural law, which itself is of Divine origin. The Catholic Church, therefore, cannot ignore the natural law. The Church derives its laws from the *ius divinum*, and, in fact, only presents and interprets them. Based on this, we may state that the canonical Scriptures of the Holy Bible, being just another expression of God's will, are consistent with the moral law, so what is contrary to the one is also adverse to the other. That is also the reason why all of the enactments of the Church are to be utterly condemned, if proven they are on the contrary to moral law. Within this context, we may also note that the precepts, the Apostles delivered to the faithful as received from the mouth of Christ, are of Divine law. Furthermore, all what is proved to derive from the Holy Ghost, for example, when the Apostles spoke or wrote through the Spirit, must be regarded as a part of the Divine law. But, the law set forth by the competent authorities of the Church is not correctly called Divine but should be called human. To summarize, the positive Divine law is defined in the canonical Scriptures of the Old and the New Testaments, as interpreted by the Magisterium of the Catholic Church. That is also the reason why these norms are obligatory only for baptized Christians. Concerning the **positive human law** (*ius positivum humanum*), we have to mention that the Apostles received the power to issue the laws for the Universal Church from Jesus Christ. These laws can be found in the Scripture (primarily the Epistles) as well as the oral Tradition. That is also the reason why the bishops, as the successors of the Apostles, derive their collegial legislative power directly from the Divine law. In connection with this we may note that the Pope, as the Bishop of Rome and the successor of Peter, who, in a compliance with Sacred Scripture and Tradition, receives the primacy of honour and jurisdiction, also disposes of the legislative power over the entire Church. The rules of the positive human law may be altered by the competent Church authorities designated by the norms of canon law and these rules are obligatory only for the baptized Catholics.[8] In general, we may say that the vast majority of canons originate in human law, that means, they are enactments of the Church's own authority and, consequently, alterable.

1.2.3 Criterion of the Form of Law

According to this criterion, we classify the written law and the unwritten law, which is also called the customary law. **Written law** represents the body of norms containing the rules of behaviour, which are defined in the form of normative legal act as a demonstration of will of the competent Church authority to oblige a certain community. **Unwritten law** consists of norms containing the rules of behaviour, which can be found in the form of a long-term stabilized customary behaviour of a certain society, and are considered as obligatory by its members. The main difference between the secular legal custom and the canonical one lies in its necessity to be tacitly or expressly

[8] Can. 11 CIC 1983: „*Legibus mere ecclesiasticis tenentur baptizati in Ecclesia catholica vel in eandem recepti, quique sufficienti rationis usu gaudent et, nisi aliud iure expresse caveatur, septimum aetatis annum expleverunt*." Translation: „Merely ecclesiastical laws bind those who were baptized in the Catholic Church or received into it, and who have a sufficient use of reason and, unless the law expressly provides otherwise, who have completed their seventh year of age." Cf. can. 1490 CCEO 1990.

confirmed by the competent Church authority. Consequently, the only one accepted source of the unwritten law is represented by the legal custom that disposes of some specific attributes. The society that is able to establish the custom (e.g. the diocese or parish) can be mentioned as one of them. The customary behaviour has to be long-lasting. The norms of canon law state thirty years as a minimum time. Stronger customs last minimally fifty years, whilst the strongest ones last over hundred years at least. As the final demand we may note the stability of such behaviour, because the content of the rule cannot be changed during the time of establishing the legal custom.

1.2.4 Criterion of Obligation

According to this criterion, canon law can be also divided into universal, or general, or common norms as opposed to particular, or proper, or special norms, depending on whether they are applied to the whole Catholic Church in all parts of the world or just to some part of it (the particular law and the personal particular law). **Universal law** is primarily contained in the Code of Canon Law of 1983, and the Code of Canons of the Eastern Churches of 1990, which are the prototypical universal law, but not the only one example. The universal law may be constituted by the Roman Pontiff, the College of Bishops with the Roman Pontiff at its head, the bishops of the Eastern Churches with the approval of the Roman Pontiff, or arguably by a dicasteries of the Roman Curia acting in the name of the Roman Pontiff and with his approval. The norms of the universal law affect the Church as a whole, as well as all of its members, regardless of their legal status. Within this context, we may especially talk about the universal law of the Latin Church or the Churches of the Eastern rites, eventually also about the common law of the whole Catholic Church. **Particular Law** contains the laws directed to a specific portion of the people of God. Section 1 of canon 13 of the Code of Canon Law of 1983 states the presumption that particular laws are geographic.[9] Particular law is considered geographic, if it refers to all those persons who live in a particular geographic territory. For example, with regard to a geographic region, the requirements of universal law can be modified by particular law in some cases, especially in that ones concerning the holy days of obligation, fast or abstinence. Mainly, the diocesan bishops are those, who dispose of the legislative power to promulgate the particular law for their dioceses. Although the particular law tends to be geographic, some persons in the certain geographic area, who are liable to particular law, may be exempt from it. Alternatively, particular law may be personal, and therefore the norms of **personal particular law** refer to the members of a specific community. For example, juridical persons are entitled to establish their own statutes (particular law) that must be approved by the competent ecclesiastical authority. As another example we may mention the religious orders, whose members are, in a specific way, exempted from the effect of universal or particular norms. Simultaneously, they are bound by some certain rules specified in their personal law and stated especially in the statutes of religious orders (*ius proprium*).

[9] Can. 13, § 1 CIC 1983: „*Leges particulares non praesumuntur personales*, *sed territoriales nisi aliud constet*." Translation: „Particular laws are not presumed to be personal, but rather territorial, unless the contrary is clear."

1.2.5 Criterion of Realized Interest

Concerning the canon law of the Catholic Church, the above-mentioned criterion is not practical at all, because the norms of this legal system apparently have the nature of a public law. Within this context, we can talk only about the exceptional existence of the non-mandatory rules. Especially the procedural canon law distinguishes between the norms of a public and a private interest. Under the term **public law** we classify the body of legal rules regulating the interests of public entities of the Church, or rather, the interests of the whole community. In general, these norms mainly regulate structure and hierarchy of the public entities of the Catholic Church. When defining the **private law**, we refer to the body of norms, by which the interests of private natural persons or corporate entities are being realized. As mentioned above, there are not many rules that dispose of the nature of private law. Most of them can be thus classified as the norms of public law only. To give an example of the norms of private law, we may refer to the canon 111, § 2, which states the right of every person to be baptized in the chosen rite (in the Latin Church or in one of the rites of the Eastern Catholic Churches *sui iuris*) after he or she had completed the fourteenth year of age.[10]

1.2.6 Criterion of Localization

According to this criterion, we distinguish the Code law and the extra Code Law. Under the term **Code law** we understand the body of norms contained in the valid Codes of the Catholic Church, that is to say the Code of Canon Law of 1983 (*Codex Iuris Canonici*) of Latin Church, respectively the Code of Canons of the Eastern Churches of 1990 (*Codex Canonum Ecclesiarum Orientalium*). These two Codes of law contain the norms of all branches of the universal canon law, which are arranged in the systematic order of one compact legal text. **Extra Code law** comprises the body of norms, which are not involved in any of the valid Codes, and thus are located in special prescripts (uncodified law). This fact is due to many reasons. These are especially the necessity of faster modification of these rules or various pastoral motives. The extra Code law is included particularly in individual apostolic constitutions issued especially by the Pope himself. Unless stated otherwise, these sources of law are obligatory for the whole Catholic Church, that means for the Latin Church and twenty one Eastern Catholic Churches of Eastern rites. Nowadays, the extra Code law comprises especially of these prescripts:

- *Sollicitudo omnium Ecclesiarum* – apostolic letter issued in 1969 by the Pope Paul VI (1963-1978), which regulates the status and tasks of the diplomatic representatives of the Apostolic See (*Sancta Sedes*).
- *Sapientia Christiana* – apostolic constitution issued in 1979 by the Pope John

[10] Can. 111, § 2 CIC 1983: „*Quiibet baptizandus qui partum decimum aetatis annum expleverit, libere potest eligere ut in Ecclesia latina vel in alia Ecclesia rituali sui iuris baptizetur; quo in casu, ipse ad eam Ecclesiam pertinet quam elegerit.*" Translation: „Any candidate for baptism who has completed the fourteenth year of age may freely choose to be baptized either in the Latin Church or in another autonomous ritual Church; in which case the person belongs to the Church which he or she has chosen." Cf. can. 30 CCEO 1990.

Paul II (1978-2005) on the study on the ecclesiastical universities and faculties.

- *Divinus perfectionis Magister* – apostolic constitution issued in 1983 by the Pope John Paul II, regulating the procedure of beatification (*beatificatio*) and canonization (*canonizatio*).
- *Spirituali militum curae* – apostolic constitution issued in 1986 by the Pope John Paul II on the organization of pastoral attendance in military units and pastoral care of soldiers.
- *De processu super matrimonio rato et non consumato* – circular letter of the Congregation for Divine Worship and the Discipline of the Sacraments (*Congregatio de Cultu Divino et Disciplina Sacramentorum*) issued in 1986, regulating the procedure for the dispensation from ratified but unconsummated marriage.
- *Pastor bonus* – apostolic constitution issued in 1988 by the Pope John Paul II, regulating the commission, structure and organization of the Roman Curia (*Curia Romana*).
- *Ex corde Ecclesiae* – apostolic constitution issued in 1990 by the Pope John Paul II on the foundation, functions and activities of Catholic universities.
- *Universi Dominici gregis* – apostolic constitution issued in 1996 by the Pope John Paul II on the vacancy of the Apostolic See and the election of the Roman Pontiff, which deals with the vacancy of the Chair of St. Peter and the Bishop of Rome.
- *Apostolos suos* – apostolic letter issued in 1998 by the Pope John Paul II on the theological and legal nature of the Episcopal Conferences (Conference of Bishops, *Conferentia Episcoporum*).
- *Ad tuendam fidem* – apostolic letter issued in 1998 by the Pope John Paul II that updates some norms of the Code of Canon Law and the Code of Canons of the Eastern Churches.
- *De dissolutione vinculi matrimonialis in favorem fidei* – the instruction of the Congregation for the Doctrine of the Faith (*Congregatio pro Doctrina Fidei*) issued in 2001, regulating the procedure for the dissolution of matrimony in favour of faith (so called "*Privilegium Petrinum*").
- *Summorum Pontificum* – motu proprio issued in 2007 by the Pope Benedict XVI (2005-2013) declaring that, upon the request of the faithful, the celebration of Mass according to the Missal of 1962 (commonly known as "the Tridentine Mass") can be easily permitted.

2 Sources of Law

2.1 Classification

The term "source of law" is used especially by the theory of law and the original sources of cognition of law use it only occasionally.[11] Firstly, it is necessary to distinguish between sources of morality and sources of law. The enforceability of the legal norms by means of sanctions can be mentioned as one of the main differences. For example, the Catechism of the Catholic Church (*Catechismus Catholicae Ecclesiae*) is the source of morality, and both of the valid Codes (the one of the Latin Church and one of the Eastern Catholic Churches *sui iuris*) contain legal rules. In this context we may note, that many rules of canon law have theological character, as well, and it is mainly because of the religious nature of the Catholic Church's legal system. The enforceability of the norms of canon law is emphasized in canon 1399 of the Latin Code of Canon Law, and guarantees the observance of the rules of God's nature and of canon-law nature, as well.[12] This fact actually points out the diffusion of the law and morality in this legal system, and thus underlining its exceptionality. According to the criterion of origin, the theory of law distinguishes between the material and formal sources of law. To be mentioned firstly, **material sources of law** include especially natural, geographical, demographic, social, economic, moral, political, technological, ecological, international, and another factors within the life of society, that have an influence on making the law. In general, anything that might have an influence on the legislator and legislative process may be considered as one of the above-mentioned factors. Actually, the writings of the Fathers of the Church, who are considered to be the most excellent propagators and reliable interpreters of the Apostles' teaching, can be pointed out as a good example of material source of canon law. The Fathers established liturgical and moral rules on the basis of apostolic teachings. Their writings formed an authoritative source of the Western canon law in this regard, but not constitutive or legislative sources. Nonetheless, they have been an important source of inspiration for legislators throughout the history. Nevertheless, in the East, and more particularly in

[11] For example the Code of Canons of the Eastern Churches uses this term in canons 1506 and 1507.

[12] Can. 1399 CIC 1983: "*Praeter casus hac vel aliis legibus statutos, divinae vel canonicae legis externa violatio tunc tantum potest iusta quidem poena puniri, cum specialis violationis gravitas punitionem postulat, et necessitas urget scandala praeveniendi vel reparandi.*" Translation: "Besides the cases prescribed in this or in other laws, the external violation of Divine or canon law can be punished, and with a just penalty, only when the special gravity of the violation requires it and necessity demands that scandals be prevented or repaired."

the Greek Orthodox Church, the writings of the Fathers have been recognized as the source having the force of law since the sixth century onwards.

From the lawyer's point of view, the **formal sources of law** are more important. They represent the forms of objective canon law recognized by the competent Church's authority, in which rules of the legal system of the Catholic Church are incorporated. These rules may be defined also as the acts of legislative authority, in which the subjects of law find their rights and duties, and they represent the base for establishment, variation or termination of the legal relationships, eventually subjective rights and duties. Based on opinion of some canonists, we can distinguish the formal sources of canon law into the sources of cognition of law and the sources of creation of law. **Sources of cognition of law** then include:

1. **Normative legal acts**:
   a) with the highest legal authority (also called preceptive normative legal acts) – laws of the Church (universal or particular) and general decrees;
   b) with lower legal authority (also called executory normative legal acts) – general executory decrees, statutes and rules of orders.
2. **Canonized customs** (universal or particular).
3. **Normative treaties** – within the Catholic Church these are: the concordats, accords, treaties of the *Modus vivendi* type, and protocols.

Distinctively, we may note the **authentic interpretations** of the Pontifical Council for the Interpretation of Legislative Texts (*Pontificium Consilium de Legum Textibus Interpretandis*), which are issued to interpret the legislative texts. These authentic interpretations have the force of law and are promulgated in the official register of the Acts of the Apostolic See (*Acta Apostolicae Sedis*). That is also the reason why they become the source of canon law. On the other hand, they are not the Church laws in the strict sense of the word, because they miss the autonomous existence and are dependent on interpreted law. Neither today, nor in the history had the decisions of highest trials or the decrees of the highest administrative bodies the force of law, regardless of their vast factual influence on the decision-making process of lower authorities. There are other acts that cannot be categorized as the sources of law as well, and these are the **individual administrative acts**. They are issued by executive authority and directed to individuals or some particular groups, rather than to the community itself. Some of them may be obligatory, but they cannot be extended on other persons or other cases, besides those expressly mentioned in the acts. They consist of: the rescripts (administrative acts granting a privilege, dispensation, or other favour in response to a request), privileges (a favour granted to certain persons, either individuals or juridical persons, by a special act of a legislator, or someone with executive authority deputed by a legislator) and dispensations (a release from ecclesiastical law in a particular case granted by those with executive authority or those who have been given the power of dispensing).

As the **sources of creation of law** we can mark the competent legislative authorities carrying out the legislative activity. For the Universal Church the sources of creation of law are the Pope and the College of Bishops with the Pope at its head. For the particular churches they are especially the diocese bishops, who are, by virtue of the

Divine law, appointed to their particular churches, in order to administer them under the authority of the Pope with an ordinary jurisdiction (*potestas ordinaria propria*).[13] Territorial prelates and abbots, apostolic prefects, apostolic vicars, and apostolic administrators enjoy the same faculty. They administer a mission area or diocese in the name of the Pope (*potestas ordinaria vicaria*). The bishops, united in plenary (for several ecclesiastical provinces), provincial, or national council (for their province or nation), legislate for the area over which they have a power of jurisdiction. The Conference of Bishops has legislative power only in such cases, in which the common law prescribes it, or by a special mandate of the Apostolic See, given either motu proprio, or on request of the Conference. In order to have a binding force, these decrees must be approved by two-thirds of the Conference members, and legitimately promulgated after they had been reviewed by the Apostolic See. General and provincial chapters of clerical religious institutes of pontifical right, and of clerical societies of apostolic life of pontifical right, also have the legislative power.[14]

2.2 Individual Sources

2.2.1 Sources in History

To illustrate the present situation in canon law we may introduce the most important historical sources that played the outstanding role in shaping of norms of this legal system. Firstly, we can mention the books of the **Sacred Scripture**, because the authors of both New and Old Testament were cited as the highest authorities in matters of Church discipline. Within this context we may also note the norms of **natural law**. Many of those structures or values, that are considered to be of the very essence of things (e.g. monogamy in marriage, protection of unborn children etc.), were, and often are, called upon as the basis for rules. Especially, in the time of primary Church the **long-standing practice** within the earliest church communities (e.g. Sunday observance, celebration time of the Easter etc.) was also considered to be normative. That is also the reason why the custom is still being used as a source of the norms of

[13] Can. 381, § 1 CIC 1983: „*Episcopo dioecesano in dioecesi ipsi commissa omnis competit potestas ordinaria, propria et immediata, quae ad exercitium eius muneris pastoralis requiritur, exceptis causis quae iure aut Summi Pontificis decreto supremae aut alii auctoritati ecclesiasticae reserventur.*" Translation: "In the diocese entrusted to his care, the diocesan bishop has all the ordinary, proper and immediate power required for the exercise of his pastoral office, except in those matters which the law or a decree of the Supreme Pontiff reserves to the supreme or to some other ecclesiastical authority." Cf. can. 178 CCEO 1990. Can. 391, § 1 CIC 1983: „*Episcopi dioecesani est Ecclesiam particularem sibi commissam cum potestate legislativa, exsecutiva et iudiciali regere, ad normam iuris.*" Translation: "The diocesan bishop governs the particular church entrusted to him with legislative, executive and judicial power, in accordance with the law." Cf. can. 191, § 1 CCEO 1990.

[14] Can. 596, § 2 CIC 1983: „*In institutis autem religiosis clericalibus iuris pontificii pollent insuper potestate ecclesiastica regiminis pro foro tam externo quam interno.*" Translation: "In clerical religious institutes of pontifical right, superiors have in addition the ecclesiastical power of governance, for both the external and the internal forum." Cf. can. 441, § 2 and 511, § 2 CCEO 1990.

canon law. Since about the end of the second century AD the bishops, priests and other leaders of the local churches have been meeting at the periodic gatherings called **particular synods** or **councils**, where they often deliberated and settled the matters of discipline relating such issues as rebaptism or reordination. Many of these matters were definitely resolved at the **ecumenical** (**general**) **councils**, the canons of which became one of the most important sources of the universal canon law. The first one of them, named as "The First Council of Nicaea" (*Concilium Nicaenum Primum*), gathered in 325 AD, and the last one (the twenty first in a row), "The Second Vatican Council" (*Sacrosanctum Concilium Vaticanum Secundum*), was formally opened under the pontificate of John XXIII (1958-1963) on 11th October 1962 and closed under the pontificate of Paul VI (1963-1978) on 8th December 1965. Nowadays we may define this institute as a conference of ecclesiastical dignitaries and theological experts, who convene to discuss and settle matters of Church doctrine and practice. Those, who are entitled to vote, are convoked from all around the world to take part in this gathering and to secure the approbation within the whole Church.

Since about the second century AD the letters and responses of the Bishops of Rome, i.e. the Roman Pontiffs or Popes, have been received with special respect. These sources gradually evolved (by the end of the fourth century AD) into **papal decretals** with the force of general regulations. Also the pastoral judgments or rules of the leading bishops (or archbishops) issued for their dioceses were often imitated and applied elsewhere. As mentioned above, the **writings of the Fathers of the Church** were also taken to be the authoritative source of law in the history of the Church (especially on the Christian East). Within this context we may note, for example, the ancient anonymous writings like "*Didaché*" (*Διδαχή τοῦ κυρίου διά τών δώδεκα άποστόλων τοΐς έθνεσιν*, *Doctrina Duodecim Apostolorum*), or the works of authors like Irenaeus († around 202 AD), Cyprian († 258 AD), Basil († 379 AD), Ambrose († 397 AD), John Chrysostom († 407 AD), Jerome († 420 AD), or Augustine († 430 AD). Since the time of the first Christian Emperor of the Roman Empire, Constantine the Great (*Flavius Valerius Aurelius Constantinus Augustus*, 306-337), also the **enactments of the Roman Emperors** and later kings, and legislatures on matters affecting religion (especially in time of Early Middle Ages), have often been accepted by the Church as authoritative. In the Middle Ages the Investiture Struggle (Investiture Controversy) was ended by the conclusion of the Concordat of Worms (1122 AD). Thereafter, the **concordats**, as normative treaties, became an important source of canon law and influenced the development of the legal system of the Catholic Church. Formal international agreements between the Holy See and national governments have become a modern source for many canonical regulations until nowadays. Finally, we may mention the **rules of religious orders**, whose constitutions of rules evolved within certain religious communities (e.g. Benedictines, Franciscans, or Dominicans), and influenced some other religious groups and, eventually, the general rules of the Universal Church.

2.2.2 Sources of Positive Law

2.2.2.1 Church Law

Neither the Code of Canon Law nor the Code of Canons of the Eastern Churches give the definition of the term "Church law" (*lex ecclesiastica*). According to the theory of law we may define the Church law as a general normative legal act of the highest authority that pertains to the written sources of canon law. If the Church law contains the God's law (natural or positive), such part is considered to be immutable. The Church law having the nature of positive human law may be modified, whilst in case of necessity has to be modified. **Universal laws**, those enacted for the entire Latin Church or for all of the Eastern Catholic Churches by the highest authority (the Pope or the College of Bishops with the Pope), are promulgated by their publication in *Acta Apostolicae Sedis* (from Latin: "Acts of the Apostolic See"), an official monthly register published by the Vatican Press. Normally, they become effective three months from the date of their publication (*vacatio legis*). Universal laws are generally obligatory for everyone, for whom they were enacted. **Particular laws**, that are those enacted for the particular church (diocese, province, or nation) by the legislative authority proper to each, are promulgated in the manner determined by the legislator, and they normally come into force one month from the date of their publication.[15] Particular laws are presumed to be territorial rather than personal, and thus binding for those, who have a residence in a certain territory, or who are actually present in it. On the other hand, they usually do not oblige non-residents, who are only passing through the territory, or residents, while they are absent from the territory. The laws enacted by the chapters of religious communities are presumed to be personal rather than territorial, and oblige the members of the community, for which they were issued. Considering the retroactivity, all of the laws have to look to the future, not to the past, unless provision is made in them for the latter by name.[16] Laws that invalidate actions or incapacitate persons must expressly say so. When there is a doubt of law, the law does not bind, and when there is a doubt of fact, the law obliges, but Ordinaries can dispense from it. Finally, we may mention the principle, according to which the laws enacted

[15] Can. 8, § 1 CIC 1983: „*Leges ecclesiasticae universales promulgantur per editionem in Actorum Apostolicae Sedis commentario officiali, nisi in casibus particularibus alius promulgandi modus fuerit praescriptus, et vim suam exserunt tantum expletis tribus mensibus a die qui Actorum numero appositus est, nisi ex natura rei illico ligent aut in ipsa lege brevior aut longior vacatio specialiter et expresse fuerit statuta*." Translation: "Universal ecclesiastical laws are promulgated by publication in the 'Acta Apostolicae Sedis', unless in particular cases another manner of promulgation has been prescribed. They come into force only on the expiry of three months from the date appearing on the particular issue of the 'Acta', unless because of the nature of the case they bind at once, or unless a shorter or a longer interval has been specifically and expressly prescribed by the law itself." Cf. can. 1489, § 1 CCEO 1990.

[16] Can. 9 CIC 1983: „*Leges respiciunt futura, non praeterita, nisi nominatim in eisde praeteritis caveatur.*" Translation: "Laws concern matters of the future, not those of the past, unless provision is made in them for the latter by name." Cf. can. 1494 CCEO 1990.

later usually replace the earlier ones.[17]

2.2.2.2 General Decree

As stated in the Latin Code of Canon Law, general decrees (*decreta generalia*) are like laws, because they have the nature of laws. That means they represent **common prescripts**, obligatory norms of action, given by legislative authority for a community capable of receiving laws (e.g. a diocesan bishop for the diocese).[18] Those with executive authority (e.g. congregations of the Roman Curia) cannot issue general decrees, unless the legislator (the Pope or the College of Bishops with the Pope) expressly gives them the authority for a particular case. The competence of the Conference of Bishops to issue general decrees is regulated in canon 455 of the Code of Canon Law. Generally, general decrees are issued especially on the ground of necessity or time-limited circumstances, and their primary goal is to specify, supplement, modify or repeal the Church laws.

2.2.2.3 General Executory Decree

This source of law belongs to the normative legal acts with the lower legal authority than law or custom. **General executory decrees** (*decreta generalia exsecutoria*) determine how the laws should be applied, or simply urge observance of laws in general. They can be issued by those with executive authority (e.g. Roman congregations) and this type of general decree includes instructions, interpretations of law, protocols, guidelines, and policies to interpret and apply a proper law. Sometimes they are called directories, norms for implementation, or ordinances (*ordinationes*). According to the secular law terminology we may compare them with the ordinances of the central bodies of public administration. Within this context we may mention, as a particular example, the legal status of **instructions** (*instructiones*) that reiterate or clarify the laws, and specify the ways to implement them. They oblige those, who are responsible for execution of the laws. Instructions are also issued by those with executive authority and cannot alter the laws which they explain.[19] Sometimes, some of the instructions

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[17] Can. 20 CIC 1983: „*Lex posterior abrogat priorem aut eidem derogat, si id expresse edicat aut ili sit directe contraria, aut totam de integro ordinet legis prioris materiam; sed lex universalis minime derogat iuri particulari aut speciali, nisi aliud in iure expresse caveatur.*" Translation: "A later law abrogates or derogates from an earlier law, if it expressly so states, or if it is directly contrary to that law, or if it integrally reorders the whole subject matter of the earlier law. A universal law, however, does not derogate from a particular or from a special law, unless the law expressly provides otherwise." Cf. can. 1502, §§ 1-2 CCEO 1990.

[18] Can. 29 CIC 1983: „*Decreta generalia, quibus a legislatore competenti pro communitate legis recipiendae capaci communia feruntur praescripta, proprie sunt leges et reguntur praescriptis canonum de legibus*." Translation: "General decrees, by which a competent legislator makes common provisions for a community capable of receiving a law, are true laws and are regulated by the provisions of the canons on laws."

[19] Can. 34, § 1 CIC 1983: „*Instructiones, quae nempe legum praescripta declarant atque rationes in iisdem exsequendis servandas evolunt et determinant, ad usum eorum dantur quorum est curare ut leges exsecutioni mandentur, eosque in legum exsecutione obligant; eas legitime edunt, intra fines*

issued by Roman congregations are given enhanced authority by the Pope's specific approval of them (*approbatio in forma specifica*). Generally, we cannot specify them as the source of law in the strict sense of the word. That is also the reason why it is important to examine every kind of the above mentioned regulations in order to realize the generality of its rules.

2.2.2.4 Statutes and Rules of Orders

Statutes (*statuta*) are ordinances for juridical persons (i.e. aggregates of persons or things like universities, associations, hospitals etc.). Statutes clarify the purposes, constitutions, governance, and policies of such institutions. They resemble articles of incorporation and bylaws. They are obligatory only for the members or for those, who govern the juridical person.[20] **Rules of order** (*ordines*) are the norms to be observed in assemblies or in celebrations (e.g. synods, chapter, conventions etc.). They set forth the organizational structure of the gathering, its leadership and procedures. They oblige only those who participate.[21]

2.2.2.5 Legal Custom

Customs (*consuetudines*) are the practices within the Christian community that can eventually obtain the force of law. As mentioned above, they commanded high respect and exercised great influence in the history of the formation of canonical discipline. Nowadays, however, the custom is so circumscribed in canon law, its rule-making effect has been reduced. On the other hand, the custom is tolerated, especially because it proceeds from tacit consent, as well as because of the greater scandal that could occur from its reprobation, when it has been affirmed by tacit consent for a longer period. According to the theory of law, the legal custom is defined as a source of unwritten law accepted on behalf of improvement, eventually correction and supplement of the positive legal system. The truth is, that the custom is often unwritten,

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suae competentiae, *qui potestate exsecutiva gaudent*." Translation: "Instructions, namely, which set out the provisions of a law and develop the manner in which it is to be put into effect, are given for the benefit of those whose duty it is to execute the law, and they bind them in executing the law. Those who have executive power may, within the limits of their competence, lawfully publish such instructions."

20 Can. 94, § 1 CIC 1983: *„Statuta, sensu proprio, sunt ordinationes quae in universitatibus sive personarum sive rerum ad normam iuris conduntur, et quibus definiuntur earundem finis, constitutio, regimen atque agendi rationes*." Translation: "Statutes properly so called are regulations which are established in accordance with the law in aggregates of persons or of things, whereby the purpose, constitution, governance and manner of acting of these bodies are defined."

21 Can. 95, § 1 CIC 1983: *„Ordines sunt regulae seu normae quae servari debent in personarum conventibus, sive ab auctoritate ecclesiastica indictis sive a christifidelibus libere convocatis, necnon aliis celebrationibus, et quibus definiuntur quae ad constitutionem, moderamen et rerum agendarum rationes pertinent*." Translation: "Ordinances are rules or norms to be observed both in assemblies of persons, whether these assemblies are convened by ecclesiastical authority or are freely convoked by the faithful, and in other celebrations: they define those matters which concern their constitution, direction and agenda."

but in case it was eventually written, its character of a custom would not have been changed. Both of the valid Codes of the Catholic Church also emphasize the principle of Roman law stated by the lawyer Paulus (*Julius Paulus Prudentissimus*, 2nd and 3rd century AD) "… *optima enim est legum interpres consuetudo*" (from Latin: "… the custom is the best interpreter of laws").[22] For the custom to become a rule and have the force of law, it must be **approved by the legislator** (e.g. the Pope or a diocesan bishop), at least by tacit toleration. Another condition is the custom has to be reasonable, that means never to be expressly disapproved by the law. The custom has to be observed by a community capable of receiving laws, that means by one that is stable, definable, and not too small (e.g. the custom may be established by the parish). The Code of Canon Law stipulates that a custom which is contrary to promulgated law obtains the force of law only after it has been observed for thirty continuous and complete years. The canon also permits a centenary (one hundred continuous and complete years) or immemorial custom (as long as anyone in the community can remember) to prevail against provision of promulgated law, even when the provision contains a clause that prohibits future customs.[23] If the custom is incomplete and meets with interruption, the allowance of acts that are contrary to it shows a tacit consent of people to induce a new one. Canon law admits the existence of the universal or particular custom, but, practically, there are only particular customs. Generally, the main difference between the promulgated law and custom is that promulgated law flows from a proper ecclesiastical authority, that disposes of legislative power, whilst the custom originates from the community.

2.2.2.6 Concordat

Considering the normative treaties, most of them consist of concordats (*concordia*), that may be defined as an agreement between the ecclesiastical and civil authority to regulate matters that concern them. Every concordat constitutes both civil law and canon law for a specific territory (particular law). A concordatory regime presumes that the state recognizes the Church as a **sovereign power**, and thus as a true society and not merely a private association. Within this context it is necessary to note the Holy See is an international juridical person, whose territory of the Vatican City State

[22] D. 1,3,37 Paulus 1 quaest.: „*Si de interpretatione legis quaeratur, in primis inspiciendum est, quo iure civitas retro in eiusmodi casibus usa fuisset: optima enim est legum interpres consuetudo*." Translation: "If a question should arise about the interpretation of a statute, what ought to be looked into first is the law that the *civitas* had previously applied in the cases of the same kind. For custom is the best interpreter of statutes." Cf. can. 27 CIC 1983 and can. 1508 CCEO 1990: "*Consuetudo est optima legum interpres*." Translation: "Custom is the best interpreter of laws."

[23] Can. 26 CIC 1983: „*Nisi a competendi legislatore specialiter fuerit probata, consuetudo vigenti iuri canonico contraria aut quae est praeter legem canonicam, vim legis obtinet tantum, si legitime per annos triginta continuos et completos servata fuerit; contra legem vero canonicam, quae clausulam contineat futuras consuetudines prohibentem, sola praevalere potest consuetudo centenaria aut immemorabiis*." Translation: "Unless it has been specifically approved by the competent legislator, a custom which is contrary to the canon law currently in force, or is apart from the canon law, acquires the force of law only when it has been lawfully observed for a period of thirty continuous and complete years. Only a centennial or immemorial custom can prevail over a canonical law which carries a clause forbidding future customs." Cf. can. 1507, § 3 CCEO 1990.

enjoys sovereignty under international law. Also the Latin Code of Canon Law recognizes the right of the Holy See to enter into treaties and pacts, which dispose of force of law.[24] On the side of the Church the negotiators are the Holy See, for the Universal Church, and the bishops, for their territory and in matters over which they have free decision-making power. In practice, usually only the Holy See concludes concordats, because these often change the general law. The head of state (usually the president) or the government negotiates for the state. Concordats deal with such things as the rights and freedoms of the Church, the establishment, dissolution, and delineation of dioceses, education, marriage, ecclesiastical property rights (e.g. alienation, taxes etc.), support of houses of worship and clergy, immunities, and the election of bishops. Based on the concordat with the Holy See, a national government may also enjoy the right to be notified of the appointment of the bishop prior to his official announcement (in Slovak republic, as well). Dissolution of the concordat occurs upon mutual agreement, by expiration of the specified period of time, or by serious and unacceptable violation of the agreement by one of the parties. It can be also terminated if being concluded under force or by deceit, or if the conditions had changed to such an extent, that it would never have been concluded under those conditions, or if the state has undergone a fundamental reform. As mentioned above, there are also **other partial agreements** between the Holy See and international bodies known as accords, treaties of the *Modus vivendi* type, or protocols, which usually enjoy also the force of law. Such agreements may secure the rights of the Church in a particular country that refer to worship, education, property, and the regulation of marriage. Although they can be properly described as constituting valid law, such agreements, however, do not depend for their validity on the Code of Canon Law.

2.2.2.7 Civil Law

The Code of Canon Law acknowledges that canon law yields the civil law in certain instances. This is known as the limited "canonization of the civil law". Canon law does not yield the civil law in general, but only in those matters that are defined by canon law itself. Its rules require the effects of civil law to be observed in canon law **with the same effects**, and in this sense, i.e. the effects of the civil law are "canonized". In other words, the effects of the specific civil law become part of the canon law. Civil laws, insofar as they are canonized, form a constituent element of positive canon law. In this way, the prescriptions of civil law were recognized in the Latin Code of Canon Law, for example, such as those concerning contracts (can. 1290 and 1299); prescription (can. 197 and 1268); amicable settlement and arbitration (can. 1714 and 1716); adoption as impediment to marriage (can. 1094); possessory actions (can. 1500); conditions of the validity of wills (can. 1299, § 2); or the administration of Church property (can. 1284, § 1, 1° and 2°). The secular law, thus taken up in Church law and thus approved, is called

[24] Can. 3 CIC 1983: „*Codicis canones initas ab Apostolica Sede cum nationibus aliisve societatibus politicis conventiones non abrogant neque iis derogant*; *eadem idcirco perinde ac in praesens vigere pergent*, *contrariis huius Codicis praescriptis minime obstantibus*." Translation: "The canons of the Code do not abrogate, nor do they derogate from, agreements entered into by the Apostolic See with nations or other civil entities. For this reason, these agreements continue in force as hitherto, notwithstanding any contrary provisions of this Code." Cf. can. 4 CCEO 1990.

"*ius receptum seu approbatum*". On the other hand, if the civil law conflicts with the canon law concerning the matters of Divine or natural law, the civil law is obviously not canonized.[25]

[25] Can. 22 CIC 1983: „*Leges civiles ad quas ius Ecclesiae remittit, in iure canonico iisdem cum effectibus serventur, quatenus iuri divino non sint contrariae et nisi aliud iure canonico caveatur.*" Translation: "When the law of the Church remits some issue to the civil law, the latter is to be observed with the same effects in canon law, insofar as it is not contrary to Divine law, and provided it is not otherwise stipulated in canon law." Cf. can. 1504 CCEO 1990.

3 Power of Governance

3.1 Conception of Power in the Church

As mentioned above, the Catholic Church, which we can simply describe as a spiritual community of faithful people established on earth as a hierarchically organized society, is focused on spreading the kingdom of God with the help of the Holy Spirit. The Church also has the right to look after the spiritual governance of the faithful and of its own hierarchical order without interference from any other authority. The Church must be free to select and prepare its ministers, to name and transfer its bishops, and to communicate freely with the Holy See and with the community of the faithful. In accordance with the will of the Founder and Supreme lawgiver of the Church, it has from the beginning a threefold function: to teach all nations, to sanctify those, who believe in Christ, and to govern God's people. Sacred ministers (i.e. bishops, presbyters, and deacons), have a leading role in these functions, but all of the faithful, since they share in Christ's priestly, prophetic, and kingly functions in virtue of their baptism and confirmation, also have their own role in fulfilling these three functions. This implies that the Church disposes of the power (or the mission) in three different areas – teaching, sanctifying and governing. From the lawyer's point of view it is especially important to mention the power of governance, that is typical of its public law character. Besides, we have to differ it from the **powers of a private law character**. In this context, we may note the dominative power (*potestas dominativa*), whose holder may also be a woman (i.e. in the institutes of consecrated life, societies of the apostolic life, or in other Christian societies). This type of power belongs to persons, who are entrusted with the care for certain subordinated subjects. Simultaneously, it is also important to distinguish the domestic power (*potestas domestica*), that serves only to provide the order in some society of a domestic type, and is applied only to unsubordinated persons (i.e. parents to infants in common household etc.).

Dealing with the **teaching function** (*potestas magisterii seu munus docendi*) of the Church, Jesus Christ entrusted the deposit of faith to the Church, so that, with the help of the Holy Spirit, it might safeguard, examine, and proclaim the revealed truth. The Church has the duty and innate right to preach the Gospel to all nations (Matt 28:18-20). It also has the right to announce moral principles, including those, that pertain to the social order, and to make judgments about human affairs to the extent required by the fundamental rights of human being or the salvation of souls. In this context, we have to mention the infallible teaching authority of the Pope and the College of Bishops with the Pope, when they definitely declare, that a doctrine of faith or morals is to be

believed as divinely revealed. They exercise this authority usually when gathered in ecumenical councils, but also when dispersed throughout the world, while remaining in communion with one another, and with the Pope. No doctrine is understood to be infallibly defined unless it is manifestly established as such.[26] The infallibility of the Pope was declared at the First Vatican Council (*Sacrosanctum Concilium Vaticanum Primum*, 1869-1870), and was completed by declaration of analogical infallibility of the College of Bishops with the Pope at its head at the Second Vatican Council (1962-1965). But, in this context, it is necessary to emphasize that also the positions, which the authentic teaching authority non-definitively declares on faith or morals, are to be given religious respect under the burden of sin. What concerns the **sanctifying function** (*potestas ordinis seu munus sanctificandi*), the Church fulfils it by imparting all the means entrusted to it to holiness, especially in celebrations of the liturgy. Mainly, the bishops are those, who exercise the sanctifying function, because they are dispensers of God's mysteries, moderators and promoters of the liturgical life of the particular church entrusted to them. Presbyters are consecrated to the celebration of Divine worship and sanctification of the people. Deacons take a share in celebration of worship, as well. The faithful people also share in this sanctifying function, especially by actively participating in liturgical celebrations. The sacraments are the primary means of sanctification, and the Eucharist (Body of Christ) is the greatest one of them. Simultaneously, we may note that the norms of canon law, as well, influence two of the above mentioned branches of the Church life, because the Church's highest authority, for example, defines what is required for the sacraments to become valid. The same authority, or another one, also determines what pertains to the lawfulness of their celebration.

3.2 Characteristic of the Power of Governance

As mentioned above, the Church has been also divinely charged to reign over the faithful in the name of Christ the Shepherd, so that they might truly live as his disciples

[26] Can. 749 CIC 1983: „§ 1. *Infallibiitate in magisterio, vi muneris sui gaudet Summus Pontifex quando ut supremus omnium christifidelium Pastor et Doctor, cuius est fratres suos in fide confirmare, doctrinam de fide vel de moribus tenendam definitivo actus proclamat*. § 2. *Infallibiitate in magisterio pollet quoque Collegium Episcoporum quando magisterium exercent Episcopi in Concilio Oecumenico coadunati, qui, ut fidei et morum doctores et iudices, pro universa Ecclesia doctrinam de fide vel de moribus definitive tenendam declarant aut quando per orbem dispersi, communionis nexum inter se et cum Petri successore servantes, una cum eodem Romano Pontifice authentice res fidei vel morum docentes, in unam sententiam tamquam definitive tenendam conveniunt*. § 3. *Infallibiliter definita nulla intellegitur doctrina, nisi id manifesto constiterit*." Translation: "§ 1 In virtue of his office the Supreme Pontiff is infallible in his teaching when, as chief Shepherd and Teacher of all Christ's faithful, with the duty of strengthening his brethren in the faith, he proclaims by definitive act a doctrine to be held concerning faith or morals. § 2 The College of Bishops also possesses infallibility in its teaching when the bishops, gathered together in an ecumenical council and exercising their Magisterium as teachers and judges of faith and morals, definitively declare for the Universal Church a doctrine to be held concerning faith or morals; likewise, when the bishops, dispersed throughout the world but maintaining the bond of union among themselves and with the successor of Peter, together with the same Roman Pontiff authentically teach matters of faith or morals, and are agreed that a particular teaching is definitively to be held. § 3 No doctrine is understood to be infallibly defined unless this is manifestly demonstrated." Cf. can. 597 CCEO 1990.

and pursue their salvation, and so in this way the properly exercising of the teaching and sanctifying functions may be defined. To carry out these functions perfectly, the Church disposes of all the power required for the spiritual governance of the faithful, namely the legislative, executive, and judicial power to be used only for building up the people of God in truth and holiness.[27] The power of governance (*potestas regiminis seu iurisdictionis*), also called **power of jurisdiction**, represents the capability of people in sacred order to rule with legal effect by issuing general or individual obligatory legal acts in all three areas of power stated above. In other words, jurisdiction is the public power of saying or declaring the law, followed by execution. Although the term itself is proper only in case of possibility of using the physical power to constrain, we have already mentioned that the Church also has its own sanctions to enforce its rules, not forgetting the common unenforceability of the rules of the state in the strict sense of the word. On the other hand, the truth is that the Church, as a spiritual society, has no temporal means to practically enforce its penalties. As indicated above, the governance power of canon law comprises of three branches, and in this way rejects the acceptance of the modern democratic doctrine of power separation. This understanding conflicts with all of the **modern secular political theories** developed especially in the time of the Enlightenment (17th and 18th century), which assigns each of the three functions to a separate office or branch of the government. It should be noted, however, with regard to a complexity of modern government, the complete separation seems neither possible nor desirable. Thus, the executive branch of government may regularly develop rules for the administration of certain entitlements. At the same time, the case decisions of the judicial branch may have a binding force of law (e.g. as in the system of common law). Nonetheless, the distinction of functions has long been a feature of Church governance. Historical evidence indicates, that at least as early as the sixth century, bishops were delegating their judicial power to other judges. Likewise, the exercise of executive power by the vicar general on behalf of the bishops claims ancient historical roots. When the Code of Canon Law of 1917 stipulated the power of governance that is proper to a bishop, it delineated legislative, judicial, and coercive power. The recognition of the tripartite distinction in the Code of Canon Law of 1983 acknowledges, that canon law encompasses more than a statutory law derived from the exercise of legislative power.

Considering the **legislative power**, both of the valid Codes were promulgated by the Roman Pontiff, who is the supreme legislator within the Church. But, this power is not limited to the Pope only. As mentioned above, the bishops, usually assembled at the ecumenical council, may exercise the legislative power as a college with the Roman Pontiff at its head.[28] To sum up, both the Pope and the College of Bishops exercise full and supreme power for governing the community of the faithful in the Universal Church. Laws issued by these supreme authorities oblige all the faithful, for whom they are given, as universal customs, introduced by the faithful people themselves.

[27] Can. 135, § 1 CIC 1983: „*Potestas regiminis distinguitur in legislativam, exsecutivam et iudicialem*." Translation: "The power of governance is divided into legislative, executive and judicial power." Cf. can. 985, § 1 CCEO 1990.

[28] Can. 337, § 1 CIC 1983: „*Potestatem in universam Ecclesiam Collegium Episcoporum sollemni modo exercet in Concilio Oecumenico*." Translation: "The College of Bishops exercises its power over the Universal Church in solemn form in an ecumenical council." Cf. can. 50, § 1 CCEO 1990.

The bishop exercises the legislative authority personally, but he can exercise the executive and judicial authority either personally or through vicars.[29] The bishops sometimes exercise the legislative authority collegially at synods, particular councils, and in certain circumstances at the Episcopal Conferences. But, it is necessary to underline that laws cannot be enacted at lower levels, which are contrary to those from the higher levels. The broader meaning of canon law is also clear from the fact that the power of governance is not limited to legislative acts only. According to the Catholic doctrine, all of the above mentioned branches of the jurisdiction power are understood to flow from one sacred power of governance, which was entrusted to the Church by Jesus Christ. The supreme authority exercises also the **executive power** in the administrative governance of the faithful by issuing decrees and instructions, usually through the sacred congregations. A bishop can also exercise the executive authority over his own people, even in case they are outside the territory of his administration, or over those passing through such territory. The **judicial power** exercise the above mentioned authorities by means of tribunals, which adjudicate contentious cases involving the rights of the faithful in the Church, as well as violations of ecclesiastical laws. It is important to mention that the decisions of judges in canon law do not create precedents, as they do in common law tradition. In relation to the highest authority of the Catholic Church, no one may sit in judgment upon the Pope.[30] Within this context, we may note also another important principle, that anyone of the faithful may appeal a case to the Pope at any time. Based on the above mentioned facts we can conclude, that as well as the Pope, also a bishop of a particular church has the authority of all three branches of the power of governance. This power, which he needs to administer his pastoral functions, also originates in the norms of God's law. In addition to diocesan bishop, the priest, who serves as the vicar general, episcopal vicar, or judicial vicar, exercises a limited power of governance according to his office. The priest, who serves as an Ordinary in a religious community, may create laws, set up the acts of executive power, and judge various cases. The lay Christian faithful, by reason of their baptism, are also called to assist the bishop in governing the people, and, for example, they may serve as one of the three judges of a collegiate tribunal.[31]

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[29] Can. 1419, § 1 CIC 1983: „*In unaquaque dioecesi et pro omnibus causis iure expresse non exceptis*, *iudex primae instantiae est Episcopus dioecesanus*, *qui iudicialem potestatem exercere potest per se ipse vel per alios*, *secundum canones qui sequuntur*." Translation: "In each diocese and for all cases which are not expressly excepted in law, the judge of first instance is the diocesan bishop. He can exercise his judicial power either personally or through others, in accordance with the following canons." Cf. can. 1066, § 1 CCEO 1990.

[30] Can. 1404 CIC 1983: „*Prima Sedes a nemine iudicatur*." Translation: "The First See is judged by no one." Cf. can. 1058 CCEO 1990.

[31] Can. 129 CIC 1983: „§ 1. *Potestatis regiminis*, *quae quidem ex divina institutione est in Ecclesia et etiam potestas iurisdictionis vocatur*, *ad normam praescriptorum iuris*, *habilis sunt qui ordine sacro sunt insigniti*. § 2. *In exercitio eiusdem potestatis*, *christifideles laici ad normam iuris cooperari possunt*." Translation: "§ 1 Those who are in sacred orders are, in accordance with the provisions of law, capable of the power of governance, which belongs to the Church by Divine institution. This power is also called the power of jurisdiction. § 2 Lay members of Christ's faithful can cooperate in the exercise of this same power in accordance with the law." Cf. can. 979 CCEO 1990.

3.2.1 Area of Exercise

According to canon law, the area in which the competent Church authorities exercise the power of governance is called "the forum". In general, we distinguish two areas: the external and internal forum. Distinguishing these two forums is a consequence of the specific orientation of canon law on spiritual goods of Christians, and has no parallel in secular law. Most of the canonical matters pertain to the **external forum** (*forum externum*), that is, the area of the Church's public governance, wherein the power of governance is usually exercised. Therefore, the external forum represents the area of exercising the power of governance, by which the competent Church authorities govern the external life of the Catholic Church on behalf of interest of the common good of all of its members. For example, according to canon 1354, § 1, the penalty may be remitted principally by every superior, who disposes of power to dispense from a law which is supported by a penalty.[32] This remittance is realized in form of individual legal act, that is to say, the public act of a competent Church authority. That is also the reason why all of these acts are practically demonstrable, for example, on trial. The execution of power in external forum has, of course, its impacts on the forum of conscience. Taking up again, there is also the **internal forum** (*forum internum*) or the forum of conscience (*forum conscientiae*), also called the forum of God (*forum Dei*), because it is the area of one's personal relationships, graced or sinful, with God. In this case, the act of power of governance has to remain concealed to the community and the precedence is given to the spiritual utility and security of intimacy of individual Christians. As a disadvantage we may note especially the difficult verifiability of exercising such an act. For example, the sacramental confession and absolution pertain to the internal forum, and therefore are followed with the strictest secrecy.[33] Generally, the power of governance is exercised in the internal forum only in rare instances.

Within the internal forum, a distinction is made between the sacramental internal forum and non-sacramental internal forum according to the matters which are decided in the sacrament of penance or outside of the sacrament. In the **internal sacramental forum** (*forum internum sacramentale*) the act of governance remains absolutely concealed under the authority of the seal of confession (*sigillum sacramentale*). The only proper evidence can be the allegation of the penitent himself, but the probative value of such an allegation is considered to be problematic, because it cannot be supported by the corresponding allegation of the confessor himself.[34] In the **internal non-sac-**

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[32] Can. 1354, § 1 CIC 1983: „*Praeter eos, qui in cann. 1355-1356 recensentur, omnes, qui a lege, quae poena munita est, dispensare possunt vel a praecepto poenam comminanti eximere, possunt etiam eam poenam remittere.*" Translation: "Besides those who are enumerated in canon 1355-56, all who can dispense from a law which is supported by a penalty, can also remit the penalty itself." Cf. can. 1419, § 1 CCEO 1990.

[33] Can. 983, § 1 CIC 1983: „*Sacramentale sigillum inviolabile est; quare nefas est confessario verbis vel alio quovis et quavis modo de causa aliquatenus prodere paenitentem.*" Translation: "The sacramental seal is inviolable. Accordingly, it is absolutely wrong for a confessor in any way to betray the penitent, for any reason whatsoever, whether by word or in any other fashion." Cf. can. 733, § 1 CCEO 1990.

[34] Can. 1550 CIC 1983: „§ 1. *Ne admittantur ad testimonium ferendum minores infra decimum quartum aetatis annum et mente debiles; audiri tamen poterunt ex decreto iudicis, quo id expedire declaretur.* § 2. *Incapaces habentur*: 1° *qui partes sunt in causa, aut partium nomine in iudicio consistunt, iudex eiusve assistentes, advocatus aliique qui partibus in eadem causa assistunt vel astiterunt*; 2° *sacerdotes,*

ramental forum (*forum internum extrasacramentale*) the act of governance is exercised in the secrecy but out of the sacrament of penance. This act remains in secrecy due to the natural discretion (*sigillum naturale*). On the other hand, its exercise can be demonstrated, e.g. by the record deposited in the secret archive of the diocesan curia. For example, a dispensation from the matrimonial impediment is usually granted by the way of individual administrative act of a competent Ordinary. According to canon 1079, § 3 of Latin Code of Canon Law, in danger of death the confessor has the power to dispense from occult impediments for the internal forum.[35] According to canon 130 of the same Code, the power of governance is normally exercised for the external forum. On the other hand, however, it is sometimes exercised for the internal forum in such a way, that the effects which its exercise is designed to have in the external forum are not acknowledged in that forum, except in so far as the law prescribes this for determinate cases.[36] For example, the above mentioned dispensation from occult impediment granted for the internal forum has *ex lege* its effects also for the external forum (nupturients, i.e. the parties contracting marriage, may contract a marriage). If this impediment will become public in the future, according to canon 1082, it is not necessary to request another dispensation for the external forum.

3.2.2 Classification

With regard to origin, eventually the derivation of jurisdiction power and the way of its delegation, the Latin Code of Canon Law distinguishes between the ordinary power and delegated power.

1. **Ordinary power** (*potestas ordinaria*) is the power that is attached to an office by the law itself (*ipso iure*), i.e. a person disposes of it in virtue of the office, and

quod attinet ad ea omnia quae ipsis ex confessione sacramentali innotuerunt, etsi poenitens eorum manifestationem petierit; immo audita a quovis et quoquo modo occasione confessionis, ne ut indicium quidem veritatis recipi possunt." Translation: "§ 1 Minors under the age of fourteen years and those who are of feeble mind are not admitted to give evidence. They can, however, be heard if the judge declares by a decree that it would be appropriate to do so. § 2 The following are deemed incapable of being witnesses: 1° the parties in the case or those who appear at the trial in the name of the parties; the judge and his assistant; the advocate and those others who in the same case assist or have assisted the parties; 2° priests, in respect of everything which has become known to them in sacramental confession, even if the penitent has asked that these things be made known. Moreover, anything that may in any way have been heard by anyone on the occasion of confession, cannot be accepted even as an indication of the truth." Cf. can. 1231 CCEO 1990.

35 Can. 1079, § 3 CIC 1983: „*In periculo mortis confessarius gaudet potestate dispensandi ab impedimentis occultis pro foro interno sive intra sive extra actum sacramentalis confessionis*." Translation: "In danger of death, the confessor has the power to dispense from occult impediments for the internal forum, whether within the act of sacramental confession or outside it." Cf. can. 796, § 2 CCEO 1990.

36 Can. 130 CIC 1983: „*Potestas regiminis de se exercetur pro foro externo, quandoque tamen pro solo foro interno, ita quidem ut effectus quos eius exercitium natum est habere pro foro externo, in hoc foro non recognoscantur, nisi quatenus id determinatis pro casibus iure statuatur.*" Translation: "Of itself the power of governance is exercised for the external forum; sometimes however it is exercised for the internal forum only, but in such a way that the effects which its exercise is designed to have in the external forum are not acknowledged in that forum, except in so far as the law prescribes this for determinate cases." Cf. can. 980, § 2 CCEO 1990.

ceases with the loss of the office.[37] Moreover, within this context, we also distinguish between the proper ordinary power and vicarious ordinary power.

a) **Proper ordinary power** (*potestas propria*) means the power, which the holder of the office (and, at the same time, of the jurisdiction power) exercises in one's own name (e.g. the Pope, metropolitan, the diocesan bishop, or the abbot of the cloister etc.). This power is usually attached to the offices, which are in a certain way independent, and are not derived from any other, more important or more stable office.

b) **Vicarious ordinary power** (*potestas vicaria*) represents the power that the holder of the office exercises in the name of another person, that is to say, in the name of the holder of this office, from which the office of the representative is derived (e.g. it is not possible to appeal against the decision of vicar general or judicial vicar to the diocesan bishop).

Within this context, we may note that the holders of ordinary power (proper or vicarious) are especially the **Ordinaries**. From the theory of law's point of view, the ordinaries can be distinguished into those with full power, i.e. legislative, executive and judicial power (e.g. the Pope or diocesan bishop) and those with limited (in other words, executive power only) power (e.g. vicar general, episcopal vicar etc.). Canonically, the title "Ordinary" is rather important, because it designates the highest levels of office-holders in the Church. According to canon 134, § 1 of the Code of Canon Law, we understand under this term:

- the Pope;
- diocesan bishops, and those equivalent to them, i.e. those entrusted with a particular church, such as a diocese;
- vicars general and episcopal vicars;
- major superiors of clerical religious communities of pontifical right.[38]

These ordinaries, except of the Pope and the religious superiors, are also called "local Ordinaries", meaning that their authority is related to a diocese or other particular church. The canons often explicitly reserve certain acts of authority to diocesan bishops, but sometimes the canons simply say "the Ordinary" or "the local Ordinary", meaning that vicars general or episcopal vicars are also included. It is an important

[37] Can. 143, § 1 CIC 1983: „*Potestas ordinaria extinguitur amisso officio cui adnectitur.*" Translation: "Ordinary power ceases on the loss of the office to which it is attached." Cf. can. 991, § 1 CCEO 1990.

[38] Can. 620 CIC 1983: „*Superiores maiores sunt, qui totum regunt institutum, vel eius provinciam, vel partem eidem aequiparatam, vel domum sui iuris, itemque eorum vicarii. His accedunt Abbas Primas et Superior congregationis monasticae, qui tamen non habent omnem potestatem, quam ius universale Superioribus maioribus tribuit.*" Translation: "Major superiors are those who govern an entire institute, or a province or a part equivalent to a province, or an autonomous house; the vicars of the above are also major superiors. To these are added the abbot primate and the superior of a monastic congregation, though these do not have all the authority which the universal law gives to major superiors." Cf. can. 418, § 1 and 441, § 3 CCEO 1990.

distinction to note in each case.[39]

2. **Delegated power** (*potestas delegate*, *concessa*, *commissa*, *demandata*) that is granted to a person, but not by means of office.[40] Therefore, this power is not attached to any office and it has to be granted to a certain person. It does not matter the fact this power is usually delegated to the persons, who dispose of the power of governance attached to a certain Church office (e.g. the office of parish priest). Designated person, contrary to the person with vicarious ordinary power, does not act in the name of delegating person but in his own name. That is also the reason why it is possible to appeal against the decision of delegated to the delegating person. For example, according to canon 679 of the Latin Code of Canon Law, for a very grave reason a diocesan bishop can forbid a member of a religious institute to remain in his diocese, provided that the person's major superior has been informed and has failed to act.[41] According to the canon 134, § 3, this precaution is not entitled to be exercised by the vicar general, unless on the base of a special delegation (*mandatum*). If acting this way, it would have been possible to take an appeal to the diocesan bishop.

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[39] Can. 134 CIC 1983: „§ 1. *Nomine Ordinarii in iure intelleguntur, praeter Romanum Pontificem, Episcopi dioecesani aliique qui, etsi ad interim tantum, praepositi sunt alicui Ecclesiae particulari vel communitati eidem aequiparatae ad normam can. 368, necnon qui in iisdem generali gaudent potestate exsecutiva ordinaria, nempe Vicarii generales et episcopales; itemque, pro suis sodalibus, Superiores maiores clericalium institutorum religiosorum iuris pontificii et clericalium societatum vitae apostolicae iuris pontificii, qui ordinaria saltem potestate exsecutiva pollent.* § 2. *Nomine Ordinarii loci intelleguntur omnes qui in § 1 recensentur, exceptis Superioribus institutorum religiosorum et societatum vitae apostolicae.* § 3. *Quae in canonibus nominatim Episcopo dioecesano, in ambitu potestatis exsecutivae tribuuntur, intelleguntur competere dumtaxat Episcopo dioecesano aliisque ipsi in can. 381, § 2 aequiparatis, exclusis Vicario generali et episcopali, nisi de speciali mandato.*" Translation: "§ 1 In law the term Ordinary means, apart from the Roman Pontiff, diocesan bishops and all who, even for a time only, are set over a particular church or a community equivalent to it in accordance with canon 368, and those who in these have general ordinary executive power, that is, vicars general and episcopal vicars; likewise, for their own members, it means the major superiors of clerical religious institutes of pontifical right and of clerical societies of apostolic life of pontifical right, who have at least ordinary executive power. § 2 The term local Ordinary means all those enumerated in § 1, except superiors of religious institutes and of societies of apostolic life. § 3 Whatever in the canons, in the context of executive power, is attributed to the diocesan bishop, is understood to belong only to the diocesan bishop and to those others in canon 381, § 2 who are equivalent to him, to the exclusion of the vicar general and the episcopal vicar except by special mandate." Cf. can. 984 and 987 CCEO 1990.

[40] Can. 131, § 1 CIC 1983: „*Potestas regiminis ordinaria ea est, quae ipso iure alicui officio adnectitur; delegata, quae ipsi personae non mediante officio conceditur.*" Translation: "Ordinary power of governance is that which by virtue of the law itself is attached to a given office; delegated power is that which is granted to a person other than through an office." Cf. can. 981, § 1 CCEO 1990.

[41] Can. 679 CIC 1983: „*Episcopus dioecesanus, urgente gravissima causa, sodali instituti religiosi prohibere potest quominus in dioecesi commoretur, si eius Superior maior monitus prospicere neglexerit, re tamen ad Sanctam Sedem statim delata.*" Translation: "For a very grave reason a diocesan bishop can forbid a member of a religious institute to remain in his diocese, provided the person's major superior has been informed and has failed to act; the matter must immediately be reported to the Holy See."

3.2.3 Rule of Ecclesia supplet

The act of executive power, which was exercised by the incompetent person, is considered to be invalid by canon law. In this case, the Church, on behalf of prevention of spiritual harms, completes the absence of the power of governance or the dubiousness of disposing of such power by the legal power. The Church **completes only the executive power** to those, who lack it in the following two special situations:

- common error, when the community mistakenly assumes, that the person has the authority, for example, the priest appears on the alter to witness the marriage or sits in the confessional booth to listen to the confessions;
- positive and probable doubt, when the person is not sure, whether or not he has the authority to perform the act in question, but has positive and likely reasons to think that he had.[42]

In general, the missing or uncertain delegation is supplied by the principle of *Ecclesia supplet* in the following cases:

- when the presbyter is conferring the sacrament of confirmation;
- when conferring the sacrament of penance;
- when the presbyters or deacons preside at the celebration of the sacrament of marriage.

In accordance with this principle, canon law considers such acts of executive power as valid from the beginning, and it is not the case when originally invalid act is convalidated. The supplementation or delegation of the power may concern all of the matters of the internal or external forum, but **not the branches of legislative and judicial power**. As a matter of interest we may note, that the first Latin Code of Canon Law of 1917 enabled to apply this principle also on the acts of the above mentioned two branches of the power of governance.[43] On the whole, the principle of *Ecclesia supplet* is a clever canonical contrivance to avoid the nullity of administrative or ministerial actions caused by the negligence or mistake of those who act without proper authorization.

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[42] Can. 144 CIC 1983: „§ 1. *In errore communi de facto aut de iure, itemque in dubio positivo et probabili sive iuris sive facti, supplet Ecclesia, pro foro tam externo quam interno, potestatem regiminis exsecutivam.* § 2. *Eadem norma applicatur facultatibus de quibus in cann. 882, 883, 966, et 1111, § 1.*" Translation: "§ 1 In common error, whether of fact or of law, and in positive and probable doubt, whether of law or of fact, the Church supplies executive power of governance for both the external and the internal forum. § 2 The same norm applies to the faculties mentioned in canon. 883, 966, and 1111, § 1." Cf. can. 994 and 995 CCEO 1990.

[43] Can. 209 CIC 1917: „*In errore communi aut in dubio positivo et probabili sive iuris sive facti, iurisdictionem supplet Ecclesia pro foro tum externo tum interno.*" Translation: "In common error or in positive or probable doubt about either law or fact, the Church supplies jurisdiction for both the external and internal forum."

4 Church Offices

4.1 Conception

The governance in the Church is exercised, to a large extent, by officeholders, i.e. by those in official positions. An exegesis to this important topic should be started with canon 145, § 1 of the Latin Code of Canon Law, that gives a legal definition of the term "Church office". According to this canon, the term should be specified as any function (*munus*) which is established by Divine or ecclesiastical law in a stable manner in order to be exercised for a spiritual purpose. The next paragraph adds that the obligations and rights attached to individual offices are determined by the canons, or by the authority which established them.[44] Based on the above mentioned definition, we may deduce the following three conceptual attributes of a Church office:

1. **Permanence** (*stabilitas*), i.e. an objective existence of the office that is independent of its holder. In this context, we may note the permanence is expressed in the fact that in case of vacation of the Church office the objective element (the office itself) remains, whilst the subjective element (the holder of the office) ceases to exist.
2. **Constitution** (*constitution*) of the office by norms of Divine or Church (human) law, that is to say, it is established on the basis of God's law (e.g. the office of the Pope or diocesan bishop), or on the basis of legal act of a competent Church authority (e.g. the office of vicar, pastor, dean, chaplain, religious superior etc.).
3. **Purpose** (*finis*) of the office, namely the spiritual purpose (*finis spiritualis*). That means every kind of a Church office has to be oriented especially on spiritual good of the community of the faithful.

The existence of any office within the Church has to be reasoned and explained first, with reference to its connection with the mission of the Church. Based on this, we may result that the mission of the Church was continually shaped into individual

[44] Can. 145 CIC 1983: „§ 1. *Officium ecclesiasticum est quodlibet munus ordinatione sive divina sive ecclesiastica stabiliter constitutum in finem spiritualem exercendum.* § 2. *Obligationes et iura singulis officiis ecclesiasticis propria definiuntur sive ipso iure quo officium constituitur, sive decreto auctoritatis competentis quo constituitur simul et confertur.*" Translation: "An ecclesiastical office is any post which by Divine or ecclesiastical disposition is established in a stable manner to further a spiritual purpose. § 2 The duties and rights proper to each ecclesiastical office are defined either by the law whereby the office is established, or by a decree of the competent authority whereby it is at one and at the same time established and conferred." Cf. can. 936, §§ 1-2 CCEO 1990.

offices. Formerly, ecclesiastical offices required a participation in the powers of orders or jurisdiction, and could be held only by the clerics. That is no longer the case, and lay persons are now eligible for many offices.[45] In order to hold the office, a person must be involved in ecclesial communion and endowed with the qualities canonically required for the specific position. In this context, it is necessary to underline that the office which carries with it the full care of souls (e.g. the office of pastor), requires the order of priesthood and it cannot be validly conferred on one who has not ordained to that order.[46]

4.2 Conferring of the Ecclesiastical Office

4.2.1 Acquiring of the Office

The process of conferring and acquiring of the ecclesiastical office is called "the canonical provision" (*provisio canonica*) of the office. According to canon 146 of the Latin Code of Canon Law, the ecclesiastical office cannot be validly obtained without it.[47] The process of canonical provision is principally distinguished into three phases:

1. **Designation of the person** – that means the designation of a certain candidate based on his free decision, or presentation of proposal, election, or postulation eventually.
2. **Rendering of the office** – it is exercised by the competent Church authority by means of free conferral, canonical installation based on the presented proposal, confirmation of legitimate election, or admission of postulation. By means of rendering of the office, the person obtains the right to take up the office (that is to say, a right to a thing – *ius ad rem*). In this context, the person has only the right that resides in legal claim to take up the office.
3. **Taking up the office** – on the basis of taking up the office, the person obtains the right to hold the office, and therefore to arbitrate in the office with legal

[45] Can. 228 CIC 1983: „§ 1. *Laici qui idonei reperiantur, sunt habiles ut a sacris Pastoribus ad illa officia ecclesiastica et munera assumantur, quibus ipsi secundum iuris praescripta fungi valent*. § 2. *Laici debita scientia, prudentia et honestate praestantes, habiles sunt tamquam periti aut consiiarii, etiam in consiiis ad normam iuris, ad Ecclesiae Pastoribus adiutorium praebendum*." Translation: "§ 1 Lay people who are found to be suitable are capable of being admitted by the sacred pastors to those ecclesiastical offices and functions which, in accordance with the provisions of law, they can discharge. § 2 Lay people who are outstanding in the requisite knowledge, prudence and integrity, are capable of being experts or advisors, even in councils in accordance with the law, in order to provide assistance to the pastors of the Church." Cf. can. 408, §§ 1-2 CCEO 1990.

[46] Can. 150 CIC 1983: „*Officium secumferens plenam animarum curam, ad quam adimplendam ordinis sacerdotalis exercitium requiritur, ei qui sacerdotio nondum auctus est valide conferri nequit*." Translation: "An office which carries with it the full care of souls, for which the exercise of the order of priesthood is required, cannot validly be conferred upon a person who is not yet a priest."

[47] Can. 146 CIC 1983: „*Officium ecclesiasticum sine provisione canonica valide obtineri nequit*." Translation: "An ecclesiastical office cannot be validly obtained without canonical provision." Cf. can. 938 CCEO 1990.

effects (that is to say, a right in a property – *ius in re*). From the moment of taking up the office, the person is authorized to act from the position of the office holder.

In accordance with the rules of canon law, only a competent Church authority, that is usually the authority able to establish or cancel the office, can be the grantor of the Church office. It is absolutely forbidden to allow the secular power to grant the Church office. Only a physical person, who is in full communion with the Catholic Church, can become the **recipient** of the Church office. This means, that the person is not an apostate, heretic, or schismatic. Whilst the apostate is a person that rejected the Catholic faith as a whole, heretic is a person that denies certain truth of faith (dogma). Finally, schismatic is a person that refuses obedience to the Pope, or communion with the persons who are in full communion with him. To fulfil the second condition, a person must be suitable for the office, i.e. he has the qualities required for the office either by law (universal or particular), or by founding norms.[48] In this context, we may mention canon 521, § 3 of the Latin Code of Canon Law, that states the possibility of the grantor of the office to take the advantage of specific examination determined by the grantor himself.[49] Sometimes, the process of canonical provision to the conferring of the office itself (*collatio officii*) precludes the qualified designation of the candidate (*designatio personae*). For example, in case of presentation in accordance with canon 158 and others that follow, if it is constituted, the official taking up of the office (*possessio canonica*) follows.[50] As a concrete example we may note especially the office of diocesan bishop[51], or, analogically, the pastor of parish[52]. If the recipient does not have

[48] Can. 149, § 1 CIC 1983: „*Ut ad officum ecclesiasticum quis promoveatur, debet esse in Ecclesiae communione necnon idoneus, scilicet iis qualitatibus praeditus, quae iure universali vel particulari aut lege fundationis ad idem officium requiruntur.*" Translation: "In order to be promoted to an ecclesiastical office, one must be in communion with the Church, and be suitable, that is, possessed of those qualities which are required for that office by universal or particular law or by the law of the foundation." Cf. can. 940, § 1 CCEO 1990.

[49] Can. 521, § 3 CIC 1983: „*Ad officium parochi alicui conferendum, oportet de eius idoneitate, modo ab Episcopo dioecesano determinato, etiam per examen, certo constet.*" Translation: "In order that one be appointed to the office of parish priest, his suitability must be clearly established, in a manner determined by the diocesan bishop, even by examination."

[50] Can. 158, § 1 CIC 1983: „*Praesentatio ad officium ecclesiasticum ab eo, cui ius praesentandi competit, fieri debet auctoritati cuius est ad officium de quo agitur institutionem dare, et quidem, nisi aliud legitime cautum sit, intra tres menses ab habita vacationis officii notitia.*" Translation: "Presentation to an ecclesiastical office by a person having the right of presentation must be made to the authority who is competent to make an appointment to the office in question; unless it is otherwise lawfully provided, presentation is to be made within three months of receiving notification of the vacancy of the office."

[51] Can. 382, § 1 CIC 1983: „*Episcopus promotus in exercitium officii sibi commissi sese ingerere nequit, ante captam dioecesis canonicam possessionem; exercere tamen valet officia, quae in eadem dioecesi tempore promotionis iam retinebat, firmo praescripto can. 409, § 2.*" Translation: "A person who is promoted to the episcopate cannot become involved in the exercise of the office entrusted to him before he has taken canonical possession of the diocese. However, he is able to exercise offices which he already held in the same diocese at the time of his promotion, without prejudice to canon 409, § 2." Cf. can. 189, § 3 CCEO 1990.

[52] Can. 527 CIC 1983: „§ 1. *Qui ad curam pastoralem paroeciae gerendam promotus est, eandem obtinet et exercere tenetur a momento captae possessionis.* § 2. *Parochum in possessionem mittit loci*

the qualities required for the objective office, it will be conferred **invalidly**. The same effects are connected with conferring of the office by means of simony (*simonia*).[53] The office cannot be conferred validly also in case of being occupied by the valid holder. The office is granted **illicitly** when it is incompatible (*incompatibilis*) with another office of the candidate. The promise of granting of any Church office is considered to be legally irrelevant (historical institute of expectation irretrievably remains in history).

4.2.2 Ways of Conferral

4.2.2.1 Free Conferral

In case of free conferral (*libera collatio*), the grantor of the office is not obligated by any qualified proposal of the third person. On the basis of the highest and immediate power over the Church, the Pope has the right to freely confer the offices within the whole Church. Actually, the Pope exercises this right only through conferring of the most important Church offices, i.e. consistorial offices, which are usually conferred at the consistory of cardinals. Also a diocesan bishop is the competent one to confer freely all of the offices within his diocese, unless the law prescribes something else. For example, the diocesan bishop appoints priests to become pastors of the parishes by freely conferring the offices to the persons, which he considers as **the most suitable to exercise them**.[54] Generally, most of the offices within the Church are filled on the basis of free conferral. There is a situation, when the competent authority, in accordance with canon law, is obligated to hear the opinion of a certain association, and this is very close to the way of the above-mentioned office conferral. Nevertheless, the authority is not obligated to accept the opinion and may do his own independent

Ordinarius aut sacerdos ab eodem delegatus, servato modo lege particulari aut legitima consuetudine recepto; iusta tamen de causa potest idem Ordinarius ab eo modo dispensare; quo in casu intimatio dispensatio paroeciae notificata locum tenet captae possessionis. § 3. *Loci Ordinarius praefiniat tempus intra quod paroeciae possessio capi debeat; quo inutiliter praeterlapso, nisi iustum obstiterit impedimentum, paroeciam vacare declarare potest*." Translation: "§ 1 One who is promoted to exercise the pastoral care of a parish obtains this care and is bound to exercise it from the moment he takes possession. § 2 The local Ordinary or a priest delegated by him puts the parish priest into possession, in accordance with the procedure approved by particular law or by lawful custom. For a just reason, however, the same Ordinary can dispense from this procedure, in which case the communication of the dispensation to the parish replaces the taking of possession. § 3 The local Ordinary is to determine the time within which the parish priest must take possession of the parish. If, in the absence of a lawful impediment, he has not taken possession within this time, the local Ordinary can declare the parish vacant." Cf. can. 288 CCEO 1990.

53 Can. 149, § 3 CIC 1983: „*Provisio officii simoniace facta ipso iure irrita est*." Translation: "The provision of an office made as a result of simony, is invalid by virtue of the law itself." Cf. can. 946 CCEO 1990.

54 Can. 157 CIC 1983: „*Nisi aliud explicite iure statuatur. Episcopi dioecesani est libera collatione providere officiis ecclesiasticis in propria Ecclesia particulari*." Translation: "Unless the law expressly states otherwise, it is the prerogative of the diocesan bishop to make appointments to ecclesiastical offices in his own particular church by free conferral."

decision.[55] Unless the law prescribes the election, the office of monastic orders are especially conferred in this way.

4.2.2.2 Bound Collation

Under the term of bound collation we can understand the way of conferring of the Church office, when a certain person (physical or juridical) or college has the right to propose the candidate in a qualified way, and so the competent Church authority is bound by this proposal. This way of conferring comes into question in the cases, when the conferring itself is preceded by:

1. **Presentation** (*ius praesentandi*), that is to say, the obligatory proposal of the person disposing of "the proposal of presentation", presented on behalf of the candidate (candidates) on relevant Church office to the competent Church authority, which is entitled to grant it. The superior is principally obligated to grant the office to the presented person, namely by the way of installation (*institutio*), that is to say by naming. The competent Church authority is not obligated to do so in case he found out the person is not suitable (*non idoneus*) for taking up the office.[56] The legal institute of presentation is historically bound with the **right of patronage** (*ius patronatus*), that represents the set of rights and obligations of someone known as "patron" in connection with a gift of land (*beneficium*). The Church understands it as a grant made out of gratitude towards a benefactor. The right of patronage was usually described in papal letters as "*ius spirituali annexum*", and until nowadays it has been a subject of the ecclesiastical legislation and jurisdiction, and civil laws relating to the ownership of property, as well. Regardless of the efforts of competent Church authorities after the Second Vatican Council (1962-1965) to minimize such rights, the right of presentation still persists, as far as it is considered to be the part of so called "acquired rights" (*iura quaesita*).[57] The presentation is most commonly

[55] Can. 127, § 1 CIC 1983: „*Cum iure statuatur ad actus ponendos Superiorem indigere consensu aut consilio alicuius collegii vel personarum coetus, convocari debet collegium vel coetus ad normam can. 166, nisi, cum agatur de consiio tantum exquirendo, aliter iure particulari aut proprio cautum sit; ut autem actus valeant requiritur ut obtineatur consensus partis absolute maioris eorum qui sunt praesentes aut omnium exquiratur consiium.*" Translation: "When the law prescribes that, in order to perform a juridical act, a superior requires the consent or the advice of some college or group of persons, the college or group must be convened in accordance with canon 166, unless, if there is question of seeking advice only, particular or proper law provides otherwise. For the validity of the act, it is required that the consent be obtained of an absolute majority of those present, or that the advice of all be sought." Cf. can. 934 CCEO 1990.

[56] Can. 179, § 2 CIC 1983: „*Competens auctoritas, si electum repperit idoneum ad normam can. 149, § 1, et electio ad normam iuris fuerit peracta, confirmationem denegare nequit.*" Translation: "The competent authority cannot refuse confirmation if he has found the person elected suitable in accordance with canon 149, § 1, and the election has been carried out in accordance with the law." Cf. can. 960, § 1 CCEO 1990.

[57] Can. 4 CIC 1983: „*Iura quaesita, itemque privilegia quae, ab Apostolica Sede ad haec usque tempora personis sive physicis sive iuridicis concessa, in usu sunt nec revocata, integra manent, nisi huius Codicis canonibus expresse revocentur.*" Translation: "Acquired rights, and likewise privileges hitherto granted by the Apostolic See to either physical or juridical persons, which are still in use and have

used when the monastic superior grants the office in the parishes, which were incorporated by the monastic community, or in the parishes, which were consigned to it according to canon 520 of the Latin Code of Canon Law.[58]

2. **Election** (*electio*) comes into question frequently, because, according to the rules of canon law, certain offices within the Church could be granted only by means of election (e.g. the office of the highest superior in religious institute, according to canon 625, § 1)[59]. Otherwise, the election is applied when a special college disposes of such a right. As an example, we may note the right of certain chapter to elect a bishop. Canon 523 explicitly acknowledges the right to elect the pastor of parish.[60] In case of election, there are two possible ways:
   a) **Election needs confirmation** (e.g. election of the superior of the chapter, according to canon 509, § 1, needs confirmation of diocesan bishop).[61] When the election is exercised in accordance with canon law, the competent Church authority is obligated to confirm the elected person, unless he has recognized him unsuitable for such an office. In this case, the office is granted by the confirmation of election (*confirmatio*) by the competent Church authority.
   b) **Election does not need confirmation** (e.g. election of the Pope). In this case, the office is granted immediately by the election itself, and by the acceptance of an elected person (*per simplicem electionem et electi accepta-*

not been revoked, remain intact, unless they are expressly revoked by the canons of this Code." Cf. can. 5 CCEO 1990.

58 Can. 520, § 1 CIC 1983: „*Persona iuridica ne sit parochus*; *Episcopus autem dioecesanus*, *non vero Administrator dioecesanus*, *de consensu competentis Superioris*, *potest paroeciam committere instituto religioso clericali vel societati clericali vitae apostolicae*, *eam erigendo etiam in ecclesia instituti aut societatis*, *hac tamen lege ut unus presbyter sit paroeciae parochus*, *aut*, *si cura pastoralis pluribus in solidum committatur*, *moderator*, *de quo in can. 517*, *§ 1.*" Translation: "A juridical person may not be a parish priest. However, the diocesan bishop, but not the diocesan administrator, can, with the consent of the competent superior, entrust a parish to a clerical religious institute or to a clerical society of apostolic life, even by establishing it in the church of the institute or society, subject however to the rule that one priest be the parish priest or, if the pastoral care is entrusted to several priests jointly, that there be a moderator as mentioned in canon 517, § 1." Cf. can. 281, § 2 and 282, § 1 CCEO 1990.

59 Can. 625, § 1 CIC 1983: „*Supremus instituti Moderator electione canonica designetur ad normam constitutionum*." Translation: "The supreme moderator of the institute is to be designated by canonical election, in accordance with the constitutions." Cf. can. 515, § 1 CCEO 1990.

60 Can. 523 CIC 1983: „*Firmo praescripto can. 682*, *§ 1*, *parochi officii provisio Episcopo dioecesano competit et quidem libera collatione*, *nisi cuidam sit ius praesentationis aut electionis*." Translation: "Without prejudice to canon 682, appointment to the office of parish priest belongs to the diocesan bishop, who is free to confer it on whomsoever he wishes, unless someone else has a right of presentation or election." Cf. can. 284, § 1 CCEO 1990.

61 Can. 509, § 1 CIC 1983: „*Episcopi dioecesani*, *audito capitulo*, *non autem Administratoris dioecesani*, *est omnes et singulos conferre canonicatus*, *tum in ecclesia cathedrali tum in ecclesia collegiali*, *revocato quolibet contrario privilegio*; *eiusdem Episcopi est confirmare electum ab ipso capitulo*, *qui eidem praesit*." Translation: "It belongs to the diocesan bishop, after consultation with the chapter, but not to the diocesan administrator, to bestow each and every canonry both in the cathedral church and in a collegiate church, any privilege to the contrary is revoked. It is also for the diocesan bishop to confirm the person elected by the chapter to preside over it."

tionem). Considering the election of the Pope by the College of Cardinals, its conditions are regulated in the apostolic constitution *Universi Dominici gregis* issued in 1996 by the Pope John Paul II (1978-2005).

Apart from these ways of conferring of the Church office by the election, we may consider another specific ways within the legal system of the Catholic Church. To the first one to be mentioned is the **election by compromise** (*per compromissum*), when the electors unanimously make a decision in written form, that for the certain case of electoral act they will transfer their electorship to one or more persons, who will elect the candidate in the name of the whole association subsequently.[62] Another way of election *sui generis* is the **postulation** (*postulatio*), that means the electors request the higher authority to dispense from an impediment standing in the way of electing a person they feel is the most suitable, e.g. the person is too young, or has already served the maximum number of terms. At least two-thirds of the group of electors must vote to postulate. The favourable response from the authority is called the admission of the postulation, and the elected candidate obtains the office on the basis of this act (*per admissionem*).[63] For example, within the religious communities the major superiors are usually being elected, and their election sometimes requires the confirmation from the higher religious authority, or from the Holy See.

4.3 Loss of the Office

As mentioned above, only the subjective element of the Church office (i.e. the holder of the office) is subject to changes. From the lawyer's point of view, we primarily distinguish between the loss of the office on the basis of legal act, and the loss of the office on the basis of legal event.

4.3.1 Basis of Legal Act

1. **Resignation** (*renuntiatio*) is the legal act of the office holder that demonstrates his will to leave the office. This act has to be made (*ad validitatem*) in written form, or in the presence of two witnesses in the hands of the superior, that is

[62] Can. 174, § 1 CIC 1983: „*Electio, nisi aliud iure aut statutis caveatur, fieri etiam potest per compromissum, dummodo nempe electores, unanimi et scripto consensu, in unum vel plures idoneos sive de gremio sive extraneos ius eligendi pro ea vice transferant, qui nomine omnium ex recepta facultate eligant*." Translation: "Unless the law or the statutes provide otherwise, an election can be made by compromise, that is the electors by unanimous and written consent transfer the right of election for this occasion to one or more suitable persons, whether they belong to the college or are outside it, who in virtue of this authority are to elect in the name of all."

[63] Can. 180, § 1 CIC 1983: „*Si electioni illius quem electores aptiorem putent ac praeferant impedimentum canonicum obstet, super quo dispensatio concedi possit ac soleat, suis ipsi suffragiis eum possunt, nisi aliud iure caveatur, a competenti auctoritate postulare*." Translation: "If a canonical impediment, from which a dispensation is possible and customary, stands in the way of the election of a person whom the electors judge more suitable and prefer, they can, unless the law provides otherwise, postulate that person from the competent authority." Cf. can. 961 CCEO 1990.

able to confer the office. Any person of a sound mind can resign an ecclesiastical office for a just cause. With the notable exception of the papal office, most resignations require acceptance before they become effective.[64]

2. **Transfer** (*translatio*) is an individual administrative act, by which the competent superior releases certain person from the office and, at the same time, confers him other office. In this case, it is the competent Church authority that is authorized to confer the released office, as well as the office conferred newly. To become fully valid, it is necessary to do such an act in written form. A person can move from one office to another, willingly or unwillingly, e.g. when a pastor is transferred to another parish within the diocese.[65]
3. **Removal** (*amotio*) is also an individual administrative act, by which the competent Church authority releases the holder from the office, but does not confer him another office. Every holder of the Church office can be removed from it by the higher Church authority for a certain cause, e.g. a pastor, whose ministry has become a detriment, or by law (*ipso iure*), when one loses the clerical state, or leaves the Catholic faith or communion, or when cleric attempts marriage. And again, in order to become valid, such an act should be done in written form. It is necessary to underline that the existence of grave or just reason is required by the norms of canon law, too.[66]
4. **Deprivation** (*privatio*) can be applied only as a penalty for a canonical offence, but only after the penal procedures have been observed.[67] This sanction is clas-

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64 Can. 332, § 2 CIC 1983: „*Si contingat ut Romanus Pontifex muneri suo renuntiet, ad validitatem requiritur ut renuntiatio libere fiat et rite manifestetur, non vero ut a quopiam acceptetur.*" Translation: "Should it happen that the Roman Pontiff resigns from his office, it is required for validity that the resignation be freely made and properly manifested, but it is not necessary that it be accepted by anyone." Cf. can. 44, § 2 CCEO 1990.

65 Can. 190, § 2 CIC 1983: „*Si translatio fiat invito officii titulari, gravis requiritur causa et, firmo semper iure rationes contrarias exponendi, servetur modus procedendi iure praescriptus*." Translation: "A grave reason is required if a transfer is made against the will of the holder of an office and, always without prejudice to the right to present reasons against the transfer, the procedure prescribed by law is to be observed." Cf. can. 972, § 2 CCEO 1990.

66 Can. 193 CIC 1983: „§ 1. *Ab officio quod alicui confertur ad tempus indefinitum, non potest quis amoveri nisi ob graves causas atque servato procedendi modo iure definito*. § 2. *Idem valet, ut quis ab officio, quod alicui ad tempus determinatum confertur, ante hoc tempus elapsum amoveri possit, firmo praescripto can. 624, § 3*. § 3. *Ab officio quod, secundum iuris praescripta, alicui confertur ad prudentem discretionem auctoritatis competentis, potest quis iusta ex causa, de iudicio eiusdem auctoritatis, amoveri*. § 4. *Decretum amotionis, ut effectum sortiatur, scripto intimandum est*." Translation: "§ 1 No one may be removed from an office which is conferred on a person for an indeterminate time, except for grave reasons and in accordance with the procedure defined by law. § 2 This also applies to the removal from office before time of a person on whom an office is conferred for a determinate time, without prejudice to canon 624, § 3. § 3 When in accordance with the provisions of law an office is conferred upon someone at the prudent discretion of the competent authority, that person may, upon the judgment of the same authority, be removed from the office for a just reason. § 4 For a decree of removal to be effective, it must be notified in writing." Cf. can. 974, § 2 and 975 CCEO 1990.

67 Can. 196 CIC 1983: „§ 1. *Privatio ab officio, in poenam sciicet delicti, ad normam iuris tantummodo fieri potest*. § 2. *Privatio effectum sortitur secundum praescripta canonum de iure poenali*." Translation: "§ 1 Deprivation of office, that is, as a punishment for an offence, may be effected only in accordance

sified as an expiatory penalty (*poena expiatoriae*, formerly *vindicativae*), that can affect the offender either forever or, generally, for a determinate, or an indeterminate period.

4.3.2 Basis of Legal Event

1. **Expiration of the period of time of the office** (*lapsus temporis praefiniti*) comes into question, when the Church office was granted to the holder on the stated term only. On the ground of legal confidence, after the expiration of period of time it is necessary to announce this fact to the holder of the office.[68] As an example, we may note the office of judicial vicar and other judges.[69]
2. **Approaching the canonical age limit** (*expleta aetas definita*) is the parallel to the above-mentioned way of losing the office on the basis of legal event. Bishops and pastors are requested to submit their resignations at age seventy-five, and cardinals over eighty years cannot serve as papal electors.[70] In this case too, the holder does not cease from the office until he has been notified by the competent authority.
3. **Loss of the office due to the function expiry of the office grantor** may be applied in two special ways:
   a) By the law itself (*ex lege*), in the cases when it results from the character of the office. For example, according to canon 481, § 1 of the Latin Code of Canon Law, the vicar general or episcopal vicar automatically lose their power and office by the moment of vacancy of diocesan seat.[71]

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with the law. § 2 Deprivation takes effect in accordance with the provisions of the canons concerning penal law." Cf. can. 978 CCEO 1990.

68 Can. 186 CIC 1983: „*Lapsu temporis praefiniti vel adimpleta aetate, amissio officii effectum habet tantum a momento, quo a competenti auctoritate scripto intimatur.*" Translation: "Loss of office by reason of the expiry of a predetermined time or of reaching the age limit, has effect only from the moment that this is communicated in writing by the competent authority." Cf. can. 965, § 3 CCEO 1990.

69 Can. 1422 CIC 1983: „*Vicarius iudicialis, Vicarii iudiciales adiuncti et ceteri iudices nominantur ad definitum tempus, firmo praescripto can. 1420, § 5, nec removeri possunt nisi ex legitima gravique causa.*" Translation: "The judicial vicar, the associate judicial vicars and the other judges are appointed for a specified period of time, without prejudice to the provision of canon 1420, § 5. They cannot be removed from office except for a lawful and grave reason." Cf. can. 1088, § 1 CCEO 1990.

70 Can. 401, § 1 CIC 1983: „*Episcopus dioecesanus, qui septuagesimum quintum aetatis annum expleverit, rogatur ut renuntiationem ab officio exhibeat Summo Pontifici, qui omnibus inspectis adiunctis providebit.*" Translation: „A diocesan bishop who has completed his seventy-fifth year of age is requested to offer his resignation from office to the Supreme Pontiff, who, taking all the circumstances into account, will make provision accordingly." Cf. can. 210, §§ 1-2 CCEO 1990.

71 Can. 481, § 1 CIC 1983: „*Exspirat potestas Vicarii generalis et Vicarii episcopalis expleto tempore mandati, renuntiatione, itemque, salvis cann. 406 et 409, remotione eisdem ab Episcopo dioecesano intimata, atque sedis episcopalis vacatione.*" Translation: "The power of the vicar general or episcopal vicar ceases when the period of their mandate expires, or by resignation. In addition, but without prejudice to canon 406 and 409, it ceases when they are notified of their removal by the diocesan

b) By the decision of the grantor of the office. For example, when the collation deed contains the clause "*durante meo munere*" (from Latin: "for a period of my office") etc. Except of these two cases, the holder of the office would not principally lose his office, if the grantor of the office lost his own office.

4. **Death of the office holder**. According to the theory of law, death and passing of time are considered to be typical legal events.
5. **Forfeiture of the office itself**. In this context, it is necessary to underline that the Church offices of the God law's character (the Pope and the diocesan bishop) are irrevocable. In case of necessity, all the other Church offices of positive human law may be forfeited by the decision of the highest Church authorities.

bishop, or when the episcopal see falls vacant." Cf. can. 224, § 1, 1° and 251, § 1 CCEO 1990.

5 Hierarchical Structure of the Catholic Church

5.1 Central Level

5.1.1 Highest Authorities of the Church

As mentioned earlier, the Catholic Church represents a hierarchical organization based on the responsibility of a certain superior and principally refuses the democratic governance. The word "hierarchy" comes from two separate Greek words; "*hieros*", meaning "sacred", and "*arche*", meaning "rule" or "power". To sum up, the word hierarchy means also "the sacred power". However, the term does not imply domination, Jesus himself forbade that any of his disciples should "lord it over" others, among the followers of Jesus, leaders are to serve the others.[72] The Second Vatican Council (1962-1965) reiterated that those who have been given hierarchical authority are the servants of their brothers and sisters (Lumen Gentium, 18). At the beginning, we have to mention that the Catholic Church and Apostolic See can be defined as juridical persons. The norms of canon law use the particular term "**moral person**" (*persona moralis*)[73] to distinguish the two above mentioned subjects from all the others within the Catholic Church which cease to exist under certain conditions. According to canon law, the Catholic Church and Apostolic See cannot cease to exist, because they were constituted on the grounds of Divine constitution (i.e. God's law). Each of these subjects has its own legal subjectivity and on that account can own a property which is different from the property of the other. Although the Pope is considered to be the hierarchical superior of both above-mentioned subjects, the College of Bishops with the Pope at its head can also be classified as one of the highest authorities of the Catholic Church.

5.1.1.1 The Pope

The hierarchical structure of the Catholic Church is grounded in the particular status of Apostle Peter († around 67 AD) as a head of the College of Apostles and the first

[72] Cf. Matt 20:25-28; Mark 10:42-45 and Luke 22:25-27.

[73] Can. 113, § 1 CIC 1983: „*Catholica Ecclesia et Apostolica Sedes, moralis personae rationem habent ex ipsa ordinatione divina*." Translation: "The Catholic Church and the Apostolic See have the status of a moral person by Divine disposition."

Bishop of Rome. Since the early Church this status has passed on concrete successors in the office of Roman Bishop (i.e. the **personal apostolic succession**). Within the communion of the churches, which is the Universal Church, the papal office serves as a unique sign, centre, and guarantee of unity. The successor of Peter is charged to nourish, support, encourage, and unify his fellow faithful Christians. In this context, it is important to mention that Jesus ordered Peter to feed his flock and strengthen his disciples[74]. In the office of the Pope there are generally united the following **five individual titles** of major or minor significance:

1. Roman Bishop – the Pope is the regular bishop of the Roman diocese;
2. Metropolitan of Roman Church province;
3. Primate of Italy – this is the title of bishops residing in the most significant "first" diocese of relevant country, that is the part of an administrative unit;
4. Patriarch of the West – this is an honorary degree only, with no practical signification. This title appeared in the annual reference publication, called *Annuario Pontificio*, which in 1885 became a semi-official publication of the Holy See. The same publication of 2006 edition stopped usage of this title. This act was explained by the statement, that this title had become obsolete and practically of no use, and it would be pointless to insist on maintaining it.
5. Primate of the Universal Church.

From the lawyer's point of view, the most important thing to be mentioned is the complex of rights which pertain to the Pope as a head of the Catholic Church, that is called the primacy of the Pope (*primatus Ecclesiae*). The stated term refers to an ecclesiastical doctrine concerning the respect and authority that is due to the Bishop of Rome from other bishops and their sees. The primacy of the Bishop of Rome got through the complex historical development and finally was declared (not constituted) at the First Vatican Council (1869-1870) in the constitution *Pastor Aeternus*. As mentioned earlier, in the Eastern Orthodox Churches some understand the stated primacy to be merely one of a greater honour, treating it as "*primus inter pares*" (from Latin: "first among equals"), without power of governance over remaining churches. Other authorities indeed see primacy as the power, expression, manifestation and realization of the power of all the bishops united in a person of one bishop, an expression and manifestation of the unity, not just of individual churches, but of the Universal Church as a whole. According to the Catholic view, the Pope is much more than the first among equals. That means, in addition to possessing a supreme authority **over the Universal Church**, he also has the authority over each of the particular churches, that make up the Universal Church. His authority does not replace or nullify the authority of the local bishop within his diocese, but complements it. It is, as well, intended to affirm and preserve the bishop's authority. When exceptional circumstances make it necessary, the Pope, thanks to primacy, has the power to intervene in life of the local Church. In this sense it implies a certain "reserve power" should be used in emergency situations. The power attributed to the Pope's primatial authority has certain limitations which are of an official, legal, dogmatic, and practical character. Concretely, it is limited by

[74] Cf. John 21:15-17 and Luke 22:32.

factors such as the revealed word of God, Christian tradition, nature and purposes of the Church, role of the papal office, natural law, collegial relationship with other bishops, and so on. So, despite the maximal definition of the Pope's power, his authority, in fact, is not certainly untrammelled.

According to the Latin Code of Canon Law, the preferred title for the Pope is "Roman Pontiff". "Pontiff" (from Latin: "*pons*", "bridge", and "*facere*", "to make", meant one, who bridged to chasm between the gods and human kind) is the ancient term used for the priest in pagan Rome. The title was applied to all bishops in the early Church, and since the sixth century AD at the latest its use has been gradually reserved only to the bishops of Rome on the Christian West. Another canonical title for the Pope is "Supreme Pontiff" (*Summus Pontifex*). "Pope", the name most commonly used, comes from the Greek "*pappas*" and the Latin "*papa*", "father", and it is the source for the more formal title, "Holy Father". Defining the legal status of the Pope, canon 331 of the Latin Code of Canon Law **describes his authority** as[75]:

1. Proper and ordinary – because it comes from the office itself, that is proper to him on the ground of God's decision, not of the arbitration of the Church.
2. Supreme – there is not any higher power within the hierarchical structure of the Catholic Church, and there is no other power within the Church, to which he would be subordinated.
3. Full – the area of his decision comprises all the cases of the Church within the internal or external forum.
4. Immediate – apart from the decisions of universal nature, his decisions are exercised immediately and directly on any subject in every particular Church, despite the existence of local authority.
5. Universal – the effects of his decisions has the significance in personal (they are applied on all members of the Church regardless of their status), territorial (they are applied on the Catholic Church on the whole, as well as on all particular churches in the world), or subject field (they may be concerned with any matters of morality or discipline).
6. Free to exercise – he makes decisions freely, regardless of time, place of actual residence, or will of other person or the body of persons.

In virtue of his headship of the College of Bishops, there is a presumption that the Pope always acts in communion with all the other bishops.[76] And, since he is the

[75] Can. 331 CIC 1983: „*Ecclesiae Romanae Episcopus, in quo permanet munus a Domino singulariter Petro, primo Apostolorum, concessum et successoribus eius transmittendum, Collegii Episcoporum est caput, Vicarius Christi atque universae Ecclesiae his in terris Pastor; qui ideo vi muneris sui suprema, plena, immediata et universali in Ecclesia gaudet ordinaria potestate, quam semper libere exercere valet*." Translation: "The office uniquely committed by the Lord to Peter, the first of the Apostles, and to be transmitted to his successors, abides in the Bishop of the Church of Rome. He is the head of the College of Bishops, the Vicar of Christ, and the Pastor of the Universal Church here on earth. Consequently, by virtue of his office, he has supreme, full, immediate and universal ordinary power in the Church, and he can always freely exercise this power." Cf. can. 43 CCEO 1990.

[76] Can. 333, § 2 CIC 1983: „*Romanus Pontifex, in munere supremi Ecclesia Pastoris explendo, communione cum ceteris Episcopis immo et universa Ecclesia semper est coniunctus; ipsi ius tamen*

highest authority, "the court of last resort" in all Church matters, there is no appeal against his decisions. In this context, it is necessary to remind that the Pope is subject to no one's judgment. Concerning other **important prerogatives** that, according to the canons of the Latin Code of Canon Law, belong to the Pope, these are:

1. He is the supreme judge for the whole Catholic world and any case may be appealed to him at any time – his decisions are definite, and they are not objects of any investigation.
2. He is the supreme administrator and caretaker of all the Church's temporal goods – he disposes of the right to take the decision-making in any administrative case.
3. He possesses an infallible teaching authority, that is to say, he is the supreme pastor and teacher of all the faithful (the Highest Magisterium).
4. He receives the obedience of all clerics and religious.
5. He has the right to send legates to particular churches and to sovereign nations[77].
6. He convokes and controls ecumenical councils.
7. He appoints or confirms all bishops – therefore he has the control over the membership of the College of Bishops.
8. He can limit the authority of bishops by reserving certain matters to himself (*causae maiores*).
9. He reserves to himself dispensations from clerical celibacy and from non-consummated marriages.
10. He can exempt religious institutes from the authority of local bishops[78].
11. He receives a report on the state of each diocese from the bishops every five

est, *iuxta Ecclesiae necessitates*, *determinare modum*, *sive personalem sive collegialem*, *huius muneris exercendi*." Translation: "The Roman Pontiff, in fulfilling his office as supreme Pastor of the Church, is always joined in full communion with the other bishops, and indeed with the whole Church. He has the right, however, to determine, according to the needs of the Church, whether this office is to be exercised in a personal or in a collegial manner." Cf. can. 45, § 2 CCEO 1990.

77 Can. 362 CIC 1983: „*Romano Pontifici ius est nativum et independens Legatos suos nominandi ac mittendi sive ad Ecclesias particulares in variis nationibus vel regionibus*, *sive simul ad Civitates et ad publicas Auctoritates*, *itemque eos transferendi et revocandi*, *servatis quidem normis iuris internationalis*, *quod attinet ad missionem et revocationem Legatorum apud Res Publicas constitutorum*." Translation: "The Roman Pontiff has an inherent and independent right to appoint legates and to send them either to particular churches in various countries or regions, or at the same time to states and to public authorities. He also has the right to transfer or recall them, in accordance with the norms of international law concerning the mission and recall of representatives accredited to states."

78 Can. 591 CIC 1983: „*Quo melius institutorum bono atque apostolatus necessitatibus provideatur*, *Summus Pontifex*, *ratione sui in universam Ecclesiam primatus*, *intuitu utilitatis communis*, *instituta vitae consecratae ab Ordinariorum loci regimine eximere potest sibique soli vel alii ecclesiasticae auctoritati subicere*." Translation: "The better to ensure the welfare of institutes and the needs of the apostolate, the Supreme Pontiff, by virtue of his primacy in the Universal Church, and with a view to the common good, can withdraw institutes of consecrated life from the governance of local Ordinaries and subject them to himself alone, or to some other ecclesiastical authority." Cf. can. 412, § 2 CCEO 1990.

years.

As mentioned earlier, the election of the Pope is regulated by the apostolic constitution *Universi Dominici gregis* issued in 1996 by the Pope John Paul II, which deals with the vacancy of the Chair of St. Peter and Bishop of Rome. Looking at the method of election, it has varied considerably at different periods in history of the Church. But, for more than half of the time the Church has been in existence, the Pope has been elected in **papal conclave** which represents the oldest ongoing method for choosing the leader of an institution. We may label it as a meeting of the College of Cardinals convened to elect a new Bishop of Rome. The cardinals have been considered to be the only persons entitled to elect the Pope since the promulgation of the act of the Pope Nicholas II (1059-1061) called *In nomine Domini* in 1059. The term "conclave" is used due to the fact the cardinal electors are theoretically locked in, "*cum clave*" (from Latin: "with key"), until a new Pope will be elected. The status of elector pertains to every cardinal of the Catholic Church, and the right to elect the Pope is considered to be his duty, as well. From the election of the Pope are excluded the cardinals, who:

1. were lawfully removed from the office by the Pope;
2. abdicated of the office of cardinal with the approval of the Pope;
3. were promoted the dignity of cardinals, but their names are reserved by the Pope "in his heart" (*in pectore*) and were not announced to the Church;
4. reached the age of 80 a day before the death of the Pope, or the day when the Apostolic See became vacant;
5. were affected by the penalty of excommunication.

The papal election is connected with a lot of special traditions and rituals, which have been observed throughout the centuries, and most of them have their legal ground in the rules of canon law. What concerns the **election itself**, three cardinals are chosen by the remaining ones to collect the votes of absent cardinal electors (by reason of illness, but personally present in Vatican), another three are chosen to count the votes, and the last three cardinals are chosen to review the counting of votes. The ballots are distributed, and each cardinal elector writes the name of his choice on it and pledges aloud that he is voting for "one whom under God I think ought to be elected" before folding and depositing his vote on a plate atop a large chalice placed on the altar.[79] The plate is then used to drop the ballot into the chalice, making it dif-

[79] Art. 66 of Universi Dominici gregis: „*Secundus gradus, qui vere proprieque dicitur scrutinium, complectitur*: 1) *positionem schedularum in urnam*; 2) *schedularum mixtionem ac numerationem*; 3) *suffragiorum diribitionem. Unusquique Cardinalis elector, praecedendi ordine servato, schedulam, postquam eam scripsit et complicavit, elevata manu, ita ut videri possit, ad altare deferat, apud quod sunt Scrutatores et in quo est urna disco cooperta ad schedulas recipiendas. Postquam ibi pervenerit, Cardinalis elector elata voce iuret in hanc formam: Testor Christum Dominum, qui me iudicaturus est, me eum eligere, quem secundum Deum iudico eligi debere. Post haec schedulam in disco ponat et per hunc in urnam ingerat, quo facto ad altare inclinet et ad suum locum revertatur. Si vero quis Cardinalis elector ex iis, qui in sacello praesentes adsunt, ad altare ob infirmam valetudinem pergere nequit, ultimus scrutator ad eum accedit; et elector ille, praedicto iure iurando dato, schedulam complicatam eidem scrutatori tradit, qui eam palam ad altare defert neque ullo iuramento pronuntiato in disco deponit, et per eum in urnam mittit.*" Translation: "The second phase, the scrutiny proper,

ficult for electors to insert multiple ballots. Before being read, the ballots are counted while still folded. If the number of ballots does not match the number of electors, the ballots are burned unopened and a new vote is held. Otherwise, each ballot is read aloud by the presiding cardinal, who pierces the ballot with a needle and thread, stringing all the ballots together and tying the ends of the thread to ensure accuracy and honesty. Balloting continues until someone is elected by a two-thirds majority. This conclusion results from the regulation of the Pope **Benedict XVI** (2005-2013), who in 2007 rescinded John Paul's change, which had been criticized as effectively abolishing the two-thirds majority requirement, as any majority would suffice to block the election until a simple majority was enough to elect the next Pope, reaffirming the requirement of a two-thirds majority. Once the ballots are counted and bound together, they are burned in a special stove erected in the Sistine Chapel, with the smoke escaping through a small chimney visible from St. Peter's Square. The ballots from an unsuccessful vote are burned along with a chemical compound (traditionally wet straw was used) to create black smoke (*fumata nera*). When a vote is successful, the ballots are burned alone, sending white smoke (*fumata bianca*) through the chimney and announcing to the world the election of a new Pope.

Then, the dean of the College of Cardinals asks the candidate, who has been elected, two solemn questions. First he asks, whether he accepts his election. If he replies affirmatively and is already a bishop, he immediately takes office. If he is not a bishop, however, he must be consecrated first to become one, before he can assume an office. If a priest is elected, the cardinal dean consecrates him bishop. If a layman is elected, then the cardinal dean first ordains him deacon, then priest, and only then consecrates him as bishop. Only after becoming a bishop does the Pope-elect take office. After the affirmative response, the dean asks about the name he would like to be called. The new Pope then announces the name he has chosen. In case the dean is elected Pope, the vice dean performs this task. Therefore, we may generally state that the Pope obtains his office by **means of two events**:

1. his ordination as a bishop;
2. his acceptance of his election by the College of Cardinals.

The custom has been for the Pope to serve for life, but, in fact, he can resign the office, if he decides to do so.[80] As an example we may mention the resignation of Ben-

comprises: 1) the placing of the ballots in the appropriate receptacle; 2) the mixing and counting of the ballots; 3) the opening of the votes. Each Cardinal elector, in order of precedence, having completed and folded his ballot, holds it up so that it can be seen and carries it to the altar, at which the Scrutineers stand and upon which there is placed a receptacle, covered by a plate, for receiving the ballots. Having reached the altar, the Cardinal elector says aloud the words of the following oath: I call as my witness Christ the Lord who will be my judge that my vote is given to the one who before God I think should be elected. He then places the ballot on the plate, with which he drops it into the receptacle. Having done this, he bows to the altar and returns to his place. If any of the Cardinal electors present in the Chapel is unable to go to the altar because of infirmity, the last of the Scrutineers goes to him. The infirm elector, having pronounced the above oath, hands the folded ballot to the Scrutineer, who carries it in full view to the altar and omitting the oath, places it on the plate, with which he drops it into the receptacle."

[80] Can. 332, § 1 CIC 1983: „§ 1. *Plenam et supremam in Ecclesia potestatem Romanus Pontifex obtinet legitima electione ab ipso acceptata una cum episcopali consecratione. Quare, eandem potestatem*

edict XVI who left his office on 28th February 2013 due to his age and illness. As a matter of interest we may note that in history, in addition to the secret ballot, another two methods of conducting the election were allowed. A committee of nine to fifteen unanimously chosen cardinals might have been delegated to make the choice for all, and that was called "election by compromise" (*per compromissum*). Alternatively, formal ballots could have been discarded in election by "acclamation" (*per acclamationem seu inspirationem*). In this case, the electors simultaneously shouted out the name of their preferred candidate. Both of these methods were abolished and, according to what was stated above, since the time of issuing the constitution *Universi Dominici gregis*, the secret ballot have represented the only one valid method of electing a Pope.

5.1.1.2 College of Bishops

5.1.1.2.1 Characteristic

Despite the above mentioned authority of the Pope, it is necessary to state that the highest authority in the Catholic Church is collegiate, not monarchical. Whilst each one of individual members of the College of Bishops is directly responsible for the pastoral care and governance of his own particular church, the College, as a whole, has a full supreme power over the entire Universal Church. That is to say, the College of Bishops, with the Pope at its head, is the subject of supreme authority within the Church. Of course, we can find an analogy of the twelve Apostles with Peter in their midst, who all were chosen by Jesus. Just as they formed a single collective body or college, so do the bishops, the **successors of the Apostles** (the collegial apostolic succession), together with the Roman Pontiff, the successor of Peter (earlier mentioned personal apostolic succession). The concept of collegiate responsibility for the Church at the highest level is crucial because of its biblical warrant, and because it reflects the nature of the Universal Church as a communion of churches (*communio ecclesiarum*). The bishops of these local churches share with the Bishop of Rome a common pastoral solicitude for the entire Church. They all participate, as a college, in teaching and governing the Church. The College of Bishops, which consists of consecrated Catholic bishops from all over the world, and who are in hierarchical communion with the Pope and with each other, exercises the power of governance in **two ways**:

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obtinet a momento acceptationis electus ad summum pontificatum, qui episcopali charactere insignitus est. Quod si charactere episcopali electus careat, statim ordinetur Episcopus. § 2. *Si contingat ut Romanus Pontifex muneri suo renuntiet, ad validitatem requiritur ut renuntiatio libere fiat et rite manifestetur, non vero ut a quopiam acceptetur.*" Translation: "§ 1 The Roman Pontiff acquires full and supreme power in the Church when, together with episcopal consecration, he has been lawfully elected and has accepted the election. Accordingly, if he already has the episcopal character, he receives this power from the moment he accepts election to the supreme pontificate. If he does not have the episcopal character, he is immediately to be ordained bishop. § 2 Should it happen that the Roman Pontiff resigns from his office, it is required for validity that the resignation be freely made and properly manifested, but it is not necessary that it be accepted by anyone." Cf. can. 44, § 1 CCEO 1990.

1. Solemn manner on the general (ecumenical) council. Based on this we can state, that the College of Bishops and ecumenical council are not identical, because the council represents only a "solemn way" of gathering of the bishops, by which they usually exercise their highest authority over the whole Church.
2. Other manner (extra council), that comes into question, when the Pope orders or accepts freely the collegiate negotiations of bishops. However, also in this case, the papal confirmation and promulgation is absolutely necessary for the validity of such decisions.[81] From the historical point of view we can mention, for example, so called "letter councils" when the Pope, before the promulgation of a new dogma, consulted this intention with majority of the bishops. The Pope Pius IX. (1846-1878) made it, for example, before declaration of the dogma of the Immaculate Conception (*Immaculata Conceptio Beatae Virginis Mariae*), and the Pope Pius XII. (1939-1958) made it before declaration of the dogma of the Assumption of the Blessed Virgin Mary (*Assumptio Beatae Mariae Virginis*).

As mentioned earlier, according to canon 749, § 2, formed in accordance with the theology of the Second Vatican Council, the College of Bishops disposes of the same infallibility as the Pope. The relationships between the College of Bishops and individual bishops, and particularly with the Bishop of Rome, have no secular counterpart, and their practical consequences cannot be deduced from secular models, such as various forms of governance of a state, or of a corporation.

5.1.1.2.2 Ecumenical Council

General or ecumenical council (*oikúmené*, from Greek: „from the whole Empire") is a gathering of bishops of the Catholic Church, and other ecclesiastical dignitaries and theological experts, convened to discuss and settle matters of Church doctrine and discipline in which those entitled to vote are convoked from the whole world and which secures the approbation of the whole Church.[82] This implies that the council cannot be apparently considered "general" neither for the number of bishops, nor for the intention of those who summon it. Therefore, its decrees must be universal-

[81] Can. 341, § 2 CIC 1983: „*Eadem confirmatione et promulgatione, vim obligandi ut habeant, egent decreta quae ferat Collegium Episcoporum, cum actionem proprie collegialem ponit iuxta alium a Romano Pontifice inductum vel libere receptum modum*." Translation: "If they are to have binding force, the same confirmation and promulgation is required for decrees which the College of Bishops issues by truly collegial actions in another manner introduced or freely accepted by the Roman Pontiff." Cf. can. 54, § 2 CCEO 1990.

[82] Can. 339 CIC 1983: „§ 1. *Ius est et officium omnibus et solis Episcopis qui membra sint Collegii Episcoporum, ut Concilio Oecumenico cum suffragio deliberativo intersint*. § 2. *Ad Concilium Oecumenicum insuper alii aliqui, qui episcopali dignitate non sint insigniti, vocari possunt a suprema Ecclesiae auctoritate, cuius est eorum partes in Concilio determinare*." Translation: "§ 1 All bishops, but only bishops who are members of the College of Bishops, have the right and the obligation to be present at an ecumenical council with a deliberative vote. § 2 Some others besides, who do not have the episcopal dignity, can be summoned to an ecumenical council by the supreme authority in the Church, to whom it belongs to determine what part they take in the council." Cf. can. 52 CCEO 1990.

ly received, that means, they must reflect the mind and conscience of the Church in general, and should be held to do so, before they will be justly entitled to ecumenical authority. The College of Bishops with the Pope at its head on these gatherings primarily exercises the **power over the whole Church** by decision-making in the matters of Catholic faith, moral and discipline. From the Catholic point of view, twenty one ecumenical councils took place in the history of the Church. The first seven of them are recognized by both the Eastern and Western sectors of Chalcedonian Christianity and were convoked by Christian Roman Emperors, who also enforced their decisions within the borders of the Roman Empire. In the concrete, from the historical point of view, we can enumerate the following ecumenical councils: 1. First Council of Nicea (325); 2. First Council of Constantinople (381); 3. Council of Ephesus (431); 4. Council of Chalcedon (451); 5. Second Council of Constantinople (553); 6. Third Council of Constantinople (680-681); 7. Second Council of Nicea (787); 8. Fourth Council of Constantinople (869-870); 9. First Council of Lateran (1123); 10. Second Council of Lateran (1139); 11. Third Council of Lateran (1179); 12. Fourth Council of Lateran (1215); 13. First Council of Lyon (1245); 14. Second Council of Lyon (1274); 15. Council of Vienne (1311-1312); 16. Council of Constance (1414-1418); 17. Council of Basel, Ferrara and Florence (1431-1445); 18. Fifth Council of Lateran (1512-1517); 19. Council of Trent (1545-1563); 20. First Vatican Council (1869-1870); 21. Second Vatican Council (1962-1965).

According to the **rules of positive canon law**, the ecumenical council may be convoked by the Pope only, who conducts it and disposes of it. This means that Pope convokes it, presides over it, transfers it, suspends it, dissolves it and approves its decrees, personally, or by the authorized person – usually a legate. The Pope also determines the matters of negotiations, that means, he submits the program of the council or approves the replenishment of the program submitted by other persons.[83] On the ecumenical councils the Pope convokes all the Catholic bishops and other persons (e.g. the deputies of other churches and religious societies, laymen, theologians or religious etc.), and at the same time he will make the decision about their status at the council, i.e. he determines the character of the vote of such persons in the process of decision making.

According to this criterion, the participants of the council are distinguished into **two categories**:

1. Participants with decisive vote – according to the legal bases of their voting right, they are successively distinguished into persons, which:

- dispose of the voting right *ipso iure* – to this category we classify all the bishops in communion with the Pope, if they are not under the Church penalty;

[83] Can. 338 CIC 1983: „§ 1. *Unius Romani Pontificis est Concilium Oecumenicum convocare, eidem per se vel per se vel per alios praesidere, item Concilium transferre, suspendere vel dissolvere, eiusque decreta approbare.* § 2. *Eiusdem Romani Pontificis est res in Concilio tractandas determinare atque ordinem in Concilio servandam constituere; propositis a Romano Pontifice quaestionibus Patres Concilii alias addere possunt, ab eodem Romano Pontifice probandas.*" Translation: "§ 1 It is the prerogative of the Roman Pontiff alone to summon an ecumenical council, to preside over it personally or through others, to transfer, suspend or dissolve the council, and to approve its decrees. § 2 It is also the prerogative of the Roman Pontiff to determine the matters to be dealt with in the council, and to establish the order to be observed. The Fathers of the council may add other matters to those proposed by the Roman Pontiff, but these must be approved by the Roman Pontiff." Cf. can. 51 CCEO 1990.

- dispose of the voting right on the basis of decision of the Pope as a legal authority – usually the territorial abbots and prelates, superiors of religious communities and other clerical persons of the Catholic Church, and the voting right is always granted individually.

2. Participants with consultative vote – they have no voting right, and we rank among them especially lay experts in theology, canon law or other related disciplines.

The decisions authorized by the council acquire the obligatory effect by the Pope's approval, approbation and subsequent promulgation. When the papal seat becomes vacant, the council is *ipso iure* suspended to the moment the new Pope decides on its continuation. Another possibility is to dissolve the council by the newly elected Pope.[84]

5.1.2 Synod of Bishops

The synod of bishops is an advisory body for the Pope. It was set up at the end of the Second Vatican Council to make ever greater use of the bishops' assistance in providing for the good of the Universal Church and to enjoy the consolation of their presence, the help of their wisdom and experience, the support of their counsel, and the voice of their authority (motu proprio *Apostolica sollicitudo*). The synod of bishops is not a form of collegial governance of the Church, but of collaborating on the primatial function of the Pope. It is a group of bishops who have been chosen from **different regions of the world** and meet together at fixed times to foster closer unity between the Roman Pontiff and bishops, to assists the Roman Pontiff with their counsel in the preservation and growth of faith and morals and in the observance and strengthening of ecclesiastical discipline, and to consider questions pertaining to the activity of the Church in the world.[85] Therefore, it discusses topics proposed to it and makes recommendations, but does not settle questions or issue decrees, unless the Pope grants it deliberative power in certain cases. That is also the reason why the main competences are entrusted to the Pope, who convokes the synod of bishops, ratifies the election of participants in the assembly, determines the topic of discussion (at least six months before the assembly, if possible), distributes the material for discussion to those who

[84] Can. 340 CIC 1983: „*Si contingat Apostolicam Sedem durante Concilii celebratione vacare, ipso iure hoc intermittitur, donec novus Summus Pontifex illud continuari iusserit aut dissolverit*." Translation: "If the Apostolic See should become vacant during the celebration of the council, it is by virtue of the law itself suspended until the new Supreme Pontiff either orders it to continue or dissolves it." Cf. can. 53 CCEO 1990.

[85] Can. 342 CIC 1983: „*Synodus Episcoporum coetus est Episcoporum qui, ex diversis orbis regionibus selecti, statutis temporibus una conveniuntut arctam coniuntionem inter Romanum Pontificem et Episcopos foveant, utque eidem Romano Pontifici ad incolumitatem incrementumque fidei et morum, ad disciplinam ecclesiasticam servandam et firmandam consiiis adiutricem operam praestent, necnon quaestiones ad actionem Ecclesiae in mundo spectantes perpendant*." Translation: "The synod of bishops is a group of bishops selected from different parts of the world, who meet together at specified times to promote the close relationship between the Roman Pontiff and the bishops. These bishops, by their counsel, assist the Roman Pontiff in the defence and development of faith and morals and in the preservation and strengthening of ecclesiastical discipline. They also consider questions concerning the mission of the Church in the world."

should participate, sets the agenda and presides either personally or through delegates over the assembly. Considering its nature, the synod of bishops is permanent, even when not in session. It periodically holds assemblies, which are either general, if summoned to consider matters directly concerning the Universal Church, or special, if summoned to solve the problems of a particular geographical area. The general assemblies are either ordinary (held at fixed intervals), or extraordinary (held to deal with some urgent matter). Besides these periodical assemblies, the synod of bishops has a permanent secretariat with its headquarters in Rome, but is not a part of the Roman Curia.

5.1.3 College of Cardinals

The College of Cardinals is the body of all cardinals of the Catholic Church. The function of this college is to advise the Pope on Church matters, when he summons them to an ordinary consistory.[86] It also convenes on the death or resignation of a Pope as a papal conclave to elect a successor. The college has no ruling power except during the papal vacancy period, and even then its powers are limited by the norms of the canon law. Historically, cardinals were the clergy of the city of Rome, serving the Bishop of Rome. Its importance raised by the above mentioned act of the Pope Nicolas II who ordained that only the members of the College of Cardinals are entitled to elect a Pope. We can mention again that according to the rules of canon law cardinals who have reached the age of 80 before the day the Apostolic See becomes vacant do not have a vote in papal elections. The cardinals are **distinguished** into:

1. Curial – they work in the bodies of Roman Curia and are the members of certain congregations. The Pope confers them the titular church in Rome but they do not dispose of any power over it, and are not supposed to intervene into the administration of property and discipline.
2. Extracurial – they are dispersed all over the world and operate as bishops in individual dioceses.

Due to organization we may note the dean of the College of Cardinals and the sub-dean, which are the president and vice-president of the college. Both are elected by and from the cardinals holding suburbicarian dioceses, but the election requires papal confirmation. Except for presiding, the dean has no power of governance over the cardinals, instead acting as first among equals (*primus inter pares*). Cardinals meet up **on the conferences** (ordinary or extraordinary consistories) convoked by the Pope.

[86] Can. 349 CIC 1983: „*Sanctae Romanae Ecclesiae Cardinales peculiare Collegium constituunt, cui competit ut electioni Romani Pontificis provideat ad normam iuris peculiaris; Cardinales item Romano Pontifici adsunt sive collegialiter agendo, cum ad quaestiones maioris momenti tractandas in unum convocantur, sive ut singuli, scilicet variis officiis, quibus funguntur, eidem Romano Pontifici praestando in cura praesertim cotidiana universae Ecclesiae.*" Translation: "The Cardinals of the Holy Roman Church constitute a special College, whose prerogative it is to elect the Roman Pontiff in accordance with the norms of a special law. The Cardinals are also available to the Roman Pontiff, either acting collegially, when they are summoned together to deal with questions of major importance, or acting individually, that is, in the offices which they hold in assisting the Roman Pontiff especially in the daily care of the Universal Church."

As mentioned earlier, the Roman Bishop is entitled to conceal the name of a newly nominated cardinal, that is called "reservation in the heart" (*reservatio in pectore*), and to announce his name later. Such a candidate does not dispose of the right and duties of cardinal (since he is not aware of being a cardinal yet).[87]

5.1.4 Roman Curia

The Roman Curia is the administrative apparatus of the Holy See and the central governing body of the entire Catholic Church, together with the Pope. It coordinates and provides the necessary central organization for the correct functioning of the Catholic Church and the achievement of its goals. According to the article 1 of the **apostolic constitution *Pastor bonus***, issued in 1988 by the Pope John Paul II that regulates the commission, structure and organization of the Roman Curia, we may describe it as the complex of dicasteries and institutes which help the Roman Pontiff in carrying out his supreme pastoral office for the good and service of the whole Church and of the particular churches. Therefore, it strengthens the unity of faith and communion of the people of God and promotes the mission proper to the Church in the world. The character of the function of Roman Curia dicasteries is:

1. Serving – according to the conclusions of the Second Vatican Council, the Roman Curia serves the Pope. The Roman Bishop uses the bodies of Roman Curia as his instrument to perform the functions of the head of the Church. Only the Pope is entitled to entrust the dicasteries with the power of governance. In accordance with the collegiate principle, the Roman Curia also serves the College of Bishops.
2. Representative – the nature of the power of governance of the bodies of Roman Curia is always representative. Through their activity, every dicastery only expresses the interpretation of the will of the Pope's will.

It is important to note that these assistants carry out their specific tasks within their canonical limits, in the name and by the authority of the Pope.[88] In spite of it, the

[87] Can. 351, § 3 CIC 1983: „*Promotus ad cardinalitiam dignitatem, cuius creationem Romanus Pontifex annuntiaverit, nomen autem in pectore sibi reservans, nullis interim tenetur Cardinalium officiis nullisque eorum gaudet iuribus; postquam autem a Romano Pontifice eius nomen publicatum fuerit, iisdem tenetur officiis fruiturque iuribus, sed iure praecedentiae gaudet a die reservationis in pectore*." Translation: "A person promoted to the dignity of Cardinal, whose creation the Roman Pontiff announces, but whose name he reserves in petto, is not at that time bound by the obligations nor does he enjoy the rights of a Cardinal. When his name is published by the Roman Pontiff, however, he is bound by these obligations and enjoys these rights, but his right of precedence dates from the day of the reservation in petto."

[88] Can. 334 CIC 1983: „*In eius munere exercendo, Romano Pontifici praesto sunt Episcopi, qui eidem cooperatricem operam navare valent variis rationibus, inter quas est synodus Episcoporum. Auxilio praetera ei sunt Patres Cardinales, necnon aliae personae itemque varia secundum temporum necessitates instituta; quae personae omnes et instituta, nomine et auctoritate ipsius, munus sibi commissum explent in bonum omnium Ecclesiarum, iuxta normas iure definitas*." Translation: "The bishops are available to the Roman Pontiff in the exercise of his office, to cooperate with him in various ways, among which is the synod of bishops. Cardinals also assist him, as do other persons and, according to the needs of the time, various institutes; all these persons and institutes fulfil

most important cases, in order to be decided, are referred directly to the Pope for the decision. He can **approve them** by the following two ways:

1. In specific form (*in forma specifica*) – after being approbated, these decisions have the character of the Pope's decision, although they were made by the certain body of Roman Curia.
2. In common form (*in forma commune*) – the decisions approved in this way formally have the character of the decision of relevant dicastery of Roman Curia.

At the present time, the organization of the Roman Curia is comprised of **following bodies**:

1. **The Secretariat of the State** – with the cardinal at its head – secretary of state, who performs all political and diplomatic functions of Vatican City and the Holy See. The secretariat is divided into two sections, the section for general affairs and the section for relations with states. The Secretariat of State was created in the 15th century, and is now the dicastery most involved in coordination of the Holy See's activities.

2. **The congregations** with the cardinal prefect at its head. They represent the monocratic bodies with special subject competence. We can compare them to the departments of the states. Nowadays, nine congregations are in function, namely:

- The Congregation for the Doctrine of the Faith;
- The Congregation for the Oriental Churches;
- The Congregation for Divine Worship and the Discipline of the Sacraments;
- The Congregation for the Causes of Saints;
- The Congregation for the Evangelization of Peoples;
- The Sacred Congregation for the Clergy;
- The Congregation for Institutes of Consecrated Life and Societies of Apostolic Life;
- The Congregation for Catholic Education (in seminaries and institutes of study);
- The Congregation for Bishops.

3. **The tribunals**:

- The Apostolic Penitentiary, more formally the Supreme Tribunal of the Apostolic Penitentiary is chiefly a tribunal of mercy, responsible for issues relating to the forgiveness of sins in the Catholic Church and the matters of internal forum.
- The Supreme Tribunal of the Apostolic Signatura is the highest judicial authority in the Catholic Church besides the Pope himself, who is the supreme ecclesiastical judge. Additionally, it is an administrative office for matters pertaining

their offices in his name and by his authority, for the good of all the Churches, in accordance with the norms determined by law." Cf. can. 46, § 1 CCEO 1990.

to the judicial activity of the whole Church. As an administrative office, it exercises the power of jurisdiction over all tribunals of the Catholic Church. It can also extend the jurisdiction of tribunals, grant dispensations from procedural laws, and establish interdiocesan tribunals.

- The Tribunal of the Rota Romana is the highest appellate tribunal. It usually tries cases in appeal in third instance (as normally in case of Eastern Catholic Churches), or even in second instance, if an appeal is made directly against the sentence of the tribunal of first instance. It is also a court of first instance for cases specified in the law and for other committed to the Rota by the Roman Pontiff. The most important function of this tribunal lies in fostering of jurisprudence and, through its own sentences, is a help to lower tribunals. The greater part of its decisions concerns the nullity of marriage.
- The Supreme Apostolic Tribunal of the Congregation for the Doctrine of the Faith that is competent for the Latin Church, as well as for the Eastern Catholic Churches, for the judgment of delicts reserved by the norms of canon law. This tribunal is usually being overlooked in the canonical literature, despite of its great importance and historical traditions. Generally, we may note that it deals with the more grave delicts in celebration of the sacraments and against morals, which are specified by the norms of canon law.[89]

4. **The pontifical councils**:

- The Pontifical Council for the Laity;
- The Pontifical Council for Promoting Christian Unity;
- The Pontifical Council for the Family;
- The Pontifical Council for Justice and Peace;
- The Pontifical Council *Cor Unum*;
- The Pontifical Council for the Pastoral Care of Migrants and Itinerants;
- The Pontifical Council for the Pastoral Care of Health Care Workers;

[89] In the concrete: **the delicts against the sanctity of the most august Eucharistic sacrifice and the sacraments**, namely: 1. Taking or retaining the consecrated species for a sacrilegious purpose or throwing them away (can. 1367 CIC 1983 and can. 1442 CCEO 1990). 2. Attempting the liturgical action of the Eucharistic sacrifice or simulating the same (can. 1378, § 2, 1° and 1379 CIC 1983 and can. 1443 CCEO 1990). 3. Forbidden concelebration of the Eucharistic sacrifice and do not recognize the sacramental dignity of priestly ordination (can. 908 and 1365 CIC 1983 and can. 702 and 1440 CCEO 1990). 4. Consecrating for a sacrilegious purpose one matters without the other in the Eucharistic celebration or even both outside a Eucharistic celebration (can. 927 CIC 1983); **the delicts against the sanctity of the sacrament of penance**, namely: 1. Absolution of an accomplice in sin against the Sixth Commandment of the Decalogue (can. 1378, § 1 CIC 1983 and can. 1457 CCEO 1990). 2. Solicitation in the act, on the occasion or under the pretext of confession, to sin against the Sixth Commandment of the Decalogue, if it is directed to sin with the confessor himself (can. 1387 CIC 1983 and can. 1458 CCEO 1990). 3. Direct violation of the sacramental seal (can. 1388, § 1 CIC 1983 and can. 1456, § 1 CCEO 1990); **a delict against morals**, namely: the delict committed by a cleric against the Sixth Commandment of the Decalogue with a minor below the age of 18 years. Only these delicts, which are indicated above with their definition, are reserved to the Apostolic Tribunal of the Congregation for the Doctrine of the Faith.

- The Pontifical Council for Legislative Texts;
- The Pontifical Council for Interreligious Dialogues;
- The Pontifical Council for Culture;
- The Pontifical Council for Social Communications.

5. **The offices**:

- The Apostolic Camera that is the central board of finance in the papal administrative system, which at one time was of great importance in the government of the State of the Church, and in the administration of justice, led by the Camerlengo of the Holy Roman Church.
- The Administration of the Patrimony of the Apostolic See, that is the part of the Roman Curia dealing with the properties owned by the Holy See in order to provide the funds necessary for the Roman Curia to function.
- The Prefecture for the Economic Affairs of the Holy See is an office entrusted with overseeing all the offices of the Holy See that manage finances, regardless of their degree of autonomy.

6. **The pontifical commissions**:

- The Pontifical Commission for the Cultural Heritage of the Church;
- The Pontifical Commission *Ecclesia Dei*;
- The Pontifical Commission for Sacred Archaeology;
- The Pontifical Biblical Commission;
- The International Theological Commission;
- Interdicasterial Commission;
- The Pontifical Commission for Latin America.

7. **Other institutions of the Roman Curia**, that is to say various commissions, committees, archives etc.

5.1.5 Papal Legates

According to the earlier mentioned canon 362, the Pope disposes of the right to nominate his legates (*legati*) and send them to particular churches, states and to other public representatives. In general, the legate is a personal representative of the Pope to foreign nations, or to some part of the Catholic Church. He is empowered in matters of Catholic faith and for the settlement of ecclesiastical matters. From the historical point of view, the system of permanent diplomatic representatives began in the Middle Ages and developed when the Pope was a major player in European politics. Up to 1870, the papacy had territorial responsibility for the area of central Italy known as the Papal State. Today, the Holy See maintains diplomatic relations with **more than 160 countries** and sends even more of its legates to several churches. The Holy See

also sends delegates or observers to some of the international organizations, such as the United Nations, the European Union, the Organization of American States, and to many international meetings and conferences. Considering this right, it consists of:

- The area of the Church itself, where the main goal of the papal legate is to support relationships between the Apostolic See and concrete particular church in order to become stronger and more effective.
- The area of international public law, where the Pope disposes of the active and passive right of legation. This right is not established according to the fact that since the time of Lateran Treaties of 1929, the Pope has been generally considered to be the head of the sovereign Vatican City State (*Stato della Città del Vaticano*), but on the basis of generally recognized legal subjectivity of the Apostolic See within the international law. It is proper to mention the thousand-year-old usucaption of this right of legation. This entitlements are testified by the above mentioned participation of the Catholic Church in various international organizations whose members are not only the states (e.g. UNESCO), but also by the fact that many states maintain diplomatic relations with the Apostolic See. Usually, a papal legate (nuncio in this case) is considered to be the honour head ("doyen" or "dean") of the diplomatic body (if a legate in the function of ambassador is not a doyen, he is called "pronuncio").

In the theory, we distinguish two independent subjects of international relationships, that is to say, the Apostolic See (as a representative of the Church), as well as Vatican (as a state), but in diplomatic practices both subjects merge. The main task of papal legates, which are simultaneously the **heads of diplomatic mission** at the states according to the rules of international public law, is especially to maintain the quality of relations between the Apostolic See and representatives of the state, as well as dealing with the questions considering the relationships between the Church and the state.[90] The mission of the papal legate expires by accomplishing his commission, recalling from the office, or by accepting his resignation, but not as a consequence of vacation of the Apostolic See, unless stated otherwise in the letter of credence.

[90] Can. 365 CIC 1983: *„Legati pontificii, qui simul legationem apud Civitates iuxta iuris internationalis normas exercet, munus quoque peculiare est*: 1° *promovere et fovere necessitudines inter Apostolicam Sedem et Auctoritates Rei Publicae*; 2° *quaestiones pertractare quae ad relationes inter Ecclesiam et Civitatem pertinent*; *et peculiari modo agere de concordatis aliisque huiusmodi conventionibus conficiendis et ad effectum deducendis*. § 2. *In negotiis, de quibus in § 1, expediendis, prout adiuncta suadeant, Legatus pontificius sententiam et consilium Episcoporum dicionis ecclesiasticae exquirere ne omittat, eosque de negotiorum cursu certiores faciat*." Translation: "§ 1 A papal legate who at the same time acts as envoy to the state according to international law, has in addition the special role: 1° of promoting and fostering relationships between the Apostolic See and the authorities of the state; 2° of dealing with questions concerning relations between Church and state, especially, of drawing up concordats and other similar agreements, and giving effect to them. § 2 As circumstances suggest, in the matters mentioned in § 1, the papal legate is not to omit to seek the opinion and counsel of the bishops of the ecclesiastical jurisdiction and to keep them informed of the course of events."

5.2 Local Level

5.2.1 Concept of Particular Churches

Local (particular) churches (*ecclesiae particulares*) are territorially bounded parts of the people of God with its proper, relatively autonomous church administration, which involve all the Catholic believers situated on the given territory. The term "particular church" expresses the fact, that in every society of Christians subordinated to a bishop, the one Holy, Universal, Apostolic Church is present. Above all, especially the dioceses are to be recognized as particular churches. There could be constituted more particular churches at the certain territory, that differ especially in the rite (*ritus*). In this context, it is necessary to remember that the right of constituting a particular church pertains to the Pope only. Properly constituted particular churches are *ipso iure* considered to be the corporate entities. Some of the personal church structures are not recognized as particular churches, although they approximate to the local churches according to their own administration with the personal Ordinary at its head. On this subject, we may note especially personal prelatures, military ordinariates, or personal apostolic administrations.

5.2.2 Units of Particular Churches

5.2.1.1 Dioceses

5.2.1.1.1 Characteristic

A diocese is the district or the see under the supervision of a bishop that is divided into parishes. In canon law, the diocese is the primary realization of the Church. The Code uses the term "particular church" to refer to the diocesan church primarily. It is this level of the church that is viewed as basic, complete, and fully realized. As mentioned earlier, the Catholic Church fully exists in each diocesan church, and the Universal Church is made up of diocesan churches.[91] Canonically, the Catholic Church is a communion of diocesan churches. From the etymology's point of view, the word "diocese" comes from the Greek "*dioikesis*", which refers to the management of a

[91] Can. 368 CIC 1983: „*Ecclesiae particulares*, *in quibus una et unica Ecclesia catholica exsistit*, *sunt imprimis dioeceses*, *quibus nisi aliud constet*, *assimilantur praelatura territorialis et abbatia territorialis*, *vicariatus apostolicus et praefectura apostolica necnon administratio apostolica stabiiter erecta*." Translation: "Particular churches, in which and from which the one and only Catholic Church exists, are principally dioceses. Unless the contrary is clear, the following are equivalent to a diocese: a territorial prelature, a territorial abbacy, a vicariate apostolic, a prefecture apostolic and a permanently established apostolic administration." Cf. can. 313 CCEO 1990.

household, but in the Roman Empire was used to name administrative jurisdictions, like those headed by magistrates or legates. The Church gradually began to use the term, and since the Middle Ages the term has been used to describe the local church headed by a bishop. The norms of positive canon law define a diocese as a **portion of the people of God**. That means, the people are entrusted to bishop's pastoral care. In providing this care, the bishop is assisted by the presbyterate, the college of presbyters. Therefore, according to the theological doctrine of the Catholic Church, there are three forces that gather the people, their bishops, and their priests into a Church: the Holy Spirit, the Gospel, and the Eucharist.[92] Especially in mission areas and elsewhere, the particular churches are sometimes called by names of territorial prelature, apostolic vicariate, or apostolic administration, but it is necessary to underline that these subjects are considered to be equivalent to diocese in canon law. Generally, only the highest authority in the Church, i.e. the Pope, can formally establish a diocese. When he does so, the diocesan church becomes a juridic person, i.e. a canonical subject of rights and obligations.[93]

5.2.2.1.2 Diocesan Bishops

Generally, the title "bishop" comes from the Greek "*episkopos*", which means "overseer" or "superintendent". The term was originally used to refer to church leaders several times in the New Testament. For that reason, as the bishops subsequently started to play the central role in the local churches, the episcopal office has been traditionally considered to be of a Divine origin. Therefore, the bishops are **successors of the Apostles** by Divine institution, as they were made such by the Holy Spirit who was given to them. They are the pastors in the church, the teachers of doctrine, the priests of sacred worship, and the ministers of governance.[94] The bishops, who have been entrusted with the care of particular churches, lead them as vicars and legates of Christ, and as pastors they nourish their people, exercising the functions of teaching, sanctifying, and ruling. This pastoral authority, which they receive by episcopal consecration, is

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92 Can. 369 CIC 1983: „*Dioecesis est populi Dei portio, quae Episcopo cum cooperatione presbyterii pascenda concreditur, ita ut, pastori suo adhaerens ab eoque per Evangelium et Eucharistiam in Spiritu Sancto congregata, Ecclesiam particularem constituat, in qua vere inest et operatur una sancta catholica et apostolica Christi Ecclesia*." Translation: "A diocese is a portion of the people of God, which is entrusted to a bishop to be nurtured by him, with the cooperation of the presbyterium, in such a way that, remaining close to its pastor and gathered by him through the Gospel and the Eucharist in the Holy Spirit, it constitutes a particular church. In this church, the one, holy, Catholic and apostolic Church of Christ truly exists and functions." Cf. can. 177, § 1 CCEO 1990.

93 Can. 373 CIC 1983: „*Unius supremae auctoritatis est Ecclesias particulares erigere; quae legitime erectae, ipso iure personalitate iuridica gaudent*." Translation: "It is within the competence of the supreme authority alone to establish particular churches; once they are lawfully established, the law itself gives them juridical personality." Cf. can. 177, § 2 and 311, § 2 CCEO 1990.

94 Can. 375, § 1 CIC 1983: „*Episcopi, qui ex divina institutione in Apostolorum locum succedunt per Spiritum Sanctum qui datus est eis, in Ecclesia Pastores constituuntur, ut sint et ipsi doctrinae magistri, sacri cultus sacerdotes et gubernationis ministri*." Translation: "By Divine institution, bishops succeed the Apostles through the Holy Spirit who is given to them. They are constituted pastors in the Church, to be the teachers of doctrine, the priests of sacred worship and the ministers of governance."

made operative by their canonical mission, which implies apostolic communion.

According to the norms of canon law, a **candidate for the bishop** should be:

1. a good Christian, outstanding in solid faith, good morals, piety, zeal for souls, wisdom, prudence, human virtues, and should be endowed with other qualities which make him suitable to fulfil the office in question;
2. of a good reputation;
3. a priest, ordained at least five years, and at least thirty-five years of age;
4. a holder of a graduate degree in Scripture, theology, or canon law, or at least well qualified in these disciplines.

Bishops are called "diocesan" when a diocese was entrusted to them. All the other bishops, e.g. auxiliaries, retired etc. are called "titular", that is, they were given a nominal see, the one, that no longer exists, as a symbol of their relationship to a portion of the people of God.[95] It is a reminder that ordained ministers has always been seen in relationship with the community of people, whom they serve. Considering the methods of assigning the office of diocesan bishop, the Pope either appoints bishops, or confirms those who have been elected. Following the commentary on the Church offices, there are **four distinct steps** of becoming a bishop: selection or designation, conferral of the office, episcopal ordination or consecration, and formal taking possession of the office. That is to say, a priest, once named a diocesan bishop, must be ordained a bishop, and then publicly "take possession" of the diocese by presenting his letter of appointment from the Holy See to the college of consultors, which represents the group of presbyters initially responsible for the diocese between bishops. Afterwards, he should take part in a liturgical ceremony in the cathedral church. Only then the new bishop can exercise the authority in the diocese. Considering the candidates, a pool or list of names compiled in secrecy by the bishops of each province of those priests who are thought suitable for the episcopacy, periodically updated, is sent to the Holy See and maintained there in the Congregation for Bishops (*Congregatio pro Episcopis*).[96] A diocesan bishop has all the ordinary (goes with the office), proper (exercised in his own name, not vicarious), and immediate (applying directly to everyone in the diocese) power that is required for the exercise of his pastoral office. The only exceptions

[95] Can. 376 CIC 1983: „*Episcopi vocantur dioecesani, quibus scilicet alicuius dioecesis cura commissa est; ceteri titulares appellantur.*" Translation: "Bishops to whom the care of a given diocese is entrusted are called diocesan bishops; the others are called titular bishops." Cf. can. 178 and 179 CCEO 1990.

[96] Can. 377, § 2 CIC 1983: „*Singulis saltem trienniis Episcopi provinciae ecclesiasticae vel, ubi adiuncta id suadeant, Episcoporum conferentiae, communi consilio et secreto elenchum componant presbyterorum etiam sodalium institutorum vitae consecrate, ad episcopatum aptiorum eumque Apostolicae Sedi transmittant, firmo manente iure uniuscuiusque Episcopi Apostolicae Sedi nomina presbyterorum, quos episcopali munere dignos et idoneus putet, seorsim patefaciendi.*" Translation: "At least every three years, the bishops of an ecclesiastical province or, if circumstances suggest it, of an Episcopal Conference, are to draw up, by common accord and in secret, a list of priests, even of members of institutes of consecrated life, who are suitable for the episcopate; they are to send this list to the Apostolic See. This is without prejudice to the right of every bishop individually to make known to the Apostolic See the names of priests whom he thinks are worthy and suitable for the episcopal office."

are the cases reserved to higher authority.[97] The bishop exercises this authority in his own name, not as the vicar of the Pope. The norms of canon law delineate the **facets of the bishop's office** by listing those, for which he must have pastoral care, and then by stating his major responsibilities as a teacher, sanctifier, and ruler. The bishop is also the representative of the diocese in all juridical matters.[98]

Moreover, the diocesan bishop has other traditional duties, which can be characterized by the obligation of presence in his diocese, the visitation of all the parishes and other institutions of his diocese, and by reporting to the Pope on the state of his diocese in five-year intervals. As a final obligation we should mention the duty to submit his resignation to the Pope, when he reaches the age of seventy-five years, or when he can no longer fulfil his duties.[99] Considering the **auxiliary bishops**, there are three categories of titular bishops who are appointed to assists or partially replace diocesan bishops. Firstly, we may note original auxiliary bishops, which are appointed upon the request of the diocesan bishop to help him, when the pastoral needs of the diocese call for it. Secondly, we can mention auxiliary bishops with special faculties, who are delegated to a diocesan bishop in response to some difficulty or deficiency in the diocese, or with the diocesan bishop himself. Lastly, there are the coadjutor bishops, who represent the auxiliary bishops with special faculties. Their appointment gives them also the right to succeed the diocesan bishop when he dies, retires, or becomes incapacitated.[100] The coadjutor becomes the diocesan bishop immediately upon the vacancy of the see. Finally, we may mention the case, when a diocesan bishop dies, resigns, was transferred or deprived of the office. The diocese is then considered vacant and is administered principally by the administrator, who has to be a priest, at least thirty-five years old, and should be outstanding in doctrine and prudence. Therefore, the papal legate gathers the suggestions of neighbouring bishops,

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97 Can. 381, § 1 CIC 1983: „*Episcopo dioecesano in dioecesi ipsi commissa omnis competit potestas ordinaria, propria et immediata, quae ad exercitium eius muneris pastoralis requiritur, exceptis causis quae iure aut Summi Pontificis decreto supremae aut alii auctoritati ecclesiasticae reserventur.*" Translation: "In the diocese entrusted to his care, the diocesan bishop has all the ordinary, proper and immediate power required for the exercise of his pastoral office, except in those matters which the law or a decree of the Supreme Pontiff reserves to the supreme or to some other ecclesiastical authority." Cf. can. 178 CCEO 1990.

98 Can. 393 CIC 1983: „*In omnibus negotiis iuridicis dioecesis, Episcopus dioecesanus eiusdem personam gerit*." Translation: "In all juridical transactions of the diocese, the diocesan bishop acts in the person of the diocese." Cf. can. 190 CCEO 1990.

99 Can. 401 CIC 1983: „§ 1. *Episcopus dioecesanus, qui septuagesimum quintum aetatis annum expleverit, rogatur ut renuntiationem ab officio exhibeat Summo Pontifici, qui omnibus inspectis adiunctis providebit*. § 2. *Enixe rogatur Episcopus dioecesanus, qui ob infirmam valetudinem aliamve gravem causam officio suo adimplendo minus aptus evaserit, ut renuntiationem ab officio exhibeat*." Translation: "§ 1 A diocesan bishop who has completed his seventy-fifth year of age is requested to offer his resignation from office to the Supreme Pontiff, who, taking all the circumstances into account, will make provision accordingly. § 2 A diocesan bishop who, because of illness or some other grave reason, has become unsuited for the fulfilment of his office, is earnestly requested to offer his resignation from office." Cf. can. 210, §§ 1-2 CCEO 1990.

100 Can. 403, § 3 CIC 1983: „*Sancta Sedes, si magis opportunum id ipsi videatur, ex officio constituere potest Episcopum coadiutorem, qui et ipse specialibus instruitur facultatibus; Episcopus coadiutor iure successionis gaudet*." Translation: "If the Holy See considers it more opportune, it can ex officio appoint a coadjutor bishop, who also has special faculties. A coadjutor bishop has the right of succession." Cf. can. 212, § 2 CCEO 1990.

and of the head of the Conference of Bishops (*Conferentia Episcoporum*), for a likely successor. At this process, the apostolic legate has to interrogate some of the members of the diocesan college of consultors, and he may also ask other priests and laypersons about their opinion. The legate sends a proposal of three names to the Holy See along with his own preference. The whole procedure is kept secret. Within this context, we can mention the existence of the **bishops of higher rank** by their office, that is to say, metropolitans of the Latin Church and patriarchs and major archbishops of the Oriental churches. Whilst metropolitans of the Latin Church provides especially the supervision within the province, the patriarchs of the Eastern Churches enjoy the authority over bishops, clergy, and people, including the nomination of bishops, in accordance with ancient traditions and decrees of ecumenical councils. Major archbishops have the similar authority within the Oriental Churches.

5.2.2.1.3 Diocesan Curia

Diocesan curia represents the apparatus of a diocesan bishop helping him in administration of the diocese and exercising certain pastoral functions, administrative functions and judicial functions. Diocesan curia consists of these functionaries (eventually collective bodies), named or removed by the diocesan bishop himself:

1. **Vicar general** is the principal deputy of the bishop of a diocese for the exercise of administrative authority (vicarious ordinary power) and possesses the title of local Ordinary. As vicar of the bishop, the vicar general exercises the bishop's ordinary executive power over the entire diocese, and, thus is the highest official in a diocese or other particular church after the diocesan bishop or his equivalent in the rules of canon law. Generally, a diocesan bishop must appoint at least one vicar general for his diocese, but may appoint more. The vicar general by virtue of his office is the bishop's agent in administration, acting as second-in-command for diocesan executive matters. Vicars general must be priests, auxiliary bishops or coadjutor bishops. Other auxiliary bishops are usually appointed vicars general or at least episcopal vicars. A vicar general is a local Ordinary and acquires his powers by virtue of office and not by delegation. He is to possess a doctorate or at least a licentiate in canon law, or theology, or should be a truly expert in these fields.
2. **Episcopal vicar** shares in the bishop's ordinary executive power like the above mentioned vicar general except of the fact, that the episcopal vicar's authority normally extends only on particular geographic section of a diocese or over certain specific matters. These might include issues concerning religious institutes or the faithful of a different rite etc. These too must be priests or auxiliary bishops. If the episcopal vicar is not simultaneously the titular bishop, he has to be named one for the indeterminate time. In order to better support the pastoral care, the bishop of a diocese can constitute for the better support of pastoral care the bishop's counsel (*consiliusm episcopale*) that consists of general and episcopal vicars.
3. **Chancellor** must be appointed in every diocesan curia. His main task is to care for the execution, sending and archiving of documents of the curia. The assis-

tant called vice-chancellor can be constituted in order to help him. According to the rules of canon law, they both are *ipso iure* notaries and secretaries of the curia. Besides them another notaries of the curia can be constituted in order to provide the execution and verification of the public documents.

4. **Economical counsel** that has to be constituted in every diocesan curia and consists of three members at least. Only the bishop or his delegate can preside over it. Its main task is to make annual diocesan budget and annual accounts. To deal with the college of consultors (*collegium consultorum*) and economic counsel, the bishop usually names the economist, who, under the bishop's guidance, administers the diocesan property.

5.2.2.1.4 Diocesan Synod

This consultative body is described as a group of priests and other faithful that offers **assistance to the diocesan bishop** for the good of the whole diocesan community.[101] A synod is not constituted as a permanent body, but it is an event that is celebrated when circumstances warrant. Firstly, it is necessary to underline that the bishop is the only highest authority in the territory entrusted to him. That is also the reason why the only one authority to dispose of the synod is the diocesan bishop, who can convoke it, but he must consult the presbyteral council before doing so. All members of the synod have consultative votes, but bishop is the one and only legislator, if canonical rule-making is the part of agenda. The final outcome of the diocesan synod has to be communicated to the metropolitan of the province and to the Conference of Bishops. During the vacation of the diocesan see, the synod is *ipso iure* suspended, until the moment a new diocesan bishop makes decision about its continuation.

5.2.2.1.5 Parishes

Parish is a territorial unit, historically under the pastoral care and clerical jurisdiction of one parish priest, who might be assisted in his pastoral duties by a curate or curates. In extended definition, the term "parish" refers not only to the territorial unit, but especially to the people of its community or congregation, as well as to church property within it.[102] Etymologically, this term comes from the Greek "*paroikia*" that means "sojourning in a foreign land", or "dwelling beside", "stranger", or "sojourner".

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[101] Can. 460 CIC 1983: „*Synodus dioecesana est coetus delectorum sacerdotum aliorumque christifidelium Ecclesiae particularis, qui in bonum totius communitatis dioecesanae Episcopo dioecesano adiutricem operam praestant, ad normam canonum qui sequuntur.*" Translation: "The diocesan synod is an assembly of selected priests and other members of Christ's faithful of a particular church which, for the good of the whole diocesan community, assists the diocesan bishop, in accordance with the following canons." Cf. can. 235 CCEO 1990.

[102] Can. 515, § 1 CIC 1983: „*Paroecia est certa communitas christifidelium in Ecclesia particulari stabiiter constituta, cuius cura pastoralis, sub auctoritate Episcopi dioecesani, committitur parocho, qua proprio eiusdem pastori.*" Translation: "A parish is a certain community of Christ's faithful stably established within a particular church, whose pastoral care, under the authority of the diocesan bishop, is entrusted to a parish priest as its proper pastor." Cf. can. 279 CCEO 1990.

In the earliest centuries it designated the church headed by a bishop, but somewhere between the fourth and sixth century it began to be used as a name for smaller local churches within the diocese **under the care of presbyters**. In the feudal period, the parish became privatized, that is, owned by the local lord who entrusted its care and income to a priest, as his job and sustenance. This system of so-called "proprietary churches" (*ecclesiae propriae*, *Eigenkirche*) was established in the 6th century at least, and its evident grounds can be found also in lawmaking of the Byzantine Emperor Justinian I. (527-565). As in history, nowadays, too, each diocese is divided into parishes, each with their own central church called the parish church, where religious services take place. Normally, a parish comprises all Catholics living in its territory, but parishes can also be established within a defined geographical area on a personal basis for Catholics of a particular rite, language, nationality, and likewise. Most Catholic parishes are part of Latin rite dioceses, which together cover the whole territory of a country. There can also be overlapping parishes of eparchies of Eastern Catholic Churches, personal ordinariates or military ordinariates. Considering the authorities, only a bishop can **establish parishes**, alter or combine them, or even suppress them, but only after he had consulted it with the presbyteral council. Within this context, it is necessary to mention that parish is a juridic person subject of rights and obligations, and able to own property.

Usually, each parish has a presbyter as a **pastor**, but when circumstances require, ministerial personnel of the parish can be configured differently. For example, several parishes may be entrusted to one pastor, several priests may, as a team, mutually provide pastoral care for one or several parishes, or a deacon or laypersons may be entrusted with the pastoral care of a parish.[103] In general, what the bishop is to the diocese, the pastor is to the parish. The pastor's role includes broad teaching, sanctifying, and governing responsibilities (executive power practically). He is also the juridical representative of the parish and the administrator of the parish property. The pastor does so always under the authority of diocesan bishop, with whom he shared the ministry of Christ. His sacramental connection with the bishop in holy orders is an expression of the communion of the parish community with the diocesan church. The pastor is charged to cooperate with other presbyters, deacons, and laypersons in carrying out his ministry to the parish community.[104] Considering the office itself, only

[103] Can. 517 CIC 1983: „§ 1. *Ubi adiuncta id requirant, paroeciae aut diversarum simul paroeciarum cura pastoralis committi potest pluribus in solidum sacerdotibus, ea tamen lege, ut eorundem unus curae pastoralis exercendae sit moderator, qui nempe actionem coniunctam dirigat atque de eadem coram Episcopo respondeat*. § 2. *Si ob sacerdotum penuriam Episcopus dioecesanus aestimaverit participationem in exercitio curae pastoralis paroeciae concredendam esse diacono aliive personae sacerdotali charactere non insignitae aut personarum communitati, sacerdotem constituat aliquem qui, potestatibus et facultatibus parochi instructus, curam pastoralem moderetur.*" Translation: "§ 1 Where circumstances so require, the pastoral care of a parish, or of a number of parishes together, can be entrusted to several priests jointly, but with the stipulation that one of the priests is to be the moderator of the pastoral care to be exercised. This moderator is to direct the joint action and to be responsible for it to the bishop. § 2 If, because of a shortage of priests, the diocesan bishop has judged that a deacon, or some other person who is not a priest, or a community of persons, should be entrusted with a share in the exercise of the pastoral care of a parish, he is to appoint some priest who, with the powers and faculties of a parish priest, will direct the pastoral care." Cf. can. 287, § 2 CCEO 1990.

[104] Can. 519 CIC 1983: „*Parochus est pastor proprius paroeciae sibi commissae, cura pastorali communitatis*

the diocesan bishop confers the office of pastor, but only after consultation with the dean or vicar of the area in which the parish is located and, if necessary, with other presbyters and laypersons. The pastor is obliged to **maintain residence** within and to be present within the parish community. Pastors lose their office by expiration of their term, transfer, removal, or resignation. Moreover, they are, like bishops, requested to submit their resignations at the age of seventy-five in the hands of diocesan bishop. In this context, we may also note other offices, like parochial vicar, by which is canonically called the ordained presbyter who is appointed to help the pastor. Another parochial office is a dean (*decanus*), who is sometimes called "vicars forane" (*vicarius foraneus*) or "archpriest" (*archipresbyter*). Under this term we understand the priest appointed by the bishop to exercise a limited oversight function over the parishes and ministers in geographical areas of the diocese. Lastly, curates are the priests to whom the pastoral care of some community or a special group of the faithful is entrusted.

5.2.2.2 Territorial Prelatures and Territorial Abbeys

These two terms represent territorial administrative units of the Church, which, on the basis of certain (usually historical) reasons, have no bishop at its head, but do have a prelate or an abbot instead. These two competent Church authorities dispose of all the rights of diocesan bishop, and they are responsible for the portion of the people of God on the delimitated smaller area.[105] The **territorial prelates** are sometimes called "prelates *nullius*", from the Latin "*nullius dioceseos*", that is to say, prelates "of no diocese", meaning the territory falls directly under the jurisdiction of the Pope, and is not a diocese under a residing bishop. The rights of prelates nullius are quasi-episcopal, and these dignitaries are supposed to have any power that has the bishop, unless they are expressly denied from disposing of such power according to the rules of canon law. If they have not received episcopal consecration, such prelates may not confer holy orders. Considering the **territorial abbots**, they are also called "abbots *nullius diocesesos*", from the Latin "belonging to no diocese", or abbreviated "abbot *nullius*". They function as ecclesiastical Ordinaries for Catholics and parishes within a defined territory around the monastery in much the same way a bishop does for a diocese. Though territorial abbots (like other) are elected by the monks of their abbey, a territo-

sibi concreditae fungens sub auctoritate Episcopi dioecesani, cuius in partem ministerii Christi vocatus est, ut pro eadem communitate munera exsequatur docendi, sanctificandi et regendi, cooperantibus etiam aliis presbyteris vel diaconis atque operam conferentibus christifidelibus laicis, ad normam iuris." Translation: "The parish priest is the proper pastor of the parish entrusted to him. He exercises the pastoral care of the community entrusted to him under the authority of the diocesan bishop, whose ministry of Christ he is called to share, so that for this community he may carry out the offices of teaching, sanctifying and ruling with the cooperation of other priests or deacons and with the assistance of lay members of Christ's faithful, in accordance with the law." Cf. can. 281, § 1 CCEO 1990.

[105] Can. 370 CIC 1983: „*Praelatura territorialis aut abbatia territorialis est certa populi Dei portio, territorialiter quidem circumscripta, cuius cura, specialia ob adiuncta, committitur alicui Praelato aut Abbati, qui eam, ad instar Episcopi dioecesani, tamquam proprius eius pastor regat*." Translation: "A territorial prelature or abbacy is a certain portion of the people of God, territorially defined, the care of which is for special reasons entrusted to a prelate or an abbot, who governs it, in the manner of a diocesan bishop, as its proper pastor." Cf. can. 311, § 1 and 312 CCEO 1990.

rial abbot can only receive the abbatial blessing and be installed under mandate from the Pope, just as a bishop cannot be ordained and installed as an Ordinary of diocese without such a mandate. Lastly, we may note, that after the Second Vatican Council more emphasis has been placed on the unique nature of the episcopacy, and on the traditional organization of the Church into dioceses under the leadership of bishops. As such, prelatures and abbeys *nullius* have been phased out in favour of establishing new dioceses, or absorbing the territory into an existing diocese.

5.2.2.3 Apostolic Prefectures

Under this term we can understand the delimitated parts of a certain (usually missionary) area, where the autonomous missions (mission stations) took place until the constitution of apostolic prefecture. These areas are not developed enough to become a diocese. In the head of these units are principally the priests called **apostolic prefects**, who govern them as local Ordinaries in the name of the Pope. This Church unit is always considered to have a temporary character only. Historically, during the last centuries of the second millennium, it has been the practice of the Holy See, either through prefects apostolic or apostolic vicars, to reign over many territories, where no dioceses with resident bishops existed, and where local circumstances, such as the character and customs of the people, or the hostility of civil powers, gave reasons to doubts whether an episcopal see could be permanently established. The apostolic prefects' powers are limited to a certain extent, and normally do not have an episcopal character. The main duty of an apostolic prefect lies in directing the work of the mission entrusted to his care.

5.2.2.4 Apostolic Vicariates

Apostolic vicariate is a form of territorial jurisdiction established in missionary regions and countries where a diocese has not been established yet. That means, if a prefecture grows and flourishes, it is usually elevated to an apostolic vicariate. They have an **apostolic vicar** at its head, principally titular (not diocesan) bishop. While such a territory can be classified as a particular church, according to canon 371, § 1 of the Latin Code of Canon Law, the power of jurisdiction of apostolic vicar is an exercise of the jurisdiction in the name of the Pope.[106] The territory thus comes directly under the Pope as "Universal Bishop", and the Pope exercises this authority through a vicar or delegate. This is unlike the jurisdiction of a diocesan bishop, whose jurisdiction derives directly from his office. These units are constituted in hope that, as the time passes by, the region will generate enough Catholics and stability for its Catholic institutions to

[106] Can. 371, § 1 CIC 1983: „*Vicariatur apostolicus vel praefectura apostolica est certa populi Dei portio quae, ob peculiaria adiuncta, in dioecesim nondum est constituta, quaeque pascenda committitur Vicario apostolico aut Praefecto apostolico, qui eam nomine Summi Pontificis regant*." Translation: "A vicariate apostolic or a prefecture apostolic is a certain portion of the people of God, which for special reasons is not yet constituted a diocese, and which is entrusted to the pastoral care of a vicar apostolic or a prefect apostolic, who governs it in the name of the Supreme Pontiff." Cf. can. 311, § 1 and 312 CCEO 1990.

deserve being established as a diocese. Generally, we may state that a usual sequence of the development is as follows: mission, prefecture, vicariate, and diocese.

5.2.2.5 Apostolic Administrations

This permanently constituted unit can either be an area, that is not yet a diocese, or a diocese, that either has no bishop (an apostolic administrator *sede vacante*) or, in very rare cases, has an incapacitated bishop (apostolic administrator *sede plena*). First and the most important case comes into questions frequently on the grounds of changing state boundaries, when the administration from the position of episcopal see lying on the territory of other country is difficult or impossible.[107] Apostolic administrations of stable administrations are governed by an **apostolic administrator** acting from the position of local Ordinary in the name of the Pope. That is to say, apostolic administrators of stable administrations are equivalent to diocesan bishops in canon law, meaning they have essentially the same authority as a diocesan bishop. This type of apostolic administrator is usually the bishop of a titular see. Administrators *sede vacante* or *sede plena* serve only until the time a newly chosen diocesan bishop takes possession of the diocese. Logically, their job in the diocese which they administer is restricted according to canon law. This type of administrator is commonly an auxiliary bishop of the diocese, a priest serving as the vicar general of the diocese, or the Ordinary of a neighbouring diocese. Normally, when a diocese becomes vacant, a capitular vicar or diocesan administrator is chosen locally, but the Pope can prevent this choice by naming an apostolic administrator instead. Sometimes, retiring bishop is designated to be an apostolic administrator, until his successor takes the office.

5.2.3 Individual Units of Particular Churches

These units dispose of their own personal character. The power of jurisdiction of the competent authorities standing at its head is not defined territorially, but personally, so it relates to a specified group of persons. In this context, it is necessary to understand that the territorial boundaries coincide with the area of regular local churches, and the jurisdiction of the competent authorities does not refer to all Catholics within the specified area.

5.2.3.1 Military Ordinariates

A military ordinariate is the specific personal unit of the Church community with a military Ordinary at its head administered by its own statutes issued by the Holy See.

[107] Can. 371, § 2 CIC 1983: „*Adminitratio apostolica est certa populi Dei portio, quae ob speciales et graves omnino rationes a Summo Pontifice in dioecesim non erigitur, et cuius cura pastoralis committitur Administratori apostolico, qui eam nomine Summi Pontificis regat*." Translation: "An apostolic administration is a certain portion of the people of God which, for special and particularly serious reasons, is not yet established by the Supreme Pontiff as a diocese, and whose pastoral care is entrusted to an apostolic administrator, who governs it in the name of the Supreme Pontiff."

Until 1986, these units were called "military vicariates", and had a status similar to the apostolic vicariates. The apostolic constitution *Spirituali militum curae* issued in 1986 by the Pope John Paul II raised their status, declaring that the bishop heading one of them is an **Ordinary**, holding the authority by virtue of his office, and not by delegation from another authorized person. We may summarize, that the main contribution of this constitution lies in fact, that it made military vicariates resemble dioceses. Each one of them is headed by the bishop, who may have the personal rank of archbishop. If the bishop is diocesan rather than titular, he is likely to delegate the daily functions to an auxiliary bishop, or a lower cleric.

5.2.3.2 Personal Prelatures

Personal prelature is the community of secular priests under the leadership of prelate associated with an approval of the Holy See on behalf of better operation in certain (especially missionary) area, or on behalf of achievement of better pastoral care for the particular group of persons. Personal prelatures are not liable to diocesan bishops in the area of their operation. The adjective "personal" refers to the fact that, in contrary to previous canonical use of ecclesiastical institutions, the jurisdiction of a prelate is not associated with a territory, but with persons, wherever they happen to be. The establishment of personal prelatures is an exercise of theologically inherent power of self-organization, which the Church has to use to pursue its mission, although the personal prelature is not a kind of particular church like diocese and eparchies. As mentioned earlier, the **prelate** is in the head of a personal prelature. Prelate is a bishop, or a presbyter, nominated by the Pope, and he governs the prelature with ordinary power. Apart from the priests, the presbyterium of a prelature is formed also by deacons of the secular clergy, that are incardinated in a personal prelature. However, it is possible that other priests, and also religious clergy, take part in pastoral works of a personal prelature. In these cases, agreements should be arranged between a prelate and a diocesan bishop, or a religious superior. The prelate disposes of the right to erect a national or international seminary, and to promote students to holy orders, in service to the pastoral mission of the prelature. The first and thus far the only personal prelature is *Opus Dei*, which was established as such by the Pope John Paul II in 1982. In 2009, it was announced that the Holy See will create personal ordinariates for Anglicans entering the Catholic Church, and this process has continued up until now.

5.2.4 Groupings of Local Churches

5.2.4.1 Ecclesiastical Provinces and Regions

Considering the term "groupings of local churches", we can define it as some kind of an intergrade between the Universal Church and local churches. According to historical development, up until now the neighbouring dioceses have constituted principally a church province, that is *ipso iure* considered to be a juridic person. The so-called

"exempt dioceses", i.e. the dioceses, which do not belong to any province and are subordinated directly to the Apostolic See, are an exception from the rule. These units usually consist of three up to ten dioceses in a province, sometimes within the boundaries of a state, or of two or three neighbouring states. They are usually grouped around a larger, or an older city, where the diocese is called an archdiocese, and the archbishop is called the **metropolitan of the province**.[108] The main difference between the titles of archbishops and metropolitans lies in the fact, that the first one conveys a notion of honour and precedency, the second one always implies the possession of jurisdiction. The other dioceses in the province are called "suffragans", from the Latin "*suffragium*", that is to say "a vote", because their bishops used to be traditional electors of the metropolitan. During the Early Middle Ages, the provinces were a vigorous and effective "middle level" of Church governance. However, their authority and influence was reduced, so that now they are largely irrelevant. Archbishops enjoy the prestige of larger and older churches, and sometimes they exercise personal leadership within the province, but they have only marginally greater canonical authority than other diocesan bishops. According to the norms of positive canon law, the metropolitan provides the supervision within the province, but has very little authority over other churches, or over their bishops. Within the suffragan dioceses, the **metropolitan is competent to**:

- control, whether the faith and ecclesiastical discipline are carefully followed, and notify the Roman Pontiff about any abuses;
- for the reason approved beforehand by the Apostolic See, to conduct a canonical visitation in case the suffragan bishop has neglected it;
- to appoint a diocesan administrator;
- in special cases, the Apostolic See can provide the metropolitan with some other special functions and power, that could be determined in particular law.

Following the above mentioned conclusions, canon 436, § 3, of the Latin Code of Canon Law emphasizes that the metropolitan has no other power of governance over suffragan dioceses. As a special authorization of metropolitan is subsequently mentioned the right to celebrate sacred functions in all churches, as if he were a bishop in his own diocese provided that, if it is the cathedral church, the diocesan bishop has been previously notified. But the main authorization in relation to church provinces, that is to say, to constitute, revise or cancel them, is entitled only to the Pope. In the Latin Church, the historical title of patriarch means only the title of honour. Also the title of primate is only an honourable title that is conceded to certain archbishops of the most important metropolises.[109] In the history, the primates disposed of the authority

[108] Can. 435 CIC 1983: „*Provinciae ecclesiasticae praeest Metropolita, qui est Archiepiscopus dioecesis cui praeficitur; quod officium cum sede episcopali, a Romano Pontifice determinata aut probata, coniunctum est.*" Translation: "An ecclesiastical province is presided over by a metropolitan, who is archbishop in his own diocese. The office of metropolitan is linked to an episcopal see, determined or approved by the Roman Pontiff." Cf. can. 134, § 1 CCEO 1990.

[109] Can. 438 CIC 1983: „*Patriarchae et Primatis titulus, praeter praerogativam honoris, nullam in Ecclesia latina secumfert regiminis potestatem, nisi de aliquibus ex privilegio apostolico aut probata consuetudine aliud constet.*" Translation: "The title of patriarch or primate gives a prerogative of honor, but in the Latin Church does not carry with it any power of governance, except in certain matters where an apostolic privilege or approved custom establishes otherwise."

over metropolitans and other bishops of a certain country. As another historical entitlement we may mention the right to crown a king that pertained to the primates of a relevant kingdom. The Code of Canon Law contains also the regulation on the **church regions,** which represent the groupings of neighbouring church provinces. They can be constituted only by the Apostolic See on the basis of preceding proposal of the Episcopal Conference, if it is considered useful (e.g. in states with great numbers of local churches). These units are considered to be juridic persons, but in contrast to the church provinces, they do not represent the regular component of horizontal organization of the Church.

5.2.4.2 Plenary and Provincial Councils

These local councils are an ancient and honoured form of deliberation and policy formation in the Church, dating from the early centuries of the Church history. Provincial councils are, for example, imposed by the canons of the First Council of Nicea summoned in 325, that ordained to convoke them twice a year, not for vague discussion, but to deal with urgent matters (can. 5). According to the rules of canon law, a **plenary council** for all particular churches of the same Episcopal Conference has to be celebrated as often, as the Episcopal Conference, with the approval of the Apostolic See, considers it necessary or advantageous. Generally, the responsibility of the Episcopal Conference is:

- to convene a plenary council;
- to chose a place for the celebration of the council within the territory of the Episcopal Conference;
- to elect from among the diocesan bishops a president of the plenary council, who is to be approved by the Apostolic See;
- to settle the rules of procedure and matters to deal with;
- to announce the beginning of the plenary council, and how long it will last;
- to transfer, prorogue and dissolve it.

Considering the **provincial councils**, they represent the particular churches of the same province. It is the responsibility of the metropolitan with the consent of the majority of suffragan bishops:

- to convene a provincial council;
- to choose a place within the territory of a province for the celebration of provincial council;
- to determine the rules of procedure and matters to deal with;
- to announce the beginning of the provincial council and how long it will last;
- to transfer, prorogue and dissolve it.

It is the prerogative of the metropolitan to preside over the provincial council. If he is lawfully impeded from doing so, it is the prerogative of the suffragan bishop,

elected by other suffragan bishops. The right to be summoned and the right for deliberative vote on both of these councils, provincial and plenary, do have: diocesan bishops, coadjutor and auxiliary bishops, and other titular bishops, who have been given a special function within the territory, either by the Apostolic See, or by the Episcopal Conference. Other titular bishops, who live in the territory, even in case they are retired, may be invited to particular councils with the right to deliberative vote. There are also many other Church authorities, that are usually summoned to particular councils, but with a consultative vote only (e.g. vicars general and episcopal vicars of all the particular churches in the territory; the major superiors of religious societies of apostolic life which have the centre in the territory; the rectors of ecclesiastical and Catholic universities, which have the centre in the territory, together with the deans of their faculties of theology and canon law etc.). The rules of canon law emphasize that these council have the power of governance, especially legislative power.[110] When the particular council concluded, the president has to ensure all the acts of the council are sent to the Apostolic See. The decrees drawn up by the council are not to be promulgated until they have been reviewed by the Apostolic See. The council has the responsibility of defining the manner in which the decrees will be promulgated, and the time when the promulgated decrees will become obligatory. Although the canons of the canon law involve both kinds of these representative meetings, *de facto* they are not almost held at all. That is also the reason why many canonists warn about the **extinction of this traditional form** of Church deliberation. One of the reasons why particular councils have fallen into disuse is that the Church has moved from synodal forms of decision-making and governance toward more administrative or executive styles. Another one reason is the control that the Holy See provides over the conciliar process. The last, but not least, is the success of modern Conferences of Bishops, which have not been convoked up until the 19th century.

5.2.4.3 Episcopal Conferences

The Episcopal Conferences were constituted in certain countries without the support of universal law, but with an approval of the Apostolic See. Due to this fact, the Second Vatican Council decided that this institution, which is more flexible and operative, will become the part of the regular Church organization. This ecumenical council also ordained to be the most adequate that all bishops of the same nation or region will form an association, that would meet at certain fixed terms. According to the valid Latin Code of Canon Law, we may define this body as an official assembly of all the

[110] Can. 445 CIC 1983: „*Concilium particulare pro suo territorio curat ut necessitatibus pastoralibus populi Dei provideatur atque potestate gaudet regiminis, praesertim legislativa, ita ut, salvo semper iure universali Ecclesiae, decernere valeat quae ad fidei incrementum, ad actionem pastoralem communem ordinandam et ad moderandos mores et disciplinam ecclesiasticam communem servandam, inducendam aut tuendam opportuna videantur.*" Translation: "A particular council is to ensure that the pastoral needs of the people of God in its territory are provided for. While it must always respect the universal law of the Church, it has power of governance, especially legislative power. It can, therefore, determine whatever seems opportune for an increase of faith, for the ordering of common pastoral action, for the direction of morality and for the preservation, introduction and defence of a common ecclesiastical discipline."

bishops of a given territory.[111] Concretely, with a deliberative vote, the **members** of the Episcopal Conference are *ipso iure*:

- all diocesan bishops and those equivalent to them in law;
- all coadjutor bishops, and auxiliary bishops;
- other titular bishops who, within the territory, exercise a special office assigned to them by the Apostolic See or by the Episcopal Conference.

Ordinaries of another rite may be invited, but they have only a consultative vote, unless the statutes of the Episcopal Conference prescribe otherwise. Other titular bishops and papal legates are not by law members of the Episcopal Conference. The nature of Episcopal Conferences and their magisterial authority in particular was subsequently clarified by the Pope John Paul II in motu proprio *Apostolos suos* of 1998. In accordance with it, Conferences of Bishops do not participate in teaching authority of the College of Bishops, although individual bishops do so as members of the College of Bishops, who maintains the unity with each other and are subordinated to the Pope. Consequently, a Conference of Bishops cannot make doctrinal declarations.

Nonetheless, the Episcopal Conference disposes of the **legislative power** to issue the general obligatory decrees only when having an authorization of the rules of universal canon law, or a special mandate of the Apostolic See. Nevertheless, also in these cases, general decrees have to receive the two-thirds approval of individual bishops of the conference, and their subsequent promulgation. Afterwards, these decrees come into effect only after they have been ratified by the Apostolic See.[112] Only such deci-

[111] Can. 448 CIC 1983: „§ 1. *Episcoporum conferentia regula generali comprehendit praesules omnium Ecclesiarum particularum eiusdem nationis, ad normam can. 450.* § 2. *Si vero, de iudicio Apostolicae Sedis, auditis quorum interest Episcopis dioecesanis, personarum aut rerum adiuncta id suadeant, Episcoporum conferentia erigi potest pro territorio minoris aut maioris amplitudinis, ita ut vel tantum comprehendat Episcopus aliquarum Ecclesiarum particularium in certo territorio constitutarum vel praesules Ecclesiarum particularium in diversis nationibus exstantium; eiusdem Apostolicae Sedis est pro earundem singulis peculiares normas statuere.*" Translation: "§ 1 As a general rule, the Episcopal Conference includes those who preside over all the particular churches of the same country, in accordance with canon 450. § 2 An Episcopal Conference can, however, be established for a territory of greater or less extent if the Apostolic See, after consultation with the diocesan bishops concerned, judges that circumstances suggest this. Such a Conference would include only the bishops of some particular churches in a certain territory, or those who preside over particular churches in different countries. It is for the Apostolic See to lay down special norms for each case."

[112] Can. 455 CIC 1983: „§ 1. *Episcoporum conferentia decreta generalia ferre tantummodo potest in causis, in quibus ius universale id praescripserit aut peculiare Apostolicae Sedis mandatum sive motu proprio sive ad petitionem ipsius conferentiae id statuerit.* § 2. *Decreta de quibus in § 1, ut valide ferantur in plenario conventu, per duas saltem ex tribus partibus suffragiorum Praesulum, qui voto deliberativo fruentes ad conferentiam pertinent, proferri debent, atque vim obligandi non obtinent, nisi ab Apostolica Sede recognita, legitime promulgata fuerint.* § 3. *Modus promulgationis et tempus a quo decreta vim suam exserunt, ab ipsa Episcoporum conferentia determinantur.* § 4. *In casibus in quibus nec ius universale nec peculiare Apostolicae Sedis mandatum potestatem, de qua in § 1, Episcoporum conferentiae concessit, singuli Episcopi dioecesani competentia integra manet, nec conferentia eiusve praeses nomine omnium Episcoporum agere valet, nisi omnes et singuli Episcopi consensum dederint.*" Translation: "§ 1 The Episcopal Conference can make general decrees only in the cases where the universal law has so prescribed, or by special mandate of the Apostolic See, either on its own initiative or at the request of the Conference itself. § 2 For the decrees mentioned in § 1 validly to be enacted at a plenary meeting, they must receive two thirds of the votes of those who

sions are obligatory for all of the members of the conference, and for the particular churches administered by them. All other conclusions of the conference have only a recommending character. Therefore, it is obvious that whilst the Conference of Bishops can assist the individual bishops of the conference, it cannot substitute for the authority which they individually possess. This also means that individual bishops do not relinquish their authority to the conference, and remain responsible for the governance of their respective dioceses. Every Episcopal Conference should draw up its own statute to be reviewed by the Apostolic See. Each Episcopal Conference is about to elect its **president** and to determine who, in the lawful absence of the president, will exercise the function of vice-president. It is also to designate a general secretary, in accordance with the statutes. The president of the conference or, when he is lawfully impeded, the vice-president, presides not only over the general meetings of the conference, but also over the permanent committee. Plenary meetings of the Episcopal Conference are to be held at least once a year, and moreover, as often as special circumstances require, in accordance with the provisions of the statutes.

belong to the Conference with a deliberative vote. These decrees do not oblige until they have been reviewed by the Apostolic See and lawfully promulgated. § 3 The manner of promulgation and the time they come into force are determined by the Episcopal Conference. § 4 In the cases where neither the universal law nor a special mandate of the Apostolic See gives the Episcopal Conference the power mentioned in § 1, the competence of each diocesan bishop remains intact. In such cases, neither the Conference nor its president can act in the name of all the bishops unless each and every bishop has given his consent."

6 Matrimonial Law

6.1 Introduction

6.1.1 Concept of Matrimony

In accordance with the norms of canon law and the doctrine of the Second Vatican Council (Gaudium et spes, 48), matrimony represents the covenant (*matrimoniale foedus*), by which a man and a woman establish a lifelong partnership between themselves, and which of its own very nature is ordered to the well-being of the spouses, and to the procreation and upbringing of children. By the contract of marriage, the contractors constitute "one body", thus indicating the unity of marriage. The marriage has to be contracted in the form prescribed by the rules of canon law, and in case of baptized persons (not only the persons baptized in the Catholic Church, but also the persons baptized in other Christian churches, which are not in full communion with the Catholic Church) is raised by Christ the Lord to the **dignity of a sacrament** (*res sacra*). That is also the reason, why a valid marriage contract cannot exist between baptized persons without its being by that very fact a sacrament.[113] The marriages of Catholics (even when only one partner is Catholic) are ruled by canon law, as well as by God's law. The civil authority has the competence over the civil effects of marriage, e.g. registration, change of names, inheritance etc. As a matter of interest we can mention, that for the centuries the legal term "*contractus*" has been used to describe the canonical concept of marriage, although it was always taken into account, that it is a specific contract (*contractus sui generis*), as the contractual liberty was restrained by the norms of Divine law. That is to say, the content of this contract was appointed by the Creator and Redeemer himself, and the contractual parties have to either accept it in this form,

[113] Can. 1055 CIC 1983: „§ 1. *Matrimoniale foedus*, *quo vir et mulier inter se totius vitae consortium constituunt*, *indole sua naturali ad bonum coniugum atque ad prolis generationem et educationem ordinatum*, *a Christo Domino ad sacramenti dignitatem inter baptizatos evectum est*. § 2. *Quare inter baptizatos nequit matrimonialis contractus validus consistere*, *quin sit eo ipso sacramentum*." Translation: "§ 1 The marriage covenant, by which a man and a woman establish between themselves a partnership of their whole life, and which of its own very nature is ordered to the well-being of the spouses and to the procreation and upbringing of children, has, between the baptized, been raised by Christ the Lord to the dignity of a sacrament. § 2 Consequently, a valid marriage contract cannot exist between baptized persons without its being by that very fact a sacrament." Cf. can. 776, §§ 1-2 CCEO 1990.

or resign to contract it. Since the times of the Second Vatican Council, the sacred, saving character of this contract has been strongly emphasized and consequently, the term "*foedus*" has began to be used more often. This term, taken from Septuaginta (Greek translation of the Old Testament from Hebraic language), indicated the sacred agreements between the God and his people, as well as the contracts made for effective realization of this primary agreement. This term, at the same time, emphasizes the religious or sacramental character of marriage.

In the science of canon law, the term "nupturients" (from Latin word "*nupturiens*"), which was applied by the rules of the Roman law, is used to label the persons willing to enter the marriage in the future. Every human being disposes of the right to contract a marriage (*ius connubii*) that enjoys the character of natural God's law, which is declared in canon 1058 of the valid Latin Code of Canon Law.[114] That is to say, the essential properties of a marriage are recognizable by the intellectual activity of every mentally healthy person and, according to the norms of canon law, are obligatory for all persons, i.e. persons baptized in the Catholic Church, persons baptized in non-Catholic churches or religious societies, non-Christian confessors, but also for people with no religious profession. This is also the answer to question why, in case of validly contracted marriage, all of the persons are principally bound to live in it until the death of one (or both) marital party (parties), and the divorce is not accepted by the Catholic Church, neither in case of unbaptized persons. Although the **right to contract a marriage** pertains to every person, there can be some objective reasons, which can impede to contract it. In this case, the priority is given to the superior principles relating especially to the moral norms of canon law. The Code of Canons of the Eastern Churches of 1990 understands the matrimonial contract in the same way as the Latin Code.[115] On the whole, we may state that this normative text offers better elaborated and formulated matrimonial theology, thanks to the Eastern tradition, which does not accept the matrimonial consent as the only condition to the constitution of matrimony. In this context, the institutional aspect of the contract is underlined, because the nupturients are not constituting the contract by the consent itself, but they enter the contract whose contents was given by God. The expression of this concept of matrimony represents especially the pneumatological conception stating, that for the validity of sacramental

[114] Can. 1058 CIC 1983: „*Omnes possunt matrimonium contrahere, qui iure non prohibentur.*" Translation: "All can contract marriage who are not prohibited by law." Cf. can. 778 CCEO 1990.

[115] Can. 776 CCEO 1990: „§ 1. *Matrimoniale foedus a Creatore conditum eiusque legibus instructum, quo vir et mulier irrevocabili consensu personali totius vitae consortium inter se constituunt, indole sua naturali ad bonum coniugum ac ad filiorum generationem ed educationem ordinatur.* § 2. *Ex Christi institutione matrimonium validum inter baptizatos eo ipso est sacramentum, quo coniuges ad imaginem indefectibilis unionis Christi cum Ecclesia a Deo uniuntur gratiaque sacramentali veluti consecrantur et roborantur.* § 3. *Essentiales matrimonii proprietates sunt unitas et indissolubilitas, quae in matrimonio inter baptizatos specialem obtinent firmitatem ratione sacramenti.*" Translation: "§ 1. The matrimonial covenant, established by the Creator and ordered by His laws, by which a man and woman by an irrevocable personal consent establish between themselves a partnership of the whole of life, is by its nature ordered toward the good of the spouses and the generation and education of the offspring. § 2. From the institution of Christ a valid marriage between baptized persons is by that very fact a sacrament, by which the spouses, in the image of an indefectible union of Christ with the Church, are united by God and, as it were, consecrated and strengthened by sacramental grace. § 3. The essential properties of marriage are unity and indissolubility, which in a marriage between baptized persons obtain a special firmness in virtue of the sacrament.."

matrimony, the presence of a priest or bishop is absolutely necessary.[116]

6.1.2 Essential Properties

The essential properties of the marriage are unity and indissolubility, which in Christian marriages have a special firmness because their marriage is considered as a sacrament.[117] These two properties are of God's law character, and hence obligatory to all people. As mentioned earlier, they are applied also on marriages of two unbaptized persons. The **unity** means that marriage is the connection of one man and one woman in "one body". It is an exclusive bond of two persons of opposite sex, and therefore eliminates:

- polygamy (multi marriage), in the form of polyandry (a bond of one woman with several men), or polygyny (a bond of one man with several women);
- bigamy (dual marriage), but only the contemporary bigamy is unauthorized, i.e. a marital bond with another person during the life of a spouse, not the subsequent polygamy, i.e. another marriage is permitted when the preceding one was terminated.

Considering **indissolubility,** it is necessary to remind that the marriage has a character of a lifelong fellowship (*totius vitae consortium*), that can be terminated by death of one spouse (or both), or by any of the specific reasons for termination (dissolving) of the marriage during the life of both spouses. According to the norms of canon law, such reasons are:

- Dissolving of the valid, but unconsummated (unconcluded, unaccomplished, not exercised) marriage of minimally one baptized person by the dispensation of the Pope.
- *Privilegium Petrinum* – it can be applied on the marriage of a person baptized in the Catholic Church with unbaptized person, that terminates by the Pope's granting of clemency.
- *Privilegium Paulinum* – it represents the dissolving of marriage of two originally unbaptized persons, in case when one of the spouses was baptized later.

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[116] Can. 828 CCEO 1990: „§ 1. *Ea tantum matrimonia valida sunt, quae celebrantur ritu sacro coram Hierarcha loci vel parocho loci vel sacerdote, cui ab alterutro collata est facultas matrimonium benedicendi, et duobus saltem testibus secundum tamen praescripta canonum, qui sequuntur, et salvis exceptionibus, de quibus in cann. 832 et 834, § 2.* § 2. *Sacer hic censetur ritus ipso interventu sacerdotis assistentis et benedicentis.*" Translation: "§ 1. Only those marriages are valid which are celebrated with a sacred rite, in the presence of the local hierarch, local pastor, or a priest who has been given the faculty of blessing the marriage by either of them, and at least two witnesses, according, however to the prescriptions of the following canons, with due regard for the exceptions mentioned in cann. 832 and 834, § 2. § 2. That rite which is considered a sacred rite is the intervention a priest assisting and blessing."

[117] Can. 1056 CIC 1983: „*Essentiales matrimonii proprietates sunt unitas et indissolubilitas, quae in matrimonio christiano ratione sacramenti peculiarem obtinent firmitatem.*" Translation: "The essential properties of marriage are unity and indissolubility; in Christian marriage they acquire a distinctive firmness by reason of the sacrament." Cf. can. 776, § 3 CCEO 1990.

Also other canonical institutes resulting from this privilege come into question (chance to retain one of the partners in polygamous marriage and impossibility to restore the marital cohabitation).

Indissolubility of a marriage becomes evident in two ways. Internal indissolubility (*indissolubilitas intrinseca*) means that marriage cannot be dissolved by the cancellation of matrimonial consent by one of the spouses, or both. The substance of external indissolubility (*indissolubilitas extrinseca*) lies in the conclusion that sacramental marriage which is ratified and consummated cannot be dissolved by any human power, i.e. the third person (Church superior or other person).[118] The above mentioned two properties, along with the good of an offspring (*bonus unitas*, *bonum indissolubilitas* and *bonum prolis*), are considered by Augustine († 430 AD) and the whole patristic tradition to be the **three fundamental goods of marriage**. In the canonical practice, there are also another goods considered as the goods of marriage, as well, especially the good of an ultimate and permanent right to exclusive marital sexual intercourse (*bonum coniugum*), and the good of devotion (*bonum fidei*). The canonists have to pay regard to general canons of the valid Codes, alongside with the norms of natural law. The importance of these three goods can be seen especially in the consequence, when, in case of their rejection by the positive act of will, the marriage is considered from its beginning to be null and void.

6.1.3 Putative Matrimony

According to canon 1061, § 3 of the Latin Code of Canon Law, the invalid marriage (*matrimonium invalidum*, *nullum*) is called putative (from the Latin "*putativus*", i.e. "supposed"). This happen in case when at least one contractor contracted it good-naturedly (*bona fide*), i.e. one contractor gave his or her consent in a good will of contracting a proper and valid marriage. Such marriage is recognized by the Church in the external forum, yet until the time its validity is being proved and the children born thereof are conceded the rights of legitimacy, until its invalidity to be proved and concedes to the children born thereof the rights of legitimacy. That is to say, the putative marriage **enjoys the favour of law** (on the grounds of principle "*matrimonium gaudet favore iuris*"), i.e. it is considered to be valid, until the contrary is proven, and represent the impediment to contract a new licit marriage.[119] The effects of invalidity are not a matter of conviction of the spouses about the nullity of their marriage (moral certainty of the spouses), but it is necessary to prove this fact in front of the Church tribunal (in the external forum, i.e. in front of the competent public Church authority). According to canon 1608, § 1, the judge of any Church tribunal must have in his mind moral cer-

[118] Can. 1141 CIC 1983: „*Matrimonium ratum et consummatum nulla humana potestate nullaque causa, praeterquam morte, dissolvi potest*." Translation: "A marriage which is ratified and consummated cannot be dissolved by any human power or by any cause other than death." Cf. can. 853 CCEO 1990.

[119] Can. 1060 CIC 1983: „*Matrimonium gaudet favore iuris; quare in dubio standum est pro valore matrimonii, donec contrarium probetur.*" Translation: "Marriage enjoys the favor of law. Consequently, in doubt the validity of a marriage must be upheld until the contrary is proven." Cf. can. 779 CCEO 1990.

tainty about the matter to be decided in the judgment, in this case about the nullity of marriage at issue.[120] If it is not acquired, the marriage cannot be proclaimed to be invalid. In case of any doubts on the validity of marriage, it is considered to be valid. Putative marriages do not exist only within the norms of canon law, but in various civil laws, as well. In some jurisdictions, putative marriages are a matter of case law, rather than legislation. In many jurisdictions, according to the civil law, the marriage becomes valid if the impediment is removed. If it is not removed, the innocent spouse is often by the divorce entitled at least to the protection of property division and child custody. From the putative marriage we have to distinguish the **attempt to enter the marriage** (*matrimonium attentatum*), when both of the contractors formally enter the marriage, but aware of its invalidity. Such a bond cannot be considered a marriage, and hence does not enjoy the favour of law.

6.1.4 Classification of Matrimony

6.1.4.1 Criterion of Nature

According to this criterion, we distinguish sacramental and non-sacramental marriage. As a **sacramental marriage** may be considered marriage between two persons, who received the baptism in Christian church, and thus the nupturients receive the help of supernatural grace. In this case, we can emphasize that it is not necessary to be baptized in the Catholic Church, and also the baptism in other Christian churches or religious societies is principally presumed to be valid, and implicates the sacramentality of a marriage. Logically, the following possibilities come into question:

- Marriage between two persons of Catholic confession.
- Marriage of a person of Catholic confession with a baptized person of non-Catholic confession (so called "mixed marriage").
- Marriage of two baptized persons of non-Catholic confession.

Catholics who enter the marriage cannot contract it validly in case they exclude the sacramental dignity of it. Anyway, with every valid marriage of two baptized persons the sacramental dignity is indivisibly connected. But, when nupturients receive the sacrament of marriage unworthy, the effect of this grace can be blocked.

Marriage of two persons, of which at least one party is unbaptized, is called **non-sacramental marriage**. The absence of baptism excludes receiving of any other sacrament except for baptism. As a non-sacramental marriage can be labelled:

- Marriage of a baptized person of Catholic confession with unbaptized person. This marriage is not sacramental, because the sacrament is indivisible, and af-

[120] Can. 1608, § 1 CIC 1983: „*Ad pronuntiationem cuiuslibet sententiae requiritur in iudicis animo moralis certitudo circa rem sententia definiendam*." Translation: "To give any judgment, the judge must have in his mind moral certainty about the matter to be decided in the judgment." Cf. can. 1291, § 1 CCEO 1990.

fects either both of the spouses, or any one of them at all. Therefore, the grace of the marriage inflicts on the consecrated status of marriage as a whole, and not on individual spouses separately. In this case, the sacrament cannot have an effect, because the unbaptized spouse is not capable to receive any sacrament, except for baptism.

- Marriage of a baptized person of non-Catholic confession with a baptized person.
- Marriage of two unbaptized persons.

All of the three above-mentioned marriages are after the receiving of baptism by unbaptized spouse raised *ipso iure* to the dignity of sacrament. In this case, it is not necessary to repeat the act of contracting marriage in the canonical form, and after the consummation of such a marriage, this becomes perfect and absolutely indissoluble by any human power.

6.1.4.2 Criterion of Form

Under this criterion we recognize canonical and non-canonical marriage. **Canonical marriage** is a marriage that is contracted in accordance with the legal rules of canon law, and these rules are applied to such a marriage. It represents the only valid and recognized form of contracting marriage for all Catholics. There was an exception, when Catholic was not obliged to follow the canonical form, that was accepted until 2009, when motu proprio *Omnium in mentem* of the Pope Benedict XVI was published. It came into question when a person baptized in the Catholic Church, or accepted into it, was by a formal act defected from it. Since 2009, the principle "Once Catholic, always Catholic" has been kept at all points, and every Catholic is obliged to observe the canonical form, even in case of defecting from the Catholic Church. The norms considering the canonical marriage are applied on the marriage when at least one of the spouses is Catholic. The norms of canon law cannot be applied on two non-Catholic nupturients, because the personal competence of the legal system of the Catholic Church is not given, and the form of contracting marriage originates in the rule of positive human law. **Non-canonical marriage** is a marriage that was not contracted under the rules of canon law. As an example we may state the legal marriage of two unbaptized persons contracting a marriage in front of the public state authority. Such a marriage is considered valid and relatively indissoluble (it is dissoluble on the ground of *Privilegium Petrinum*), because both of these persons are not obliged to observe the rules of canon law, including the canonical form.

6.1.4.3 Criterion of Manner

According to the criterion of manner, we distinguish a public or a secret marriage. Under the term **public marriage** can be understood only a canonical marriage, because it is not acceptable to consider a marriage contracted according to the rules of different system of law under this criterion. Based on this, two conditions have to be

fulfilled:

- Marriage has to be contracted in the form prescribed by the rules of canon law.
- Marriage has to be contracted in public form, that means the public has to be informed about it.

What concerns a **secret marriage**, the following conditions have to be fulfilled:

- Marriage has to be contracted in the form prescribed by the rules of canon law.
- Marriage was contracted privately, i.e. the public was excluded and had no chance to be informed about its contracting. Such a marriage was not even registered to the public Church parish register.
- All the participating persons are obliged to keep secret of contracting this kind of marriage (qualified witness, unqualified witnesses and nupturients themselves).

To contract a secret marriage, it is necessary to acquire the permission (*licentia*) from the local Ordinary[121] even before beginning the investigations, which are made before the marriage. Based on the above-mentioned, the canon 1133 states that such a marriage is to be recorded only in a special register which is to be kept in the secret archive of the competent diocesan curia.[122] In this context, it is necessary to understand the secrecy is to be kept on behalf of nupturients. Therefore, when the reason for concealing vanishes and nupturients agree on renouncing the secret, other persons, who were bound to maintain secrecy, become free of this obligation. In case a threat of a grave scandal or a grave harm to the sanctity of marriage appears, the local Ordinary is entitled to reveal such a marriage to the public also without the consent of the spouses.

6.1.4.4 Criterion of Effect

From the lawyer's point, the criterion of effect represents the most important criterion, due to the fulfilment of legal requirements, a marriage can be considered valid, or null and void. According to the rules of canon law, a marriage is considered **valid**, when following conditions are fulfilled:

- A man and a woman have to interchange their matrimonial consents reciprocally in the way prescribed by the norms of canon law.
- Marriage has to be contracted in canonical form.
- In the moment of contracting a marriage, no marriage impediment can exist.

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[121] Can. 1130 CIC 1983: „*Ex gravi et urgenti causa loci Ordinarius permittere potest*, *ut matrimonium secreto celebretur.*" Translation: "For a grave and urgent reason, the local Ordinary may permit that a marriage be celebrated in secret." Cf. can. 840, § 1 CCEO 1990.

[122] Can. 1133 CIC 1983: „*Matrimonium secreto celebratum in peculiari tantummodo regesto*, *servando in secreto curiae archivo*, *adnotetur.*" Translation: "A marriage celebrated in secret is to be recorded only in a special register which is to be kept in the secret archive of the curia." Cf. can. 840, § 3 CCEO 1990.

Analogically, a marriage is considered **invalid** in case, when:

- Matrimonial consents were not exchanged in the form prescribed by the norms of canon law.
- Marriage was not contracted in canonical form.
- Any marriage impediment existed in the moment of contracting a marriage.

Within this context, we may note again that matrimony enjoys the favour of law, and hence is considered to be valid until contrary is proven. According to this disprovable legal presumption, if someone contracted marriage, it is presumed that he or she contracted it validly, and when anybody else asserts something else, this has to be proven in the external forum (usually in front of the Church tribunal). That implies, such a marriage is considered valid until the time of issuing a judgment that would declare the nullity of the given marriage. Therefore, in case of doubts on validity of a marriage, it has to be upheld until the time of issuing the judgment of nullity.

6.1.4.5 Criterion of Permission

Marriage is contracted **licitly**, when a person entering the marriage does not belong to any of the specified categories of persons, that are not allowed to contract a marriage either by the law itself (*ex lege*), or by the individual prohibition. Valid marriage is contracted **illicitly** in case it was contracted despite of a prohibition. According to the rules of canon law, persons, who contracted the marriage illicitly, as well as qualified witnesses, can be imposed a sanction. The prohibition to contract the marriage may be expressed:

1. **By the law itself**. According to this regulation, it is necessary to acquire the permission for official assistance at contracting marriage, except for the case of necessity to desist from the requirement of permission. The norms of canon law deal with following cases:

- marriage of vagi;
- marriage which cannot be recognized by the civil law or celebrated in accordance with it;
- marriage of a person for whom a previous union has created natural obligations towards a third party or towards children;
- marriage of a person who is under censure;
- marriage of a minor whose parents are either unaware of it, or reasonably opposed to it;
- marriage to be entered by proxy.

According to other canons of the Latin Code of Canon Law, the permission of the local Ordinary is moreover required for contracting the licit marriage in case of:

- marriage contracted in secret manner;

- marriage contracted with attached condition;
- mixed marriage;[123]
- marriage of persons who took private or temporal vow of chastity in a religious institute.

The Code of Canon Law also requires that local Ordinary is not to grant the permission to assist at the marriage of a person, who has notoriously rejected the Catholic faith, unless the norms mentioned in canon 1125 have been observed with necessary adaptation. In this context, we may note the norms of canon 1125 are usually applied to mixed marriages and marriages with the marriage impediment of disparity of cult (*disparitas cultus*), that is to say, a marriage of baptized Catholic with unbaptized person.[124]

2. **By the decision of a competent authority**. Local Ordinary can temporarily prohibit a concrete person, or persons, from contracting of marriage. As an example, we can state canon 1091, § 4, that allows a local Ordinary to forbid contracting of marriage to the persons, who are probably legally related by reason of consanquinity, if their relationship is in the direct line or in the second degree of the collateral line.
3. **By the judgment of Church tribunal**. Within this context, we may mention that Church tribunals are used to forbid contracting of marriage to the persons, who attempted to contract valid marriage at least two times. In this case, the individual prohibition to contract marriage is usually a part of the judgement. But, it is necessary to underline that in all of the above-mentioned cases, when

[123] Can. 1124 CIC 1983: „*Matrimonium inter duas personas baptizatas*, *quarum altera sit in Ecclesia catholica baptizata vel in eandem post baptismum recepta*, *altera vero Ecclesiae vel communitati ecclesiali plenam communionem cum Ecclesia catholica non habenti adscripta*, *sine expressa auctoritatis competentis licentia prohibitum est*." Translation: "Without the express permission of the competent authority, marriage is prohibited between two baptized persons, one of whom was baptized in the Catholic Church or received into it after baptism, the other of whom belongs to a church or ecclesial community not in full communion with the Catholic Church." Cf. can. 813 CCEO 1990.

[124] Can. 1125 CIC 1983: „*Huiusmodi licentiam concedere potest Ordinarius loci*, *si iusta et rationabilis causa habeatur*; *eam ne concedat*, *nisi impletis condicionibus quae sequuntur*: 1° *pars catholica declaret se paratam esse pericula a fide deficiendi removere atque sinceram promissionem praestet se omnia pro viribus facturam esse*, *ut universa proles in Ecclesia catholica baptizetur et educetur*; 2° *de his promissionibus a parte catholica faciendis altera pars tempestive certior fiat*, *adeo ut constet ipsam vere consciam esse promissionis et obligationis partis catholicae*; 3° *ambae partes edoceantur de finibus et proprietatibus essentialibus matrimonii*, *a neutro contrahente excludendis*." Translation: "The local Ordinary can grant this permission if there is a just and reasonable cause. He is not to grant it unless the following conditions are fulfilled: 1° the Catholic party is to declare that he or she is prepared to remove dangers of defecting from the faith, and is to make a sincere promise to do all in his or her power in order that all the children be baptized and brought up in the Catholic Church; 2° the other party is to be informed in good time of these promises to be made by the Catholic party, so that it is certain that he or she is truly aware of the promise and of the obligation of the Catholic party 3° both parties are to be instructed about the purposes and essential properties of marriage, which are not to be excluded by either contractor." Cf. can. 814 CCEO 1990.

a person, who is not allowed to contract marriage, will contract it in spite of the prohibition, such a marriage will become valid, but illicit. That is to say, this person can be imposed the canonical sanction, nevertheless, his or her marriage will be considered valid.

6.2 Canonical Form of Marriage Celebration

6.2.1 Ordinary Form

6.2.1.1 Concept of Canonical Form

Historically, as early as in the times of primary Church it was required to contract marriage "*in facie Ecclesiae*" (from Latin: "before the face of the church"), and this request remained in force during the Middle Ages, as well. But, what concerns omitting to fulfil the canonical form, it was not connected with the sanction of marriage invalidity. Such a marriage remained valid, but was considered illicit. Regarding the situation of **primary Church** (especially on the ground of penal punishments of Christians by the rules of Roman criminal law) and the ongoing tradition, also secret marriages were allowed, and hence canonical form was not requested for the validity of marriage. Only since the time after the protestant reformation the accent has been put on the observance of the canonical form with an effect on the validity of marriage. According to the decree *Tametsi* of the Council of Trent (*Concilium Tridentinum*, 1545-1563) of 1563, that was issued on the initiative of bishops from Spain and France, it was ordered to observe the canonical form unconditionally. Based on the principle of personality, this requirement remained in force until 1907, when the decree *Ne temere*, which preferred the principle of territoriality, was issued by the Pope Pius X (1903-1914). According to the positive canon law, the canonical form means the necessity to contract marriage **with the presence** of:

- nupturients themselves, eventually of properly charged mandator in place of nupturient[125];

[125] Can. 1105 CIC 1983: „§ 1. *Ad matrimonium per procuratorem valide ineundum requiritur*: 1° *ut adsit mandatum speciale ad contrahendum cum certa persona*; 2° *ut procurator ab ipso mandante designetur, et munere suo per se ipse fungatur*. § 2. *Mandatum, ut valeat, subscribendum est a mandante et praeterea a parocho vel Ordinario loci in quo mandatum datur, aut a sacerdote ab alterutro delegato, aut a duobus saltem testibus*; *aut confici debet per documentum ad normam iuris civilis authenticum*. § 3. *Si mandans scribere nequeat, id in ipso mandato adnotetur et alius testis addatur qui scripturam ipse quoque subsignet*; *secus mandatum irritum est*. § 4. *Si mandans, antequam procurator eius nomine contrahat, mandatum revocaverit aut in amentiam inciderit, invalidum est matrimonium, licet sive procurator sive altera pars contrahens haec ignoraverit*." Translation: "§ 1 For a marriage by proxy to be valid, it is required: 1° that there be a special mandate to contract with a specific person; 2° that the proxy be designated by the mandator and personally discharge this function; § 2 For the mandate to be valid, it is to be signed by the mandator, and also by the parish priest or local Ordinary of the place in which the mandate is given or by a priest delegated by either of them or

- two unqualified witnesses;
- one qualified witness, i.e. assisting person, who requires a Church mandate, especially the power of jurisdiction above one of the nupturients at least.

6.2.1.2 Qualified Witness

The main role of a qualified witness is to guarantee the presence of the Church by contracting of marriage. Only the person, who asks the contracting parties to manifest their consent and in the name of the Church receives it, is understood to assists at the marriage. Within this context, it is necessary to mention also some other roles of the Church authorities, consisting especially in pastoral care and marriage preparation. According to the norms of Latin Code of Canon Law, pastors are to see that their church communities support and assist married couples. This task relates to instructions about the meaning of marriage and parenthood, with personal preparation for entering into marriage, with a fruitful liturgical celebration of their weddings, and with ongoing help as they live their married lives. The leading role of diocesan bishop in his diocese is emphasized in the request that bishops are to organize this support and assistance within the diocese. As well, other **formal requirements** have to be fulfilled by the pastors themselves. Before a marriage is celebrated, it has to be ensured that nothing stands in the way of its valid and licit celebration. This is the pastor's responsibility. However, the faithful are obliged to reveal to him or the bishop any impediments to the marriage they are aware of. Pastors are trying to prevent from marrying those, who are too young for it, and they should, as well, inform the bishop about certain problematic marriages. Only the persons, whose properties are strictly defined by the norms of canon law, are to assists at the marriage:

- **Cleric** (bishop, priest or deacon). Laymen are to assists at marriages only in extraordinary situations. According to canon 1112 of the Code of Canon Law, where there are no priests and deacons, the diocesan bishop can delegate lay persons to assist at marriages, with an approval of the Episcopal Conference and the permission of the Holy See.[126]
- Disposing of the **power of jurisdiction** above the nupturients, whereas the ordinary power of governance follows the principle of territoriality. That means

by at least two witnesses, or it is to be drawn up in a document which is authentic according to the civil law. § 3 If the mandator cannot write, this is to be recorded in the mandate and another witness added who is also to sign the document; otherwise, the mandate is invalid. § 4 If the mandator revokes the mandate, or becomes insane, before the proxy contracts in his or her name, the marriage is invalid, even though the proxy or the other contracting party is unaware of the fact."

[126] Can. 1112 CIC 1983: „§ 1. *Ubi desunt sacerdotes et diaconi*, *potest Episcopus dioecesanus*, *praevio voto favorabii Episcoporum conferentiae et obtenta licentia Sanctae Sedis*, *delegare laicos*, *qui matrimoniis assistant*. § 2. *Laicus seligatur idoneus*, *ad institutionem nupturientibus tradendam capax et qui liturgiae matrimoniali rite peragendae aptus sit*." Translation: "§ 1 Where there are no priests and deacons, the diocesan bishop can delegate lay persons to assist at marriages, if the Episcopal Conference has given its prior approval and the permission of the Holy See has been obtained. § 2 A suitable lay person is to be selected, capable of giving instruction to those who are getting married, and fitted to conduct the marriage liturgy properly."

the Pope is entitled to assists at contracting marriages anywhere in the world, local Ordinary or pastor only on the territory of his diocese or parish. Also the principle of personality can be supportively applied in certain cases. For example, personal Ordinary can assists at contracting of marriage of the persons under his jurisdiction.

- Persons (priests and deacons, or laymen in extraordinary cases) without jurisdiction on the certain territory, or in relation to certain persons, are not entitled to assists. However, these persons can be **delegated** by the competent Church authority (local Ordinary, personal Ordinary or pastor) to do it by the way of delegation, eventually, in specific cases, by subdelegation. A delegation can be granted on the concrete marriage (*ad casum*), or on more marriages, or can be granted in general (*ad univesitatem casuum*).

Within this context, it is necessary to mention **some important differences** between the Latin law and the law of the Eastern Catholic Churches. The main difference consists in the necessity of benediction of marriage by the priest or bishop. Therefore, it is not allowed to assist deacons, not even laymen. The status of the Pope is in a certain manner evoked in the legal status of patriarchs, which are entitled to assist at weddings as the qualified witnesses anywhere in the world, but with the difference of necessity of jurisdiction above one of the nupturients at least.[127] In general, in accordance with the above-mentioned, we can point out three elements that should be followed: the office, territorial or personal principle, and the ceremony itself.

6.2.1.3 Unqualified Witnesses

The only task of unqualified witnesses consists in the **assurance of publicity**, i.e. legal verifiability of contracting of marriage. Therefore, the only requirement put on them is to understand the ceremony and, subsequently, to give evidence of its action. No other requests are put on unqualified witnesses, as, for example, the age limit, relationship to nupturients, Church status, or faith. In this context, we may note that according to the character or the function of a witness it is not necessary to expressly appoint a person to be an unqualified witness, and hence every one who is present at the celebration can be considered a witness. In general, the only presumption for a witness is to understand the meaning of celebration, to know the nupturients (at least one of them), and to be able to testify the proper action of wedding.

6.2.1.4 Place of Wedding

Contracting of marriage is classified to the parish acts and therefore it is primarily

[127] Can. 829, § 3 CCEO 1990: „*Patriarcha ipso iure facultate praeditus est servatis aliis de iure servandis matrimonia per se ipsum benedicendi ubique terrarum*, *dummodo alterutra saltem pars ascripta sit Ecclesiae*, *cui praeest*." Translation: "By the law itself, the patriarch is endowed with the faculty to personally bless marriages anywhere in the world, as long as at least one of the parties is enrolled in the Church over which he presides, observing the other requirements of law."

important to realize which parish is competent for it. According to canon 1115 of the Latin Code of Canon Law, the competence is determined by the **domicile of Catholic nupturient**. In case of marriage of two persons of Catholic confession, it is up on their decision to select the parish of one of them. On this subject, the principle of the first Latin Code of Canon Law of 1917 was abandoned, that preferred the parish of the domicile of the bride.[128] Principally, competent is the parish of the domicile or quasi-domicile, eventually one month's residence. In case of a homeless person, competent is the parish of his actual residence. The personal parish is competent when one of the nupturients belongs to it, and in case of more competent parishes (territorial or personal), the nupturients have the right to choose one of them. In other parish a marriage would be contracted validly, but illicitly. Such a marriage would be licit only on the ground of permission of a competent local Ordinary or a pastor of parish that is competent according to the norms of canon law.

6.2.1.5 Exemption for Marriage with Orthodox Nupturient

Considering mixed marriages, canon 1127, § 1, appoints an exemption for the marriage with Orthodox nupturient. This exemption originates in the **common tradition** of the Eastern Orthodox Churches, which require almost the same canonical form as the Latin Church. In addition, these churches have more strict regulations on the requirements of the qualified witness (as well as the Catholics of Eastern rites). In this case, the following regulations have to be observed:

- presence of the cleric in order to assure the sacred rites (*ritus sacer*);
- public celebration of the wedding (unqualified witnesses) and all the proprieties of pre-marital actions.

For validity of aforesaid marriages, it is necessary to acquire the permission of the local Ordinary of Catholic nupturient to celebrate it before the Orthodox assistant. Without this permission the marriage is considered to be canonically illicit, but valid. It is an exemption from the principle, that the marriage of Catholic is invalid in case its canonical form was violated. Because the canonical form is observed in the Orthodox form, it is considered to be valid also in accordance with the rules of Catholic canon law.

6.2.1.6 Dispensation

Despite the necessity to observe the canonical form to contract valid marriage, competent Church authorities are entitled to dispense it by means of formal act in a

[128] Can. 1097, § 2 CIC 1917: „*In quolibet casu pro regula habeatur ut matrimonium coram sponsae parocho celebretur, nisi iusta causa excuset; matrimonia autem catholicorum mixti ritus, nisi aliud particulari iure cautum sit, in ritu viri et coram eiusdem parocho sunt celebranda*." Translation: "In any case, as a rule it is held that marriage will be celebrated in the presence of the pastor of the bride, unless just cause excuses; but marriages of Catholics of mixed rite, unless particular law determines otherwise, are celebrated in the rite of the husband and in the presence of his pastor."

concrete individual administrative act. The Latin Code of Canon Law refers to three cases, when the **local Ordinary** (not personal Ordinary) is entitled to grant a dispensation from the canonical form of marriage contracting:

- In case danger of death threatens one of the nupturients at least. The dispensation can be granted to anyone residing in his diocese (territorial definition), or to anyone of the persons entrusted to his jurisdiction authority (personal definition). When it is not possible to contact a local Ordinary, the dispensation authority on the territory of a relevant parish (territorial or personal) pertains to the pastor or to another cleric (in concrete case) properly delegated to assist at contracting of marriage.[129]
- In case of mixed marriage. The dispensation can be granted by the local Ordinary to the Catholic nupturient only (personal definition), however, after the place of contracting of marriage was consulted with the local Ordinary (territorial definition).
- In case of contracting of marriage between the Catholic nupturient and unbaptized nupturient. The dispensation can be analogically granted by the local Ordinary of Catholic nupturient only (personal definition), however, accordingly, after the place of contracting of marriage was consulted with the local Ordinary (territorial definition).

Regarding the common errors in the canonical literature, it is necessary to underline that in all other cases the dispensation from the canonical form is **reserved to the Apostolic See**. Almost the same regulation is stated in the Code of Canons of the Eastern Churches, that reserves the dispensation from the canonical form to the Apostolic See or patriarch, who will not grant it except for a most grave reason.[130]

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[129] Can. 1079 CIC 1983: „§ 1. *Urgente mortis periculo, loci Ordinarius potest tum super forma in matrimonii celebratione servanda, tum super omnibus et singulis impedimentis iuris ecclesiastici sive publicis sive occultis, dispensare proprios subditos ubique commorantes et omnes in proprio territorio actu degentes, excepto impedimento orto ex sacro ordine presbyteratus*. § 2. *In eisdem rerum adiunctis, de quibus in § 1, sed solum pro casibus in quibus ne loci quidem Ordinarius adiri possit, eadem dispensandi potestate pollet tum parochus, tum minister sacer rite delegatus, tum sacerdos vel diaconus qui matrimonio, ad normam can. 1116, § 2, assistit*." Translation: "§ 1 When danger of death threatens, the local Ordinary can dispense his own subjects, wherever they are residing, and all who are actually present in his territory, both from the form to be observed in the celebration of marriage, and from each and every impediment of ecclesiastical law, whether public or occult, with the exception of the impediment arising from the sacred order of priesthood. § 2 In the same circumstances mentioned in § 1, but only for cases in which not even the local Ordinary can be approached, the same faculty of dispensation is possessed by the parish priest, by a properly delegated sacred minister, and by the priest or deacon who assists at the marriage in accordance with canon 1116, § 2." Cf. can. 796, §§ 1-2 CCEO 1990.

[130] Can. 835 CCEO 1990: „*Dispensatio a forma celebrationis matrimonii iure praescripta reservatur Sedi Apostolicae vel Patriarchae, qui eam ne concedat nisi gravissima de causa*." Translation: "Dispensation from the form for the celebration of marriage required by law is reserved to the Apostolic See or the patriarch, who will not grant it except for a most grave reason."

6.2.2 Extraordinary Form

In order to apply the norms of canon law on the contracting of marriage in extraordinary form, the fulfilment of two specific conditions is required. As the first one, we should mention the will of the nupturients to enter the marriage, not forgetting the natural right of every human being to contract it. The second condition lies in the impossibility to observe the canonical form on the ground of reasons, which cannot arise from the will of nupturients. To sum up, the Latin Code of Canon Law presumes two possible situations:

- the danger of death (*articulus mortis*, or *periculum mortis*) threatening at least one of the nupturients;
- the impossibility to address the qualified witness disposing of proper jurisdiction without grave inconvenience, provided it is prudently foreseen that this state of affairs will continue for a month.[131]

In this case, a marriage is contracted with no presence and cooperation of a competent person to assists it, therefore in front of **two unqualified witnesses only**. In this context, it is necessary to mention the conclusion resulting from the wording of the aforesaid canon, if another priest or deacon is at hand who can be present, he must be called upon and, together with the witnesses, be present at the celebration of the marriage. All the participants are obligated to announce the contracting of marriage as soon as possible to the competent pastor or local Ordinary. The main meaning of such a constitution is to assure the registration of marriage into the books of baptized persons. Considering the universal law of the Eastern Catholic Churches, there are two main differences toward the regulation of the Latin Code of Canon Law. The Code of Canons of the Eastern Churches emphasizes that present priest without competency to assist in contracting of marriage has to be recalled to grant a benediction to the nupturients. The second difference is that in case of absence of the priest, the married couple is obligatory to request the priest for benediction of their valid marriage as soon as possible.[132] It is necessary to underline that also a marriage contracted

[131] Can. 1116 CIC 1983: „§ 1. *Si haberi vel adiri nequeat sine gravi incommodo assistens ad normam iuris competens, qui intendunt verum matrimonium inire, illud valide ac licite coram solis testibus contrahere possunt*: 1° *in mortis periculo*; 2° *extra mortis periculum, dummodo prudenter praevideatur earum rerum condicionem esse per mensem duraturam*. § 2. *In utroque casu, si praesto sit alius sacerdos vel diaconus qui adesse possit, vocari et, una cum testibus, matrimonii celebrationi adesse debet, salva coniugii validitate coram solis testibus*." Translation: "§ 1 If one who, in accordance with the law, is competent to assist, cannot be present or be approached without grave inconvenience, those who intend to enter a true marriage can validly and lawfully contract in the presence of witnesses only: 1° in danger of death; 2° apart from danger of death, provided it is prudently foreseen that this state of affairs will continue for a month. § 2 In either case, if another priest or deacon is at hand who can be present, he must be called upon and, together with the witnesses, be present at the celebration of the marriage, without prejudice to the validity of the marriage in the presence of only the witnesses." Cf. can. 832, §§ 1-2 CCEO 1990.

[132] Can. 832, § 2 CCEO 1990: „*In utroque casu, si praesto est alius sacerdos, ille, si fieri potest, vocetur, ut matrimonium benedicat salva matrimonii validitate coram solis testibus; eisdem in casibus etiam sacerdos acatholicus vocari potest*." Translation: "In either case, if another priest, even a non-Catholic one, is able to be present, inasmuch as it is possible he is to be called so that he can bless the

in the extraordinary form before two unqualified witnesses is considered valid and sacramental.

6.3 Diriment Impediments of Marriage

6.3.1 Concept

As mentioned earlier, there are some factors which can limit the right to contract marriage that is considered to be of natural character. As one of these factors we may note the diriment impediments of marriage, which were formed during the existence of the Church and their existence is apologized by their effectiveness. Due to definition, the diriment impediments of marriage are **objective facts** constituted by the norms of canon law, that impede certain person or persons to contract marriage. That is to say, stated persons are on the ground of these facts incapable of contracting of valid marriage. This impossibility can be absolute (*erga omnes*), regarding all persons of opposite sex (e.g. diriment impediment of impotency), or relative, regarding certain persons only (e.g. diriment impediment of crime). In addition, this impossibility can be permanent (e.g. diriment impediment of consanguinity) or temporary (e.g. diriment impediment of the defect of age). Constitutions specifying the diriment impediments represent the laws which limit the free exercise of rights, and that is also the reason why they always are to be interpreted strictly.[133] If the existence of diriment impediment can be demonstrated in the external forum, it is considered public, otherwise, it is considered secret (despite its objective existence). Such a diriment impediment can be dispensed only by the sacrament of penance or through the act of Apostolic Penitentiary. In general, it is necessary to mention that the only competent authority to establish new diriment impediment is the **highest Church authority**, which is also entitled to determine its character (Church law or God's law).[134] According to the positive canon law of the Latin Church, twelve diriment impediments of marriage exist at present time. The Code of Canons of the Eastern Churches recognizes thirteen diriment impediments of marriage, and to be specific, the spiritual relationship is not considered to be a diriment impediment under the norms of the Latin Church.

marriage, without prejudice for the validity of a marriage in the presence only of the witnesses."

133 Can. 18 CIC 1983: „*Leges quae poenam statuunt aut liberum iurium exercitum coarctant aut exceptionem a lege continent, strictae subsunt interpretationi.*" Translation: "Laws which prescribe a penalty, or restrict the free exercise of rights, or contain an exception to the law, are to be interpreted strictly." Cf. can. 1500 CCEO 1990.

134 Can. 1075 CIC 1983: „§ 1. *Supremae tantum Ecclesiae auctoritatis est authentice declarare quandonam ius divinum matrimonium prohibeat vel dirimat*. § 2. *Uni quoque supremae auctoritati ius est alia impedimenta pro baptizatis constituere*." Translation: „§ 1 Only the supreme authority in the Church can authentically declare when the Divine law prohibits or invalidates a marriage. § 2 Only the same supreme authority has the right to establish other impediments for those who are baptized." Cf. can. 792 CCEO 1990.

6.3.2 Dispensation

The competent Church authority is entitled to dispense from the diriment impediments of marriage of the Church (human) law. In this case, the dispensation can be defined as a grace of the competent authority that, on behalf of advanced good, allows certain person (or both nupturients) to contract marriage despite the objective existence of the law of Church law's character. The competent authority to dispense from the diriment impediments in the particular church is the **local Ordinary**. As indicated above, the competent Church authority is entitled to dispense from the diriment impediments of the Church law, but it is absolutely inadmissible and objectively impossible to dispense from the impediments of God's law character. According to the positive canon law, there are three impediments considered to be of such character, and these are impotence, previous marriage and consanguinity in direct line. In accordance with canon 1078, § 3, it is not possible to dispense from the impediment of consanguinity in the second degree of the collateral line.[135] The local Ordinary is also not entitled to dispense from impediments, dispensation of which is reserved to the Apostolic See. And, alike, there are another three impediments of such character, namely sacred order, public perpetual vow of chastity in a religious institute and crime. In case of danger of death (with the exemption of the impediment of sacred order), the dispensation can be granted also by the local Ordinary or pastor, when it is not possible to address to the local Ordinary. A priest or deacon is entitled to dispense in the situation, when they are delegated to assist in contracting of marriage.

6.3.2 Individual Diriment Impediments

6.3.2.1 Defect of Age

According to the norms of canon law, marriage cannot be validly contracted by a boy before he has completed his sixteenth and a girl before she has completed her fourteenth year of age. Although marriage contracted after the aforesaid age is valid, pastor of souls should hinder young people from doing it, when they have not reached the age at which, according to the **state law of relevant country**, marriage is usually contracted.[136] That is also the reason why, in case of contracting of marriage by a person not reaching the age of 18 years, or a marriage of a minor, whose parents

[135] Can. 1078, § 3 CIC 1983: „*Numquam datur dispensatio ab impedimento consanguinitatis in linea recta aut in secundo gradu lineae collateralis*." Translation: "A dispensation is never given from the impediment of consanguinity in the direct line or in the second degree of the collateral line." Cf. can. 795, § 3 CCEO 1990.

[136] Can. 1083 CIC 1983: „§ 1. *Vir ante decimum sextum aetatis annum completum*, *mulier ante decimum quartum item completum*, *matrimonium valide inire non possunt*. § 2. *Integrum est Episcoporum conferentiae aetatem superiorem ad licitam matrimonii celebrationem statuere*." Translation: "§ 1 A man cannot validly enter marriage before the completion of his sixteenth year of age, nor a woman before the completion of her fourteenth year. § 2 The Episcopal Conference may establish a higher age for the lawful celebration of marriage." Cf. can. 800, § 1 CCEO 1990.

are either unaware of it, or are reasonably opposed to it, anyone is to assist without the permission of the local Ordinary. The defect of age is the impediment of the Church law, and on this ground it can be dispensed by the local Ordinary. But, it is obvious that it is suitable to grant the dispensation only in case when the nupturients are able to understand the essential properties and the meaning of the marriage itself. In this context, it is necessary to underline that the required age must be completed. This impediment ceases to exist by granting of dispensation, or by completing of the required age by both of the nupturients. If the marriage is invalid on that account, it is not convalidated *ipso facto* when the required age was completed by both of the nupturients.

6.3.2 Impotence

The core of this impediment lies in the natural incapability of sexual connection. Impotence supersedes the marriage when the **following conditions** are fulfilled cumulatively:

- Permanent – i.e. not temporal only, and it is not possible to cure it, whereas grave and dangerous medical interventions to the physical integrity are forbidden.
- Antecedent – i.e. it existed at least in time of contracting of marriage, or earlier, and did not occur after it was contracted.
- Definite – i.e. when there are no doubts about it, the marriage is objectively valid or invalid depending on the existence or absence of impotence. But, according to the refutable presumption of the favour of law, it is presumed to be valid until the time its invalidity will be declared in the external forum.
- Absolute or relative – it does not matter, because it is not important to distinguish between these two eventualities. But, absolute impotence concerns all persons of the opposite sex, whilst relative impotence concerns only a certain person or persons of the opposite sex.
- Organic or functional – analogically to what was mentioned above, it is not important to distinguish between these two eventualities. Organic impotence is a consequence of the error of genital organs, whereas functional impotence appears on the ground of psychical error.

Impotence is an impediment of the God's law, and therefore cannot be dispensed. Sterility without impotence is not considered to be an impediment of marriage, because giving birth to an offspring does not belong to the essential properties of marriage. Therefore, sterility does not cause the invalidity of marriage, whereas the concealment of impotence to the spouse can be qualified as a part of defective matrimonial consent (deceit).[137]

[137] Can. 1084 CIC 1983: „§ 1. *Impotentia coeundi antecedens et perpetua, sive ex parte viri sive ex parte mulieris, sive absoluta sive relativa, matrimonium ex ipsa eius natura dirimit.* § 2. *Si impedimentum impotentiae dubium sit, sive dubio iuris sive dubio facti, matrimonium non est impediendum nec, stante dubio, nullum declarandum.* § 3. *Sterilitas matrimonium nec prohibet nec dirimit, firmo praescripto can. 1098.*" Translation: "§ 1 Antecedent and perpetual impotence to have sexual intercourse,

6.3.3 Previous Marriage

The existence of previous valid marital bond precludes both of the nupturients from contracting other bigamous marriage. This impediment is considered to be of God' law character, and therefore it is not possible to dispense from it and, at the same time, it is obligatory also for non-Catholics or unbaptized persons, who contracted the marriage in the form proper to them. This impediment exists also in case of unconsummated marriage. As mentioned above, the sacramental marriage which is ratified and consummated cannot be dissolved by any human power. Therefore, in addition to death as typical reason for dissolving of marriage, if one of the above stated conditions is missing, it is possible to regard some **special reasons of dissolving of marriage**. In order to abolish this impediment, the following options should be considered:

- death of one of the spouses;
- dissolution of valid but unconsummated marriage by the dispensation of the Pope;
- dissolution of marriage in favour of faith (*Privilegium Petrinum*);
- dissolution of marriage by the application of *Privilegium Paulinum*.

6.3.4 Disparity of Cult

According to the positive law, a marriage contracted between the nupturient baptized in the Catholic Church and the unbaptized nupturient is considered invalid. This impediment is of Church law's character, but the dispensation can be granted only in case when **following conditions** are fulfilled:

- just and reasonable cause;[138]
- Catholic nupturient is to declare that he or she is prepared to remove dangers of defecting from the faith, and is to make a sincere promise to do all within his or her power in order that all the children be baptized and brought up in the Catholic Church;
- non-Catholic nupturient is to be informed in time of the promises Catholic nupturient is about to make, so that it is sure that he or she is truly aware of the promise and of the obligation of the Catholic nupturient;

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whether on the part of the man or on that of the woman, whether absolute or relative, by its very nature invalidates marriage. § 2 If the impediment of impotence is doubtful, whether the doubt be one of law or one of fact, the marriage is not to be prevented nor, while the doubt persists, is it to be declared null. § 3 Without prejudice to the provisions of canon 1098, sterility neither forbids nor invalidates a marriage." Cf. can. 801 CCEO 1990.

[138] Can. 90, § 1 CIC 1983: *„A lege ecclesiastica ne dispensetur sine iusta et rationabili causa, habita ratione adiuctorum casus et gravitatis legis a qua dispensatur; alias dispensatio illicita est, nisi ab ipso legislatore eiusve superiore data sit, etiam invalida."* Translation: "A dispensation from an ecclesiastical law is not to be given without a just and reasonable cause, taking into account the circumstances of the case and the importance of the law from which the dispensation is given; otherwise the dispensation is unlawful and, unless given by the legislator or his superior, it is also invalid." Cf. can. 1536, § 1 CCEO 1990.

- both parties are to be instructed about the purposes and essential properties of marriage, which are not to be excluded by any of them.

For the purpose of this impediment, the status of unbaptized person is considered to be a different (non-religious) cult, but not a mixed marriage. In case of granting a dispensation from this impediment, a marriage that was contracted as non-sacramental becomes *ipso iure* sacramental by the fact of baptism of unbaptized party up to this point. This impediment concerns all persons who were baptized in the Catholic Church or later admitted to it.

6.3.5 Sacred Order

The essence of this impediment is that no one is to contract a marriage when receiving any degree of the sacred orders, that is to say diaconate, presbyterate, or episcopate. It is the **impediment of Church law** and the dispensation is reserved to the Apostolic See. In case of danger of death, the persons in diaconate can dispense from this impediment the local Ordinary, exceptionally presbyter or deacon in the cases determined by the law itself. The examination of the deacon's application is reserved to the Congregation for Divine Worship and the Discipline of the Sacraments (*Congregatio de Cultu Divino et Disciplina Sacramentorum*); application of the priest to the Sacred Congregation for the Clergy (*Congregatio pro Clericis*), that will afterwards bring such a proposal to the Pope. This impediment does not cease to exist by the fact of losing the clerical status or the declaration on the invalidity of priest's ordination, because this impediment only refers to the fact of existence or non-existence of validly received sacred order. Clerical status has almost nothing to do with this impediment, and, in the second case, as well, the Church tribunal only declares that the person was not ordained, and thus the impediment never existed. That is also the reason why it is not correct to use the term "contracting of marriage" in this case, and for the person in sacred order rather the term "attempt to enter the marriage" should be used instead.[139]

6.3.6 Public Perpetual Vow of Chastity in Religious Institute

In general, the vow is considered as a deliberate and free promise made to God, concerning a possible and better good. A vow is public, if it is accepted in the name of the Church by a lawful (religious) superior. According to the norms of universal law, the permission to make a perpetual vow together with a perpetual profession requires that the person has completed at least the twenty-first year of age, and that there has been a previous temporary profession at least for three years. The **religious institute** is defined as a society in which members pronounce public vows (temporal or perpetual) of chastity, poverty and obedience and live a fraternal life in the community.[140]

[139] Can. 1087 CIC 1983: „*Invalide matrimonium attentant, qui in sacris ordinibus sunt constituti*." Translation: "Those who are in sacred orders invalidly attempt marriage." Cf. can. 804 CCEO 1990.

[140] Can. 607 CIC 1983: „§ 1. *Vita religiosa, utpote totius personae consecratio, mirabile in Ecclesia manifestat conubium a Deo conditum, futuri saeculo signum. Ita religiosus plenam suam consummat*

The impediment of public perpetual vow of chastity in a religious institute is of Church law's character, and therefore it ceases to exist by granting of dispensation. What concerns the religious institute of papal right, the dispensation is reserved to the Apostolic See only. In the religious institutes of diocesan right, a competent diocesan bishop is entitled to grant dispensation. This impediment ceases to exist *ipso iure* also by the lawful loss of the status of consecrated life (religious status). The religious status can by lawfully lost in case of:

- leaving the religious institute (secularization) after the indult (permission) of the competent Church authority;
- releasing from the religious institute after committing a delict, or due to other grave reasons.

For the existence of this impediment it is necessary to fulfil all of the above mentioned conditions simultaneously. As a matter of interest we may note that it is forbidden, under the sanction of illicitness, to contract marriage for such persons, who made private vow in a religious institute. But, in this case, such a marriage is considered valid, but illicit, depending on the existence or non-existence of the above characterized impediment.

6.3.7 Abduction

Historically, this impediment was classified as a part of deficiency of matrimonial consent of violence and grave fear. The essence of this impediment lies in taking away any woman from a place where she felt safe and free to a morally different place, and there detaining her under the power of her abductor. In such case, the abduction is intended with the **view of contracting of marriage** with the abducted woman. Considering this impediment, anyone can be an abductor, and a man that was about to contract marriage with the abducted woman does not even have to know about the abduction at all. This impediment is of Church law's character, and it ceases to exist either when the situation of abduction or detaining a woman has been solved, or by dispensation of the local Ordinary. To give valid matrimonial consent, a woman has to be freed from the influence of power of the abductor in order to freely decide whether she will give the consent or not. According to the Latin Code of Canon Law, only a

donationem veluti sacrificium Deo oblatum, quo tota ipsius exsistentia fit continuus Dei cultus in caritate. § 2. *Institutum religiosum est societas in qua sodales secundum ius proprium vota publica perpetua vel temporaria, elapso tamen tempore renovanda, nuncupant atque vitam fraternam in communi ducunt*. § 3. *Testimonium publicum a religiosis Christo et Ecclesiae reddendum illam secumfert a mundo separationem, quae indoli et fini uniuscuiusque instituti est propria*." Translation: "§ 1 Religious life, as a consecration of the whole person, manifests in the Church the marvelous marriage established by God as a sign of the world to come. Religious thus consummate a full gift of themselves as a sacrifice offered to God, so that their whole existence becomes a continuous worship of God in charity. § 2 A religious institute is a society in which, in accordance with their own law, the members pronounce public vows and live a fraternal life in common. The vows are either perpetual or temporary; if the latter, they are to be renewed when the time elapses. § 3 The public witness which religious are to give to Christ and the Church involves that separation from the world which is proper to the character and purpose of each institute."

woman can be abducted in order to qualify such act as an impediment of marriage. On the other hand, the Code of Canons of the Eastern Churches refers to the abduction of a person, so the abduction of a man can be qualified as an impediment of marriage, as well.[141]

6.3.8 Crime

This impediment of marriage originates in adultery, but its content has been altering during the Church history. Considering the positive law, the **essence of this impediment** lies in:

- murder of the spouse on behalf of the view of contracting of marriage with a person chosen by the murderer in advance;
- murder of the one of the spouses by the third person in the interest of contracting of marriage with the bereaved spouse;
- physical or psychical collaboration between the spouse and the third person who agreed on contracting of marriage in the future with one another after the impedimental spouse is murdered.[142]

This impediment exists between the murderer, or the person that ordered the murder, and a person specified in advance to contract marriage in the future. The crime is considered an impediment within the Church law, and therefore can be dispensed. Regarding the seriousness of this impediment, its dispensation is reserved to the Apostolic See. According to the norms of canon law, exceptionally, in danger of death this impediment can be dispensed also by a priest.

6.3.9 Consanguinity

Consanguinity represents an impediment of marriage in the whole direct line and as far as the fourth degree of kinship inclusive of the collateral line. The term "consanguinity" here means, within certain limitations defined by the law of nature, the positive law of God, or the supreme authority of state or Church, the blood-relationship (*cognatio naturalis*), or the natural bond between persons descended from the same

[141] Can. 806 CCEO 1990: „*Cum persona abducta vel saltem retenta intuitu matrimonii cum ea celebrandi matrimonium valide celebrari non potest, nisi postea illa ab abducente vel retinente separata et in loco tuto ac libero constituta matrimonium sua sponte eligit*." Translation: "No marriage can take place with a person who is abducted or at least detained for the purpose of entering into marriage, unless the person freely chooses marriage after having been separated from the abductor or detainer and is in a safe and free place."

[142] Can. 1090 CIC 1983: „§ 1. *Qui intuitu matrimonii cum certa persona ineundi, huius coniugi vel proprio coniugi mortem intulerit, invalide hoc matrimonium attentat*. § 2. *Invalide quoque matrimonium inter se attentant qui mutua opera physica vel morali mortem coniugi intulerunt*." Translation: "One who, with a view to entering marriage with a particular person, has killed that person's spouse, or his or her own spouse, invalidly attempts this marriage. § 2 They also invalidly attempt marriage with each other who, by mutual physical or moral action, brought about the death of either's spouse." Cf. can. 807 CCEO 1990.

stock. In view of the recognized descent of all men from one common stock, there is a general blood-relationship between all men. Hence the limitation mentioned has reference to the nearest root or source of consanguinity. This bond or union of blood takes place in one case through the descent of one person from the other, and this is called the direct line. In another case it takes place because the common blood is drawn from a common root, the same ancestor, from whom both persons descend, though they do not descend one from the other, and are therefore not in a direct but in a transverse or collateral line. By the **law of nature** it is universally forbidden, under the sanction of invalidity of marriage, to contract marriage between the persons in whole direct line and obviously also in the second degree (brother and sister) of the collateral line. The consanguinity in the third (aunt and nephew, uncle and niece) and fourth degree (marriage between cousins) of the collateral line is considered to be the impediment of Church law, and therefore can be dispensed by the local Ordinary. As mentioned above, the dubiousness about possible consanguinity in whole direct line or in the second degree of the collateral line substantiates non-granting of dispensation.[143]

6.3.10 Affinity

In the conception of this marriage impediment, the affinity is considered to be a relationship between the spouse and the relatives of the second spouse. This relationship results from contracting of marriage and constitutes the diriment impediment between the spouse and the relatives of the second spouse in whole direct line (e.g. a bride and the father of husband).[144] Logically, this impediment comes into question only **after the death of one of the spouses,** and is qualified as an impediment of Church law. That is also the reason for its dispensability by the competent authority, who is the local Ordinary. The relationship of affinity in second line (e.g. the husband and the sister of dead bride) has not been an impediment since the valid Latin Code of Canon Law (27th November 1983).

6.3.11 Public Propriety

This impediment comes into existence with the beginning of common life of two persons in public concubinage, or when a couple begins to live together after an in-

[143] Can. 1091 CIC 1983: „§ 1. *In linea recta consanguinitatis matrimonium irritum est inter omnes ascendentes et descendentes tum legitimos tum naturales*. § 2. *In linea collaterali irritum est usque ad quartum gradum inclusive*. § 3. *Impedimentum consanguinitatis non multiplicatur.* § 4. *Numquam matrimonium permittatur, si quod subest dubium num partes sint consanguineae in aliquo gradu lineae rectae aut in secundo gradu lineae collateralis*." Translation: "§ 1. Marriage is invalid between those related by consanguinity in all degrees of the direct line, whether ascending or descending, legitimate or natural. § 2 In the collateral line, it is invalid up to the fourth degree inclusive. § 3 The impediment of consanguinity is not multiplied. § 4 A marriage is never to be permitted if a doubt exists as to whether the parties are related by consanguinity in any degree of the direct line, or in the second degree of the collateral line." Cf. can. 808 CCEO 1990.

[144] Can. 1092 CIC 1983: „*Affinitas in linea recta dirimit matrimonium in quolibet gradu*." Translation: "Affinity in any degree of the direct line invalidates marriage." Cf. can. 809, § 1 CCEO 1990.

valid marriage. The impediment occurs between the man living in such a relationship and the relatives of the woman in the **first degree of direct line**, eventually between the woman and the relatives of the man in the same degree.[145] Civil marriage of two persons baptized in the Catholic Church is not considered to be the public concubinage, regarding a will of these persons to live in a marriage. This impediment is of Church law and thus the dispensation comes into question. The competent authority for this act is the local Ordinary. The impediment of public propriety does not cease to exist by the interrupting of concubinage or common life after an invalid marriage.

6.3.12 Adoption

Adoption means the establishment of the relationship between certain persons by the decision of civil tribunal on adoption. As a result of such decision, a child will get into the care of other person (persons) instead of his or her natural parents or blood-related relatives. The universal canon law does not prescribe the way of adoption, and in this case the Church recipes the laws of the state, as well as the decision of **civil tribunal** on adoption. The impediment of marriage comes into existence between the adopted child and his legal relatives in whole direct line and in the second degree of collateral line (relationship between the brother and sister established by adoption).[146] This impediment relates to Church law, and therefore the dispensation of the local Ordinary comes into question. According to the opinion of some canonists, this impediment can cease to exist also by the cancellation of adoption by the relevant state body. Other authors hold an opinion about the permanence of this impediment that still remains yet in case of cancellation of adoption.

6.3.13 Spiritual Relationship

Spiritual relationship is a relation that comes into existence on the ground of spiritual parenthood, or compaternitas, when the godfather or godmother becomes the father or mother in handing over of the faith. That is also the reason why such a relationship is considered as entering into the family of the baptized child, especially strongly on the ground of the baptism, regarded as the sacrament of rebirth. This impediment of marriage was a part of the canons of the first Latin Codex Iuris Canonici

[145] Can. 1093 CIC 1983: „*Impedimentum publicae honestatis oritur ex matrimonio invalido post instauratam vitam communem aut ex notorio vel publico concubinatu; et nuptias dirimit in primo gradu lineae rectae inter virum et consanguineas mulieris, ac vice versa*." Translation: "The impediment of public propriety arises when a couple live together after an invalid marriage, or from a notorious or public concubinage. It invalidates marriage in the first degree of the direct line between the man and those related by consanguinity to the woman, and vice versa." Cf. can. 810 CCEO 1990.

[146] Can. 1094 CIC 1983: „*Matrimonium inter se valide contrahere nequeunt qui cognatione legali ex adoptione orta, in linea recta aut in secundo gradu lineae collateralis, coniuncti sunt*." Translation: "Those who are legally related by reason of adoption cannot validly marry each other if their relationship is in the direct line or in the second degree of the collateral line." Cf. can. 812 CCEO 1990.

of 1917 (canons 768 and 1079)[147], but it ceased to exist since promulgation of the new Code of Canon Law of 1983, and hence does not exist in the Latin Canon Law any longer. The impediment of spiritual relationship still exists in the **law of the Eastern Catholic Churches** between the godfather and godmother on the one hand, and the baptized person and his or her parents on the other hand. If a baptism is repeated under condition, the impediment of marriage of spiritual relationship does not arise, unless the same sponsor was employed for the second ceremony.[148] This impediment is of Church law's character, and therefore considered dispensable. The dispensation can be granted by the local hierarch.

6.4 Matrimonial Consent

6.4.1 Concept

According to canon 1057, § 1, of the Latin Code of Canon Law, the marriage is contracted by legitimately manifested consent of two parties who are by law qualified to enter into such contract. This implies no substitute for this consent can be supplied by any human power. According to the next paragraph, the matrimonial consent is an act of the will by which a man and a woman by an irrevocable covenant mutually give and accept one another for the purpose of establishing a marriage. This consent must be a **free act of the will**, and as far as such an act of the will is internal and invisible, it must be manifested by external signs like words, or actions, i.e. marital vows or nodding the head in affirmation, that are commonly considered sufficient to express one's will. Matrimonial consent is also considered as the act of will that was preceded by the reasonable activity and the recognition of future rights and duties resulting from the matrimonial contract. The consent must be external and internal simultaneously and expressed before witnesses. The internal consent of the mind is presumed to conform to the words or the signs used in the celebration of a marriage.[149] Analogous to impediments of marriage and the non-observance of the canonical form, also the infelicitous giving of the matrimonial consent restrains to the contracting of valid marriage. Along

147 Can. 768 CIC 1917: „*Ex baptismo spiritualem cognationem contrahunt tantum cum baptizato baptizans et patrinus*." Translation: "From baptism a spiritual relationship is contracted only between the one baptizing, the one being baptized, and the sponsor." Can. 1079 CIC 1917: „*Ea tantum spiritualis cognatio matrimonium irritat*, *de qua in can*. *768*." Translation: "Only the spiritual relationship discussed in canon 768 invalidates marriage."

148 Can. 811 CCEO 1990: „§ 1. *Ex baptismo oritur inter patrinum et baptizatum eiusque parentes cognatio spiritualis*, *quae matrimonium dirimit*. § 2. *Si iteratur baptismus sub condicione*, *cognatio spiritualis non oritur*, *nisi iterum idem patrinus adhibitus est*." Translation: "§ 1. From baptism there arises a spiritual relationship between a sponsor and the baptized person and the parents of the same that invalidates marriage. § 2. If a baptism is repeated under condition, a spiritual relationship does not arise, unless the same sponsor was employed for the second ceremony."

149 Can. 1101, § 1 CIC 1983: „*Internus animi consensus praesumitur conformis verbis vel signis in celebrando matrimonio adhibitis*." Translation: "The internal consent of the mind is presumed to conform to the words or the signs used in the celebration of a marriage." Cf. can. 824, § 1 CCEO 1990.

with the various infelicities of the matrimonial consent, the norms of canon law also deal with the persons incapable of giving the proper matrimonial consent. In such case, the matrimonial consent does not exist and therefore, it is not suitable to deal with the infelicity of something that does not exist. Nevertheless, even if a marriage was contracted invalidly by reason of an impediment or defect of form, the consent given is **presumed to persist** until its withdrawal has been established.

6.4.2 Mental Incapacity

Following the above indicated, firstly, we will deal with the mental incapacity of the persons, that are incapable of giving the proper matrimonial consent on the ground of psychological reasons. Closer specification of these incapacities can be found in canon 1095 of the Latin Code of Canon Law, that represents the result of the development of legal science in the last century.[150] Mental incapacity is of **natural law's character,** and that is also the reason why it cannot be dispensed. Therefore, the persons afflicted by the mental incapacity are incapable of giving the proper matrimonial consent at all (*erga omnes*). Also the marriages contracted before the Latin Code of Canon Law of 1983 came into effect are qualified according to these rules. As mentioned earlier, the matrimonial consent must be a free act of the will, that is to say, it has to be the result of activities, by which the psychic of the person (i.e. reason and will) participates. These activities are realized in three phases:

1. **Recognition of the object** – in this case, it is the examination and recognition of the essence of marriage and mutual marital rights and duties.
2. **Reasoning on the object in the theoretical level** – critical phase, in which the person considers the essence and the significance of the marital rights and duties according to their value.
3. **Choice of the object** – decision-making phase as a practical result after previous theoretical conclusion on the essence, significance and the value of the marriage, and the rights and duties of the spouses.

6.4.2.1 Lack of Use of Reason

Considering the use of reason, the Church states that a person must have sufficient development of his or her faculties of intellect and a will to be able to judge and carry out this truly human act. This is the most basic level of intellectual maturity, which cannot be found by small children, or by adults who suffer from conditions which affect

[150] Can. 1095 CIC 1983: „*Sunt incapaces matrimonii contrahendi*: 1° *qui sufficienti rationis usu carent*; 2° *qui laborant gravi defectu discretionis iudicii circa iura et officia matrimonialia essentialia mutuo tradenda et acceptanda*; 3° *qui ob causas naturae psychicae obligationes matrimonii essentiales assumere non valent*." Translation: "The following are incapable of contracting marriage: 1° those who lack sufficient use of reason; 2° those who suffer from a grave lack of discretionary judgment concerning the essential matrimonial rights and obligations to be mutually given and accepted; 3° those who, because of causes of a psychological nature, are unable to assume the essential obligations of marriage." Cf. can. 818 CCEO 1990.

their **powers of reasoning**. It takes a very grave permanent or transitory condition, however, such as schizophrenia, or alcoholic stupor, to invalidate marriage for lack of reason. In this case, the problem occurs in the first phase, i.e. the recognition of the object, because the subject is not able to get to the recognition of the object of the contract of marriage. Every single case must be considered by the expert in the objective area, and weighed individually.

6.4.2.2 Lack of Due Discretion

It can happen that somebody is able to use reason, to understand the natural character of the marriage, but he or she is insufficient to correctly evaluate the essential rights and duties of the spouses, which are to be mutually given and accepted. Discretion refers to the capacity of intellect and will to specifically evaluate, decide and freely enter into a marriage. The discretion due any act is proportionate to the seriousness of the act. Marital consent, therefore, requires an appropriate seriousness of the maturity of discretion for it to be entered validly. It would be easy, however, to overestimate this, as if a perfect discretion is needed. In this context, we have to mention that the person after puberty is considered capable of marriage unless the contrary is proved.[151] But **only the incapacity**, not just difficulty, is invalidating. An immature person, for example, may have difficulties, but still has the capacity to enter into a marriage and assume its essential obligations. A grossly immature person may indeed be incapable, but this must be proven with respect to the marriage at the time of exchanging consent. In this case, the problem occurs in the second phase, i.e. the reasoning on the object in the theoretical level. Just this reason represents the most common cause for declaring the marriage invalid at Church tribunals.

6.4.2.3 Inability to Assume

It can happen that someone is able to recognize the nature of marriage, has the knowledge of the nature and significance of marital right and duties, he or she longs for true marriage, but yet the marriage becomes invalid, when one of the spouses is unable to assume the essential duties (e.g. the conjugal act, the community of life and love, providing mutual help, procreating and educating of children etc.) for the cause of his or her psychical nature. In this context, it is necessary to underline that regarding the lack of reason, it must be the incapacity, not just a difficulty, and it must be present at the time of exchanging consent. Examples of such **conditions** are especially psychosexual disorders (e.g. homosexuality, nymphomania, transsexualism etc.) and personality disorders (especially psychic anomalies which affect the personality structure

[151] Can. 1096 CIC 1983: „§ 1. *Ut consensus matrimonialis haberi possit, necesse est ut contrahentes saltem non ignorent matrimonium esse consortium permanens inter virum et mulierem ordinatum ad prolem, cooperatione aliqua sexuali, procreandam*. § 2. *Haec ignorantia post pubertatem non praesumitur*." Translation: "§ 1 For matrimonial consent to exist, it is necessary that the contracting parties be at least not ignorant of the fact that marriage is a permanent partnership between a man and a woman, ordered to the procreation of children through some form of sexual cooperation. § 2 This ignorance is not presumed after puberty." Cf. can. 819 CCEO 1990.

of the subjects). It is important to remember that these essential obligations must be mutual, permanent, continuous, exclusive, and irrevocable, so that there would be incapacity of one of the contracting parties, that should be, due to psychological cause, incapable of assuming these obligations with these essential characteristics. Similarly to both of the above mentioned reasons of mental incapacity, also the third point of canon 1095 lies in the principle of natural law *"nemo potest ad impossibile obligari"* (from Latin: "no one is bound to do impossible").

6.4.3 Infelicities of the Ability of Recognition

6.4.3.1 Ignorance

This deficiency of the marital consent lies in the ability of recognition resulting from **other than psychical reasons** (e.g. reduced intelligence, absolute lack of recognition interest etc.). In this case, the basic knowledge of the object of marital consent is indeed missing. Yet, it is not needed to dispose of an educated or special knowledge, but of that dealing with marriage as:

- a consortium, or partnership, to achieve certain goals;
- that it is a permanent partnership, as opposed to temporary or transient;
- that it is a relation between a man and a woman (persons of the opposite sex);
- that it is ordered to the procreation of children (raising a family);
- and it is achieved through some kind of sexual cooperation.

As mentioned above, this knowledge is presumed, until the contrary is proved, by anyone after puberty (which is presumed by females at age 14 and males at age 16).

6.4.3.2 Error

Generally, three sorts of error are recognized according to the norms of canon law.[152] Explaining the two paragraphs of canon 1097, since the marital consent involves marrying a specific person, error about that person may lead to invalidation of the consent. This error must be factual, either about the person, or about his or her qualities. Factual **error about the person** simply renders the consent invalid, regardless of the fact whether it affected the contracting of marriage itself, or was only associated with the contracting. This kind of deficiency of marital consent is usually connected with the fraud. The invalidity is related to natural law, because the marital consent

[152] Can. 1097 CIC 1983: „§ 1. *Error in persona invalidum reddit matrimonium*. § 2. *Error in qualitate personae*, *etsi det causam contractui*, *matrimonium irritum non reddit*, *nisi haec qualitas directe et principaliter intendatur*." Translation: "§ 1 Error about a person renders a marriage invalid. § 2 Error about a quality of the person, even though it be the reason for the contract, does not render a marriage invalid unless this quality is directly and principally intended." Cf. can. 820 CCEO 1990.

was in this case given to other person. An error concerning the qualities of the person is more common and more difficult to assess. By itself, the **error about qualities of a person** does not invalidate consent, since one is marrying a person, not his or her qualities. However, the consent dependent on a certain quality of a person, as one can intent to get married directly and primarily of the given quality. For example, a man may marry a woman believing she is the mother of his child, a fact, which later proves false. If that was the direct and primary reason for him to marry her, then his consent was conditioned by that quality. Or, a woman may believe she is marrying into a certain family, and this attribute of her fiancé is the principal and direct reason for marrying him. The motive may be specious, but it determines her consent. On the other hand, many qualities of a person are erroneously evaluated before marriage, or discovered only after marriage, yet one have already married the person. But that fact itself would not invalidate the consent. Someone determining his or her choice of a spouse by a quality obviously makes that evaluation and determination prior to marrying, but to invalidate the consent it is necessary to prove the quality of a person was directly and principally intended, and, therefore, the error about qualities of a person changes to the error about the person.

6.4.3.3 Fraud

While in error the subject makes a false judgment concerning the object and is the author of the lack of correspondence between his or her idea and reality, in deceit it is a third person who, through fraud (*dolus*), fabricates a false reality which gives rise in the subject to an apparently true perception of an object that is in itself false. Consequently, there is, in deceit, an inappropriate manipulation by a hired person of the formulation of the act of comprehension in the subject who is its victim. This act of comprehension is absolutely necessary to consent which of its very nature must correspond to the self-determination of the contracting parties themselves. The error must be of such a kind that it would seriously **disturb the community of life** which is rightly expected in marriage.[153] Logically, a person who is not actually deceived, despite the attempt, or accepts the quality, cannot claim fraud. The error does not need to be the result of a positive fraud, but can be a concealment of some quality, about which the other party has a right to know, and which would gravely disturb the marriage either objectively (e.g. venereal disease, grave illness, addictions to vice etc.), or subjectively, according to the esteem placed on that quality by the deceived party (e.g. practicing Catholic etc.). A person who objectively or subjectively conceals a grave quality deprives the other party of freedom in choosing to marry.

[153] Can. 1298 CIC 1983: *„Nisi res sit minimi momenti, bona ecclesiastica propriis administratoribus eorumve propinquis usque ad quartum consanguinitatis vel affinitatis gradum non sunt vendenda aut locanda sine speciali competentis auctoritatis licentia scripto data*." Translation: "Unless they are of little value, ecclesiastical goods are not to be sold or leased to the administrators themselves or to their relatives up to the fourth degree of consanguinity or affinity, without the special written permission of the competent authority." Cf. can. 1041 CCEO 1990.

6.4.4 Infelicities of the Consent Resulting from the Will

This case concerns the situations when the nupturient expresses his or her marital consent that is not sufficient for valid marriage. Such acting can be done under pressure or freely. According to canon law, to contract valid marriage the true marital consent is required that is internal and expressed in proper form externally. The external expression of marital consent is lightly detectable, but it can be difficult to prove the internal consent as time passes by. The nupturient can externally express something that is not conformable with his or her inner feeling. The reasons for this acting can have its roots in fear or pressure, or the nupturient can follow his or her selfish goals.

6.4.4.1 Simulation

When two people stand up before God, the Church and the society and exchange their vows, their words and acts are presumed to be truthful. When the consent is given falsely, and it touches the marriage itself, or one of the essential elements or properties of marriage, such consent is invalid. In this case, the person is said to have simulated the consent. Generally, there are two kinds of simulation. **Total simulation** occurs when one or both of the parties positively intend not to marry. This could be done in order to obtain any rights of marriage, or even the civil effects of marriage (e.g. tax advantages, immigration visa etc.). It is licit to long for any goods of marriage in relation to concrete person in case there is a will to marry the person. But, when instead of the marriage itself the nupturient wants only these goods, the consent is considered invalid. **Partial simulation** occurs when, according to the will of one of the parties, some essential elements of marriage are positively excluded, such as the sexual rights and duties, life in common, or the procreation and education of children. Partial simulation also occurs when the essential property of marriage is positively excluded. Someone, who intends to have other spouses or other sexual relations, excludes unity. Those, who intend to take advantage of divorce or remarriage, exclude indissolubility, if they do so.[154] As mentioned earlier, closer elaboration of other essential properties is entrusted to the doctrines of canonists. On the whole, we can state that total or partial simulation invalids the marriage, because the simulation describes the discrepancy between the words or signs used within the marriage ceremony and one's inner attitude.

6.4.4.2 Conditioned Matrimonial Consent

Historically, the Church accepted future conditions on consent (e.g. a male heir), but under the positive law, the new Code invalidates such conditions. Conditions con-

[154] Can. 1101, § 2 CIC 1983: *„At si alterutra vel utraque pars positivo voluntatis actu excludat matrimonium ipsum vel matrimonii essentiale aliquod elementum, vel essentialem aliquam proprietatem, invalide contrahit.*" Translation: "If, however, either or both of the parties should by a positive act of will exclude marriage itself or any essential element of marriage or any essential property, such party contracts invalidly." Cf. can. 824, § 2 CCEO 1990.

cerning the past and present may be imposed with the written consent of the local Ordinary. If that permission is not obtained, the marriage is valid, but illicit. An example of a present or past condition could be the existence of some quality, such as innocence of crime, or innocence of sexual intercourse etc. A condition can also be made on the basis of past and present behaviour, even though it concerns the future. So, for example, a man marries a woman with former drinking problem due to her promise to live soberly. If her promise was sincere and made responsibly, even though she ultimately breaks it, the marriage is valid. However, if such a promise was insincere, given merely to obtain the marital consent, the marriage is invalid. In order to become valid, the condition does not need to be expressed in vows. However, it must be conveyed either **implicitly or explicitly** in words or actions. A woman, who announces that she just could not marry a man who was a drunkard, has established a condition. His concealment of drinking would, of course, involve fraud, as well as failing to live up to a condition for marital consent. Since this is a very complex area of the law, the recourse to the Ordinary is essential for placing an invalidating condition with certainty.[155]

6.4.4.3 Force and Fear

The necessity of determining the will is present in the canon that refers to the institute of invalid marriage on the ground of force and fear, as in so many others rules already discussed. In this case, the person chooses a marriage in order to avoid physical or psychological force or coercion. Unjustly inflicted fear of such a nature, as to overcome a steady and firm character, destroys the perpetuity of the contract, as *restitutio in integrum* can be invoked against this, according to the principle that those things done by force and fear must be revoked as null and void and ought to be devoid of the binding force of validity. Therefore, such force would necessarily be grave, since it takes away the freedom of will and rational thinking. This gravity could be objective (the threat of death) or subjective (emotional disturbance evoked by psychological manipulation). The threat must come from outside, as opposed to one's own conscience, and it must be the principal cause of consent. In case of **reverential fear**, which children ought to have for their parents or a subordinate for a superior of another kind, to invalidate the consent there must be actual coercion of the person by the parent or superior, who is perceived as grave. An example would be the coerced marriage of an unwed mother by her parents, if remaining conditions are fulfilled.

[155] Can. 1102 CIC 1983: „§ 1. *Matrimonium sub condicione de futuro valide contrahi nequit*. § 2. *Matrimonium sub condicione de praeterito vel de praesenti initum est validum vel non*, *prout id quod condicioni subest*, *exsistit vel non*. § 3. *Condicio autem*, *de qua in § 2*, *licite apponi nequit*, *nisi cum licentia Ordinarii loci scripto data*." Translation: "§ 1 Marriage cannot be validly contracted subject to a condition concerning the future. § 2 Marriage entered into subject to a condition concerning the past or the present is valid or not, according as whatever is the basis of the condition exists or not. § 3 However, a condition as mentioned in § 2 may not lawfully be attached except with the written permission of the local Ordinary." Cf. can. 826 CCEO 1990.

6.5 Dissolution of Marriage

According to the norms of canon law, the dissolution of marriage is different from the institute of declaring the marriage null and void. A tribunal process in pursuit of a **decree of marital nullity** (annulment) has the sole purpose of determining whether or not a valid and binding bond was created when the parties exchanged consent. A decree of nullity, therefore, is a judgment by an ecclesiastical tribunal which states that on the basis of evidentiary proof a given relationship was not a binding marriage in the way the Catholic Church understands the marriage to have been created by the norms of God's law. The decree of nullity does not deny that a wedding ceremony took place, nor does it imply that the husband and wife never had a relationship. Moreover, any children born of a relationship which was presumed by at least one of the parents to be a valid and binding marriage at the time are considered to be legitimate, even if at a later time the marital bond is proven to have been invalid and null. **Dissolution of a marital bond** is a different reality than proving marital nullity. The Catholic Church believes that a marriage between two baptized persons is permanently indissoluble once consent is validly exchanged and the marriage is consummated. Hence, the parties are obliged by that marital bond until one or the other is deceased. However, as mentioned above, there are certain reasons when the marital bond between two unbaptized persons or between a baptized person and an unbaptized person can be dissolved by the application of relevant institutes of canon law.

6.5.1 Death of One or Both Spouses

According to the above mentioned canon 1141 of the Latin Code of Canon Law, sacramental marriage which is ratified and consummated cannot be dissolved by any human power or by any cause other than death. By death of one of the spouses the matrimony ceases to exist *ipso facto* and *ipso iure*. A **decree of diocesan bishop declaring the supposed death** of one of the spouses does not cause the dissolution of marriage. Everything depends on the objective status of such a marriage, that either exists or does not exist depending on the fact whether the putatively dead spouse is dead or alive. Therefore, the bereaved spouse is only considered to be exempt from marital rights and duties, but with the right to contract new marriage. If the putatively dead spouse once appears, nothing will change, since the former valid marriage was not dissolved at all, and the duty of the Church tribunal is to declare invalidity of the next putative marriage.

6.5.2 Act of the Pope

The Pope is the only one to dispose of the right to dissolve the marital bond on the ground of the words of Jesus Christ, who entrusted this power to the Apostle Peter with the words: "… *whatever you bind on earth shall have been bound in heaven and whatever you loose on earth shall have been loosed in heaven*" (Matt 18:18). This power is also connected with the function of the **vicar of Jesus Christ** on earth (*potestas*

vicarii Christi). In this case, only the Pope is entitled to release anyone from the regulation of the norm of natural-law character about the indissolubility of marriage. In this context, it is necessary to remind again that the sacramental marriage which is ratified and consummated cannot be dissolved by any human power, not even by the Pope. In case one of the above-mentioned conditions absents, only the Pope can use this power in favour of faith of a certain person and on behalf of the supernatural good of the human being.

6.5.2.1 Peter's Privilege

The term "Peter's privilege" (*Privilegium Petrinum*) is usually used to describe this institute of canon law, however it is not recognized by the renowned canonists. The more accurate is to use the term "privilege in the favour of faith" (*privilegium in favorem fidei*). The foundation for using this term is given in the fact that this institute allows the Pope to dissolve a marriage in situation, when one marital party in a valid marriage is unbaptized and the goal of the good faith is being followed. That implies this privilege can be applied to the non-sacramental marriage only. As a matter of interest we may state, that it is not possible to find the more detailed specification of this institute in the valid Latin Code of Canon Law, eventually in the Code of Canons of the Eastern Churches. The supreme lawgiver decided to regulate it in the individual instruction of the Congregation for the Doctrine of the Faith (*Congregatio pro Doctrina Fidei*) called "*De dissolutione vinculi matrimonialis in favorem fidei*", that was issued in 2001. This privilege is usually applied to instances when one of the parties of the previous marriage (presumably severed in divorce) wishes to marry a Catholic in a second ceremony, or the non-Christian party wants to become a Catholic and remarry. Such an act can be later referred to as dissolution of **non-sacramental marriage** by the power of the Pope. This institute is interpreted in the broadest sense of meaning, and thus it is applied also in the favour of faith of the third person. One of the most important conditions to be fulfilled is that previous non-sacramental marriage cannot be restored by the reason of complete and irreformable break-up. As the second *conditio sine qua non*, we may note the fact that the claimant for this privilege was not the one to cause the stated break-up of the previous marriage.

6.5.2.2 Dissolution of Valid but Unconsummated Marriage

The term officially designated by the Latin phrase "*ratum et non consumatum*" represents the situations, in which no completed sexual intercourse took place between the wedded couple. According to canon 1061, § 1, of the Latin Code of Canon Law, the sexual intercourse has to be done in a human manner and in itself apt for the generation of offspring.[156] The next paragraph also emphasizes that if the spouses have lived

[156] Can. 1061, § 1 CIC 1983: „*Matrimonium inter baptizatos validum dicitur ratum tantum, si non est consummatum; ratum et consummatum, si coniuges inter se humano modo posuerunt coniugalem actum per se aptum ad prolis generationem, ad quem natura sua ordinatur matrimonium, et quo coniuges fiunt una caro.*" Translation: "A valid marriage between baptized persons is said to be merely ratified, if it is not consummated; ratified and consummated, if the spouses have in a

together after the celebration of their marriage, consummation is presumed until the contrary is proven. Based on the old *ius controversum* between the medieval universities of Bologna and Paris, that was decided by the Pope Alexander III. (1159-1181), the Church sees the sexual intercourse as the final, necessary step for an indissoluble, sacramental marriage. In the cases of unconsummated marriage, such bond can be dissolved even if **both parties are baptized Christians**. This kind of dissolution comes into question also in case of marriage of a baptized person with an unbaptized person (non-sacramental marriage).[157] These cases are serious, therefore have to be properly investigated first, and then resolved only in Rome by the dispensation of the Pope after all of the legal conditions have been cumulatively fulfilled. This institute can be also seen as an extension of the papal power growing out of the above mentioned privilege of the faith (*Privilegium Petrinum*).

6.5.3 Establishment of New Marriage

6.5.3.1 Pauline Privilege

This institute of canon law is based on the words of the **Apostle Paul** who wrote: "*To the married I give charge, not I but the Lord, that the wife should not separate from her husband* (*but if she does, let her remain single or else be reconciled to her husband*), *and that the husband should not divorce his wife. To the rest I say, not the Lord, that if any brother has a wife who is an unbeliever, and she consents to live with him, he should not divorce her. If any woman has a husband who is an unbeliever, and he consents to live with her, she should not divorce him. For the unbelieving husband is consecrated through his wife, and the unbelieving wife is consecrated through her husband. Otherwise, your children would be unclean, but as it is they are holy. But if the unbelieving partner desires to separate, let it be so; in such a case the brother or sister is not bound. For God has called us to peace.*"[158] Interpreting the aforementioned text from the times of the primary Church, this institute was applied to the marriages of two unbaptized persons, when one of the spouses

human manner engaged together in a conjugal act in itself apt for the generation of offspring. To this act marriage is by its nature ordered and by it the spouses become one flesh."

157 Can. 1142 CIC 1983: „*Matrimonium non consummatum inter baptizatos vel inter partem baptizatam et partem non baptizatam a Romano Pontifice dissolvi potest iusta de causa, utraque parte rogante vel alterutra, etsi altera pars sit invita*." Translation: "A non-consummated marriage between baptized persons or between a baptized party and an unbaptized party can be dissolved by the Roman Pontiff for a just reason, at the request of both parties or of either party, even if the other is unwilling." Cf. can. 862 CCEO 1990.

158 1 Cor 7:10-15: „*τοῖς δὲ γεγαμηκόσιν παραγγέλλω, οὐκ ἐγὼ ἀλλὰ ὁ κύριος, γυναῖκα ἀπὸ ἀνδρὸς μὴ χωρισθῆναι ἐὰν δὲ καὶ χωρισθῇ, μενέτω ἄγαμος ἢ τῷ ἀνδρὶ καταλλαγήτω καὶ ἄνδρα γυναῖκα μὴ ἀφιέναι. Τοῖς δὲ λοιποῖς λέγω ἐγώ, οὐχ ὁ κύριος: εἴ τις ἀδελφὸς γυναῖκα ἔχει ἄπιστον, καὶ αὕτη συνευδοκεῖ οἰκεῖν μετ' αὐτοῦ, μὴ ἀφιέτω αὐτήν: καὶ γυνὴ εἴ τις ἔχει ἄνδρα ἄπιστον, καὶ οὗτος συνευδοκεῖ οἰκεῖν μετ' αὐτῆς, μὴ ἀφιέτω τὸν ἄνδρα. ἡγίασται γὰρ ὁ ἀνὴρ ὁ ἄπιστος ἐν τῇ γυναικί, καὶ ἡγίασται ἡ γυνὴ ἡ ἄπιστος ἐν τῷ ἀδελφῷ: ἐπεὶ ἄρα τὰ τέκνα ὑμῶν ἀκάθαρτά ἐστιν, νῦν δὲ ἅγιά ἐστιν. εἰ δὲ ὁ ἄπιστος χωρίζεται, χωριζέσθω: οὐ δεδούλωται ὁ ἀδελφὸς ἢ ἡ ἀδελφὴ ἐν τοῖς τοιούτοις: ἐν δὲ εἰρήνῃ κέκληκεν ὑμᾶς ὁ θεός.*"

choose to receive the sacrament of baptism, and the second spouse did not want to share the common household with him or her. It is necessary to remember that in the early days of Christianity becoming a Christian was definitely a counter-cultural event, and soon Christians even began to suffer from life-threatening sanctions due to the rules of Roman criminal law. That was also the reason why the Church was so often confronted with the situation in which two non-Christians were married, one spouse converted to Christianity and was baptized, while the another one chose not to convert. Resulting from the above stated text of Bible, the judgment of the Apostle Paul was based on the assumption that a marriage between two unbaptized persons is only a "natural bond", and therefore could be broken, if it is "for the good of the faith" to do so. From the contemporary point of view, the definition of the Pauline privilege can be found in canon 1143 to 1147 of the Latin Code of Canon Law. The **following criteria** must be met for the use of this privilege:

- The two parties were certainly unbaptized at the time of the wedding and the opponent remains unbaptized at this point.
- It is clear that the possibility of reconciliation does not exist.
- There is conversion (Christian baptism) on the part of the petitioner.
- The canonical questions have to be proposed to the unbaptized spouse. Concerning these questions, the unbaptized party must always be interpellated: whether he or she also wishes to receive baptism; he or she at least is willing to live peacefully with the baptized party without offence to the Creator. These interpellations are to be done after baptism.[159]
- The baptized spouse can contract new marriage, whereas the preceding marriage is dissolved in the moment of contracting of new marriage.

The separation of the spouses or even the civil decree terminating the civil requirements of marriage logically does not dissolve the natural bond and valid consent to a new marriage in the Catholic Church, rather accomplishes the dissolution. As a matter of interest we may state, that the conversion to Catholicism is not required for this privilege to be used, whilst the conversion to Christianity is rather sufficient. In order to determine the potential for applying of this privilege, any of the **following situations must occur**:

- A Catholic seeks to marry a convert to Catholicism who was formerly unbap-

[159] Can. 1144 CIC 1983: „§ 1. *Ut pars baptizata novum matrimonium valide contrahat*, *pars non baptizata semper interpellari debet an*: 1° *velit et ipsa baptismum recipere*; 2° *saltem velit cum parte baptizata pacifice cohabitare*, *sine contumelia Creatoris*. § 2. *Haec interpellatio post baptismum fieri debet*; *at loci Ordinarius*, *gravi de causa*, *permittere potest ut interpellatio ante baptismum fiat*, *immo et ab interpellatione dispensare*, *sive ante sive post baptismum*, *dummodo constet modo procedendi saltem summario et extraiudiciali eam fieri non posse aut fore inutilem*." Translation: "For the baptized person validly to contract a new marriage, the unbaptized party must always be interpellated whether: 1° he or she also wishes to receive baptism; 2° he or she at least is willing to live peacefully with the baptized party without offence to the Creator. § 2 This interpellation is to be done after baptism. However, the local Ordinary can for a grave reason permit that the interpellation be done before baptism; indeed he can dispense from it, either before or after baptism, provided it is established, by at least a summary and extrajudicial procedure, that it cannot be made or that it would be useless." Cf. can. 855 CCEO 1990.

tized and married to an unbaptized person.

- A Catholic seeks to marry a convert to another Christian Church who was formerly unbaptized and married to an unbaptized person.
- A convert to Catholicism who was formerly unbaptized and married to an unbaptized person seeks to marry a baptized non-Catholic or an unbaptized person. In this case, the dissolution is granted in virtue of canon 1147 of the Latin Code of Canon Law, which refers to mixed marriages. The permission, if it is a mixed marriage, and the dispensation from impediment, if it concerns the disparity of cult marriage (to an unbaptized), is required.

6.5.3.2 Chance to Retain One of the Partners in Polygamous Marriage

The foundation for this institute can be found in the historical development related to missionary activities of the Church in the time after protestant reformation. In that time commonly happened that the persons who lived in polygamous marriage wanted to enter the Catholic Church, as well as to contract the new marriage in common. That was also the reason why the Popes of the 16th century permitted to apply the criteria of Pauline privilege on such marriages. In these cases, a man or a woman who contracted the polygamous marriage had the chance to retain the first woman or man in a row. On the ground of the cases, when a man or a woman did not remember who was that first woman or man to establish the polygamous bond, the Church legislation was remitted. According to the following rules of the Pope Pius V. (1566-1572), a man or a woman living in the polygamous marriage had to retain the first woman or man in a row, with whom they contracted the bond, but in case of not remembering who was the first one, they could retain one of the women or men from the polygamous bond, and the others had to be released (apostolic constitution *Romani Pontificis* of 1571). The **present canonical enactment**, as well, lies especially in the above mentioned historical background. According to canon 1148 of the Latin Code of Canon Law, when an unbaptized man who simultaneously has a number of unbaptized wives, has received baptism in the Catholic Church, and if it would be a hardship for him to remain with the first of the wives, he may retain one of them, having dismissed the others. Logically, this norm is analogously applied to an unbaptized woman who simultaneously has a number of baptized husbands. When a man or a woman from the polygamous marriage chose the first woman or man in a row, it is not necessary to repeat the celebration of marriage in canonical form, because the partnership to the first woman or man in a row is considered as natural marriage. In case of choosing one of the later partners, it is necessary to contract the marriage in canonical form, and to follow the norms of canon law considering a mixed marriage (to a non-Catholic), or a disparity of cult (to an unbaptized) marriage. By the moment of contracting of new marriage, the previous one ceases to exist. As a matter of interest we may note, that the local Ordinary is to ensure that adequate provision is made for the needs of the first wife or bride and of the others who have been dismissed.[160]

[160] Can. 1148 CIC 1983: „§ 1. *Non baptizatus, qui plures uxores non baptizatas simul habeat, recepto in Ecclesia catholica baptismo, si durum ei sit cum earum prima permanere, unam ex illis, ceteris dimissis,*

6.5.3.3 Impossibility to Restore the Marital Cohabitation

This institute of canon law, as well, has its roots in the history, more specifically, in the 16th century, when blacks were taken out from Africa to work as slaves on plantations in America. They usually have to leave their wives in Africa, and when decided to receive baptism, they often wanted to contract a new marriage. Based on this, the apostolic constitution *Populis* was issued in 1585, by which the Pope Gregory XIII permitted to apply the norms of Pauline privilege also on these cases. From this moment on, these persons were able to contract a new marriage, and the first Latin Code of Canon Law of 1917 broadened this institute on the whole Universal Church. According to positive canon law, it can be applied when an unbaptized person who, having received baptism in the Catholic Church, **cannot re-establish cohabitation** with his or her unbaptized spouse by reason of captivity or persecution. In this case, such a person can contract new marriage, even if the other party has in the meantime received baptism.[161] Also in this case, by the moment of contracting of new marriage, the previous one will cease to exist.

retinere potest. Idem valet de muliere non baptizata, quae plures maritos non baptizatos simul habeat. § 2. *In casibus de quibus in § 1, matrimonium, recepto baptismo, forma legitima contrahendum est, servatis etiam, si opus sit, praescriptis de matrimoniis mixtis et aliis de iure servandis.* § 3. *Ordinarius loci, prae oculis habita condicione morali, sociali, oeconomica locorum et personarum, curet ut primae uxoris ceterarumque dimissarum necessitatibus satis provisum sit, iuxta normas iustitiae, christianae caritatis et naturalis aequitatis.*" Translation: "§ 1 When an unbaptized man who simultaneously has a number of unbaptized wives, has received baptism in the Catholic Church, if it would be a hardship for him to remain with the first of the wives, he may retain one of them, having dismissed the others. The same applies to an unbaptized woman who simultaneously has a number of unbaptized husbands. § 2 In the cases mentioned in § 1, when baptism has been received, the marriage is to be contracted in the legal form, with due observance, if need be, of the provisions concerning mixed marriages and of other provisions of law. § 3 In the light of the moral, social and economic circumstances of place and person, the local Ordinary is to ensure that adequate provision is made, in accordance with the norms of justice, Christian charity and natural equity, for the needs of the first wife and of the others who have been dismissed." Cf. can. 859 CCEO 1990.

[161] Can. 1149 CIC 1983: „*Non baptizatus qui, recepto in Ecclesia catholica baptismo, cum coniuge non baptizato ratione captivitatis vel persecutionis cohabitationem restaurare nequeat, aliud matrimonium contrahere potest, etiamsi altera pars baptismum interea receperit, firmo praescripto can. 1141.*" Translation: "An unbaptized person who, having received baptism in the Catholic Church, cannot re-establish cohabitation with his or her unbaptized spouse by reason of captivity or persecution, can contract another marriage, even if the other party has in the meantime received baptism, without prejudice to the provisions of canon 1141." Cf. can. 860 CCEO 1990.

7 Criminal Law

7.1 Introduction

7.1.1 Concept

To start this topic, we should refer to the regulation of canon 1311 of Latin Code of Canon Law, where can be read that the Church has its own inherent right to constrain with penal sanctions its members who commit offences.[162] The existence of the norms of criminal canon law is considered to be an important demonstration on how perfect the Catholic Church is as an autonomous society with its own legal system. Besides the legislative and executive power it also owns the judicial power and has its own system of institutions disposing of the right to punishment for committing canonical delicts. These institutions are as well authorized to exercise other competencies entrusted to them by the norms of canon law. The right of the Catholic Church to punish its members is considered to be its **inherent and own right**. On the ground of its entrustment from Jesus Christ, its Founder, from its very beginning it is considered inherent. In the Gospel of Matthew we can read: "*If your brother sins against you, go and tell him his fault between you and him alone. If he listens to you, you have won over your brother. If he does not listen, take one or two others along with you, so that 'every fact may be established on the testimony of two or three witnesses.' If he refuses to listen to them, tell the church. If he refuses to listen even to the church, then treat him as you would a Gentile or a tax collector. Amen, I say to you, whatever you bind on earth shall be bound in heaven, and whatever you loose on earth shall be loosed in heaven.*"[163] Criminal canon law is a part of the public law of the Catholic Church. On the whole, the criminal canon law does not distinguish between public and private criminal delicts, as it used to be in the Roman Empire, when certain criminal acts were qualified as delicts (e.g. *furtum*, or *damnum*

[162] Can. 1311 CIC 1983: „*Nativum et proprium Ecclesiae ius est christifideles delinquentes poenalibus sanctionibus coercere*." Translation: "The Church has its own inherent right to constrain with penal sanctions Christ's faithful who commit offences."

[163] Matt 18:15-18: „*Ἐὰν δὲ ἁμαρτήσῃ [εἰς σὲ] ὁ ἀδελφός σου, ὕπαγε ἔλεγξον αὐτὸν μεταξὺ σοῦ καὶαὐτοῦ μόνου. ἐάν σου ἀκούσῃ, ἐκέρδησας τὸν ἀδελφόν σου: ἐὰν δὲ μὴ ἀκούσῃ, παράλαβε μετὰ σοῦ ἔτι ἕνα ἢ δύο, ἵνα ἐπὶ στόματος δύομαρτύρων ἢ τριῶν σταθῇ πᾶν ῥῆμα: ἐὰν δὲ παρακούσῃ αὐτῶν, εἰπὲ τῇ ἐκκλησίᾳ: ἐὰν δὲ καὶ τῆς ἐκκλησίας παρακούσῃ, ἔστω σοι ὥσπερ ὁ ἐθνικὸς καὶ ὁ τελώνης. Ἀμὴν λέγω ὑμῖν, ὅσα ἐὰν δήσητε ἐπὶ τῆς γῆς ἔσται δεδεμένα ἐν οὐρανῷ καὶ ὅσαἐὰν λύσητε ἐπὶ τῆς γῆς ἔσται λελυμένα ἐν οὐρανῷ.*"

iniuria datum), and others as public criminal acts (e.g. *crimen laesae maiestatis*, or *parricidium*).

7.1.2 Delict

Delict is an external, i.e. in the external forum, morally imputable culpable violation of the penal law or penal precept, that is sanctioned by the norms of criminal canon law. The main purpose of the sanction is the correction of delinquent, removal of offence and reparation of damage. The term "delict" is not identical with the term "sin". Every delict is a sin indeed, but the sin hardly ever fulfils conditions of the subject-matter of delict. The sin is considered to be delict only in case it fulfils the **following conditions**:

- The sin has to be public, whereas the private (internal) sin, i.e. the sin that was not performed in the action of a man, is irrelevant. The sin has to be expressed externally, but in this context, it is necessary to underline that also a secret sin can be qualified as delict (e.g. secretly performed abortion).
- The sin has to be grave. In this case, the sin has to concern the violation of the norm of the God's law or the Church law in the area of big moral issues, according to the objective evaluation of the act. The sin has to impose or, at least, bring along the threat of a big spiritual or material loss.
- Accomplishment of the act. Every act can be referred to as delict only in case when results naturally ascended as a consequence of certain acting.
- Such acting is punishable under the norms of canon law. In terms of "*nullum crimen sine lege*" principle, it is not possible to punish anyone for the acting, attributes of which are not stated in the subject-matter of the legal rule of criminal canon law.
- The acting has to be wilful. That means, the acting person must be aware of violating the interest protected by law, wants to inflict damage, and, according to canon law, such acting undergoes canonical punishment.

When only one of these conditions is not fulfilled, the act is not considered to be delict, but can be qualified as sin. In this case, the acting person is not subject to punishment in accordance with the norms of criminal canon law.

7.2 Sources of Law

According to the norms of canon law, the only source of criminal law can be the **law itself**, never a custom. Under canon 6, § 1, when the current Latin Code of Canon Law came into force, all penal laws enacted by the Apostolic See, whether universal or particular, unless they were resumed in that Code itself, were abrogated. The norms of substantive criminal canon law are contained in canons 1311 to 1399 of the sixth book of the Code, called Sanctions in the Church; while the norms of the process criminal canon law can be found in canons 1717 to 1734 in the seventh book, called the Penal

Process.

7.3 Penal Sanctions

7.3.1 General Classification

Considering the penal sanctions, we may classify them into various categories. According to the **criterion of character** (nature), the penalties are distinguished into:

1. Spiritual penalty that deprives the delinquent of a certain spiritual good or determines the moral satisfaction at least.
2. Material penalty that denies certain material good to the delinquent that is conferred to him by the norms of canon law.

Under the **criterion of constitution,** canon law recognizes penalties:

1. Certain – the kind of penalty is explicitly determined by the Code of Canon Law.
2. Uncertain – the kind of penalty is not determined by the law itself, but it depends on the decision of a competent Church authority.

According to the **criterion of legal effects**, penalties are classified into:

1. Self-acting penalty (judgment issued in advance – penalty of *latae sententiae*), therefore the penalty is inflicted by committing a delict itself. The penalty is determined by the law (normative legal act) and comes into effect by accomplishing of delict (it comes into effect *ipso facto* and *ipso iure*).[164] The fact of self-acting has to be explicitly declared in the law, alongside with the type of penalty itself (e.g. excommunication, interdict etc.). The competent Church authority is entitled to confirm the self-acting penalty on behalf of removing any doubts on its inflicting.
2. Inflicted penalty (penalty *ferendae sententiae*). The penalty becomes effective only after the judgment (or individual administrative act) of a competent Church authority came into force.[165]

Under the criterion of possibility to **remit inflicted penalties,** the canon law rec-

[164] Can. 1370, § 1 CIC 1983: „*Qui vim physicam in Romanum Pontificem adhibet, in excommunicationem latae sententiae Sedi Apostolicae reservatam incurrit, cui, si clericus sit, alia poena, non exclusa dimissione e statu clericali, pro delicti gravitate addi potest*." Translation: "A person who uses physical force against the Roman Pontiff incurs a latae sententiae excommunication reserved to the Apostolic See; if the offender is a cleric, another penalty, not excluding dismissal from the clerical state, may be added according to the gravity of the crime." Cf. can. 1445, § 1 CCEO 1990.

[165] Can. 1377 CIC 1983: „*Qui sine praescripta licentia bona ecclesiastica alienat, iusta poena puniatur.*" Translation: "A person who without the prescribed permission alienates ecclesiastical goods, is to be punished with a just penalty." Cf. can. 1449 CCEO 1990.

ognizes:

1. Obligatory penalty – such a penalty comes into effect *ipso iure* (self-acting penalty), or a competent Church authority is obliged to inflict a certain penalty (penalty *ferendae sententiae*).
2. Facultative penalty – when the possibility for a competent Church authority whether or not to inflict the penalty is granted by the law itself. According to canon 1345, the judge can make a decision of non-inflicting the penalty in case he considers that the person's reform may be better accomplished in some other way.[166]

According to the criterion of the **goal of punishment**, the penalties are distinguished into:

1. Medical penalties (censures), which are focused on the delinquent's reform (medicinal penalties) and do not cease by passing of time or removing the cause of punishment, but only by remitting them (forgiving).
2. Expiatory penalties (disciplinary penalties), the main goal of which is the restoration of damaged legal conditions.
3. Other conciliatory sanctions. The canon law also deals with penal remedies, goal of which is to prevent delicts by applying pastoral care remedies. Especially, the admonition and caution are considered such remedies. The acts of penance are, as well, applied on illegal acts of small danger.

7.3.2 Canonical Penalties and Other Punishments

7.3.2.1 Medicinal Penalties

As mentioned earlier, the censures are correcting penalties, which are focused especially on the **reform of the delinquent**. When the reform is accomplished, the penalty has to be remitted, because the censures represent the gravest canonical sanctions. The inflicted penalty has to be in compliance with the principles of gentleness and such sanctions can be used only after previous admonition. The prohibition to celebrate the sacraments or sacramentals[167] is *ipso iure* suspended in favour of good of

[166] Can. 1345 CIC 1983: „*Quoties delinquens vel usum rationis imperfectum tantum habuerit, vel delictum ex metu vel necessitate vel passionis aestu vel in ebrietate aliave simili mentis perturbatione patraverit, iudex potest etiam a qualibet punitione irroganda abstinere, si censeat aliter posse melius consuli eius emendationi.*" Translation: "Whenever the offender had only an imperfect use of reason, or committed the offence out of fear or necessity or in the heat of passion or with a mind disturbed by drunkenness or a similar cause, the judge can refrain from inflicting any punishment if he considers that the person's reform may be better accomplished in some other way." Cf. can. 1415 CCEO 1990.

[167] Can. 1166 CIC 1983: „*Sacramentalia sunt signa sacra, quibus, ad aliquam sacramentorum imitationem, effectus praesertim spirituales significantur et ex Ecclesiae impetratione obtinentur.*" Translation: "Sacramentals are sacred signs which in a sense imitate the sacraments. They signify certain

the faithful in danger of death.[168]

7.3.2.1.1 Excommunication

Excommunication (Latin "*ex*", "out of", and "*communion*", "communion") is the principal and most severe censure. On the whole, it is especially a medicinal, spiritual penalty that deprives a guilty Christian of all participation in common blessings of the ecclesiastical society. As mentioned above, it is a medicinal rather than a vindictive penalty, that was intended not as much to punish the delinquent as to correct him and bring him back to the path of righteousness. Its main goal and effect is the **loss of communion**, i.e. the loss of spiritual benefits shared by all members of Christian society. Logically, then it can affect only those who have been accepted to the society by baptism. The excommunication differs from all other penalties especially in privation of all rights resulting from the social status of the Christian as such. But in this context, it is necessary to underline that the excommunicated person still remains a Christian, since his or her baptism can never be affected. That is also the reason why this penalty is considered an exile from Christian society, and non-existence of a person, at least for a short period of time, in the eyes of ecclesiastical authority. However, as mentioned earlier, such an exile can come to an end as soon as the offender gives an appropriate satisfaction. Meanwhile, his or her status before the Church is that of a stranger. He or she may not participate in public worship, nor can he or she receive the Body of Christ or any of other sacraments. Moreover, if he was a cleric, he would be forbidden to administer a sacred rite or to exercise an act of spiritual authority. The remittance of this penalty is in certain cases reserved to the Apostolic See, and then the remittance is exercised by the Apostolic Penitentiary or the Pope personally.

7.3.2.1.2 Interdict

Interdict is sometimes called "**small excommunication**", because it causes loss of certain rights and acts of governing power, too. As a matter of interest we may note that this institute originally comes from Roman law interlocutory edict of the praetor, especially in matters affecting the right of possession. In general, an interdict is a censure or prohibition excluding the faithful from participation in certain holy matters. These matters are all those pertaining to Christian worship, and are divided into fol-

effects, especially spiritual ones, and they achieve these effects through the intercession of the Church." Cf. can. 867, § 1 CCEO 1990.

168 Can. 1352 CIC 1983: „§ 1. *Si poena vetet recipere sacramenta vel sacramentalia, vetitum suspenditur, quamdiu reus in mortis periculo versatur.* § 2. *Obligatio servandi poenam latae sententiae, quae neque declarata sit neque sit notoria in loco ubi delinquens versatur, eatenus ex toto vel ex parte suspenditur, quatenus reus eam servare nequeat sine periculo gravis scandali vel infamiae.*" Translation: "§ 1 If a penalty prohibits the reception of the sacraments or sacramentals, the prohibition is suspended for as long as the offender is in danger of death. § 2 The obligation of observing a latae sententiae penalty which has not been declared, and is not notorious in the place where the offender actually is, is suspended either in whole or in part to the extent that the offender cannot observe it without the danger of grave scandal or loss of good name." Cf. can. 1435, § 1 CCEO 1990.

lowing three classes:

- Divine offices, in other words the liturgy, and, in general, all acts performed by clerics as such and having reference to worship;
- sacraments, except from private administration of those that are of necessity;
- ecclesiastical burial, including all funeral services.

In history, the interdict came into question in the form of personal or local (territorial) penalty. Especially the local interdict was considered as one of the gravest penalties as it inflicted not only guilty persons, but everyone residing in the objective area. The positive canon law enumerates only the personal interdict that can exist in the form of general or individual penalty.[169]

7.3.2.1.3 Suspension

Suspension is usually defined as a censure, by which **only a cleric**[170], that is entirely or partially deprived of the use of power of orders, office, or benefice, can be punished. In case of total suspension, the cleric is deprived of exercising any function and any ecclesiastical right. When it is partial, it may only refer to exercise of one's sacred orders, or to one's office, which includes deprivation of the use of orders and jurisdiction; or it can refer to his benefice, which deprives him of both administration and income. When the suspension is decreed absolutely and without limitation, it is understood to be a total suspension. A partial suspension deprives the cleric of the use of the power, that is expressed in a sentence. This penalty can be inflicted only within the area of his territorial competency. According to canon 1333, § 4 of the Latin Code of Canon Law, a suspension prohibiting the receipt of benefits, stipends, pensions or other such things, carries with it the obligation of restitution of whatever has been unlawfully received.[171]

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169 Can. 1332 CIC 1983: „*Interdictus tenetur vetitis, de quibus in can. 1331, § 1 nn. 1 et 2; quod si interdictum irrogatum vel declaratum sit, praescriptum can. 1331, § 2, n. 1 servandum est*." Translation: "One who is under interdict is obliged by the prohibition of canon 1331, § 1, nn. 1 and 2; if the interdict was imposed or declared, the provision of canon 1331, § 2, n. 1 is to be observed." Cf. can. 1431, § 1 CCEO 1990.

170 Can. 1333, § 1 CIC 1983: „*Suspensio, quae clericos tantum afficere potest, vetat*: 1° *vel omnes vel aliquos actus potestatis ordinis*; 2° *vel omnes vel aliquos actus potestatis regiminis*; 3° *exercitium vel omnium vel aliquorum iurium vel munerum officio inhaerentium*." Translation: "Suspension, which can affect only clerics, prohibits: 1° all or some of the acts of the power of order 2° all or some of the acts of the power of governance; 3° the exercise of all or some of the rights or functions attaching to an office." Cf. can. 1432, § 1 CCEO 1990.

171 Can. 1333, § 4 CIC 1983: „*Suspensio vetans fructus, stipendium, pensiones aliave eiusmodi percipere, obligationem secumfert restituendi quidquid illegitime, quamvis bona fide, perceptum sit*." Translation: "A suspension prohibiting the receipt of benefits, stipends, pensions or other such things, carries with it the obligation of restitution of whatever has been unlawfully received, even though this was in good faith." Cf. can. 1432, § 3 CCEO 1990.

7.3.2.2 Expiatory Penalties

The main meaning of the existence of expiatory penalties is to repair the inflicted damage and restore damaged condition. On the whole, these penalties can affect the offender either forever, or for determinate or indeterminate period. Apart from other penalties, that might be established by the law or lawgiver, these **penalties are as follows**:

- a prohibition against residence or an order to reside in a certain place or territory;
- deprivation of power, office, function, right, privilege, faculty, favour, title or insignia, even of a merely honorary nature;
- a prohibition on exercising above mentioned matters, or a prohibition on their exercise inside or outside a certain place;
- a penal transfer to another office;
- dismissal from the clerical state.

Removing the power of orders, that is to say the power resulting from the sacrament of sacred order is, according to the character of this sacrament (it impress an indelible mark into the soul of such person), absolutely impossible.[172]

7.3.2.3 Penal Remedies and Penances

Considering the **penal remedies**, their goal is to admonish or correct certain person, who is in a proximate occasion of committing an offence or when, after an investigation, there is a serious suspicion that an offence has been committed. In such case, the Ordinary either personally or through another can give that person warning. The penal remedy is not considered a real penalty, because it does not suppose the delict has been committed. It can substitute the penalty or can be added to it only in certain cases. In case of behaviour which gives rise to scandal or serious disturbance of public order, the Ordinary can also correct the person. In this context, it is necessary to underline that the fact that there has been a warning or a correction must always be proven, at least from some document.[173] A **penance** imposed in the external forum means the

[172] Can. 1008 CIC 1983: „*Sacramento ordinis ex divina institutione inter christifideles quidam, charactere indelebili quo signantur, constituuntur sacri ministri, qui nempe consecrantur et deputantur ut, pro suo quisque gradu, in persona Christi Capitis munera docendi, sanctificandi et regendi adimplentes, Dei populum pascant.*" Translation: "By Divine institution some among Christ's faithful are, through the sacrament of order, marked with an indelible character and are thus constituted sacred ministers; thereby they are consecrated and deputed so that, each according to his own grade, they fulfill, in the person of Christ the Head, the offices of teaching, sanctifying and ruling, and so they nourish the people of God." Cf. can. 323, § 1 and 743 CCEO 1990.

[173] Can. 1339 CIC 1983: „§ 1. *Eum, qui versatur in proxima delinquendi occasione, vel in quem, ex investigatione peracta, gravis cadit suspicio delicti commissi, Ordinarius per se vel per alium monere potest.* § 2. *Eum vero, ex cuius conversatione scandalum vel gravis ordinis perturbatio oriatur, etiam corripere potest, modo peculiaribus personae et facti condicionibus accommodato.* § 3. *De monitione et correptione constare semper debet saltem ex aliquo documento, quod in secreto curiae archivo*

performance of some work of religion or piety or charity. Such institute is never to be applied for an occult transgression. According to his prudent judgment, the Ordinary may add penances to the penal remedy of warning or correction.[174]

7.3.3 Cessation

On the whole, canonical penalties can **cease to exist** by:

- The remission of the competent Church authority. The penalty can be remitted by the person with executive power for the external forum (Ordinaries) or, in the cases specified by law, by the person with the executive power for the internal forum.
- The performance of the penalty.
- Passing of time for which the penalty was imposed.
- The cancellation of penalty *ex lege*, according to the principle of favourable retroactivity.
- The lapse of penalty (criminal action). The prescription period starts to run on the day of committing a delict (simple delict), or on the day of cessation of delict (lasting or repeating delict), and runs three years, in peculiar cases five years. The offences reserved to the Congregation for the Doctrine of the Faith (delicts against faith) are never extinguished by prescription.

The infliction and remission of certain penalties is reserved to the Apostolic See only. In case of doubts about the reservation of certain penalty to the Apostolic See, the relevant rule has to be strictly interpreted, i.e. in these cases such penalty is not considered to be reserved to the Apostolic See.

7.3.4 Persons Not Liable to Penal Sanctions

Firstly, it is appropriate to mention that according to the rules of canon law, those, who habitually lack the use of reason, even though they appeared sane when they vi-

servetur." Translation: "§ 1 When someone is in a proximate occasion of committing an offence or when, after an investigation, there is a serious suspicion that an offence has been committed, the Ordinary either personally or through another can give that person warning. § 2 In the case of behavior which gives rise to scandal or serious disturbance of public order, the Ordinary can also correct the person, in a way appropriate to the particular conditions of the person and of what has been done. § 3 The fact that there has been a warning or a correction must always be proven, at least from some document to be kept in the secret archive of the curia." Cf. can. 1427, § 1 CCEO 1990.

[174] Can. 1340 CIC 1983: „§ 1. *Paenitentia, quae imponi potest in foro externo, est aliquod religionis vel pietatis vel caritatis opus peragendum*. § 2. *Ob transgressionem occultam numquam publica imponatur paenitentia*. § 3. *Paenitentias Ordinarius pro sua prudentia addere potest poenali remedio monitionis vel correptionis*." Translation: "§ 1 A penance, which is imposed in the external forum, is the performance of some work of religion or piety or charity. § 2 A public penance is never to be imposed for an occult transgression. § 3 According to his prudent judgment, the Ordinary may add penances to the penal remedy of warning or correction."

olated a law or precept, are deemed incapable of committing an offence. Canon 1323 indicates certain categories of persons who are not liable to penal sanctions. According to this canon, no one is liable to penalty who, **when violating a law or precept**:

- has not completed the sixteenth year of age;
- was, without fault, ignorant of violating the law or precept (inadvertence and error are equivalent to ignorance);
- acted under physical force, or under the impetus of a chance occurrence which the person could not foresee or if foreseen could not avoid;
- acted under compulsion of grave fear, even if only relative, or by reason of necessity or grave inconvenience, unless, however, the act is intrinsically evil or tends to be harmful to souls;
- acted, within the limits of due moderation, in lawful self-defence or defence of another against an unjust aggressor;
- absolutely had no use of reason.

As a matter of fact, the above mentioned reasons exclude punishment. Nevertheless, intentionally initiated states in which the person lost the ability to control his or her acting (e.g. by the reason of drunkenness or other distortion of mind) on behalf of apology of the delict do not represent the reason for excluding penalty.

7.4 The Most Important Principles

On the basis of prevailing ideas and concepts of the norms of criminal canon law, we can deduce certain principles which influence especially the application of relevant rules. As the most important of them we can mark:

- **Strictness in interpreting the norms of criminal law** – according to above-mentioned canon 18 of the Latin Code of Canon Law, the laws which prescribe a penalty or restrict the free exercise of rights are to be interpreted strictly.
- **Inadmissibility of analogy** – in the area of criminal canon law the analogy is not admitted, because every delict has to be determined by the law. For every delict it is allowed to impose only the penalty that is determined by the law itself.
- **Admissibility of favourable retroactivity** – under canon 9, and in accordance with canon 1313, in criminal canon law it is necessary to apply the principle of favourable retroactivity. It is an exception from the principle that laws are to be effective to the future only. In case the law issued after the commitment of delict is more favourable for the delinquent, such a law can be applied although it did not existed in the time a delict was committed. Based on this, the penalty can also cease to exist when the newer law abrogates the penalty for the relevant delict.
- **The principle of "*nullum crimen sine lege*" –** the penalty can be imposed only

in the cases determined by the law, or for other external violation of the Church law when required due to the gravity of the violation of Divine or Church law, or when necessity demands scandals to be prevented or repaired.

- **Subsidiarity of imposition of penalties** – according to canon 1341, the Ordinary should start a judicial or an administrative procedure of imposition or declaration of penalties only when he perceives that neither by fraternal correction or reproof, nor by any methods of pastoral care, can the scandal be sufficiently repaired, justice restored and the offender reformed.
- **Acceptance of mitigating circumstances or other reasons supposed by the norms of canon law on behalf of penalty moderation** – for example, in case of: imperfect use of reason, lacking the use of reason because of culpable drunkenness or other mental disturbance of a similar kind; acting in the heat of passion; a minor who has completed the sixteenth year of age; lawful self-defence or defence of another against an unjust aggressor when the due moderation was not observed; acting against another person who was gravely and unjustly provocative etc. In this context, we may note that canon law principally accepts the modified principle of the state law that "ignorance of the law does not excuse" accepting that "accidental ignorance of the law excuses". But, criminal canon law recognizes also the aggravating circumstances, of which can be noted the case: when a person, after being condemned, or after the penalty has been declared, continues to offend; of a person who is established in some position of dignity, or who has abused a position of authority or an office, in order to commit a crime; of an offender who, after a penalty for a culpable offence was constituted, foresaw the event but nevertheless omitted to take the precautions to avoid it which any careful person would have taken.
- **Possibility to refrain from punishment** – a judge can restrain from punishment on behalf of necessity to avoid the conflict between the internal and external forum.
- **Right to appeal against the judgment of a tribunal or against decrees which impose or declare any penalty** – such an appeal has a suspensive effect.[175]

[175] Can. 1353 CIC 1983: „*Appellatio vel recursus a sententiis iudicialibus vel a decretis*, *quae poenam quamlibet irrogent vel declarent*, *habent effectum suspensivum*." Translation: "An appeal or a recourse against judgments of a court or against decrees which impose or declare any penalty, has a suspensive effect." Cf. can. 1487, §§ 1-2 CCEO 1990.

Bibliography

Sources

KOP, F.: PŘEKLAD KODEXU KANONICKÉHO PRÁVA, I. – III. Text komise pro překlad Kodexu při Cyrilometodějské bohoslovecké fakultě v Praze, pobočce v Olomouci. Olomouc, 1968/69;

THE 1917 PIO-BENEDICTINE CODE OF CANON LAW. Translated by Edward Peters. San Francsico : Ignatius Press, 2001;

CODEX IURIS CANONICI - KÓDEX KÁNONICKÉHO PRÁVA. Latinsko-slovenské vydanie. Bratislava : Spolok sv. Vojtecha, 1996;

KÓDEX KÁNONOV VÝCHODNÝCH CIRKVÍ. Unofficial Slovak translation (available on http://cirkevny_sud1.artisys.sk/wp-content/kkvce.pdf);

PAZOUREK, M.: *Manuál pro Codex Canonum Ecclesiarum Orientalium aneb Úvod do Kodexu kánonů východních cirkví*. Praha : Karolinum, 1998;

CORPUS IURIS CIVILIS – CODEX IUSTINIANUS. Ed. Paul Krüger. Berlin : Keip Verlag, 1998;

CORPUS IURIS CIVILIS, Editio stereotypa tertia decima, Volumen primum. Institutiones recognovit Paulus Krueger, Digesta recognovit Theodorus Mommsen retractavit Paulus Krueger. Berlin : Weidmann, 1920;

CORPUS IURIS CIVILIS, Volumen Primum. Novellae Institutiones recognovit Paulus Krueger, Digesta recognovit Theodorus Mommsen, Retractavit Paulus Krueger. Hildesheim : Weidmann, 2000;

THE DIGEST OF JUSTINIAN, Volume 2. Translation edited by Alan Watson. Philadelphia : University of Pennsylvania Press, 1998;

GAUDIUM ET SPES, pastoral constitution on the Church in the modern world, promulgated by the Pope Paul VI. in 1965;

LUMEN GENTIUM, dogmatic constitution on the Church, promulgated by the Pope Paul VI. in 1964;

SACRAE DISCIPLINAE LEGES, apostolic constitution promulgated by the Pope John Paul II in 1983;

SACRI CANONES, apostolic constitution promulgated by the Pope John Paul II in 1990;

UNIVERSI DOMINICI GREGIS, apostolic constitution on the vacancy of the Apostolic See and the election of the Roman Pontiff, promulgated by the Pope John Paul II in 1996.

Books

BEDOUELLE, G.: *História Cirkvi*. Prešov : Petra, 2005;

BRUNDAGE, J. A.: *Medieval Canon Law*. London : Longman, 1995;

BUŠEK, V.: *Učebnice dějin práva církevního I*. Praha : Všehrd, 1946;

CORIDEN, J. A.: *An Introduction to Canon Law*. Revised. New York : Paulist Press, 2004;

COUGHLIN, J. J.: *Canon Law. A Comparative Study with Anglo-American Legal Theory*. Oxford : Oxford University Press, 2011;

DUDA, J.: *Úvod do štúdia kanonického práva*. Spišská Kapitula : Kňazský seminár biskupa J. Vojtaššáka, 1995;

DUDA, J.: *Katolícke manželské právo*. Spišská Kapitula : Kňazský seminár J. Vojtaššáka, 1996;

FILO, V.: *Kánonické právo. Úvod a prvá kniha*. Bratislava : Rímskokatolícka bohoslovecká fakulta UK, 1997;

FRANZEN, A.: *Malé dějiny církve*. 3. vyd. Kostelní Vydří : Karmelitánské nakladatelství, 2006;

GEROSA, L.: *Právo Cirkvi*. Prešov : Petra, 2005;

GÓRECKI, E.: *Obecné normy Kodexu kanonického práva Jana Pavla II. Část I*. Olomouc : Matice cyrilometodějská, 1993;

GÓRECKI, E.: *Obecné normy Kodexu kanonického práva Jana Pavla II. Část II*. Olomouc : Matice cyrilometodějská, 1994;

HRDINA, A.: *Kanonické právo*. Praha : EUROLEX BOHEMIA, 2002;

JACOŠ, J.: *Cirkevné právo*. Prešov : Prešovská univerzita v Prešove, Pravoslávna bohoslovecká fakulta, 2006;

JUDÁK, V.: *Dejiny mojej Cirkvi. I. diel*. Trnava : Spolok sv. Vojtecha, 2002;

JUDÁK, V.: *Dejiny mojej Cirkvi. II. diel*. Trnava : Spolok sv. Vojtecha, 2004;

KASAN, J.: *Prameny cirkevního práva. Dějinný vývoj*. Praha : Katedra historicko-právní na Římskokatolické Cyrilometodějské bohoslovecké fakultě, 1952;

KAŠNÝ, J.: *Bůh nás povolal k pokoji* (*1Kor 7,15*). *Kanonická řízení ke zrušení manželství in favorem fidei*. České Budějovice : Teologická fakulta Jihočeské univerzity, 2005;

KAŠNÝ, J.: *Manželství v západní tradici. Soubor kanonických studií*. České Budějovice : Jihočeská univerzita v Českých Budějovicích, 2006;

KINCL, J./URFUS, V./SKŘEJPEK, M.: *Římské právo*. Praha : C. H. Beck, 1995;

KLIMEŠ, P.: *Psychické příčiny neplatnosti manželství*. Olomouc : Matice cyrilometodějská, 2004;

KNAPP, V.: *Teorie práva*. Praha : C. H. Beck, 1995;

KRAJČI, J.: *Veľké tajomstvo*. Bratislava : Vydavateľstvo TA SR PRESSFOTO, 1993;

McKENZIE, J. L.: *Moc v cirkvi*. Prešov : Vydavateľstvo Michala Vaška, 2003;

MICHAL, J.: *Dějiny pramenů poznání kanonického práva s přihlédnutím k dějinám práva římského*. Praha : Ústřední církevní nakladatelství, 1967;

MRKÝVKA, P./VESELÁ, R.: *Vybrané otázky z dějin kanonického práva*. Brno : Masarykova univerzita, 1992;

NEMEC, M.: *Základy kánonického práva*. Bratislava : IURA EDITION, 2001;

NEMEC, M.: *Základy kánonického práva*. 2. vyd. Bratislava : IURA EDITION, 2006;

NEMEC, M.: *Štát, cirkev a právo v Rímskej ríši v prvých štyroch storočiach po Kristovi*. Bratislava : IURA EDITION, 2005;

NĚMEC, D.: *Manželské právo Katolické církve s ohledem na platné české právo*. Praha – Kostelní Vydří : Krystal OP, 2006;

OWEN, R.: *Institutes of Canon Law*. London : J. T. Hayes, 1884;

PRUSÁK, J.: *Teória práva*. Bratislava : Vydavateľské oddelenie Právnickej fakulty UK, 2001;

PŘIBYL, S.: *Ekumenismus a právo*. Brno : L. Marek, 2006;

REBRO, K./BLAHO, P.: *Rímske právo*. Bratislava : MANZ, 1997;

REBRO, K./BLAHO, P.: *Rímske právo*. Bratislava : IURA EDITION, 2003;

ŘÍČAN, R./MOLNÁR, A.: *12 století církevních dějin*. Praha : Kalich, 1990;

ŘÍČAN, R./MOLNÁR, A.: *Dvanáct století církevních dějin*. 3. vyd. Praha : Kalich, 2008;

SCHATZ, K.: *Dějiny papežského primátu*. Brno : Centrum pro studium demokracie a kultury, 2001;

TRETERA, J. R.: *Cirkevní právo. Díl první*. Praha : Jan Krigl nakladatelství, 1992;

TRETERA, J. R.: *Cirkevní právo*. Praha : Jan Krigl nakladatelství, 1993;

TRETERA, J. R.: *Konfesní právo a cirkevní právo*. Praha : Jan Krigl nakladatelství, 1997;

TRETERA, J. R./HORÁK, Z.: *Slovník církevního práva*. Praha : Grada, 2011;

WIEL, C. Van de.: *History of Canon Law*. Louvain: Peeters Press, 1991;

VASIĽ, C.: *Kánonické pramene byzantsko-slovanskej katolíckej cirkvi v Mukačevskej a Prešovskej eparchii v porovnaní s Kódexom kánonov východných cirkví*. Trnava : Dobrá kniha, 2000;

VASIĽ, C.: *Patriarchálne cirkvi v Kódexe kánonov východných cirkví*. Trnava : Dobrá kniha, 1999;

VLADÁR, V.: *Pramene práva Katolíckej cirkvi v historickom vývoji*. Plzeň : Vydavatelství a nakladatelství Aleš Čeněk, 2009;

ZUBERT, B. W.: *Řeholní právo*. Olomouc : Matice cyrilometodějská, 1997.