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Accompany Man in the Digital Age (II)



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Accompany Man in the Digital Age (II)

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Part One

Canon Law



Jurij Popovič

University of Presov, Greek-Catholic Faculty of Theology, Prešov

<https://orcid.org/0000-0002-7631-7739>

Media and the Regulations of the Code of Canons of the Eastern Churches Current Challenges

Abstract: Today, we cannot imagine a world without media communication at the service of society. At the same time, we can note the changes that media communication is undergoing. Contemporary media communication is too far removed from the very notion of *communio, communicare*. The very notion of “to join together, to make something common, to pass on a message, to consult” is gradually disappearing from the media space, as it does in the term *communio*, that is, “togetherness, communion, a sense of connection.” In our times, the word *communicate* reminds everyone above all of the transmission of information or, more precisely, of news, regardless of ethical or moral principles. That is why the Church, aware of the importance of media communication, demands the right to regulate their use and, in its regulations, calls on professionals in the production and transmission of information to ensure that the use of these means is imbued with the spirit of Christ.

Keywords: means of social communication, the media, virtual reality

Introduction

The media field is one of the areas in which we can note great technical progress, which is constantly advancing. The term mass media or social communication is found in the CCEO regulations in cann. 651–666. The prescriptions of these

canons have in mind the social communication maintained by the press, radio, but, above all, by television. The means of public communication are aimed at the masses and are different from group means of communication aimed at groups or individuals. While drama, opera, etc. are group means of communication, radio, cinema, and the Internet press are mass media. For the latter are effective means of proclaiming the Gospel.¹

The social means of communication, through their influence on individuals and the masses, greatly influence their thinking, feeling, and acting. In this case, we can speak of media culture in a broader sense. Of course, we are not referring here to cultural expressions through the media, but to the impact of the media on society as a whole. The development of new technologies influences science and research and, of course, the environment in which people live. Revolutionary changes, which are not only of a technical nature, have also taken place in communication technologies. It can be said that contemporary society bears, among a number of attributes, the label of information society. This reflects the fact that in all the stages of the development of human civilization we would not find an epoch with such an information expansion. Thus, mass media, especially social networks, have become an integrated part in the structure of the social sphere, but also in the life of the individual. As a result of these changes, people are more frequently exposed to a wealth of information from different parts of the world, which has both positive effects and negative.²

For this reason, the media should be a source of information that helps people stay in touch with the reality of everyday life. It should also be a tool for shaping ethical values and norms in society. Nevertheless, we are witnessing how the mass media distort reality to such an extent that they create a media reality that has a negative impact on the creation of the real reality. Therefore, it goes without saying that the mass media is in itself destined for human development and brings multiple values into the hearts of the people. The problem, however, lies in their proper use. That is why the mass media very often become a means of consciously manipulating public opinion in the interests of a group, an ideology or even an authoritarian power.

Therefore, “the media, both print and electronic, and especially some of them television, can not only be a blessing to life and culture, but can also spread incurable diseases of the spirit.”³ That is why the rules of canon law

¹ Georg Nedungatt, *Путівник по Східному Кодексу: Коментар до Кодексу Канонів Східних Церков*, trans. Ostap Hladky [A Guide to the Code: A Commentary on the Code of the Canons Eastern Churches] (Lviv: Svičado, 2008), 399.

² Gabriel Paľa, “Skreslená mediálna realita ako priestor pre mediáciu,” in *Mediácia—cesta k tvorbe interkultúrnej spoločnosti*, ed. Gabriel Paľa and Emília Halagová (Prešov: University of Prešov, Faculty of Greek-Catholic Theology, 2016), 206–207.

³ Gabriel Paľa, *Masmediálna komunikácia* (Prešov: University of Prešov, Faculty of Greek-Catholic Theology, 2010), 6.

contain a special call to media representatives to ensure that they are filled with the spirit of Christ in the contemporary media space.⁴

The Church and the Media

Before His ascension, Jesus Christ said to His apostles: “All authority in heaven and on earth has been given to Me. Go ye therefore, and teach all nations, baptizing them in the name of the Father, and of the Son, and of the Holy Ghost; and teach them to observe all things whatsoever I have commanded you. And behold, I am with you always, even to the end of the world.”⁵ And at the ascension Jesus says to his disciples: “But when the Holy Spirit has come upon you, you will receive power, and you will be my witnesses in Jerusalem, and in all Judea and Samaria, and to the uttermost parts of the earth.”⁶ This is how the Church engages in God’s eternal concern for man: to proclaim “the Gospel to all creation.”⁷

Therefore, the Church by Christ’s ordination is called to bring the abundance of redemption through the proclamation of the Good News. As Pope Paul VI’s Apostolic Exhortation *Evangelii Nuntiandi* No. 9 speaks of it:

As the kernel and centre of His Good News, Christ proclaims salvation, this great gift of God which is liberation from everything that oppresses man but which is above all liberation from sin and the Evil One, in the joy of knowing God and being known by Him, of seeing Him, and of being given over to Him. All of this is begun during the life of Christ and definitively accomplished by His death and resurrection. But it must be patiently carried on during the course of history, in order to be realized fully on the day of the final coming of Christ, whose date is known to no one except the Father.⁸

The command to proclaim the Gospel to all men is the primary and natural duty of the Church. “But the question of how to evangelize is still temporal,

⁴ Cf. George Nedungatt and Damián G Astigueta, “Ecclesiastical Magisterium,” in *Canonica 10. A Guide to the Eastern Code A Commentary on the Code of Canons of the Eastern Churches*, ed. George Nedungatt and Georges Ruysen (Rome: Pontificio Instituto Orientale & Valore Italiano, 2020), 573–574. Cf. Nedungatt, *Путівник* [A Guide], 399. Cf. Canon 651 § 2 CCEO.

⁵ Matthew 28:18–20.

⁶ Acts 1:8.

⁷ Cf. Gabriel Paľa, *Masmediálna komunikácia* (Prešov: University of Prešov, Faculty of Greek-Catholic Theology, 2010), 104.

⁸ Paul VI, *Evangelii Nuntiandi*, 9, accessed October 27, 2021, https://www.vatican.va/content/paul-vi/en/apost_exhortations/documents/hf_p-vi_exh_19751208_evangelii-nuntiandi.html.

because the ways of proclaiming the Gospel change according to place, time, and human cultures, thus provoking to some extent our faculties to seek and adapt.”⁹

Our times are characterized by social means of communication, without which the proclamation of the Gospel, catechesis and the further deepening of faith cannot do. If we confront them in the service of the Gospel, they can extend indefinitely the area in which people can listen to the Word of God. Hence the Church today would feel guilty before God if she did not make use of these effective means which human reason is continually perfecting. Therefore, in the life of the Catholic Church, the means of social communication are becoming an indispensable and significant instrument for proclaiming God’s message, becoming a “pulpit” with the widest reach imaginable.¹⁰

The term “media” is nowadays ambiguous. In general, the term is understood as the sum of all mass media: print, auditory, audiovisual, visual and online. The media are a public form of communication. The media are a public form of communication that goes from a single source of information to a large number of recipients.¹¹

The Church has been aware of this fact and has therefore commented on the use of the media through numerous documents of popes, councils, commissions, councils, and ecclesiastical institutions.¹² The first time the Church commented on one of the modern mass media, the press, was in 1832, when Pope Gregory XVI issued the encyclical *Mirari vos* on liberalism and religious indifferentism. The Church at that time had a defensive attitude and moralizing was the main thing because of the period of the French Revolution, and the birth of the political press was occurring. In this encyclical, the Pope accuses the press of lighting torches of resistance everywhere, thus shaking the nation’s duty to be subservient to the government.¹³

The Church’s war against the influence of the “bad press” has not been limited to banning the reading of such books or excommunicating their publishers and readers. In almost every document Pope Pius IX, in addition to condemning the “bad press,” has focused on the organization and rise of the so-called good press. He portrayed it in the 1849 encyclical *Nostis et nobiscum*.¹⁴

⁹ Paul VI, *Evangelii Nuntiandi*, 40, accessed October 27, 2021, https://www.vatican.va/content/paul-vi/en/apost_exhortations/documents/hf_p-vi_exh_19751208_evangelii-nuntiandi.html.

¹⁰ Cf. Paľa, *Masmediálna komunikácia*, 104–105.

¹¹ Anna Remišová, *Etika médií* (Bratislava: Kalligram, 2010), 19.

¹² Peter Tirpák and Gabriel Paľa, *Tajomstvo spásy vo svetle katechézy* (Prešov: Vydavateľstvo Prešovskej univerzity, 2013), 230.

¹³ Tadeusz Zasępa, Peter Olekšák, and Imrich Gazda, *Etika v žurnalistike* (Ružomberok: Katolícka univerzita, 2009), 92. Cf. Gregory XVI, *Mirari vos*, 17, accessed October 27, 2021, <https://www.papalencyclicals.net/greg16/g16mirar.htm>.

¹⁴ Dimitrios Salachas, “De Instrumentis communicationis socialis et in specie de libris,” in *Commento al Codice dei Canonici delle Chiese Orientali*, ed. Pio Vito Pinto (Città del Vaticano: Libreria Editrice Vaticana, 2001), 567.

This encyclical resulted in the publication of the Vatican newspaper *L'Osservatore Romano*, which was first published in 1861.¹⁵

The rapid advances in technology brought about new ways of communication through the radio, cinema, and, later, television. These again presented a challenge for the Church to consider how to use them to strengthen and disseminate the Catholic faith.¹⁶

Pope Pius XI (1922–1939) addresses film in his encyclical *Vigilanti cura* (1936), in which he discusses the nature and possibilities of positive influence, but also points to the dangers that emanate from bad films.¹⁷ This is the beginning of the incorporation of the press into the apostolic work of the Church. Pope Pius XII (1939–1958) was perhaps the most vocal of all the popes up to that time on the subject of the press. His Apostolic Exhortation on Television *I rapidi progressi* (Rapid Progress) of 1 January 1954 is the first papal document addressed directly to the bishops.¹⁸ The Pope's encyclical *Miranda prorsus* of 8 September 1957 is considered to be the sum of the preconciliar media teaching of the Holy See, in which he took up and developed the ideas of the encyclical *Vigilanti cura*.¹⁹ The encyclical also stresses, in the use of radio, television, and all means of social communication, the necessary preparation of radio listeners and television viewers and all means of mass communication.²⁰

During the brief but groundbreaking pontificate of the next Pope John XXIII (1958–1963), the Second Vatican Council was convened.²¹ During his pontificate, a new phase in the Catholic Church begins.²² One of its first approved documents was the decree on social communication, *Inter mirifica* (1963), which set out the main directions for the future development of the Church's media teaching and marked the beginning of a new stage in the Church's relationship with the means of mass communication.²³

This decree touches on the issue of means of social communication. Its entire content can be divided into four parts: Preface—Introduction, Chapter on the Doctrine of the Church, Chapter on the Pastoral Activity of the Church, and Conclusion. The fact that the Council dealt with this problem testifies to its importance and to the Church's role. This document was the second document

¹⁵ Paľa, *Masmediálna komunikácia*, 93.

¹⁶ Gabriel Paľa, *Globalization & Evangelization & Media* (Boonton: Bartimaeus—Diocesan House of Formation—New Jersey, 2017), 177. Cf. Zasepa, Olekšák, and Gazda, *Etika v žurnalistike*, 93. See also: Paľa, *Masmediálna komunikácia*, 110.

¹⁷ Paľa, *Globalization & Evangelization & Media*, 177. Cf. Zasepa, Olekšák, and Gazda, *Etika v žurnalistike*, 94.

¹⁸ Paľa, *Masmediálna komunikácia*, 110.

¹⁹ Zasepa, Olekšák, and Gazda, *Etika v žurnalistike*, 95.

²⁰ Paľa, *Masmediálna komunikácia*, 110.

²¹ Zasepa, Olekšák, and Gazda, *Etika v žurnalistike*, 96.

²² Paľa, *Globalization & Evangelization & Media*, 180.

²³ Zasepa, Olekšák, and Gazda, *Etika v žurnalistike*, 96.

confirmed by the Council. To be well understood, it must be read in the context of the other documents of the Council: *Gaudium et spes*, *Lumen gentium*, *Presbyterorum ordinis*. It is the first conciliar document in the two-thousand-year history of the Church to deal with the press, radio, and television, which are among the marvelous inventions of technology and which, with God's help in our times, have been created by the genius of man (art. 1). Article 11 stresses the role in society of journalists, writers, directors, publishers, etc. In their hands lies a great moral responsibility, for they have such power that they can manipulate people and lead them to good or evil. The Decree *Inter mirifica* recommends many initiatives to deepen the role of the mass media.²⁴

The confirmation of a new stage in the Church's attitude towards the media was the proclamation by Pope Paul VI (1963–1978) in 1967 of the annual World Day for the Social Media, which is binding on the whole Church. The requirements of the decree *Inter mirifica* were implemented and in 1971 the pastoral instruction *Communio et progressio* was issued, which is still considered the Magna Carta of the Church's media teaching. This Instruction introduced several new impulses into the Church's teaching on the mass media, underlining the importance of information in social development, pointing to the important role of public opinion, laying the foundations of a theology of social communication, and pointing to the need for dialogue within the Church itself and between the Church and the world. The issues of social communication and media ethics are addressed by Paul VI in his encyclical *Evangelium nuntiandi* (1975).²⁵

Pope John Paul II (1978–2005) is described by many authors as a media pope. In the Apostolic Constitution *Sapientia Christiana* (Christian Wisdom) on Studies in Ecclesiastical Universities and Faculties (April 29, 1979), he states that every faculty should also have technical, audiovisual, and other aids to assist didactics, and calls for the establishment of research institutes, scientific laboratories, as well as other aids necessary to achieve these goals. In the Apostolic Exhortation *Catechesi tradendae* on Catechesis in our time of 16 October 1978, the Pope again supports the idea of the Decree *Inter mirifica* on the establishment of a day of social means of communication and speaks of the importance of mass media catechesis. The Pope's message for the 19th World Day on May 19, 1985, on the theme "Means of Communication for the Christian Education

²⁴ Paľa, *Globalization & Evangelization & Media*, 180. Cf. Paľa, *Masmediálna komunikácia*, 115–116.

Cf. Paul VI, *Inter Mirifica*, accessed October 27, 2021, https://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_decree_19631204_inter-mirifica_en.html.

²⁵ Paul VI, Apostolic Exhortation *Evangelii Nuntiandi* of His Holiness Pope Paul VI about the Proclamation of the Gospel in Today's World, accessed October 27, 2021, https://www.vatican.va/content/paul-vi/en/apost_exhortations/documents/hf_p-vi_exh_19751208_evangelii-nuntiandi.html.

of Youth” contains the first remarks of the Magisterium on technotronics and a further call for theoretical and practical education in seminaries.

The most recent document issued by Pope John Paul II on social communications is the Apostolic Letter *Rapid Development* of January 24, 2005. It is addressed to those responsible for social communications. In the introduction, he underlines the timeliness of the decree of the SCC *Inter mirifica* by saying, “More than forty years after the publication of this document, it seems most appropriate to return to it and reflect on the challenge posed to the Church by the social means of communication.” He concludes by urging those working in the mass media and especially the faithful active in this important area of society: “Do not be afraid of new technologies! They are among the admirable things—*Inter mirifica*—that God has placed at our disposal so that we can know, use and proclaim the truth, including the truth of our dignity and of the goal that is destined for us as his children and heirs of his eternal kingdom.”²⁶

During the pontificate of John Paul II, another of the Church’s key media documents, *Aetatis novae* (1992), was published, as well as several important documents of the Pontifical Council for Social Communications. The pontificate of this Pope was marked by a significant development of information communication technologies, including the advent of the Internet. He has touched on the ethical problems associated with this phenomenon in several of his messages and statements. In his message for the 36th World Day for Social Media, entitled “The Internet: A New Forum for the Proclamation of the Gospel,” the Pope writes: “Like other instruments of communication, the Internet is only a means and not an end in itself.” Then the Pope goes on:

The essential characteristic of the Internet is the provision of an almost endless flow of information, much of which lasts only an instant. In a culture that thrives on such volatile realities, information can easily become more important than values. The Internet offers a wealth of knowledge, but it does not teach values, and if these are overlooked, our very humanity will be stripped away, and man will easily lose sight of his transcendent dignity. [...] The impulse for deeper thought and reflection may be lacking, even though human beings existentially need time and inner peace to reassess and explore life with its mysteries and gradually gain a mature mastery over themselves and the world around them. [...] Moreover, the Internet, as a forum in which everything is in fact permissible and almost nothing is permanent, favors a relativistic way of thinking and sometimes facilitates an escape from personal responsibility and engagement.²⁷

²⁶ John Paul II, *The Rapid Development*, 14, accessed October 27, 2021, https://www.vatican.va/content/john-paul-ii/en/apost_letters/2005/documents/hf_jp-ii_apl_20050124_il-rapido-sviluppo.html.

²⁷ John Paul II, *Message of the Holy Father John Paul II for the 36th World Communications Day—“Internet: A New Forum for Proclaiming the Gospel”* 4, accessed October 27, 2021,

In his encyclical *Laudato si*, the current Pope Francis also appealed to the media and urged them to be responsible so that they do not contribute to the deterioration of the quality of human life and social degradation:

Furthermore, when media and the digital world become omnipresent, their influence can stop people from learning how to live wisely, to think deeply and to love generously. In this context, the great sages of the past run the risk of going unheard amid the noise and distractions of an information overload. Efforts need to be made to help these media become sources of new cultural progress for humanity and not a threat to our deepest riches. True wisdom, as the fruit of self-examination, dialogue, and generous encounter between persons, is not acquired by a mere accumulation of data which eventually leads to overload and confusion, a sort of mental pollution. Real relationships with others, with all the challenges they entail, now tend to be replaced by a type of internet communication which enables us to choose or eliminate relationships at whim, thus giving rise to a new type of contrived emotion which has more to do with devices and displays than with other people and with nature.

The Pope also stated that:

Today's media do enable us to communicate and to share our knowledge and affections. Yet at times they also shield us from direct contact with the pain, the fears and the joys of others and the complexity of their personal experiences. For this reason, we should be concerned that, alongside the exciting possibilities offered by these media, a deep and melancholic dissatisfaction with interpersonal relations, or a harmful sense of isolation, can also arise.²⁸

Also in his message for the 57th World Day of Social Communications, the Holy Father Francis said:

Focus on the expression 'speaking with the heart.' It is the heart that moves us to go, to see and to listen, and it is the heart that impels us to open and kind communication. Having trained ourselves in listening, which requires waiting and being patient, and renouncing the biased assertion of our own opinion, we can enter into the dynamic of dialogue and sharing, which is precisely communication with the heart.²⁹

https://www.vatican.va/content/john-paul-ii/en/messages/communications/documents/hf_jp-ii_mes_20020122_world-communications-day.html

²⁸ Francis, Encyclical: *Laudati si* (Vatican City: Libreria Editrice Vaticana, 2015), § 47.

²⁹ Francis, *Message of His Holiness Pope Francis for the 57th World Day of Social Communication* (January 24, 2023), accessed January 9, 2024, <https://www.vatican.va/content/francesco/en/messages/communications/documents/20230124-messaggio-comunicazioni-sociali.html>.

The Pope continues:

We must not be afraid to proclaim the truth, even if it is sometimes uncomfortable, but we must not do so without love, without heart. Because the program of the Christian—as Benedict XVI wrote—is the heart, that he sees. A heart that reveals the truth of our being with its beating and therefore must be listened to. This leads the listener to tune into the same wavelength to the point that he is able to feel in his own heart the heartbeat of the other. Then the miracle of encounter can take place, making us look at each other with compassion and accept each other’s weaknesses with respect, instead of judging based on talk and sowing discord and division.³⁰

At the same time, the Pope turns to the media: “We also need kind speech in the media, so that communication does not foster resentment, which incites, provokes anger and leads to conflict, but helps people to think calmly and to interpret critically, but always with respect, the reality in which they live.”³¹

The Means of Social Communication and CCEO

In recent years, we have seen several amendments to legislation to meet the current needs of the faithful. But somehow the media sector has been forgotten. The legislation of both codes would need to be amended so that the Church can respond to the current issues that we encounter almost every day in the media sphere, whether it is misinterpretation, manipulation and propaganda, which, especially during the pandemic, have been spread inexplicably, including through social networks. Because we live in a media world that affects not only our knowledge, skills, emotions, but also our identity and worldview. It does this quickly, dynamically, flexibly, on a massive scale. The media world is global, universal, and actionable. It changes quickly, without waiting for those who do not keep up, because it has the latest scientific discoveries and new technologies at its disposal.³²

³⁰ Francis, *Message of His Holiness Pope Francis for the 57th World Day of Social Communication*.

³¹ Francis, *Message of His Holiness Pope Francis for the 57th World Day of Social Communication*.

³² Remišová, *Etika médií*, 29.

The mass media have fundamentally changed the world of culture and have become the main creators of cultural values, for many people they are trusted institutions and the main source of information. What does not appear in the mass media is as if it did not exist. People do not form their opinions based on their own experiences, but on how the media and, nowadays, social networks see them. The media's image of the world has become more credible than our own critical thinking.³³ Under the influence of the flood of information, people are more inclined to accept only that which confirms their own views and does not upset their status quo.³⁴

For this reason, the Church is aware of its responsibility in the media sphere; its reflection of this concern is reflected in the regulations in the CCEO. The very title of this title "Instruments of Social Communication and Specifically Books," which is contained in the regulations of canons 651–666 of the CCEO, affirms the right of the Church to control the instruments of social communication, especially books, and all productions associated with these media when they are contrary to or harmful to faith and morals.³⁵

Self-expression, a fundamental human right, partially accepted in the CCEO, as a Christian right in can. 21. Suffice it to say that the former is not absolute and unlimited, but subject to the control of society, and the latter is regulated by the prescriptions of the canons of the Church, especially with regard to the means of social communication and their use for the needs of the Church, in the prescriptions of canons 651–666 of the CCEO. In these regulations it states:

— In the proclamation of the Gospel, the duty and right of the Church to use the social means of communication and to defend the freedom of the press (can. 651, § 1).³⁶

God has been in constant communication with the world and human beings since his act of creation. The Old Testament gives us an account of the ceaseless communication between God and the nation of Israel. The apostle Paul begins his letter to the Hebrews with a reminder of this communication, which he directed to Jesus: "Many times and in various ways God spoke at one time to the fathers through the prophets. In these last days he has spoken to us in the Son" (Heb 1:1–2). The Church, as the proclaimer of the Gospel, begins her work by proclaiming the Gospel to herself, so that she may retain fresh strength to proclaim it spiritually. In the constant self-reflection of the

³³ Gabriel Paľa and Martina Poláková, *Online podoba II* (Prešov: University of Prešov, Faculty of Greek-Catholic Theology, 2013), 15.

³⁴ Tadeusz Zasepa, *Médiá v čase globalizácie* (Bratislava: LÚČ, vydavateľské družstvo, 2002), 83.

³⁵ Salachas, *De Instrumentis communicationis socialis*, 537.

³⁶ *Code of Canons of the Eastern Churches. Latin—English edition* (Washington: Canon Law Society, 1995). Cf. Nedungatt, *Путівник* [A Guide], 399.

Gospel she finds encouragement and inspirational courage in bearing witness to the truth.³⁷

The Church, responsible for proclaiming and transmitting the message of redemption, cannot pass indifferently by the means of mass communication. From the beginning of the dissemination of information through the media, the Church has been interested in these means of social communication. Since its main task is to proclaim the Gospel, it has used various kinds of media to fulfill its mission.³⁸

He is aware that the proclamation of the faith is unthinkable without mass media. Therefore, it lays down rules of canon law to guide the faithful in the proper use of the media. In the regulations of can. 651 § 2 of the CCEO: “All the Christian faithful for their part collaborate in this great mission of the Church, and support and foster the initiatives of this apostolate; moreover, let those especially who are experts in the production and the transmission of communications offer their caring help to the pastoral action of the bishops, and earnestly endeavor to imbue the use of the media with the spirit of Christ.”³⁹

The prescription of this canon is inspired by the Council’s decree *Inter mirifica* 3, which states:

It is, therefore, an inherent right of the Church to have at its disposal and to employ any of these media insofar as they are necessary or useful for the instruction of Christians and all its efforts for the welfare of souls. It is the duty of Pastors to instruct and guide the faithful so that they, with the help of these same media, may further the salvation and perfection of themselves and of the entire human family. In addition, the laity especially must strive to instill a human and Christian spirit into these media, so that they may fully measure up to the great expectations of mankind and to God’s design.⁴⁰

This canon is a further and specific application of the doctrine formulated in can. 595 § 1, according to which: “The Church, to whom Christ the Lord entrusted the deposit of faith so that, assisted by the Holy Spirit, it might reverently safeguard revealed truth, more closely examine it and faithfully proclaim and expound it, has the innate duty and right to preach the gospel to all nations, independent of any human power whatever.”⁴¹

It is clear that the Church uses the various means at her disposal to proclaim Christian doctrine, especially preaching and catechetical teaching and

³⁷ Hebr 1: 1–2.

³⁸ Paľa, *Mediálna problematika v katolíckej náboženskej výchove* (Prešov: University of Prešov, Faculty of Greek-Catholic Theology, 2010), 128.

³⁹ *Code of Canons of the Eastern Churches. Latin-English edition* (Washington: Canon Law Society, 1995). Cf. Nedungatt, *Путівник [A Guide]*, 399.

⁴⁰ Salachas, *De Instrumentis communicationis socialis*, 538.

⁴¹ Can. 595, §1.CCEO.

their dissemination through the press and other means of social communication. It is therefore the Church's natural right to proclaim the message of salvation by means of the instruments of social communication and to teach people the proper way to use them. It is the right of every person to know the truth of the Gospel, and therefore every person has the right to be informed of the truth of the Gospel.⁴²

Already the Second Vatican Council dealt with education in the light of the current problems of the time. Thus, in the document *Gravissimum educationis*, which deals with education, it speaks of the particular importance of education and its influence on social progress. At the same time, circumstances both facilitate and intensify the urgency of the education of the young, as well as the continuing education of adults. Educational and teaching methods are being improved on the basis of new experiences.⁴³

From today's point of view, we see that this conciliar document has a timeless framework, because, as in the past, we have circumstances today that affect education and formation, and at the same time they need to be exploited or paid attention to. In a special way, education concerns the Church, since it is her duty to proclaim to all people the way of salvation. In fulfilling her mission, the Church seeks to use all appropriate means, especially her own. It should also make use of others which have educational and upbringing efficacy and permeate its spirit. Among these are precisely the means of social communication.⁴⁴

Mass media nowadays determines and shapes almost every event of our culture. They influence not only what we think and what we feel, but also how we dream and how we pray. In other words, they shape our vision of the world and our idea of God. Increasingly, we are using means that expand the possibilities of action to such an extent that they can bring about revolutionary changes. It turns out that moral sensitivity to the consequences of influencing people in ways we cannot see is not yet at the level of the achievements of technologies whose consequences we are already beginning to realize. A proper view of the means of communication reveals people's actions as expressions of a particular culture, as the realisation of the human spirit and creative power that co-create the whole culture of humanity.⁴⁵

The use of social communication tools requires the technical, sociological, and cultural knowledge necessary to effectively transmit each message. In addition, there is an urgent need to educate the public on how to use these tools, which today are bombarding them with many different types of production that are not only unpleasant but also detrimental to their dignity. This is why

⁴² Salachas, *De Instrumentis communicationis socialis*, 538.

⁴³ Paľa and Poláková, *Online podoba II*, 151–152.

⁴⁴ Marek Petro, "Influence of Television on Moral Development of Children and Youth," in *Orbis communicationis socialis* (Lublin: Norbertinum, 2007), 72.

⁴⁵ Zasepa, *Médiá v čase globalizácie*, 70.

eparchial bishops must ensure, especially with the help of the institutes that deal with the tools of social communication, that the Christian faithful are instructed in the critical and beneficial use of these tools. The canon stresses that this is much more effective than reprimanding and condemning the wrong.⁴⁶

At the same time, it calls on the bishops to lay down detailed regulations on the use of radio, cinema, and television through the rules of particular law, since this area of communication is undergoing great changes and technical advances.⁴⁷

In addition to the individual eparchial bishops, the Synod of Bishops of the Patriarchal Church, the Major Archdiocesan Church, and the Council of Hierarchs of the Metropolitan Church *sui iuris* have this duty in relation to the faithful entrusted to their care, but especially the Apostolic See to the whole People of God. According to the general principle sanctioned by canon 652, all instruments of social communication that touch on faith or morals must be subject to the vigilance of the pastors. When publications (books, magazines, newspapers, pamphlets, etc.) that touch on faith or morals are concerned, it is required that they be subjected to the judgment of ecclesiastical authority before publication. Clearly, if these writings lead to bad faith or bad morals, they are to be rebuked and not used by the faithful because they compromise the integrity of the faith.⁴⁸

Current Challenges

Nowadays we are witnessing great technical advances in the digital world and the Internet, and we can talk about the globalization of the media. Globalization is one of the most significant changes in recent years. It is not only the subject of sociologists, lawyers, economists, geographers, and politicians, but the word globalization itself is being increasingly heard from the electronic media and is appearing in the press.⁴⁹ Thanks to the technology of information transfer between computers, not only the geographical problem but also the problem of the diversity of systems, national borders, etc., has lost its importance. At any one time, a user has access to information ten meters away from them as well as to information 15,000 km away.⁵⁰

⁴⁶ *Code of Canons of the Eastern Churches. Latin—English edition* (Washington: Canon Law Society, 1995). Cf. Paľa, *Masmediálna komunikácia*, 120.

⁴⁷ Nedungatt, *Путівник* [A Guide], 400.

⁴⁸ Salachas, *De Instrumentis communicationis socialis*, 539–540.

⁴⁹ Zasepa, *Médiá*, 366.

⁵⁰ Paľa, *Mediálna problematika*, 42.

With the emergence of multinational corporations, multinational monopolies, and mediocracy the global regulation of ethics has taken on particular importance. The global level of media ethics is a matter for the owners, who own the crucial media groups and social networks, dictate the economic conditions for their employees and business partners, and decide the quality of media products and the direction of social networks. The importance of media ethics cannot be explained without an understanding of the interaction between media and society. The media are part of the social system and their nature is social, even if their functioning is determined by technological means. The content of news is primarily a matter of human needs and interests.⁵¹

Globalization also affects the field of culture, especially local cultures that distinguish societies, and the influence that global media has in this field.⁵² A wide range of information can be placed on the Internet on the basis of accessibility for all. Unfortunately, there is also information that is considered harmful by both the Church and society. The Church takes it as her duty to draw attention to such negative aspects of the Internet and encourages responsibility on the part of the creators. The need to respect the dignity of the human person and the prescriptions of canon law, in particular the prescription of can. 653 of the CCEO, which prescribes to particular law to establish more precise norms on the use of radio, television, cinema and similar means regarding what concerns Catholic teaching or morals.⁵³

Although the Code does not speak directly about the Internet, the prescription of Canon 654 of the CCEO, which speaks of any other writings or speeches intended for public publication and disseminated in any way by means of technical inventions. So the rules of law that apply to books also apply to electronic media.⁵⁴

The Internet as a medium has seen tremendous development and has become a global information system. It is now indispensable in the field of work, but also in the field of consumption. It is a powerful medium because it enables the provision of a range of services from individual communication to mass communication. Its economic importance is incalculable. The Internet offers virtually limitless possibilities, and these can sometimes be glamorous but also harmful. New technologies bring not only progress, but also certain threats. A glance into the past makes it possible to discover that, for example, along with television came addiction to the medium, addiction to games,

⁵¹ Remišová, *Etika médií*, 26–27.

⁵² Zasepa, *Médiá v čase globalizácie*, 369.

⁵³ *Code of Canons of the Eastern Churches. Latin–English edition* (Washington: Canon Law Society, 1995). Cf. Salachas, *De Instrumentis communicationis socialis et in specie de libris*, 540.

⁵⁴ *Code of Canons of the Eastern Churches. Latin–English edition* (Washington: Canon Law Society, 1995). Cf. Nedungatt, *[A Guide]*, 400.

addiction to the computer or even addiction to sex, or a morbid imitation of film stars.⁵⁵

In virtual space, too, manipulation and propaganda are widely encountered.

The term manipulation⁵⁶ has a negative ethical connotation as it denotes an action that is ethically wrong and reprehensible. Manipulation is a purposeful activity on the part of an individual or collective subject; its intention is to make the object of manipulation act according to their wishes.⁵⁷ The perfect manipulation is when, without knowing it, you do what I want and still feel good about it. The bottom line is that manipulation cannot be overt, or else, understandably, it ceases to work.⁵⁸ So it is the ways or methods by which the manipulated person is convinced that they are the originator of a behavior, or that they have made a decision or evaluated something, whereas in reality they are just a tool in the hands of the author.⁵⁹

It is important to delimit when media influence takes the form of manipulation. Manipulation is characterized in particular by the following specific conditions. The manipulator consciously pursues their own benefit and does not take into account the needs of the influenced.⁶⁰

The most common forms of manipulation include omission and suppression, lies, incomplete information and its repetition, labeling, transmission of false values, imbalance, framing, and “teaching viewers not to ask why.” We give at least a brief description of these.

— Omission and suppression:

It is the ignoring of certain messages, information and ideas. Omitting a detail of a message, but also the whole message, ignoring the other party’s opinion, etc.

⁵⁵ Zasepa, *Médiá v čase globalizácie*, 353.

⁵⁶ Eva Chudinová, “Media relations—jadro public relations—mediálna manipulácia?” in *Médiá—Moc—Manipulácia*, ed. Eva Chudinová et al. (Bratislava: Paneurópska vysoká škola v Bratislave, 2016), 115. In the media we can encounter several forms of manipulation. Pristašová (2005) lists the following forms: the use of evaluative vocabulary, the use of commentary elements in news reporting, the promotion of the editorial line at the expense of objectivity, covert persuasion—the truth about reality—the concepts are unambiguous and correct—what has been said is true (e.g., election polls—this candidate will win), news ranking, photo selection, interview question ranking, headlines, perex, withholding inconvenient information, publication of unverified information, confusion, news and commentary, deliberate accusations and invectives, use of “experts,” the technique of endorsement.

⁵⁷ Remišová, *Etika médií*, 243.

⁵⁸ Radovan Šoltés, *Propaganda, manipulácia a logické klamy* (Prešov: University of Prešov, Faculty of Greek-Catholic Theology, 2017), 102.

⁵⁹ Maciej Howiecki and Tadeusz Zasepa, *Moc a nemoc médií* (Bratislava: Vydavateľstvo Trnavskej univerzity, spoločné pracovisko TU a VEDY, vydavateľstvo SAV, 2003), 35.

⁶⁰ Chudinová, *Media relations*, 116.

— Labelling:

The media pre-label an event, phenomenon or person involved—labelling it with a word or phrase with a pre-defined meaning with a distinct evaluation (positive or negative) that precludes any other interpretation.

— Transmission of false values:

This is the transmission of quasi-objective news, official statements, including lies and fabrications, followed by the production of a series of pseudo-news.

— Imbalance:

Under the principle that both sides should be heard, the media give space only to positive views, not to alternative views.

— Framing (framing of news):

It is the influence of content by means of form: changing the order of the news, by spacing it out, by using a selection of “suitable” (for the manipulator) photographs.⁶¹

One type of social influence that applies the above principles is propaganda. Propaganda is an attempt by an authority, such as a state or party, to persuade as many people as possible. In doing so, it uses procedures to persuade a group to acquiesce and agree. It aims to achieve or maintain political power, often by manipulative means. It thus serves the power elite as well as groups seeking to achieve power. Political propaganda concerns the political sphere, but it can also be present in different social groups and religions.⁶²

In the broadest sense, manipulation means an activity in which the manipulator changes their own will, their own opinion of the objects of manipulation and directs them in a way that they consider advantageous. The difference between manipulation and persuasion can be defined in such a way that persuasion is based on rational persuasion and is often carried out in the interest of the persuaded, whereas manipulation is based on techniques of deception and influence on the subconscious. It is therefore important to understand that some form of persuasion becomes manipulation, and manipulation always hides elements of coercion.⁶³

Thus, the very term propaganda, defined in many ways in the social sciences, can be recognized as: “the art of making people do what they would not do if they had all the data on the subject.”⁶⁴ Or, according to a more recent definition: “Propaganda is a deliberate and systematic effort to shape perception, manipulate thought and immediate behavior with the intention of achieving responses that are consistent with the desired goals of the propaganda.”⁶⁵

⁶¹ Chudinová, *Media relations*, 116. Cf. Howiecki and Zasepa, *Moc a nemoc médií*, 37.

⁶² Šoltés, *Propaganda*, 91.

⁶³ Cf. Howiecki and Zasepa, *Moc a nemoc médií*, 35.

⁶⁴ Howiecki and Zasepa, *Moc a nemoc médií*, 33.

⁶⁵ Howiecki and Zasepa, *Moc a nemoc médií*, 33

The Church and the Internet

In spite of all these negative effects of the Internet, the Church, in the spirit of the pastoral instruction *Comunio et progressio*, takes a positive attitude towards the Internet and calls not only the faithful, but all people, especially the young, to learn to deal well with the world of cyberspace, to be able to critically assess the information they find and to use the new technologies for their own integral development and for the good of others.⁶⁶

The ethical issues of communication via the Internet are also discussed in the document *Ethics and the Internet*, which deals with the overall issue of the Internet, from its possibilities to its recommendations. The proliferation of the Internet has also added a number of ethical issues as well as many other problems. The ethical issues relate to privacy, security and confidentiality, copyright and intellectual property rights, pornography, hate sites and sites spreading slander and defamation under the guise of serious news.⁶⁷

Despite the exceptional features of the Internet, such as the possibility of direct and immediate access, its presence throughout the world, its decentralization, its interactivity, the unlimited possibility of expanding its content, flexibility, great adaptability, it also contains negative features, such as the spread of pornography, excessive individualism, egocentrism, cyber-terrorism, manipulation.

At the same time, there is a great deal of data on how pornography is arrogantly pushed into the media, especially electronic and digital media, and how it is abused. There are authors who, based on research,⁶⁸ point out that children and adolescents are also involved in the production and distribution of pornographic material.⁶⁹ In his post-synodal exhortation *Amoris Laetitia*, in Article 41, the Holy Father Francis touched on this problem and expressed concern about the proliferation of pornography and the commercialization of the body, which is also opened up by the use of the Internet in a non-traditional way.⁷⁰

Despite these negative facts, *Ethics and the Internet* rejects the resort to censorship by government elites:⁷¹

⁶⁶ Zasepa, Olekšák, and Gazda, *Etika v žurnalistike*, 109.

⁶⁷ Paľa, *Mediálna problematika v katolíckej náboženskej výchove*, 102.

⁶⁸ Pavel Izrael, Juraj Holdoš, Róbert Ďurka, and Marek Hasák, *Správa z výskumu EU Kids Online IV na Slovensku—Slovenské deti a dospievajúci na internete* (Ružomberok: Katolícka univerzita v Ružomberku, 2020), 2123.

⁶⁹ Ján Ďačok, “‘Bezpečný sex’? Vedecké, morálne a pastorálne aspekty,” in *Kurz Pre Spovedníkov: Príspevky z prednášok konaných 6–8 Septembra 2016 V Spišskej Kapitule*, ed. Mária Spišiaková and Martin Koleják. (Trnava: Spolok svätého Vojtecha, 2017), 100.

⁷⁰ Francis, *Encyclical, Amoris laetitia* (Trnava: Spolok svätého Vojtecha, 2016), 27.

⁷¹ Zasepa, Olekšák, and Gazda, *Etika v žurnalistike*, 110.

In light of these requirements of the common good, we deplore attempts by public authorities to block access to information—on the Internet or in other media of social communication—because they find it threatening or embarrassing to them, to manipulate the public by propaganda and disinformation, or to impede legitimate freedom of expression and opinion. Authoritarian regimes are by far the worst offenders in this regard; but the problem also exists in liberal democracies, where access to media for political expression often depends on wealth, and politicians and their advisors violate truthfulness and fairness by misrepresenting opponents and shrinking issues to sound-bite dimensions.⁷²

However, the Church's rejection of censorship does not reject regulation. Therefore, the document states: "Regulation of the Internet is desirable, and in principle industry self-regulation is best. The solution to problems arising from unregulated commercialization and privatization does not lie in state control of media but in more regulation according to criteria of public service and in greater public accountability."⁷³

The presence of the Church on the Internet has a very deep meaning. A particular challenge for the Church is the great value of virtual communion. The greatest impact that virtual communities can achieve will not lie in the implementation of advertising on the Internet, but in the new forms of culture that will emerge in virtual communities. These forms will be richer and will serve the people more if the Church and the people of the Church do not get on the Internet.⁷⁴ The Internet should be based on the same understanding of values, rooted in the nature of man. Only then can the Internet be used as a means of building a civilization of love.⁷⁵

Therefore, education for the critical use of the Internet in media education also appears to be a priority in the *Ethics and the Internet* document. There is a need to develop new legal arrangements for the needs of the Internet and its ethical implications. Another conclusion is that the "information gap," which affects the technical and educational as well as the cultural spheres, must be closed in both the public and private sectors.⁷⁶ The conclusions of this document are in line with the prescriptions of can. 653 of the CCEO for the issuance of more precise norms of particular law on the use of the Internet in order to respect Catholic teaching and good morals.

⁷² Pontifical Council for Social Communications, *Ethics in Internet*, accessed October 27, 2021, https://www.vatican.va/roman_curia/pontifical_councils/pccs/documents/rc_pc_pccs_doc_20020228_ethics-internet_en.html

⁷³ Pontifical Council for Social Communications, *Ethics in Internet*, accessed October 27, 2021, https://www.vatican.va/roman_curia/pontifical_councils/pccs/documents/rc_pc_pccs_doc_20020228_ethics-internet_en.html

⁷⁴ Zasepa, *Médiá v čase globalizácie*, 372.

⁷⁵ Paľa, *Mediálna*, 102.

⁷⁶ Paľa, *Mediálna*, 102.

The very conclusion of the document stresses that the Catholic Church should be present on the Internet and participate in the public debate on its further development. In this way, the Church can ultimately help prosperity and peace, intellectual and ethical development, and mutual understanding between peoples and nations.⁷⁷

In spite of the most varied experiences throughout history and in different cultures, the texts of Holy Scripture are permeated with the conviction that God acts with a power that neither destroys nor condemns, a power that is the Holy Spirit, the Spirit of God. Even though we have been given spiritual good things to deposit, these do not necessarily transform the world. The Spirit works in them mostly like He does in people. These often inconspicuous spiritual gifts show that real redemption is taking place today. The Holy Spirit gives a new beginning after every human fall, opening up a dimension of humanity that exists outside of one-sided rationalism, opening up a space in which the cause does not find a reason in itself. The Holy Spirit is the gift by which God gives himself to the individual until they reject him. Only he can help humanity to discover the Spirit in nature, in history, in all cultures and religions. Thus the Holy Spirit can be discerned from other forces that obscure his work. Although the Church is not the kingdom of heaven, but only a sinful community, the Holy Spirit is especially at work in it. By permeating all cultures and media, the Holy Spirit can remake them and be a fulcrum for them.⁷⁸

Conclusion

Access to the Internet and to the world's sources of information and the possibility of virtually unlimited communication are an invaluable gift to humanity in proclaiming the Gospel. In addition to the manipulation and negative content found on the Internet, unfair practices such as cybercrime are now coming to the fore. Due to the global aspect and anonymity, more or less dangerous viruses are spreading. Recently, a new phenomenon of collusion has emerged—hackers who use their “art” of obtaining confidential information to the detriment of the victims. All the negative things that we see in the field of the Internet do not destroy the values of this new tool for evangelization and interpersonal communication. Everything depends on the person behind every action—good or bad. Controlling the Internet is complicated at the moment, the interior ministries of several countries are trying to control the Internet, al-

⁷⁷ Paľa, *Mediálna*, 103.

⁷⁸ Zasepa, *Médiá v čase globalizácie*, 71–72.

though they can identify the author of a particular website, the sanctions against that author are very complicated, because the site most often comes from another country or even another continent. For this reason, it is also difficult to apply the CCEO legislation, so that the whole issue rests on the shoulders of the individual, who needs to be adequately formed to make good use of the tool they have been given in their hands. In this issue, in addition to the rules of particular law, the basic rule of natural law should be applied—do good and avoid evil. This must be a boundary setting for the media as to what is allowed and what is not.⁷⁹

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⁷⁹ Cf. Zasepa, *Médiá*, 361–369.

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Jurij Popovič

Médias et dispositions du Code des canons des Eglises orientales

Résumé

Aujourd'hui, nous ne pouvons pas imaginer un monde sans communication médiatique au service de la société. En même temps, nous pouvons constater des changements que subit la communication médiatique. La communication médiatique contemporaine est trop éloignée de la notion même de *communico*, *communicare*. La notion même de *s'associer*, *rendre quelque chose commun*, *transmettre un message*, *cosulter* disparaît progressivement de l'espace médiatique,

tout comme le terme *communio*, c'est-à-dire « collectivité, communauté, sens du lien ». De nos jours, le mot *communiquer* est associé principalement à la transmission d'informations ou plus précisément, de nouvelles, abstraction faite des principes éthiques et moraux. C'est pourquoi l'Église, consciente de l'importance des moyens de communication, revendique le droit d'en réglementer l'usage et, dans ses règlements, appelle les personnes compétentes en matière de création et de transmission d'informations à veiller à ce que l'utilisation de ces moyens soit imprégnée de l'esprit du Christ.

Mots-clés: moyens de communication sociale, médias, réalité virtuelle

Jurij Popovič

Mezzi e disposizioni del Codice dei Canoni delle Chiese Orientali

Sommario

Oggi non possiamo immaginare un mondo senza la comunicazione multimediale al servizio della società. Allo stesso tempo, possiamo notare i cambiamenti che stanno subendo i mezzi di comunicazione. La comunicazione multimediale contemporanea è troppo lontana dal concetto stesso di *communio*, *communicare*. Il concetto stesso di “unire, mettere in comune qualcosa, trasmettere un messaggio, consultare” sta gradualmente scomparendo dallo spazio mediale, così come il termine *communio*, ovvero “comunità, fratellanza, senso di connessione”. Ai nostri giorni la parola “comunicare” è associata principalmente alla trasmissione di informazioni, o più precisamente di messaggi, indipendentemente dai principi etici e morali. Per questo la Chiesa, consapevole dell'importanza della comunicazione multimediale, richiede il diritto di regolamentarne l'uso, e nei suoi regolamenti invita le persone qualificate nella creazione e trasmissione dell'informazione a garantire che l'uso di questi mezzi sia permeato dello spirito di Cristo.

Parole chiave: mezzi di comunicazione sociale, media, realtà virtuale



Andrzej Pastwa

University of Silesia in Katowice, Poland

 <https://orcid.org/0000-0003-2679-5107>

The Digital Environment as a Space of the Evangelization Activity: New Dimension of the Obligations Arising from the Prescripts of can. 822 CIC

Abstract: Contemporary papal enunciations are characterized by the assertive—active and optimistic, yet risk-conscious and non-critical—ecclesial approach to the opportunities/challenges of the “digital age.” If we follow these indications, imbued with the concern for the effectiveness of the evangelizing mission in the new socio-(technological-)cultural realities/contexts, and at the same time bear in mind the rule that the Church’s legal practice must take into account the current conditions of human existence—it becomes clear that this authoritatively outlined horizon of the “signs of the times” poses a challenge to theological sciences, including the canonical doctrine. As far as the latter is concerned, leaving aside the often urgent need for legislative changes/adjustments (given the peculiarities of the various regions of the world—above all at the level of particular law), the role of experts in presenting a renewed, adequate *hic et nunc* interpretation of certain nodal canons of the *Code of Canon Law* remains invaluable. We may argue that such include the prescripts of can. 822. Hence, this article attempts a two-stage delimitation of the problem *meritum*—according to the research steps announced in the title: (1) The digital environment as an indispensable space of the evangelization activity; (2) The new dimension of the obligations of the Church’s Pastors imposed by the prescripts of can. 822 §§ 1–3.

Keywords: “signs of the times,” communication and community in the “digital age,” legal elements of the ministry of the Word, tasks of church pastors-legislators, introducing order to and interpretation of the “new living space,” optimizing the Church’s evangelizing mission

Introductory Remarks

“The digital media revolution of recent decades has proved to be a powerful means of fostering communion and dialogue within our human family.”¹ This characteristic passage from Pope Francis’s message to the representatives of the World Catholic Association for Communication (an association of media professionals operating in 140 countries) gathered at the SIGNIS World Congress 2022² all too clearly reveals the assertive—active and optimistic, yet risk-conscious and non-critical—ecclesial approach of the present Shepherd and Legislator to the opportunities/challenges of the “digital age.” Indeed, the papal enunciation is a clear signal that the Church’s response to the rapidly progressing civilizational processes of the formation of the digital society must be a wise and consistent delineation of the foundations of a positive program, included in the current of implementation of the conciliar paradigm³ *Ecclesia semper reformanda*.⁴

The meaning of the papal message is abundantly clear. On the one hand, the fact that the virtual world has become a daily space of human life raises a number of serious ethical issues, poses a new dimension of responsibility and tasks for pastoral workers—necessarily in alliance with committed and competent lay Catholics, such as members of the international association for the Catholic communications professionals—which they cannot evade. Here Francis, focusing his attention on social media users, points explicitly to the urgent need “to assist especially young people, to develop a sound critical sense, learning to distinguish truth from falsehood, right from wrong, good from evil, and to appreciate the importance of working for justice, social concord, and respect for our common home.”⁵

¹ Francis, “Message to the Participants in the SIGNIS World Congress” (August 15, 2022), <https://www.vatican.va/content/francesco/en/messages/pont-messages/2022/documents/20220715-messaggio-congresso-signis.html>, accessed February 14, 2023,

² *SIGNIS World Congress 2022*, Seoul, August 16–19, 2022, <https://www.signisasia.net/signis-world-congress-2022/>, accessed February 14, 2023.

³ See George Weigel, “Re-Forming the Church,” *Plough Quarterly* 14 (Autumn 2017).

⁴ It is safe to say that Pope Francis has made this very paradigmatic idea the motto of his pontificate—in his famous proclamation: “The path of synodality [is the path—A.P.] which God expects of the Church of the third millennium.” Francis, *Address at the Ceremony Commemorating the 50th Anniversary of the Institution of the Synod of Bishops* (October 17, 2015), http://www.vatican.va/content/francesco/en/speeches/2015/october/documents/papa-francesco_20151017_50-anniversario-sinodo.html, accessed February 14, 2023. See Andrzej Pastwa, “Synodality—Participation—Co-Responsibility. Remarks on the Determinants of the *Aggiornamento* of the Church Law,” in *Idea of Synodality: Contexts, Challenges and Perspectives* (I), ed. Andrzej Pastwa, *Ecumeny and Law* 7 (2019): 95–114.

⁵ Francis, “Message to the Participants in the SIGNIS World Congress.”

On the other hand, the rapid development of modern forms of communication (interpersonal, group, mass), which is taking place before our eyes, does not in any way escape the thought of the Holy Father. On the contrary, it is a reminder to the direct and indirect addressees of the “Message” that an indispensable feature of true communication—nowadays often involving digital technologies—is a service to dialogue and understanding between individuals and larger communities in the pursuit of a serene and peaceful coexistence.⁶ A kind of bracket that binds this papal statement (in a way “programmatic,” because it also identifies in the sphere of social media the potential to stimulate the dynamics of the synodal work of the new evangelization⁷) is the papal recommendation contained in the recent “Message for the 57th World Day of Social Communications” (2023): “I dream of an ecclesial communication that knows how to let itself be guided by the Holy Spirit, gentle and at the same time, prophetic, that knows how to find new ways and means for the wonderful proclamation it is called to deliver in the third millennium.”⁸

If we follow these indications of the Shepherd of the Sheep of Christ, imbued with the concern for the effectiveness of the constitutive—because ecclesiocreative (!)—of the evangelizing mission⁹ in the new socio-(technological)cultural

⁶ Francis, “Message to the Participants in the SIGNIS World Congress.”

⁷ Andrzej Pastwa, “‘Accompanying Migrants’ as a Touchstone of the Realisation of the Synodal Church Idea. A Canonist’s Remarks,” in *Migration—Ecumenism—Integration* (II), ed. Andrzej Pastwa, *Ecumeny and Law* 9, no. 2 (2021): 8–12. See International Theological Commission, *Synodality in the Life and Mission of the Church* (2018), http://www.vatican.va/roman_curia/congregations/cfaith/cti_documents/rc_cti_20180302_sinodalita_en.html, accessed February 14, 2023. See also Joachim Schmiedl, “Synodalität in der katholischen Kirche – ein »Zeichen der Zeit«. Anmerkungen im Anschluss an ein Dokument der Internationalen Theologenkommission,” in *Rechtskultur und Rechtspflege in der Kirche. Festschrift für Wilhelm Rees zur Vollendung des 64. Lebensjahres*, ed. Christoph Ohly, Stephan Haering, and Ludger Müller [Kanonistische Studien und Texte, vol. 71] (Berlin: Duncker & Humblot, 2020), 339–351.

⁸ Francis, “Message for the 57th World Day of Social Communications” (January 24, 2023), <https://www.vatican.va/content/francesco/en/messages/communications/documents/20230124-messaggio-comunicazioni-sociali.html>, accessed February 14, 2023.

⁹ “Die ganze Welt mit der Schönheit des Evangeliums bekannt zu machen, indem sie Jesus Christus als wahren Gott und wahren Menschen verkündet, das ist und bleibt die hohe Pflicht und der hohe Auftrag der Kirche zu allen Zeiten.” Georg Gänswein, “Neuevangelisierung. Weg und Herzmitte der Kirche in unserer Zeit,” in *Theologia Iuris Canonici. Festschrift für Ludger Müller zur Vollendung des 65. Lebensjahres*, ed. Christoph Ohly, Wilhelm Rees, and Libero Gerosa [Kanonistische Studien und Texte, vol. 67] (Berlin: Duncker & Humblot, 2017), 41–42. See more: Benedict XVI, “Apostolic Letter in the Form of Motu Proprio Establishing the Pontifical Council for Promoting the New Evangelization *Ubicumque et Semper*” (September 21, 2010), http://www.vatican.va/content/benedict-xvi/en/apost_letters/documents/hf_ben-xvi_apl_20100921_ubicumque-et-semper.html, accessed February 14, 2023.

realities/contexts,¹⁰ and at the same time bear in mind the rule that the Church's legal practice must take into account the current conditions of human existence¹¹—it becomes clear that this authoritatively outlined horizon of the “signs of the times” poses a challenge to theological sciences, including the canonical doctrine. As far as the latter is concerned, leaving aside the often urgent need for legislative changes/adjustments (given the peculiarities of the various regions of the world—above all, at the level of particular law¹²), the role of experts in presenting a renewed, adequate *hic et nunc* interpretation of certain knotty canons of the *Code of Canon Law* (CIC)¹³ remains invaluable. We may argue that such include the prescripts of can. 822. And since this is the case, it seems advisable to attempt a two-stage delimitation of the problematic merits¹⁴—according to the research steps announced in the title: (1) The digital environment as an indispensable space of the evangelization activity; (2) New dimension of the obligations of the Church's Pastors imposed by the prescripts of can. 822 §§ 1–3.

Digital Environment as an Indispensable Space of the Evangelization Activity

A considerable contribution to the scholarly debate on a subject similar to that of the conference organized by the University of Presov, *Accompany Man in the Digital Age*, reflected in this volume, is made by a recently published by Innsbruck University Press (2021), as a part of the well-known series “Theologische Trends,” book *Digitalisierung—Religion—Gesellschaft*.¹⁵ We have to agree

¹⁰ “Ab initio suae historiae, nuntium Christi, ope conceptuum et linguarum diversorum populorum exprimere didicit.” Concilium Vaticanum Secundum, “Constitutio pastoralis de Ecclesia in mundo huius temporis *Gaudium et spes*” (December 7, 1965), n. 44.

¹¹ Cf. Remigiusz Sobański, “‘Omnis institutio ecclesiasticarum legum ad salutem referenda sit animarum.’ Uwagi o zbawieniu dusz jako celu prawa kościelnego,” *Ateneum Kapłańskie* 134 (2000): 213.

¹² Here, an example is the general decree issued by the Polish Episcopal Conference as a supplementary norm to can. 831 § 2 CIC. Konferencja Episkopatu Polski, “Dekret ogólny w sprawie występowania duchownych, członków instytucji życia konsekrowanego, stowarzyszeń życia apostołskiego oraz niektórych wiernych świeckich w mediach” (30.03.2023), *akta Konferencji Episkopatu Polski*, no. 35 (2023).

¹³ *Code of Canon Law* (promulgated: January 25, 1983).

¹⁴ A broader study of the issues does not allow for the adopted framework of the article.

¹⁵ *Digitalisierung—Religion—Gesellschaft*, ed. Monika Datterl, Wilhelm Guggenberger, and Claudia Paganini [Theologische Trends, vol. 31] (Innsbruck: Innsbruck University Press, 2021).

with editorial team member and the author of the “Introduction” (*Einleitung*) Claudia Paganini that the collective work submitted—the fruit of the congress: “Innsbrucker Theologischen Sommertage 2021”—can be regarded as unique in many respects. Firstly, this is determined by the sensitive area of research, determining the urgency and professionalism of the scientific reflection, and, secondly, by the high degree of interdisciplinarity: the participation of philosophers, representatives of systematic theology, biblical studies and canon law. Professor Claudia Paganini—a philosopher and theologian working at the University of Innsbruck and the Munich Hochschule für Philosophie, specializing in the field of media ethics—puts the subject matter of the study in the said Introduction as follows:

Media studies and theology do not face each other as strangers, but as two disciplines that can look back on a long shared history full of points of contact and overlap. Media criticism has always been and remains an authentic component of the sacred scriptures of Judaism, Christianity, and Islam, and if we focus on the recent past, it becomes clear that it is central to the development of media ethics [...]. Against this background, it is not surprising that at the dawn of the digital age, on the one hand, religious communities have begun to make practical use of the new possibilities, and on the other hand, more and more theologians have begun to subject media studies to theological analysis in order to enter the field of tensions between current media developments, digitisation, fundamental theological topoi, social changes (*gesellschaftlichem Wandel*), and ecclesiastical transformations (*kirchlichen Veränderungen*).¹⁶

In a way, the quoted words of the “Introduction” are an invitation to a careful reading of a further text by the same author entitled “Helfen und Heilen. Neue Medien in Seelsorge und Psychotherapie.”¹⁷ The clear ethical profile of the reflection contained here—as we shall see, with the inherent question of the “Christian use of the new media”¹⁸—is already heralded by the very title of the first part of the study: Church Activity on the Net (*Kirchliches Handeln im Netz*).

¹⁶ Claudia Paganini, “Einleitung,” in *Digitalisierung—Religion—Gesellschaft*, 8–9.

¹⁷ Claudia Paganini, “Helfen und Heilen. Neue Medien in Seelsorge und Psychotherapie,” in *Digitalisierung—Religion—Gesellschaft*, 129–146.

¹⁸ It is worth showing the broader background to this statement: “Wenn Kirche online geht, d. h. von den Chancen der Digitalisierung Gebrauch macht, dann tut sie das—noch bevor die Seelsorge in den Blick kommt—im Kontext der Verwaltung, des Recruitings, der Öffentlichkeitsarbeit, der Bildungsarbeit mit Kindern, Jugendlichen und Erwachsenen. In all diesen Bereichen gilt es aus einer theologischen Perspektive zu fragen, wie eine christliche Nutzung der Neuen Medien aussehen kann [...]” Paganini, “Helfen und Heilen...”, 130–131; see more Paganini, *Werte für die Medien(ethik)* [Kommunikations- und Medienethik, vol. 12] (Baden-Baden: Nomos, 2020): 216–228; cf. also Ralf Peter Reimann, “Digitalisierung als Herausforderung für die seelsorgliche Kommunikation. Veränderungen in der Seelsorge durch Social Media,” *Wege zum Menschen* 72 (2020): 216–228.

And indeed, here the theological (!) heart of today's burning issue is rendered with the utmost conviction and precision: How can we pastorally "program" an optimal use of the eponymous new media?¹⁹ In Claudia Paganini's response, she adheres to the principle of not knocking down open doors ("doors and gates should be [constantly—A.P.] open to stimulation and inspiration"²⁰)—draws attention to the activities and achievements of the German theologian and journalist Johanna Haberer on this issue. These have resonated far beyond her native academic (Friedrich-Alexander-Universität Erlangen-Nürnberg) and ecclesiastical (Evangelisch-Lutherische Kirche in Bayern) circles, as they are now being vigorously discussed in Protestant circles worldwide, as well as inspiring research thought and debate in the global scientific world. Which specific achievements are in question? Three must necessarily be mentioned. In 2015, Professor Johanna Haberer published the pioneering²¹ monograph *Digitale Theologie. Gott und die Medienrevolution der Gegenwart*.²² It is worth noting that the publisher's note about this book reveals the author's ambitious goal. Well, the phenomenon of the "new living space" (as a result of the ever-accelerating digital revolution) sets the horizon of "ecclesiastical" responsibility, namely obliging us to take action to organize and interpret this space—according to theological criteria. In this work we are only at the beginning of a long road, while the book, as the note informs us, allows us to take the first steps.²³

¹⁹ Paganini, "Helfen und Heilen," 130–134.

²⁰ Paganini, "Einleitung," 9.

²¹ Cf. Thomas Schlag, "Von der Möglichkeit zur Selbstverständlichkeit. Überlegungen zu einer Ekklesiologie der Digitalität," in *Theologie und Digitalität. Ein Kompendium*, ed. Wolfgang Beck, Ilona Nord, and Joachim Valentin (Freiburg im Breisgau: Verlag Herder, 2021): 282, note 1.

²² Johanna Haberer, *Digitale Theologie. Gott und die Medienrevolution der Gegenwart* (München: Kösel Verlag, 2015).

²³ Here is the full text of the publisher's note: "Die digitale Revolution hat unser Denken dramatisch verändert. Wir betreten mit dieser Technik einen neuen [Raum], in dem herkömmliche Regeln nicht gelten und die Gesellschaften lernen müssen, neue Normen auszuhandeln. Der Umgang mit Texten und anderen traditionellen Autoritäten verändert sich, und damit auch ethische Fragestellungen aus christlicher Perspektive. Zum Beispiel: Wer ist mein Nächster? Es wird ein langer Weg, bis die herkömmliche Wissenschaft von Gott diesen neuen [Raum] nach theologischen Kriterien einordnen und deuten kann. Dieses Buch möchte einen Anfang machen," https://books.google.pl/books/about/Digitale_Theologie.html?hl=de&id=EeNgBgAAQBAJ&redir_esc=y, accessed February 14, 2023. A slightly different research perspective is presented by Peter Phillips (head of Digital Theology at Durham University, England)—signaled by open questions: How can we encourage the Church to move towards greater engagement with the Digital? How might we explore the theology of the digital age? <https://uk.linkedin.com/in/drpetermphillips>, accessed February 14, 2023. See Peter M. Phillips, Kyle Schiefelbein-Guerrero, and Jonas Kurlberg, "Defining Digital Theology: Digital Humanities, Digital Religion and the Particular Work of the CODEC Research Centre and Network," *Open Theology* 5 (2019): 29–43.

No less significant was to be the chairmanship of an interesting scientific project involving also other scholars from Friedrich-Alexander-Universität Erlangen-Nürnberg. This group presented a high-profile 50-page paper in 2015 entitled *Das Netz als sozialer Raum: Kommunikation und Gemeinschaft im digitalen Zeitalter*²⁴ [The Net as Social Space: Communication and Community in the Digital Age].

In this document, approved by the Regional Church Council of the Evangelical Lutheran Church in Bavaria, the Bishop of this Church, Heinrich Bedford-Strohm, presents (in the Preface) the scale of the urgent tasks to be carried out in the name of fidelity to the mission of preaching the Gospel today—in a digitized society: “As a Protestant Church, we need to engage more with an ethical-media discourse that describes [...] legal and ethical framework conditions to place ‘private’ and ‘public’ in a freedom-promoting relationship—which corresponds to the Christian understanding of human dignity, also of human responsibility in terms of possible guilt and forgiveness.”²⁵ At the present time, there can be no doubt, concludes the Bavarian bishop in his argument, that it is the duty of the churches to actively and critically help shape the civilization of the digital society.²⁶

The central problem considered in the document, as its title already indicates, is the current revolution in digital communication, bringing with it the potential²⁷ for profound, and from the second half of the 21st century (Web 2.0)—escalated²⁸ changes: in the sphere of culture (*Netzkultur*),²⁹ in the

²⁴ *Das Netz als sozialer Raum: Kommunikation und Gemeinschaft im digitalen Zeitalter*. Edited by Landeskirchenrat der Evangelisch-Lutherischen Kirche in Bayern. München 2015, <https://handlungsfelder.bayern-evangelisch.de/downloads/ELKB-Impulspapier-Medienkonzil-2015-Webversion.pdf>, accessed February 14, 2023.

²⁵ *Das Netz*, 3.

²⁶ *Das Netz*, 4.

²⁷ Let us recall, Marshall McLuhan (†1980) one of the most eminent communication theorists recognized the fourth media epoch (after three epochs in human history—successively the culture of the oral tribe, the handwriting culture and the “Gutenberg Galaxy”), namely the electronic media culture (in the “global village”) as the most astonishing stage of human development.

²⁸ The processes in question were decisively accelerated by the Web 2.0 revolution (2004–2016), i.e., the advent of the era of the “dynamic web,” which is characterized by interaction (Social Web). “Web 2.0 is about connecting people and creating technologies that are effective for people. To describe Web 2.0, terms such as Social Web, people-centric Web or participative Web are used. Technological development has enabled the flourishing of social networking sites and services that have changed the way that the content is managed and interaction happens between the users. Web 2.0 is characterized by Internet applications that facilitate global content production and information exchange. In the Web 2.0 era, all users can generate content, and not just read it.” Karol Król, “Evolution of Online Mapping: from Web 1.0 to Web 6.0,” *Geomatics, Landmanagement and Landscape 1* (2020): 37–38.

²⁹ “Die Netzkultur ist eine Kultur des Teilens und Mitteilens in all ihrer Ambivalenz. Die Möglichkeiten des Netzes, Ideen, Texte, Bilder usw. der Netzöffentlichkeit mitzuteilen und in

sphere of social relations, and also within structures of power. Today, new digital technologies—especially the rapidly growing social media—are changing people’s perceptual habits, which significantly affect social interactions. The authors of the document in question demonstrate this when they do not content themselves with the easy (neutral) statement that digital technologies are opening up an—abstract-sounding—“new era.” They put it specifically and expressively: we are all (at least potentially) entering a new living space, a kind of “primordial state” (*Naturzustand*),³⁰ where the hitherto conventional social rules lose their meaning as useless and societies must learn to negotiate new rules.³¹ “We, who have woken up in the network galaxy, are contemporary witnesses of a profound cultural change with no end or destination in sight. We are experiencing how our identities are being reconstructed, how global hegemonies are being redefined, how nations are entering new constellations, how wars are being fought in new and very different ways, how entire continents and their inhabitants are being monitored in detail, and how the reliable institutions of our society are being undermined and slipping as if on shifting sands.”³²

It is evident that what makes the document associated with the name Johanna Haberer interesting and valuable in exploring the title question are, above all, the elements of scientific diagnosis attesting to the depth of cultural change associated with the advent of the digital age. And this is in the context of the self-evident truth that the religious life of Christians and the activities of church communities are never unaffected by current trends/phenomena in the socio-cultural sphere—where progress or even technological revolution is an important determinant. If, therefore, there are such unambiguous signals from expert circles about “the far-reaching implications of digitality on all aspects of human existence,”³³ one can expect the shepherds of Christ’s Church to respond adequately and

neue Zusammenhänge zu stellen (“Recht auf Remix“), veranlassen zu Fragen über das Recht auf geistiges Eigentum. Neue Demokratiebewegungen, Freundschaftsnetze, Interessens- und Betroffenenengruppen, Forschungsnetzwerke und Diskussionsforen entstehen. Das Netz vervielfacht die Kommunikationsoptionen, es entgrenzt die erste Realität, überspringt räumliche und soziale Distanzen, es schafft neue Möglichkeiten virtueller Begegnung und Selbstdarstellung.” *Das Netz als sozialer Raum*, 11.

³⁰ It is hard to miss the reference made by the documentary’s authors to the libertarian ideas of John Rawls (†2002), the American political philosopher, one of the most influential thinkers of the 20th century. He became famous as a creator of the concept of justice as fairness, which he developed in his magnum opus: *A Theory of Justice* (1971—original version). John Rawls, *A Theory of Justice*. Revised Edition. Cambridge, MA: The Belknap Press of Harvard University Press, 1999.

³¹ *Medienkonzil. Bürgersein in der digitalen Welt* (11–12.05.2015), <http://www.medienkonzil.de>, accessed February 14, 2023.

³² *Medienkonzil. Bürgersein in der digitalen Welt*.

³³ “Given the pace of technological innovation and ‘the far-reaching implications of digitality on all aspects of human existence, the demand for prophetic appraisals of digital culture cannot be ignored.’ Phillips, Schiefelbein-Guerrero, and Kurlberg, *Defining Digital Theology*, 40.

promptly—of course, in close cooperation with competent lay persons—in order to achieve the desired effect of “synodal synergy.”³⁴ All this in order not to squander the opportunity to optimize (!) the mission of evangelization, yes, without underestimating the dangers and by giving resistance to negative phenomena. Referring directly to these premises, Johanna Haberer emphatically states that “the Web should not be an uncivilised space.”³⁵ Hence, it is clear that the great challenge facing the pastors of the Church—not without the intellectual support of academic bodies (especially representatives of practical theology)—is the ecclesiastical “design” and use of the space of the Internet for the proclamation of the gospel of God, community building and faith sharing.³⁶ With such a positive message today—it is worth noting—both Catholic,³⁷ and Protestant³⁸ representatives of theological thought come forward.

³⁴ “Synodality is lived out in the Church in the service of mission. *Ecclesia peregrinans natura sua missionaria est*; she exists in order to evangelize. The whole People of God is an agent of the proclamation of the Gospel. Every baptized person is called to be a protagonist of mission since we are all missionary disciples. The Church is called, in synodal synergy, to activate the ministries and charisms present in her life and to listen to the voice of the Spirit, in order to discern the ways of evangelization.” International Theological Commission, *Synodality in the Life and Mission of the Church* (2018), n. 53.

³⁵ Johanna Haberer, “Das Netz soll kein unzivilisierter Raum sein” [Interview mit Johanna Haberer über die Bayerische Kirche und digitale Medien], *evangelisch.de*, 25.08.2015, <https://www.evangelisch.de/inhalte/124055/25-08-2015/interview-mit-johanna-haberer-ueber-die-bayerische-kirche-und-digitale-medien>, accessed February 14, 2023.

³⁶ Cf. Haberer, “Das Netz.”

³⁷ Prof. Norbert Mette of TU Dortmund University sees the potential for desirable changes in the matter under discussion in the activities of young church members: “Mit der Kommunikation des Evangeliums wird nicht eine bloße Reproduktion überlieferter christlicher Lebensformen angezielt. Es geht vielmehr darum, einen Raum zu eröffnen, in dem das Evangelium entdeckt, erfahren und gelebt werden kann. [...] Soll es in diesem Prozess dazu kommen, dass auch die Kirche eine Rolle spielt [...] dann muss den Jugendlichen die Möglichkeit gegeben werden, ihren eigenen Beitrag zur Auferbauung des Volkes Gottes einzubringen [...] Dass auf diese Weise der Kirche Impulse gegeben werden, auch ihren eigenen Horizont zu weiten, wäre ein erfrischender und nachhaltiger Nebeneffekt—etwas, was genau auf der Linie des von Papst Franziskus ausgegebenen Programms einer ‘pastoralen Bekehrung’ liegt, wie er es in seinem vom Geist des Zweiten Vatikanischen Konzil geprägten Apostolischen Schreiben ‘Evangelii Gaudium’ ausgegeben hat.” Norbert Mette, “Kommunikation des Evangeliums—insbesondere mit der heranwachsenden Generation—im digitalen Zeitalter.” *Zeitschrift für Pastoraltheologie* 39, no. 1 (2019): 121–122.

³⁸ Expert Prof. Ilona Nord from the University of Würzburg states: “Die Frage nach politischer Partizipation von Kirche und Praktischer Theologie in Zeiten der Digitalisierung liefert der Institution wie der wissenschaftlichen Fachdisziplin einen starken Impuls. [...] Es gilt, praktisch-theologische Studien zu zentralen [...] Themenstellungen anzuregen bzw. solche für sie fortzuentwickeln. Hiermit verlassen beide, Kirche und Praktische Theologie, keinesfalls ihr angestammtes Gebiet, vielmehr werden sie dazu motiviert, ihre Traditionen und Reflexionen, ihre Ressourcen und Kompetenzen in den Dienst der Gestaltung einer digitalisierten Gesellschaft zu stellen. [...] Dies gilt für Gottesdienst und Verkündigung, für Bildung und Seelsorge.”

As far as the second field of pastoral responsibility is concerned, the Church should work intensely to eliminate harmful content on the Internet (violence, pornography) or toxic forms of communication (vulgarity, mudslinging, phishing for personal data). The shepherds of the Church should also not be indifferent to the problem of building the financial and political power of the large media corporations Facebook, Google, Apple, Microsoft, or Amazon,³⁹ and the resulting escape from state/international control of the spontaneous processes of development of artificial intelligence.⁴⁰ All this is of considerable importance in the context of creating/securing the right conditions for the digital Environment to increasingly become a Space of the Evangelization. This was also the intention of Prof. Johanna Haberer (nota bene, since 2018, a member of the Data Protection Ethics Committee of the Government of the Federal Republic of Germany)—and we are talking about her third initiative, worthy of at least signaling—when, in 2015, she formulated “Die zehn Gebote für die digitale Welt” [The Ten Commandments for the Digital World],⁴¹ a kind of ethical primer dedicated to today’s Internet users, in the form of a catalogue of social rules: rights and obligations.⁴²

Ilona Nord, “Öffentliche Kirche und Theologie in Zeiten der Digitalisierung,” in *Evangelisch-Lutherische Kirche in Bayern, Profil und Konzentration. Der landeskirchliche Zukunftsprozess (Dokumentation der Akademischen Konsultation 8. November 2018 in Nürnberg)*, 36–47, <https://puk.bayern-evangelisch.de/downloads/18-11-23-dokumentation-akademische-konsultation.pdf>, accessed February 14, 2023. In contrast, the great dynamic of the Church’s opening up to the “digital world” in recent years is noted by Prof. Thomas Schlag of the University of Zurich: “Kirche ist inmitten der digitalen Kultur auf vielfältige und innovative Art präsent. Dies galt in gewissem Sinn schon für die Zeit vor der Corona-Pandemie.” Schlag, “Von der Möglichkeit zur Selbstverständlichkeit,” 281.

³⁹ Cf. Haberer, “Das Netz.”

⁴⁰ “While in the case of Web 4.0 and Web 5.0 there are the concepts of artificial intelligence and virtual agent, in the case of Web 6.0 they aspire to be independent, to the extent that it cannot be described as ‘artificial.’” Król, “Evolution of Online Mapping,” 42.

⁴¹ The catalogue is as follows: “1) Du brauchst dich nicht vereinnahmen zu lassen!—Denn nur Gott hat Anspruch auf mein Leben. Sonst niemand. Auch nicht das scheinbar allwissende Netz. 2) Du sollst keine Unwahrheiten verbreiten!—so wie Du auch nichts mit dem Hinweis auf Gott beschwören sollst. 3) Du darfst den netzfreien Tag heiligen!—Eine Atempause ist wichtig, genau wie der Sonntag. 4) Du musst ein Datentestament machen!—Wer hat Zugriff auf Deine Daten, wenn Du nicht mehr da bist? 5) Du sollst nicht töten!—Bedenke, auch Worte und Fotos können Menschen zerstören! 6) Du brauchst keine schwachen Beziehungen eingehen!—Das Internet ermögliche Kontakte aller Arten. Aber welche Beziehungen bieten Geborgenheit und Nähe? 7) Du sollst nicht illegal downloaden!—Das ist Diebstahl am Eigentum anderer. 8) Du darfst nicht digitalen Rufmord betreiben! 9) Du hast Verantwortung für persönliche Daten anderer! 10) Du gestaltest die Gesellschaft, wenn du dich im Netz bewegst!”, <https://www.kirche-im-swr.de/beitraege/?id=20034>, accessed February 14, 2023.

⁴² “So wie die alten Gebote zunächst nicht einen arbeitsteiligen Staat regulieren, sondern das Verhalten des Einzelnen in der Gemeinschaft, so muss auch das vernetzte Leben im globalen Dorf zunächst die Rechte und Pflichten der Einzelnen in den Blick nehmen: das Recht auf freie Kommunikation und Partizipation an gesellschaftlichen Prozessen einerseits und die Pflicht, die

What is striking is the comprehensive nature of the catalogue and the universalism of the ethical and moral thought it contains. Suffice it to quote the last rule: “Du gestaltest die Gesellschaft, wenn du dich im Netz bewegst!” [You shape society when you move online]. Yes, much is explained by the author’s word of commentary/conclusion: it is, in fact, about “looking in the mirror of the ten principles of freedom, popularly known as the ‘decalogue,’ which still today delineates the foundations of Western culture.”⁴³

New Dimension of the Obligations of the Church’s Pastors Imposed by the Prescripts of Can. 822 §§ 1–3

Illuminating the legal issue, announced by the subtitle, it is appropriate to begin by directing the research attention to the systemic location of the title can. 822. The aforementioned canon, containing three paragraphs, opens the collection of prescripts devoted to the instruments of social communication in Book III of the CIC: “The Teaching Function of the Church”—and thus naturally correlates with the entry of can. 747, which initiates the group of introductory canons of the cited Book. Significantly and worthy of comment, even a cursory glance at the normative content of these paragraphs makes it possible to realize that the direct addressees of only the first two are the pastors of the Church, since the third paragraph is addressed to “all the Christian faithful,” especially the numerous (looking from today’s perspective) group of those who meet the criteria given here. The prescripts in question are as follows:

Can. 822 § 1. The pastors of the Church, using a right proper to the Church in fulfilling their function, are to endeavor to make use of the instruments of social communication.

§ 2. These same pastors are to take care to teach the faithful that they are bound by the duty of cooperating so that a human and Christian spirit enlivens the use of instruments of social communication.

§ 3. All the Christian faithful, especially those who in any way have a role in the regulation or use of the same instruments, are to be concerned to offer

Rechte und die Meinung des anderen zu würdigen andererseits.” Johanna Haberer, “Regeln fürs globale Dorf,” *medienpolitik.net* (05.08.2013), <http://www.medienpolitik.net/2013/08/medienethikregeln-furs-globale-dorf/>, accessed February 14, 2023.

⁴³ Haberer, “Regeln fürs globale Dorf.”

assistance in pastoral action so that the Church exercises its function effectively through these instruments.

In turn, the signaled introductory canon—doctrinally and structurally programmatic and consistently the point of reference for all the regulations of Book III—was given the wording by the ecclesiastical legislator:

“Can. 747 §1. The Church, to which Christ the Lord has entrusted the deposit of faith so that with the assistance of the Holy Spirit it might protect the revealed truth reverently, examine it more closely, and proclaim and expound it faithfully, has the duty and innate right, independent of any human power whatsoever, to preach the gospel to all peoples, *also using the means of social communication* [emphasis—A.P.] proper to it.”

The juxtaposition of the above code norms, expedient, as we shall see, in the specific context of the verification of the research thesis proposed here (the “New Dimension of the Obligations...” of the title), provides the opportunity to place this reflection—still in the realm of general assumptions—on a solid ecclesiological foundation. The proclamation of the Gospel and the proclamation of the Revealed Truth to all peoples, which is Jesus Christ the Redeemer, is the task and responsibility—by virtue of baptism and confirmation⁴⁴—of all members of the People of God, and not of the shepherds (bishops) alone. Yes, in the community animated by the Spirit of Christ (*communio*), it is the latter who are entrusted with a particular responsibility for the deposit of faith.⁴⁵ And this is due to the formal mission received from Christ, namely the *munus docendi*, which is exercised according to the logic of the *nexus communionis*: “preserving the bond of communion.”⁴⁶ But insofar as Jesus Christ entrusted the universal *munus propheticus* to the whole (!) *ecclesial communio*⁴⁷—as he formed it as a salvific community⁴⁸—this apostolic service to the Word of God must update the paradigm of the unifying power of the ministry of the Word of God.⁴⁹ And this implies a dynamic process of ecclesial (synodal) co-participation in this ministry *cum et sub Petro*, with the presupposition of “interactive reciprocity between the apostolic magisterium and the *sensus fidei* of all the faithful.”⁵⁰ It is no coincidence that in *Evangelii Gaudium*—the pontificate’s programmatic document—Pope Francis has already included key passages of the exhortation

⁴⁴ Cf. CIC, can. 759 § 2.

⁴⁵ Cf. CIC, cann. 747 § 1, 756 §§ 1–2.

⁴⁶ CIC, can. 749 § 2.

⁴⁷ Vatican Council II, Dogmatic Constitution on the Church *Lumen Gentium* (November 21, 1964), n. 12.

⁴⁸ Vatican Council II, Dogmatic Constitution on the Church *Lumen Gentium*, n. 1.

⁴⁹ CIC, can. 762: “Cum *Dei populus primum coadunetur verbo Dei vivi* [emphasis—A.P.], quod ex ore sacerdotum omnino fas est recipere, munus praedicationis magni habeant sacri ministri, inter quorum praecipua officia sit Evangelium Dei omnibus annuntiare.”

⁵⁰ Cf. Libero Gerosa, *Canon Law* (Münster: LIT Verlag, 2002): 35.

segment entitled “The entire people of God proclaims the Gospel”⁵¹ refers precisely to this truth: “In all the baptized, from first to last, the sanctifying power of the Spirit is at work, impelling us to evangelization. [...] The Spirit guides it in truth and leads it to salvation. As part of his mysterious love for humanity, God furnishes the totality of the faithful with an instinct of faith—*sensus fidei*—which helps them to discern what is truly of God. The presence of the Spirit gives Christians a certain connaturality with divine realities, and a wisdom which enables them to grasp those realities intuitively, even when they lack the wherewithal to give them precise expression.”⁵² Without entering into the meanders of the contemporary debate among theologians and canonists regarding—as Francis pointed out—the overcoming of the separation between an *Ecclesia docens* and an *Ecclesia discens*,⁵³ it should be clearly stated: the common/community responsibility for the ministry of the Word, exercised according to the different degrees of authority and according to the variety of special functions in Ecclesia, is demanded by the very logic of *communio*. And this is true at every level of ecclesial communion: from the Shepherd of Christ’s flock,⁵⁴ to whom the universal ministry of the proclamation of the word has been entrusted, to the lay faithful,⁵⁵ called to be witnesses of the Gospel, co-workers of the Bishop⁵⁶ and his presbyters in carrying out the service to the Word of God.⁵⁷

The canonical doctrine places this fundamental problematic within the horizon of the principle that the law organizes *hic et nunc* the activity of the

⁵¹ Francis, Apostolic Exhortation *Evangelii Gaudium* (November 24, 2013).

⁵² Francis, Apostolic Exhortation *Evangelii Gaudium*, n. 119.

⁵³ “The *sensus fidei* prevents a rigid separation between an *Ecclesia docens* and an *Ecclesia discens*, since the flock likewise has an instinctive ability to discern the new ways that the Lord is revealing to the Church.” Francis, *Address at the Ceremony Commemorating the 50th Anniversary of the Institution of the Synod of Bishops* (October 17, 2015), http://www.vatican.va/content/francesco/en/speeches/2015/october/documents/papa-francesco_20151017_50-anniversario-sinodo.html. Accessed February 14, 2023. See also Ilona Riedel-Spangenberg, “Der Verkündigungsdienst (munus docendi) der Kirche und der Glaubenssinn des Volkes Gottes (sensus fidelium),” in *Wege der Evangelisierung. Heinz Feilzer zum 65. Geburtstag*, ed. Andreas Heinz, Wolfgang Lentzen-Dies and Ernst Schneck (Trier: Paulinus Verlag, 1993): 193–206; Andrzej Pastwa, “*Sensus fidei fidelium*. Legal and Ecumenical Reflection,” in *Remaining United in Diversity*, ed. Andrzej Pastwa, *Ecumeny and Law*, vol. 6 (2018): 225–247; Thomas Schüller, “Kirchenrechtliche Spielräume und Begrenzungen synodaler Prozesse am Beispiel des ‘Synodalen Weges’ in Deutschland,” *Synodalität, Theologisch-Praktische Quartalschrift* 170 (2022): 347–355.

⁵⁴ Cf. CIC, can. 756 § 1.

⁵⁵ CIC, can. 225 § 2: “According to each one’s own condition, they are also bound by a particular duty to imbue and perfect the order of temporal affairs with the spirit of the gospel and thus to give witness to Christ, especially in carrying out these same affairs and in exercising secular functions.”

⁵⁶ Cf. CIC, can. 756 § 2.

⁵⁷ Cf. Gerosa, *Canon Law*, 82.

Church.⁵⁸ Thus the Supreme Legislator, who is at the same time the teacher of the faith, systematically refreshes and enlivens—whether personally or through subordinate organs (especially the dicasteries of the Roman Curia)—the legislated norms (in the present case: the canons of the CIC) by clarifying their premises and reasons (especially new premises and new reasons). The idea is that, by providing authoritative explanations and comments in the various enunciations, the legal efficacy of these norms is ensured and their functionality is optimized. Similarly, with the measure determined by the hierarchical structure of the Church (which presupposes the implementation of the indications/decisions of the Shepherd of the universal Church), the activity of the particular legislator—teacher of the faith to the part of God’s people entrusted to him—should be seen. If, therefore, we ask, what impels us to take regulatory action: updating and activating, in terms of stimulating the *munus propheticus* in the aforementioned two planes of ecclesial life? The answer is obvious—to dynamize the solidarity action of the faithful (in the religious and ethical fields), directed towards the evangelizing goal. On the one hand, it will always be a question of safeguarding the clarity and credibility of the communal witness of the baptized; on the other hand, it will be a question of the desirable generation of new “impulses” to stimulate activity, yes, also overcoming pastoral inertia.

It is clear that such motivation of the faithful for activities that are indispensable today (because determined by the “signs of the times”)—even when these can be typified and generalized—does not necessarily imply the establishment of new norms, establishing an obligation. The nature of Church law and the spirit of Church law are more in keeping with behavior guided by a sense of responsibility than by precepts. In fact, even mere advice or encouragement (whether still ethical or already legal) will serve its purpose when it stimulates and promotes appropriate action while protecting the space of freedom. This regularity is well reflected in the thought of Prof. Remigiusz Sobański: “The rules of communal behavior arising from faith find their bearing in the preaching of the Church and fulfil their proper function in it. It would be a distortion to conceive of them [...] as an instrument of conducting (e.g., as a means of social engineering) or of restricting the freedom behind religious or ethical decisions.”⁵⁹

It is worth taking a closer look at exemplary implementations of these assumptions in the title context of the united efforts of pastors (church legislators) and communities (which they lead) so that “a human and Christian spirit

⁵⁸ The aforementioned principle safeguards and promotes the effectiveness of the “here and now” of the Church’s actions, understood both dogmatically (unity of the faith, authenticity of the sacraments) and pastorally (legibility of the Church’s witness). Cf. Sobański, “Omnis institutio,” 214.

⁵⁹ Remigiusz Sobański, “Zasięg normy kanonicznej,” *Prawo Kanoniczne* 34, no. 3–4 (1991): 46.

enlivens the use of instruments of social communication.”⁶⁰ In 2012, the German Bishops’ Conference issued a two-page document entitled. “Social Media Guidelines für kirchliche Mitarbeiter. Empfehlungen und Muster” [Social Media Guidelines for Church Workers. Recommendations and Benchmarks].⁶¹ This document became the reference for the “Social-Media-Codex”⁶² developed by the Diocese of Augsburg in 2017. In its ten points, which set out the rules for presence and activity in various areas of social media, the Codex sets out an ethical and legal framework for the use of social media in various fields of pastoral activity, including on the plane of (new) evangelization. The section preceding the presentation of these principles reads: “This ‘Social Media Code’ is intended to provide binding regulations. [...] The Code is *legally binding* [emphasis—A.P.], in particular for ministers in pastoral, educational and associational work, as well as for all administrative staff who use social media in an official context.”⁶³ The legal and not just ethical nature of the Code is underlined by the rules/regulations formulated in points 7. and 9. Point 7 states, among other things: “Do not take part in activities or projects that are incompatible with Catholic doctrine and morals, violate human dignity or interfere with the sphere of personality. As a breach of official duties, these offences may result in legal consequences.”⁶⁴ In turn, point 9 contains the standard: “You must actively guarantee data protection, personal rights and copyright.”⁶⁵ How to read the normative profile of this last regulation? It is clear that such violations of the law—in addition to unpleasant official consequences—potentially expose the perpetrator to criminal sanctions under state law.

It is interesting, but also significant, that the normative part of the German “Social-Media-Codex” opens with a kind of ideological “key” in the form of a motto—an excerpt from the first Message of Pope Francis for the 48th World Day of Social Communications in 2014, entitled “Communication at the Service of an Authentic Culture of Encounter.” The “synodally” sounding passages present themselves as follows: “A culture of encounter demands that we

⁶⁰ CIC, can. 822 § 2.

⁶¹ Deutsche Bischofskonferenz, “Social Media Guidelines für kirchliche Mitarbeiter. Empfehlungen und Muster” (2012), https://www.dbk.de/fileadmin/redaktion/diverse_downloads/presse/2012-109b-Empfehlungen-Social-Media-Guidelines.pdf, accessed February 14, 2023.

⁶² Bistum Augsburg, “Social-Media-Codex für Mitarbeiter/-innen in der Diözese Augsburg” (2017), https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwiX9-Xq7_b-AhUIgosKHeO1Dm8QFnoECAQQAQ&url=https%3A%2F%2Fbistum-augsburg.de%2Fcontent%2Fdownload%2F161530%2Ffile%2FSocial-Media-Codex-Flyer-2017.pdf&usq=AOvVaw3wj5GlceaK0gNbGtjhHb_. Accessed February 14, 2023.

⁶³ Bistum Augsburg, “Social-Media-Codex.”

⁶⁴ Bistum Augsburg, “Social-Media-Codex,” n. 7. As noted earlier in the document, this is a violation of the norms of internal Church labour law: “Grundordnung des kirchlichen Dienstes im Rahmen kirchlicher Arbeitsverhältnisse.” Bistum Augsburg, “Social-Media-Codex,” n. 4.

⁶⁵ Bistum Augsburg, “Social-Media-Codex,” n. 9.

be ready not only to give, but also to receive. Media can help us greatly in this, especially nowadays, when the networks of human communication have made unprecedented advances. The Internet, in particular, offers immense possibilities for encounter and solidarity. This is something truly good, a gift from God.”⁶⁶

The same motto was used by the Australian Catholic Bishops Conference in the introductory section of its high-profile 20-page 2019 document “Making It Real: Genuine Human Encounter in Our Digital World.”⁶⁷ The importance of this document was highlighted by Francis himself in his 2020 encyclical “Fratelli Tutti”—first citing the same passage from Message (2014) and then pointing to the Australian bishops’ extensive and pertinent analysis of the dangers lurking online.⁶⁸ Of course, the document does more than just show the dark side of the Internet. “We are called not just to be inhabitants of this new digital world, but active citizens shaping it”⁶⁹—proclaims the introduction preceding a proclamation of ethical (and legal) principles, accompanied by appropriate commentary. These principles, which are intended by the authors to “guide us to a more just digital space,”⁷⁰ are edited in simple terms: “(1) Make your online presence one of dignity and respect; (2) Be present to others in the real and virtual worlds; (3) Take care of yourself and others online; (4) Every community should promote digital literacy; (5) We cannot leave our sisters and brothers behind; (6) We must protect the personal data of citizens; (7) We call for transparency and accountability in all online systems.”⁷¹

But that is not all. In the document in question, the Australian bishops—again on the basis of the 2014 Message—formulate a message about the need to add to the catalogue of human rights. “Our Church has an important role to play in building the city of God in reality and online. Keeping the doors of our churches open also means keeping them open in the digital environment so that

⁶⁶ Francis, “Message for the 48th World Communications Day” (June 1, 2014),

https://www.vatican.va/content/francesco/en/messages/communications/documents/papa-francesco_20140124_messaggio-comunicazioni-sociali.html, accessed February 14, 2023.

⁶⁷ Australian Catholic Bishops Conference, “Making It Real: Genuine Human Encounter in our Digital World” (November 2019), 4, <https://socialjustice.catholic.org.au/wp-content/uploads/2019/11/Social-Justice-Statement-2019-20.pdf>, accessed February 14, 2023.

⁶⁸ “We need constantly to ensure that present-day forms of communication are in fact guiding us to generous encounter with others, to honest pursuit of the whole truth, to service, to closeness to the underprivileged and to the promotion of the common good. As the Bishops of Australia have pointed out, we cannot accept ‘a digital world designed to exploit our weaknesses and bring out the worst in people.’” Francis, *Encyclical Letter on Fraternity and Social Friendship “Fratelli Tutti”* (October 3, 2020), n. 205, https://www.vatican.va/content/francesco/en/encyclicals/documents/papa-francesco_20201003_enciclica-fratelli-tutti.html, accessed February 14, 2023.

⁶⁹ Australian Catholic Bishops Conference, “Making It Real,” 13.

⁷⁰ Australian Catholic Bishops Conference, “Making It Real,” 12.

⁷¹ Australian Catholic Bishops Conference, “Making It Real,” 13–15.

people, whatever their situation in life, can enter, and so that the Gospel can go out to reach everyone. We are called to show that the Church is the home of all.”⁷² And it is in this context that the words of appeal are made: since digital inclusion appears today as necessary for basic participation in society, it should be considered a human right (!).⁷³ This standpoint of the Australian Catholic Bishops Conference is not an isolated one. The bishops refer in the cross-reference to the declarations of the Australian Human Rights Commission, among which is this declaration: “[...] the right to freedom of expression includes a right of access to the Internet.”⁷⁴

It is clear that the German and Australian documents—although they do not invoke any norm of the Code of Canon Law—meet the *ratio legis* of can. 822, and by no means can they be denied—if not in whole, then in part—the character of legal normative acts. However, this is not the issue at hand. By posing the title question: “a new dimension of the obligations of the Church’s shepherds,” we are in fact asking about the optimal choice of the way to make the digital world, in the near future possible, a common/community space for the evangelizing activity of the faithful: clergy and laity. Especially in contemporary realities—when the ecclesial “sign of the times” is the growing (self-)awareness that “a synodal Church walks forward in communion to pursue a common mission through the participation of each and every one of her members.”⁷⁵ Indeed, the ministry of pastors—“teachers of the faith” and “rulers of the Church”⁷⁶—must

⁷² Australian Catholic Bishops Conference, “Making It Real,” 16. Cf. Francis. “Message for the 48th World Communications Day.”

⁷³ Here is the full and literal form of this appeal: “It is clear that social divisions are being replicated online. More worryingly, as essential services continue to shift online, digital inclusion becomes mandatory for basic participation in society. It should therefore be considered a human right. This is especially important in the context of e-government, where the welfare of the most vulnerable is at stake.” Australian Catholic Bishops Conference, “Making It Real,” 8.

⁷⁴ It is worth pointing out the wider context of the Commission’s statement: “New technologies are causing us to rethink our understanding of particular human rights. For example, there has been increasing attention to the implications of the internet, and its role in modern life, for freedom of expression. The former UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression said: ‘By vastly expanding the capacity of individuals to enjoy their right to freedom of opinion and expression, which is an enabler of other human rights, the Internet boosts economic, social and political development, and contributes to the progress of humankind as a whole.’ This leads some to claim that the right to freedom of expression includes a right of access to the Internet.” Australian Human Rights Commission, *Human Rights and Technology* (Sydney: AHRC, 2018): 17. See also: <https://tech.humanrights.gov.au/downloads>, accessed February 14, 2023.

⁷⁵ Synod of Bishops, *For a Synodal Church: Communion, Participation, and Mission. Vademecum for the Synod on Synodality* (September 7, 2021), n. 1.3 [“What is the aim of this Synod? Objectives of the Synodal Process”], <https://press.vatican.va/content/salastampa/en/bollettino/pubblico/2021/09/07/210907b.html>, accessed February 14, 2023.

⁷⁶ CIC, can. 212 § 1.

today be viewed through the lens of the idea and praxis of synodality.⁷⁷ The synodal process, launched by Pope Francis on 9 and 10 October 2021, is to lead as the theme for this Synod proclaims: “Towards a Synodal Church: Communion, Participation, and Mission.” And the aim of the “synodal path” is the widespread participation of all (!) faithful in shaping the life and evangelizing mission of the Church.

It is easy to recognize in this epochal event an echo of the realization of the subjective rights of the faithful from the catalogue of fundamental rights in Book III of the CIC entitled “The Obligations and Rights of All the Christian Faithful.”⁷⁸ With the distinctive in terms of the systemic “programming” of the freedom of opinion and counsel, the prescript of can. 212 § 3: “According to the knowledge, competence, and prestige which they possess, they have the right and even at times the duty to manifest to the sacred pastors their opinion on matters which pertain to the good of the Church and to make their opinion known to the rest of the Christian faithful, without prejudice to the integrity of faith and morals, with reverence toward their pastors, and attentive to common advantage and the dignity of persons.”⁷⁹ A specific, evangelizing profile was given to this legal statement by the Pontifical Council for Social Communications in its instruction “Aetatis Novae” as early as 1992: “Partly—states the Commission—this is a matter of maintaining and enhancing the Church’s credibility and effectiveness. But, more fundamentally, it is one of the ways of realizing in a concrete manner the Church’s character as communion.”⁸⁰ And in

⁷⁷ “Synodality is not so much an event or a slogan as a style and a way of being by which the Church lives out her mission in the world.” Synod of Bishops, *For a Synodal Church*, 1.3.

⁷⁸ CIC, cann. 208–223.

⁷⁹ CIC, can. 212 § 3. In a recent commentary, Prof. Rüdiger Althaus has interestingly identified the addressees and purpose of the standard of can. 212 § 3: “[Adressaten]: (–) *scientia*: hier ist an Wissenschaftler und Fachexperten zu denken, die über ein gediegenes fachliches Wissen verfügen, u.a. auch im anthropologischen, administrativen, ökonomischen, handwerklichen oder technischen Bereich; (–) *competentia*: eine besondere fachliche oder sachliche Zuständigkeit, mit der sie Verantwortung tragen; (–) *praestantia*: eine herausragende Stellung, z.B. der Inhaber eines leitenden Kirchenamtes (Pfarrer oder Dechant), Sprecher eines Pfarrpastoralrates, Leitung einer Tageseinrichtung für Kinder, die für Personen oder Personengruppen besondere Verantwortung tragen. [...] [Zwecke]: Solche Beratungen sollen dem Wohl der Kirche (*bonum Ecclesiae*) dienen. Der damit eröffnete, weite Horizont umfasst zwei Dimensionen: (–) kirchenimmanente Ziele wie die Seelsorge einschließlich innerkirchliche Strukturen; (–) Sendung der Kirche in der und in die Welt, um die Gesellschaft mehr und mehr mit der Botschaft des Evangeliums zu durchdringen (LG Art. 37 Abs. 4).” Rüdiger Althaus, “Kommentar zum c. 212,” in *Münsterischer Kommentar zum Codex Iuris Canonici* (Essen: Ludgerus Verlag, Lfg. Januar 2022), 212/1–3.

⁸⁰ Pontifical Council for Social Communications, “Pastoral Instruction on Social Communications *Aetatis Novae*” (February 22, 1992), n. 10, https://www.vatican.va/roman_curia/pontifical_councils/pccs/documents/rc_pc_pccs_doc_22021992_aetatis_en.html, accessed February 14, 2023. In the next issue opening chapter: “Media at the service of a new evangelization”

Ethics and Communications (2000), the same Commission recommends Church wide activities for communication training.⁸¹ The purpose of these activities is clear: “Pastors should encourage use of media to spread the Gospel (cf. Code of Canon Law, Canon 822.1).”⁸²

Finally, it seems expedient and useful to affirm the theses of Prof. Wilhelm Rees, recently formulated in a study with the somewhat provocative title: “Präsent oder digital? Lässt Kirchenrecht eine Digitalisierung in der pastoralen Praxis zu?” [Present or Digital. Does Ecclesiastical Law Allow Digitization in Pastoral Practice?].⁸³ It is fitting to subscribe to the three conclusions of this eminent canonist, to add one more of my own at the end.

1. Digitalization promotes the priesthood of all the baptized, since digital preaching formats presuppose “teamwork”; the faithful can thus more easily contribute and realize their responsibility in the Church, which they accepted with their baptism and confirmation.
2. In the area of social communication media, ecumenical cooperation is becoming indispensable; it can and should be consistently expanded, as should interreligious dialogue.
3. The time has come to adapt the existing canonical norms to the requirements of the Church’s evangelizing mission in the digital age; the new regulations should affirm personal freedom, after all, the pastors-legislators of the Church cannot abstract from the fact that the media are gifts of God.⁸⁴
4. The promotion of communication of the members of the People of God in the media and the accompanying media education/formation of a broad spectrum of the faithful (clergy, religious, lay catechists, those involved in ecclesial movements and associations, etc.) and, above all, the creation of an ecclesiastical community in the media. The response to the challenges of the “digital

a proclamation appears: “Today’s evangelization ought to well up from the Church’s active, sympathetic presence within the world of communications,” n. 11.

⁸¹ “The Church would be well served if more of those who hold offices and perform functions in her name received communication training. This is true not only of seminarians, persons in formation in religious communities, and young lay Catholics, but Church personnel generally. Provided the media are ‘neutral, open and honest,’ they offer well-prepared Christians ‘a frontline missionary role’ and it is important that the latter be ‘well-trained and supported.’ Pastors also should offer their people guidance regarding media and their sometimes discordant and even destructive messages (cf. Canon 822.2, 3). Pontifical Council for Social Communications, *Ethics and Communications* (June 4, 2000), n. 26, https://www.vatican.va/roman_curia/pontifical_councils/pccs/documents/rc_pc_pccs_doc_20000530_ethics-communications_en.html, accessed February 14, 2023. Cf. Pontifical Council for Social Communications, *The Church and Internet* (February 22, 2002), n. 6, https://www.vatican.va/roman_curia/pontifical_councils/pccs/documents/rc_pc_pccs_doc_20020228_church-internet_en.html, accessed February 14, 2023.

⁸² Pontifical Council for Social Communications, n. 26.

⁸³ Wilhelm Rees, “Präsent oder digital? Lässt Kirchenrecht eine Digitalisierung in der pastoralen Praxis zu?” in *Digitalisierung—Religion—Gesellschaft*, 199–218.

⁸⁴ Rees, “Präsent oder digital?,” 212–213.

age” is nowadays an urgent duty and, at the same time, a great responsibility for the shepherds of the Church.

* * *

The digital environment is now part of the everyday experience of many people. This observation gave Pope Benedict XVI the impetus to outline in his *Message for the 47th World Communications Day* (2013) a programmatic thought so relevant today, which can be put as follows: Social networks as a new “agora” is an important space for evangelization.⁸⁵ May the papal words, to which the pastors of the Church, addressees of the prescripts of can. 822 CIC, should carefully listen to, summarize the above reflections. “Social networks, as well as being a means of evangelization, can also be a factor in human development. [...] In the digital world there are social networks which offer our contemporaries opportunities for prayer, meditation and sharing the word of God. But these networks can also open the door to other dimensions of faith. [...] In our effort to make the Gospel present in the digital world, we can invite people to come together for prayer or liturgical celebrations in specific places such as churches and chapels. There should be no lack of coherence or unity in the expression of our faith and witness to the Gospel in whatever reality we are called to live, whether physical or digital. When we are present to others, in any way at all, we are called to make known the love of God to the furthest ends of the earth.”⁸⁶

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Andrzej Pastwa

L'environnement numérique comme espace d'activité évangélisatrice Une nouvelle dimension des obligations découlant des dispositions can. 822 du Code de droit canonique

Résumé

Les énonciations papales contemporaines se caractérisent par une approche ecclésiale affirmée – active et optimiste, bien que consciente des dangers et non dénuée d'esprit critique – des opportunités/défis de l'«ère numérique». Si l'on suit ces indications, qui sont gonflées de la préoccupation de l'efficacité de la mission évangélisatrice dans les nouvelles réalités/contextes socio-(technologiques)-culturels, et que l'on garde en même temps à l'esprit la règle selon laquelle la pratique juridique de l'Église doit prendre en compte les conditions actuelles de l'existence humaine, il devient clair que cet horizon des «signes des temps», esquissé avec autorité, lance un défi aux sciences théologiques, y compris la canonologie. En ce qui concerne cette dernière, abstraction faite du besoin souvent urgent de changements/ajustements législatifs (étant donné la spécificité des diverses régions du monde – surtout au niveau du droit particulier), le rôle des experts dans la présentation d'une interprétation renouvelée, adéquate *hic et nunc* de certains canons essentiels du Code de droit canonique reste inestimable. On peut soutenir que parmi ces canons figurent les dispositions du can. 822. D'où la tentative, dans cet article, de délimiter le contenu de la problématique en deux temps – selon les étapes de recherche annoncées dans le titre : (1) L'environnement numérique comme espace indispensable à l'activité évangélisatrice ; (2) La nouvelle dimension des devoirs des bergers de l'Église imposée par le can. 822 §§ 1–3.

Mots-clés : «signes des temps», communication et communauté à «l'ère numérique», éléments juridiques de la prédication de la Parole, tâches des bergers-législateurs de l'Église, rangement et interprétation du «nouvel espace de vie», optimisation de la mission évangélisatrice de l'Église

Andrzej Pastwa

L'ambiente digitale come spazio per le attività di evangelizzazione Una nuova dimensione degli obblighi derivanti dalle disposizioni del can. 822 del codice di procedura penale

Sommario

Gli enunciati papali contemporanei sono caratterizzati da un approccio ecclesiale assertivo – attivo e ottimista, pur consapevole delle minacce e non acritico – verso le opportunità/sfide dell' "era digitale". Se seguiamo queste indicazioni, piene di preoccupazione per l'efficacia della missione evangelizzatrice nei nuovi contesti/realità socio-(tecnologico-)culturali, e teniamo presente allo stesso tempo la regola secondo cui la prassi giuridica della Chiesa deve tenere conto delle attuali condizioni dell'esistenza umana, diventa chiaro che questo orizzonte autorevolmente delineato dei "segni dei tempi" pone una sfida alle scienze teologiche, compreso la scienza canonistica. Quanto a quest'ultima – a parte la necessità, spesso urgente, di apportare modifiche/

aggiustamenti legislativi (tenendo conto delle specificità delle varie regioni del mondo, soprattutto a livello di diritto particolare), resta prezioso il ruolo strumentale degli esperti nel presentare una rinnovata e adeguata interpretazione *hic et nunc* di alcuni canoni chiave del *Codice di Diritto Canonico*. Si può sostenere che tra questi rientrano le disposizioni del can. 822. Pertanto, questo articolo tenta di delineare il merito della problematica in due tappe, secondo le fasi di ricerca annunciate nel titolo: (1) L'ambiente digitale come spazio indispensabile per le attività di evangelizzazione; (2) Una nuova dimensione dei compiti dei pastori della Chiesa imposta dalle disposizioni del can. 822 §§ 1–3.

Parole chiave: “segni dei tempi”, comunicazione e comunità nell’“era digitale”, elementi giuridici della predicazione della Parola, compiti dei pastori-legislatori ecclesiali, ordinamento e interpretazione del “nuovo spazio della vita”, aggiornamento della missione evangelizzatrice della Chiesa



Elżbieta Szczot

The John Paul II Catholic University of Lublin, Institute of Canon Law

<https://orcid.org/0000-0002-8360-4250>

Between Entitlement and Limitation of the Right to Sacraments during the Sars-CoV-2 Pandemic Internet as a Means of Transmission and Communication with the Faithful

Abstract: The article presents the right of the faithful to access sacraments and restriction of the right resulting from the outbreak of the SarsCov-2 virus pandemic in 2020. The article also presents the scope of the entitlement to the spiritual goods of the Church, which is guaranteed by the norm of canon 213 of the 1983 Code of Canon Law, as well as the spatial limits for gatherings introduced by state law and bishop's decrees. Access to the Internet and the preservation of online communication has somehow made it possible during the ongoing social isolation to establish communication between ministers and the faithful. Therefore, it was easier to survive the restrictions on access to the Holy Sacraments.

Keywords: the right of the faithful, pandemic, restrictions, Internet

The purpose of undertaking the titular issue is to show the existing tension occurring between the right of the faithful to the sacraments and the restriction on participation in them due to the SarsCov-2 virus pandemic. Internet access made it possible to establish communication between ministers and the faithful during the then ongoing social isolation, making it easier for them to survive the restrictions on access to places of worship and the inability to be physically present in the places where the sacraments are celebrated, especially in the Holy Mass.

The Right of the Faithful to the Sacraments

The faithful's right to the sacraments has its source in the words of Christ that can be found in the Gospel according to St. John (10,10): "I have come that they [the sheep] may have life and have it in abundance." Until the middle of the twentieth century, the quoted Jesus's statement was not the subject of special analysis aimed at concern for the growth of the spiritual wealth of the faithful. This became possible only during the Second Vatican Council in connection with the development of a renewed concept of the Church as one people of God, and the subsequent definition of the fundamental rights of the faithful. Promulgating the Code of Canon Law in 1983, the Church legislature introduced in Canon 213 a guarantee of the right to receive the word of God and the sacraments for all faithful.¹ The right, rooted in the sacrament of baptism, was reflected in the catalog of duties and rights of all faithful.

An important part of the message of Vatican II was the doctrine of the Church, or ecclesiology. The concept developed within its framework is *communio*, used to define a community of people with God, in which God acts through the Holy Spirit.² This community is constituted by one people of God, and all its members form the Mystical Body of Christ, since "God, however, does not make men holy and save them merely as individuals, without bond or link between one another. Rather has it pleased Him to bring men together as one people, a people which acknowledges Him in truth and serves Him in holiness" (*Lumen gentium* 9:1). Such a vision of the Church-community has a biblical source.³ Quoting St. Paul, and referring to the teachings of Pope Pius XII,⁴ the Council Fathers presented the Church as the Body of Christ, which consists of various members performing multiple functions, but belonging to one body.⁵ The Word proclaimed by Jesus was ecclesia-forming and, on the one hand,

¹ Canon 213 *Codex Iuris Canonici* 1983 (further referred to as: CIC/1983 = Code of Canon Law): *The Christian faithful have the right to receive assistance from the sacred pastors out of the spiritual goods of the Church, especially the word of God and the sacraments; see: canon 16 Codex Canonum Ecclesiarum Orientalium* (1990): *Ius est christifidelibus, ut ex spiritualibus Ecclesiae bonis, praesertim ex verbo Dei et sacramentis, adiumenta ab Ecclesiae Pastoribus accipiant.*

² See *Lumen Gentium* (Second Vatican Council, Dogmatic Constitution on the Church *Lumen Gentium*, further referred to as: LG) 2, 9. Cf. Andrzej Czaja, "Kościół jako eucharystyczna Komunia. Koncepcja Józefa Kardynała Ratzingera," in *Ineffabile Eucharistiae donum*, ed. Tadeusz Dola (Opole: Opolska Biblioteka Teologiczna, vol. 19, 1997), 57–70.

³ Rz 12, 4–6.

⁴ Pius PP XII, Litterae encyclicae *Mystici Corporis Christi* (June 29, 1943), *Acta Apostolicae Sedis* (further referred to as: AAS) 35 (1943): 193–240.

⁵ *Just as a body, though one, has many parts, but all its many parts form one body, so it is with Christ*, 1 Cor 12, 12–31; Ef 4,4–16; 5, 21–32; Kol 1, 24; LG 8, 1; 32, 1.

proclaimed the Gospel and was a form of revelation, on the other hand, was a call to faith and the formation of a community of believers gathered around the Person of the Divine Messenger, which is the beginning of the Church.⁶ For the Word has the power to create community and sustain it. Through the reception of the Word in faith, there is inclusion in the process of own salvation, and this is expressed in the reception of the sacraments, since it is in the sacraments that the mystery of man was incarnated.⁷

Word and sacrament are two essential building blocks of the Church, with ecclesiastical-legal significance.⁸ The preached Word and the administered sacraments are the two means of the redemptive work of Jesus Christ, and both have the power to create and sustain the community. The Church as a community, *communio*, carries out its tasks and ministry through the preaching of the Word of God and the administration of the sacraments, thus accomplishing sanctification of Man. The faithful are entitled by virtue of baptism to participate in the threefold mission fulfilled by Christ and His Church—prophetic, pastoral, and royal—and spiritual goods are the basis for participation in it (in this mission) for all the faithful and each individual. The Dogmatic Constitution on the Church specifies that the lay faithful, like other Christians, have the right to receive these goods of the Church “in abundance.”⁹ The entitlement to the Word and sacraments is therefore not only to the minimum extent, such as the right to the Eucharist on Sunday, but to the full extent, including

⁶ See: Marian Rusecki, “Eklezjotwórczy wymiar Eucharystii,” in *Jeżus eucharystyczny*, ed. Marian Rusecki and Mieczysław Cisło (Lublin: KUL, 1997), 168.

⁷ Remigiusz Sobański, “Słowo i sakrament jako czynniki kształtujące prawo kościelne.” *Prawo Kanoniczne: kwartalnik prawno-historyczny* 16, no. 1–2 (1973), 3–15; cf. can. 840 of CIC/1983.

⁸ The first canonist to point to and justify the legal structure of the Church in Word and Sacrament was Klaus Mörsdorf; see the same, “Wort und Sakrament als Bauelemente der Kirchenverfassung,” *Archiv für Katholisches Kirchenrecht* 134 (1965): 72–79; Mörsdorf identifies the legal structure of the Church as an essential element of its visibility, and since the law can only regulate what is revealed externally, therefore the sacramental signs of the Church are the area where the legal structure of the Church has its place; cf. Ludger Müller, “Die Kirche als Wurzelsakrament,” in *Ecclesia a sacramentis: theologische Erwägungen zum Sakramentenrecht*, ed. Reinhild Ahlers, Libero Gerosa, and Ludger Müller (Paderborn: Bonifatius Buch, Druck, Verlag, 1992), 132; See also: Libero Gerosa, “Charisma und Recht, Kirchenrechtliche Überlegungen zum ‘Urcharisma’ der neuen Vereinigungsformen in der Kirche” (Trier: Johannes Verlag, 1989), 120–122; Peter Krämer, *Kirchenrecht I. Wort-Sakrament—Charisma* (Stuttgart–Berlin–Köln; Kohlhammer, 1992), 20–21.

⁹ See J 10,10; LG 37,1; cf. can. 682 of CCL, according to which the faithful had the right to use them not *abundanter*, but only as an aid *ad salutem necessaria*; John Flader, “The Right of the Faithful to the Spiritual Goods of the Church: Reflections on Canon 213,” *Apollinaris* 65 (1992): 377–378; Bronisław Wenanty Zubert, “Prawo do sakramentów świętych,” *Studia Prawnicze KUL* 3 (35), 118.

on weekdays.¹⁰ The principle expressed in can. 213 applies to all the faithful and is universal in nature. It creates a legal basis for action and defines the legal relationship to those persons who are their ministers.¹¹ The legislator in can. 843 § 1 clarifies this general rule by indicating that ministers cannot refuse the sacraments to those faithful who properly ask for them, are properly disposed to receive them, and are not prohibited by law from receiving them.¹² The right to the sacraments refers to either administering or receiving them, and the wording regarding sacred ministers indicates the relationship of the person with a pastoral office to the sacramental subject.

The sacrament of the Eucharist holds a special place in the spiritual goods of the faithful and the sacraments received, since it is the summit and source of all Christian worship and life.¹³ The essence of the community of people with God is its unity, which it achieves in the Eucharist, forming the “Eucharistic community.” The last Council put this issue in a new perspective by pointing out that the Eucharist *is the source and summit of the entire Christian life* (see CL 10; CC 11). In the Eucharist, the basis of the Church’s existence as the continuation of the work of salvation of Jesus Christ through His presence in the world is concretized in a special way. The community of the faithful in union with Christ is fulfilled precisely in the celebration of the Eucharist. Participation in it constitutes the Church as the Body of Christ, which lives and grows whenever the Eucharist is celebrated.¹⁴ Jesus Himself speaks of eating His Body

¹⁰ This is the opinion of Pree, interpreting can. 213 in the context of the conciliar *abundanter* (“Das Recht auf die Heilsgüter (c. 213 CIC),” in *Heiliger Dienst* 4 (1994): 273–291, 274). This opinion should be agreed with, but not in the sense that every pastor is legally obligated to celebrate the Eucharist daily. While the legislator encourages priests to celebrate the Eucharistic sacrifice daily (can. 276 § 2, 20), it does not legally obligate them to do so. Flader, *The Right*, 378–379.

¹¹ Cf. Robert J. Kaslyn SJ, “The Obligations and Rights of all the Christian Faithful,” in *New Commentary on the Code of Canon Law. Commissioned by The Canon Law Society of America* ed. John. P. Beal, James A. Coriden, and Thomas J. Green (New York, N.Y.–Mahwah, N.J.: Paulist Press, 2000), 245–290. Cf. Daniel Cenalmor, “Obligaciones y derechos de los fieles, c. 213,” in *Comentario exegetico al Código de Derecho Canónico*, ed. Angel Marzoa, Jorge Miras, and Rafael Rodríguez–Ocana, vol. II, 91–98 (Pamplona: EUNSA, 1996), 91–98.

¹² Can. 843 § 1 CIC/1983: *Ministri sacri denegare non possunt sacramenta iis qui opportune eadem petant, rite sint dispositi, nec iure ab iis recipiendis prohibeantur.*

¹³ On the centrality of the sacrament of the Eucharist in the Church and in the community in the documents of the Second Vatican Council, see LG 11.1 and 26.1; PO (Second Vatican Council, Decree *Presbyterorum ordinis*) 5.2; CD (Second Vatican Council, Decree *Christus Dominus*) 30/2. Pope John Paul II dedicated his encyclical *Ecclesia de Eucharystia*, (April 17, 2003), AAS 95(2003), 433–475. Pope Benedict XVI convened the 11th synodal session on the topic: “The Eucharist: Source and Summit of the Life and Mission of the Church.” The result of the Synod’s work is the exhortation: *de Eucharistia vitae misionisgue Ecclesiae fonte et culmine Sacramentum caritatis* (February 22, 2007), AAS 99 (2007): 105–180, see no: 73, 75.

¹⁴ Reinhild Ahlers, “Eucharistie und Kirche. Kirchenrechtliche Implikationen einer eucharistischen Ekklesiologie,” in *Theologisch—praktische Quartalschrift* 1 (1992): 35–40. An

and drinking His Blood as a gift of himself, for it is only in the Eucharist that we receive the gift of the “bread of life.” Hence the Eucharist gives beginning to the community, for which it is strength and food, and strengthens each member of the community.¹⁵ It also contributes to the growth of the Church and unites its participants into one body. It feeds the Church, enlivens it and creates it. Hence it is said that the Church makes the Eucharist, and the Eucharist builds the Church.¹⁶ Therefore, R. Ahlers rightly believes that if the Church ceased to celebrate the Eucharist, it would cease to be the Church.

The Congregation for the Doctrine of the Faith, in its letter on the Eucharist *Communiois notio* concerning the Church understood as a community, presented it as a sacrament that is “the basis and center of ecclesial communion, into which everyone is incorporated by faith and baptism.” It is also “the source and creating force of communion among the members of the Church,” for the reason that it unites everyone with Christ, “and in the breaking of the Eucharistic bread, participating in a real way in the Body of the Lord, we enter into communion with Him and with each other.”¹⁷ Therefore, the right to the Eucharist is among the special rights enjoyed by participants in the liturgy. The claim for admission to this most venerable sacrament arises upon reaching the age of discernment¹⁸ and includes specific entitlements such as:

1. The right of a faithful and the community to the Eucharist on Sundays and prescribed holy days of obligation (can. 528 § 2; 530, 70; 534; 1247);
2. The right to receive Holy Communion on Easter (can. 920);
3. The right to participate in the liturgy of the Eucharist (SC 14; excommunicated and non-Catholics also have this right; for Catholics there is at the same time a specific obligation contained in canons 1247 and 898)¹⁹;
4. The right to visit and adore the Blessed Sacrament (can. 937);

extensive discussion of the Eucharist as *communio* in the teaching of the Second Vatican Council was given by Oskar Saier, *Communio in der Lehre des Zweiten Vatikanischen Konzils* (München: Hueber, 1973).

¹⁵ Wojciech Hanc, “Eucharystia sakramentem chrześcijańskiej jedności” in *Roczniki Teologiczno-Kanoniczne* 21(1974), notebook 6, p. 64; Hanc, “Eucharystia—sakramentalnym znakiem jedności,” *Ateneum Kapłańskie* 101 (1983): 349–365.

¹⁶ Cf. Marian Stasiak, “Eucharystia fundamentem wspólnoty kościelnej,” in *Żeby nie ustawiła wiara. Katolicki Uniwersytet Lubelski przed wizytą Ojca Świętego Jana Pawła II*, ed. Józef Homerski (Lublin: Towarzystwo Naukowe KUL, 1989), 165–166; Joannes Paulus PP. II, *Epistula ad universos Ecclesiae Episcopos: de SS. Eucharistiae mysterio et cultu Dominicae cenae* (February 24, 1980), AAS 72 (1980): 113–148, text in Polish: *Listy pasterskie Ojca Świętego Jana Pawła II* no. 4 (Kraków: Znak, 1997), 373.

¹⁷ Congregation for the Doctrine of the Faith, *Letter to the Bishops of the Catholic Church on Certain Aspects of the Church Conceived as Communion, Communiois notio* (May 28, 1992), AAS 85, no. 5 (1993): 838–850.

¹⁸ Can. 913: *Ut sanctissima Eucharistia ministrari possit pueris, requiritur ut ipsi sufficienti cognitione [...].*

¹⁹ See Can. 844 §§ 3 and 4 of CIC/1983.

5. The right of the faithful to participate in the Eucharist according to the norms of the Code of Canon Law (canons 837, 846);
6. The right to receive Holy Communion outside of Mass (*iusta de causa*) according to can. 918;
7. The right to receive Holy Communion on the hand or on the tongue.²⁰

The celebration of the sacraments is the performance of the Church's public worship in accordance with the regulation in canon 834 § 2. Public worship occurs when it is performed by those legally appointed to do so, in the name of the Church and in accordance with approved liturgical texts.²¹

The rights and duties of the faithful are described on the basis of reciprocal implication, that is, when considering subjective rights, it is necessary to pay attention to the interdependence between them so that the law of one determines the duty of the other,²² and vice versa. In a certain situation, the law can only regulate the fulfillment of an obligation, an example of which is canon 1247²³ according to which: "On Sundays and other holy days of obligation, the faithful are obliged to participate in the Mass. Moreover, they are to abstain from those works and affairs which hinder the worship to be rendered to God, the joy proper to the Lord's day, or the suitable relaxation of mind and body." The Church legislator in canon 1248 § 2 defines exceptional situations when the obligation to attend Mass is suspended and the faithful does not commit a grave sin: "If participation in the eucharistic celebration becomes impossible because of the absence of a sacred minister or for another grave cause, it is strongly recommended that the faithful take part in a liturgy of the word if such a liturgy is celebrated in a parish church or other sacred place according to the prescripts of the diocesan bishop or that they devote themselves to prayer for a suitable time alone, as a family, or, as the occasion permits, in groups of families."²⁴

To administer and receive the sacraments, it is necessary to meet certain legal requirements and co-presence in action. Canon law regulates these issues in detail for each sacrament. In the Sars-CoV-2 pandemic, simultaneous physi-

²⁰ Congregatio pro Cultu Divino, *Instructio Memoriale Domini* (May 29, 1969), AAS 61 (1969): 541–547.

²¹ Can. 834 § 2 of CIC/1983: *Huiusmodi cultus tunc habetur, cum defertur nomine Ecclesiae a personis legitime deputatis et per actus ab Ecclesiae auctoritate probatos.*

²² Can. 223 § 1 of CIC/1983; Marian Żurowski, *Podstawy uprawnień wiernych we wspólnocie Kościoła*, *Roczniki Teologiczno-Kanoniczne* 5, no. 28 (1981): 86.

²³ The Code of Canon Law only stipulates the obligation of the individual faithful to participate in the Eucharist (not the obligation to receive the Eucharist) on Sundays and holy days of obligation.

²⁴ Can. 1248 § 2 of CIC/1983: *Si deficiente ministro sacro aliave gravi de causa participatio eucharisticae celebrationis impossibilis evadat [...]; Joannes Paulus PP. II, Epistula apostolica de diei dominicae sanctificatione Dies Domini* (May 31, 1998), AAS 90, no. 54 (1998): 713–766. See more: Elżbieta Szczot, *Prawo wiernego do Eucharystii według Kodeksu Prawa Kanonicznego z 1983 roku* (Lublin: Towarzystwo Naukowe KUL, 2000), 97–103.

cal presence at the place of the sacraments administered became a fundamental problem, since no one can administer the sacraments of baptism, confirmation or anointing of the sick alone. We cannot confess sins to ourselves, nor can we ordain ourselves to the priesthood. With the proper form, it is admittedly possible to marry by proxy,²⁵ whose necessary physical presence only confirms this requirement. The reception and administration of sacraments requires the simultaneous presence in a specific place, the minister and the receiving subject, using the appropriate matter and form for each sacrament.

Restrictions on Access to the Sacraments

The Sars-CoV-2 epidemic, which broke out in late 2019 in China, spread quite rapidly around the world taking the form of a pandemic,²⁶ caused restrictions on the gathering of the population, including religious worship. In view of the resulting pandemic situation threatening the health and lives of citizens, state authorities, issued a series of laws to protect the population from the sudden development of infection. Thus, the right to exercise freedom to externalize religious freedoms was restricted.²⁷

In view of the concern and anxiety arising from the resulting epidemic threat, the highest authorities of the Catholic Church published relevant deci-

²⁵ Can. 1104 § 1 of CIC/1983. It should be noted that the ministers of the sacrament of marriage in the Latin rite are the spouses (bridegroom and bride) themselves. See: Zbigniew Janeczowski, "Materia i forma sakramentu małżeństwa," in *Ius Matrimoniale* 18, no. 24 (2013): 15; See: Lucjan Świto, *Zawarcie małżeństwa przez pełnomocnika w formie wyznaniowej ze skutkami cywilnymi w prawie polskim* (Olsztyn: Wydawnictwo Uniwersytetu Warmińsko-Mazurskiego w Olsztynie, 2019).

²⁶ An epidemic of an infectious disease that involves several countries at the same time is called a pandemic. The countries affected by the virus can be on one continent or all over the world. In a pandemic, there is a high contagiousness of the disease, as well as an asymptomatic form of the disease at the initial stage of infection. The first case of SARS-CoV-2 virus was reported on November 17, 2019, in the Chinese city of Wuhan. In Poland, on March 20, 2020, an epidemic state was introduced throughout the country, see: Regulation of the Minister of Health of March 20, 2020 on the declaration of an epidemic state on the territory of the Republic of Poland, Journal of Laws of 2020, item 49. On March 11, 2020, the WHO recognized Europe as the epicenter of the pandemic.

²⁷ See Aneta M. Abramowicz, "Wolność religijna w czasie pandemii koronawirusa—ocena rozwiązań polskich," *Studia z Prawa Wyznaniowego* 24 (2021): 255–278. The author presents in detail the premises for the application of restrictions on religious freedom and discusses their legal basis. Also: Piotr Stanisław, "Ograniczenia wolności kultu religijnego w czasie pandemii COVID-19: między konstytucyjnością a efektywnością," *Przegląd Sejmowy* 3 (2021): 143–165.

sions and indications aimed at the faithful. Initially, the Apostolic Penitentiary issued a note on March 19, 2020, informing that, especially in the places most affected by the pandemic and until the phenomenon is brought under control, there is a premise of grave necessity (*gravis necessitas*), as referred to in can. 961 § 1, 2°, so that the minister may grant absolution to multiple penitents simultaneously without their prior individual confession, observing the other conditions required by the canon law.²⁸ The Sars-CoV-2 coronavirus pandemic has been recognized as one that creates a circumstance of grave necessity and justifies *absolutio pluribus* without prior individual confession. However, this possibility was used exceptionally due to the failure to preserve the premise of “many penitents simultaneously.”²⁹ P. Stanisz shows that such permission was granted in Poland by a single diocesan bishop to chaplains of infectious hospitals and single-immunized hospitals for those infected with the Covid-19 virus, but only to those patients and staff who expressed a willingness to use this possibility.³⁰ The Apostolic Penitentiary also recognized that the spread of the epidemic constitutes a right cause (*iusta de causa*) justifying the celebration of the sacrament of penance outside the confessional.³¹ A faithful who does not have the opportunity to attend individual confession, but feels a very strong need for reconciliation with God and the Church, should induce an act of perfect contrition. This act causes “the forgiveness of mortal sins if it includes a firm resolve to go to sacramental confession and confess these sins as soon as possible.”³² During the 2020 Sars-CoV-2 pandemic, the Congregation for Divine Worship responded negatively to a question about the possibility of confession via cell phone in order to at least amplify the voice of the confessor and penitent, who can see each other.³³ At the time, the reason for the request to the

²⁸ Note from the Apostolic Penitentiary regarding the sacrament of reconciliation in the current pandemic situation (March 19, 2020), accessed May 17, 2023, <https://episkopat.pl/nota-penitencjarii-apostolskiej-odnosnie-sakramentu-pojednania-w-obecnej-sytuacji-pandemii-20-03-2020-r/> and https://www.vatican.va/roman_curia/tribunals/apost_penit/documents/rc_trib_ap_pen_pro_20200319_decreto-speciali-indulgenze_en.html.

²⁹ Piotr Stanisz, “Komunikacja Kościoła katolickiego w Polsce w okresie pandemii Covid-19. Raport z badań interdyscyplinarnych,” in *Edukacja—Media—Teologia*, ed. Andrzej Kiciński, Mirosław Chmielewski (Kraków: Wydawnictwo “Scriptum,” 2022), 25–29.

³⁰ Stanisz, *Komunikacja Kościoła katolickiego w Polsce*, 52. There is no information available regarding the fact and possible number of such absolutions given.

³¹ Can. 964 § 3 of CIC/1983: *Confessiones extra sedem confessionalem ne excipiantur, nisi iuxta de causa*. Due to the development of the pandemic during Lent, confessions were heard from cars in parking lots or other places where a safe distance could be maintained while observing the indications of the Apostolic Penitentiary, including the suggestion that the place be airy. See Oskar Vyner, “Disembodied Conversion or Gift of Mercy? Confession by Videoconference,” *Antiphon. A Journal for Liturgical Renewal* 25, no. 3 (2021): 287–317.

³² Can. 962 of CIC/1983.

³³ Apostolic Penitentiary, “Lettera circolare riguardante la non ammissibilità dei moderni mezzi di comunicazione nei ricorsi riguardanti materie tutelate dal sigillo sacramentale L’uso dei

Apostolic Penitentiary was to assist the faithful and ministers in administering the sacraments, who are, for example, in hospitals or other places of isolation, in quarantine, due to a restraining order and the impossibility of physical contact. On the other hand, in order to provide spiritual assistance to the faithful in life-threatening danger due to contracting Covid-19, the Penitentiary issued a decree granting special indulgences to the faithful, stressing that: “The Church prays for those who find themselves unable to receive the Sacrament of the Anointing of the Sick and of the Viaticum, entrusting each and every one to divine Mercy by virtue of the communion of saints and granting the faithful a Plenary Indulgence on the point of death, provided that they are duly disposed and have recited a few prayers during their lifetime [...]”³⁴

In Poland, during the initial period of the pandemic, a proposal appeared to increase the number of Sunday holy masses, in order to reduce the number of people present at the various liturgical gatherings.³⁵ Information was also disseminated about the possibility of receiving Holy Communion spiritually or on the hand³⁶ for this period, and on March 12, 2020, an announcement was is-

mezzi tecnologici (October 23, 2002),” in *Enchiridion Vaticanum* 21, no. 1259: Documenti ufficiali della Santa Sede 2002, ed. Erminio Lora (Bologna: Edizione Dehoniane, 2002), 930–931; Waldemar Bartocha, “Celebrazja sakramentu pokuty i pojednania w cyberprzestrzeni z perspektywy teologiczno-kanonicznej,” *Kultura-Media-Teologia* 51 (2022): 10–29; Stefano Testa Bapenheim, “Does the Covid-19 pandemic authorize the derogation from the canonical rule of absolution necessarily preceded by individual confession? (can. 961 CIC),” accessed May 25, 2023, <https://diresom.net/2020/04/22/does-the-covid-19-pandemic-authorize-the-derogation-from-the-canonical-rule-of-absolution-necessarily-preceded-by-individual-confession-canon-961-cic/>. Archbishop Blair advises cellphones cannot be used to administer sacraments, accessed May 25, 2023, <https://catholicreview.org/archbishop-advises-cellphones-cannot-be-used-to-administer-sacraments/>. Andrzej Draguła, “Ciało koniecznie potrzebne Czy możliwa jest spowiedź przez internet?,” accessed June 17, 2023, <https://wiedz.pl/2003/01/01/42-cialo-koniecznie-potrzebneczy-mozliwa-jest-spowiedz-przez-internet/>; Henryk Stawniak, “Wybrane funkcje szafarza sakramentu pokuty—aspekt prawny,” *SEMINARE* 24 (2007), 69–82.

³⁴ Apostolic Penitentiary, “Decree: The gift of Special Indulgences is granted to the faithful suffering from Covid-19 disease, commonly known as Coronavirus, as well as to health-care workers, family members and all those who in any capacity, including through prayer, care for them (March 19, 2020),” accessed May 25, 2023, https://www.vatican.va/roman_curia/tribunals/apost_penit/documents/rc_trib_appen_pro_20200319_decreto-speciali-indulgenze_en.html.

³⁵ Message from the President of the KEP (= Konferencja Episkopatu Polski, Eng. version: Polish Bishops’ Conference) on the Coronavirus Threat, March 10, 2020, accessed May 26, 2023, <https://episkopat.pl/przewodniczacy-episkopatu-kosciol-stosuje-sie-do-zalecen-sluzb-sanitarnych-ws-koronawirusa-2/>.

³⁶ Announcement of the Chairman of the Polish Bishops’ Conference, in connection with the coronavirus, Poznań, March 12, 2020, N. 1234/2020, accessed June 16, 2023, <http://parafiamachowo.pl/koronawirus-pilne/>. Although the worshippers were already allowed to receive Holy Communion in the hand, the circumstance of the pandemic caused a wave of criticism in some Catholic circles against Church authorities and those worshippers who received the Host in the hand. See: Standing Council of the Polish Bishops’ Conference, Order No. 1/2020 of March 12,

sued encouraging the reception of Holy Communion on the hand and granting a dispensation from the obligation to attend Sunday and holy day of obligation masses. As required by canon law, based on can. 1245: “Without prejudice to the right of diocesan bishops mentioned in can. 87, for a just cause (*iusta de causa*) and according to the prescripts of the diocesan bishop, a pastor can grant in individual cases a dispensation from the obligation of observing a feast day or a day of penance or can grant a commutation of the obligation into other pious works [...]”³⁷ The recipients of the dispensation were asked to connect spiritually with the Church community through broadcasts in the social media.³⁸ It was stressed that “Taking advantage of the dispensation means that absence from Sunday Mass at the indicated time is not a sin.” At the same time, the people were encouraged to persist in personal and family prayer, as well as remain in spiritual connection with the Church community through radio, television or Internet broadcasts.”³⁹ Subsequently, on March 24, 2020, an announcement was issued in connection with another restriction on the number of participants in the gatherings.⁴⁰ Chairman of the Polish Episcopal Conference, Archbishop

2020, para. 2.b. “We recall that the liturgical regulations of the Church provide for the reception of Holy Communion on the hand, which we now encourage.” See: Commission for Divine Worship and the Discipline of the Sacraments of the Polish Bishops’ Conference, Communication in connection with an inquiry into public initiatives critical of Communion on the hand (October 3, 2020), accessed June 15, 2023, <https://episkopat.pl/komisja-liturgiczna-episkopatu-komunia-na-reke-nie-jest-profanacja/>. See SC (= Sacrosanctum Concilium = Constitution on the Liturgy) 55; Can. 918 of CIC/1983.

³⁷ The dispensation was aimed at 4 groups of the faithful: (1) to the elderly, (2) people with symptoms of infection, (3) school children and adolescents and adults who take direct care of them, (4) people who feel fear of infection. It should be noted that the dispensation is not addressed in p. 3. to those who care for the elderly or sick.

³⁸ See: Permanent Council of the Polish Bishops’ Conference, Order No. 1/2020 of March 12, 2020. This dispensation was initially granted until March 29, 2020. Due to the development of the virus, the dispensation was extended and granted by individual bishops for their dioceses, accessed April, 2023, <https://episkopat.pl/zarzadzenie-nr-1-2020-rady-stalej-konferencji-episkopatu-polski-z-dnia-12-marca-2020-r/>.

³⁹ Ibid. See: Decree of the Congregation for Divine Worship and the Discipline of the Sacraments with Guidelines for the Celebration of the Paschal Triduum in Places Affected by Epidemics (March 19, 2020), accessed May 17, 2023, https://www.vatican.va/roman_curia/congregations/ccdds/documents/rc_con_ccdds_doc_20200325_decreto-intempodicovid_en.html; (<https://episkopat.pl/watykan-o-celebrewaniu-wielkanocy-w-czasie-epidemii-2/>) and the March 25, 2020 update, <https://episkopat.pl/dekret-kongregacji-ds-kultu-bozego-i--disciplines-sacraments-with-guidelines-for-performing-the-paschal-triduum-in-epidemic-affected-places-update-of-25-March-2020-r/>.

⁴⁰ Archbishop Stanislaw Gądecki, KEP Announcement of March 24, 2020, accessed June 17, 2023, <https://episkopat.pl/przewodniczacy-episkopatu-prosze-o-uwzglednienie-ograniczenia-do-5-uczestnikow-zgromadzen-religijnych/>. See: <https://chrystuskrol.oblaci.pl/dekret-w-sprawie-duszpasterstwa-w-stanie-epidemii/> (accessed April 25, 2023). Previously, 50 people were allowed. From March 24 to April 11, 2020, there was a restriction on the movement of the population,

S. Gądecki, addressed the faithful in a special announcement, noting that: “In connection with the outbreak of coronavirus, the state authorities have decided that no more than 5 people will be allowed to participate in a holy mass or any other religious rite at the same time,” not counting those officiating the service. In all Polish dioceses, the possibility for the faithful to attend Mass was restricted to those ordering a Mass intention, and in the case of a funeral, only the immediate family. The decree once again encouraged all the faithful to join together in prayer. What was new were the regulations on the limit of the faithful at masses, services and funerals. The number of attendees at funerals was then limited to five people, in addition to those performing religious worship or employed by the funeral home to organize the burial. The pandemic also led to such a state that in some cases the family of the deceased had to make the decision to postpone the funeral because there was no person authorized to organize it, due to the entire family being ill with COVID-19, or being in quarantine. In the fall of 2020, for the first time in Polish history, all cemeteries in the country were closed. From October 31 to November 2, access to cemeteries was banned, except for the necessity of burying the deceased and only for funeral and burial activities.⁴¹ In 2020, more than 477,000 people died in Poland. The increase in the number of deaths compared to 2019 was nearly 68 thousand, while 2021 was a record year in terms of deaths, as 519.5 thousand people died in it. It is difficult to reliably estimate the number of the sacrament of the Anointing of the Sick given in those years to people in danger of death (*periculum mortis*), or because of old age.⁴² The bishops recommended administering the anointing,

with the exception of going out to buy groceries, visiting the doctor and going to work. From March 12, 2020, schools and kindergartens were closed.

⁴¹ Ordinance of the Council of Ministers of October 30, 2020, amending the Ordinance on the Establishment of Certain Restrictions, Orders and Prohibitions in Connection with the Occurrence of an Epidemic Condition, Journal of Laws of October 30, 2020, Item 1917. November 1 has been celebrated by the Catholic Church since the 9th century as *Sollemnitatis Omnium Sanctorum*. In Poland, it is a statutory holiday, enshrined and guaranteed in the Concordat, Article 9, accessed June 20, 2023, <https://www.gov.pl/web/koronawirus/epidemia-koronawirusa-przybiera-na-sile-dlatego-zamykamy-cmentarze-na-wszystkich-swietych>; Concordat between the Holy See and the Republic of Poland, signed in Warsaw on July 28, 1993, Journal of Laws 1998, No. 51, Item 318. See also: Elżbieta Szczot, “Death in times of SARS-CoV-2 Pandemic. Legal regulations of the Burial of the COVID-19 Deceased in Poland,” *Review of European and Comparative Law* 4 (2021): 135–156.

⁴² See: Can. 1004 of CCL; Bronisław Wenanty Zubert OFM, “Prawa chorego we wspólnocie Kościoła,” *Homo meditans*, vol. XIII (Lublin: KUL, 1992), 131–148; Bronisław Wenanty Zubert OFM, “Sakrament namaszczenia chorych. Próba wykładni obowiązujących przepisów kodeksowych,” *Kościół i prawo*, vol. XIII (Lublin 1998), 231–259; Zbigniew Janczewski, “Sprawowanie sakramentów uzdrowienia w okresie stanu epidemicznego w świetle prawa kanonicznego,” *Prawo Kanoniczne* 63, no. 3 (2020): 3–21. See Ordinance of the Bishop of Płock on the Occasion of Liturgical Activities during the State of Epidemics (March 23, 2020), accessed May 10, 2023, <https://www.diecezjaplocka.pl/biskupi/piotr-libera/listy/zarządzenie->

but only in danger of death, without specifying what state of that danger they had in mind. The Institute of Statistics of the Catholic Church SAC presented data on the sacraments administered for 2020 and indicated that the sacrament of baptism was administered to 312,100 people, down 16.3 percent compared to 2019, with more than 355,000 live births registered in 2020, according to the Central Statistical Office. The sacrament of confirmation in 2020 was received by 252.3 thousand people, which is 34 percent less than in 2019. The number of sacramental marriages performed in 2020 amounted to 91.5 thousand—26.8 percent less than in 2019.⁴³

In 2020, the time for receiving Easter Communion, which according to canon law must be received at least once a year during the Easter season, has been extended in some dioceses, unless for just cause (*nisi iusta de causa*) it is received at another time.⁴⁴ Archbishop S. Gądecki issued a decree under which he decided to extend this time in the Archdiocese of Poznań until the Feast of the Exaltation of the Holy Cross, that is, September 14, 2020. Thus, he reminded that receiving Holy Communion on the appointed date is one of the fundamental duties of a Catholic.⁴⁵ Not in all dioceses was such an extension granted.

The abolition of dispensations exempting the faithful from the obligation to attend a prescribed mass took effect in Poland on June 20, 2021. The bishops gathered at the 389th Plenary Meeting of the Polish Bishops' Conference decided that the dispensations be abolished at the same time in all dioceses where they had been in force until then due to the COVID-19 pandemic.⁴⁶ However, restrictions on the gathering of the population continued. On July 7, 2021,

biskupa-plockiego-w-sprawie-sprawowania-czynnosci-liturgicznych-w-czasie-stanu-epidemii and <http://parafia.fatimskaciechanow.pl/zarzadzenie-biskupa-plockiego-w-sprawie-sprawowania-czynnosci-liturgicznych-w-czasie-stanu-epidemii-zaktualizowane-dnia-26-marca-2020-roku/>. In the Archdiocese of Boston in the US, volunteer priests were appointed to administer anointing to Covid-19 patients. Clad in protective clothing, the priests performed part of the rite by reciting prayers at the door of a hospital room. Then, once inside the room, they used a cotton cloth to anoint the sick on their feet, accessed May 5, 2023, <https://wpolityce.pl/polityka/497795-grupa-ksiezy-ma-zadanie-namaszczenie-chorych-na-covid-19>.

⁴³ See: accessed August 31, 2023, <https://wiesz.pl/2023/01/16/iskk-nowe-dane/>. See “Pandemia COVID-19 znacząco wpłynęła na życie religijne polskich katolików,” accessed August 31, 2023, <https://episkopat.pl/iskk-pandemia-covid-19-znaczaco-wplynela-na-zycie-religijne-polskich-katolikow/>.

⁴⁴ Can. 920 § 3 of CIC/1983. In Poland, the time for receiving Easter Communion is from the Sunday preceding Ash Wednesday to Trinity Sunday.

⁴⁵ See: accessed April 25, 2023, <http://archpoznan.pl/pl/web/homilia/view/id/dekret-dotyczacy-duszpasterstwa-po-zniesieniu-limitow-uczestnikow-liturgii>.

⁴⁶ See: accessed June 15, 2023, <http://archpoznan.pl/pl/dyspensy-do-uczestnictwa-we-mszy-sw-zniesione>. The introduced limit was in effect until August 31, 2021, <https://dzieje.pl/dziedzictwo-kulturowe/dziennik-ustaw-od-13-czerwca-w-kosciolach-nie-wiecej-osob-niz-stanowi-50-proc>; These restrictions have been extended until September 30, 2021, accessed August 31, 2023, <https://www.gov.pl/web/koronawirus/aktualne-zasady-i-ograniczenia>.

rules and restrictions on participation in religious ceremonies were issued, and a limit on people in places of worship was imposed up to a maximum of 75 percent occupancy of the building. The limit did not apply to persons fully vaccinated against COVID-19. It was also recommended that ceremonies be held outdoors.⁴⁷ On the one hand, dispensations were abolished, while on the other hand, church buildings could only be filled to 75 percent. However, the faithful were not checked for the required doses of inoculation against COVID-19. The end of the epidemic state was declared by the WHO on May 5, 2023, and as of July 1, 2023, the epidemic risk state in Poland was lifted.⁴⁸ Thus, any restrictions on receiving and administering sacraments were not in force any more.

Virtual Participation as an Extension of the Temple Space

The development of the pandemic in Poland did not result in a total ban on participation in the sacraments celebrated, as was the case in some European countries.⁴⁹ The restrictions that were put in place varied and intensified or relaxed with the rise and fall of the disease and the mortality rate of people. This state of affairs often caused confusion, uncertainty and fear among the faithful.⁵⁰ Almost

⁴⁷ From June 13 to June 25, 2021, the faithful were still required to maintain a 1.5-meter distance and no more than 50% occupancy of the building where worship was held. The obligation continued to cover the nose and mouth with the exception of ministers. The wearing of masks (except in health clinics, hospitals, and pharmacies) was abolished on March 28, 2022, accessed April 21, 2023, <https://www.gov.pl/web/psse-zdunska-wola/zniesienie-obowiazku-noszenia-maseczek-zniesienie-kwarantanny-i-izolacji-domowej>.

⁴⁸ Accessed July 31, 2023, <https://www.gov.pl/web/rpp/koniec-stanu-zagrozenia-epidemicznego>.

⁴⁹ In Italy, for example, churches were left open, but the faithful could not enter them to pray because of strict lockdown, accessed April 12, 2023, <https://www.vaticannews.va/en/church/news/2020-03/church-state-in-italy-cooperate-to-halt-spread-of-coronavirus.html>. Those wishing to pray in a church could do so only if the church was along the road to or from a government-approved reason for leaving home: e.g., to go to the grocery store, pharmacy, doctor's office, or to work when it was necessary and could not be done from home, accessed April 12, 2023, <https://www.ncronline.org/news/italian-government-clarifies-lockdown-rules-churches>.

⁵⁰ In the period from March 13 to June 30, 2020, matters concerning congregations and participation in religious worship were regulated by nine consecutive ordinances, see Stanisław, *Komunikacja Kościoła katolickiego w Polsce*, 28; Marek Rembierz, "Stan pandemii jako ćwiczenie duchowe. O uczeniu się i oswojaniu siebie w stanie pandemicznej zapaści i dezorientacji witalnej," ed. Wiesław Gumuła, *Dzienniki stanu pandemii* (Kraków: Instytut Literatury i Zakład Wydawniczy NOMOS, 2021), 223–245.

all appeals made by the bishops to the faithful included an encouragement to connect spiritually in prayer through broadcasts in the social media.⁵¹ Restrictions imposed by state and church authorities on access to physical participation in the liturgy caused the activity of the faithful to move to the Internet. In homes and families, the faithful prayed in real time with the celebrant, using television broadcasts, radio broadcasts, via the Internet, via computers or cell phones. In this way, they sought to fulfill the premise of canon 1248 § 2 “[...] or they devoted adequate time to individual prayer in the family or in groups of families.” Authentic home churches were formed in many homes and families. The family as the home Church was presented in the Second Vatican Council’s Dogmatic Constitution on the Church.⁵² In the decree *Apostolicam actuositatem* it appears as *tamquam domesticum sanctuarium Ecclesiae* and forms a small Church.⁵³ In the New Testament, we find the phrases ἡ κατ’ οἶκον αὐτῶν ἐκκλησία (Church formed in the home⁵⁴), from which it is clear that it refers to the community of the faithful gathered in the Christian’s home for the Eucharist.⁵⁵ In this way, the space of churches has been expanded and transferred to homes and apartments. Thanks to the delivered broadcast, the faithful could more easily keep the rhythm of Sunday celebrations, experience the weeks of Lent, listen to retreats,

⁵¹ See Permanent Council of the Polish Bishops’ Conference, Order No. 1/2020 of March 12, 2020, accessed April 12, 2023, <https://episkopat.pl/zarzadzenie-nr-1-2020-rady-stalej-konferencji-episkopatu-polski-z-dnia-12-marca-2020-r/>.

⁵² LG 11, 2: *In hac velut Ecclesia domestica parentes verbo et exemplo sint pro filiis suis primi fidei praecones, et vocationem unicuique via, a Domino vocantur*”; Catechism of the Catholic Church no 1656. See more: Winfried Aymans, “Gleichsam Häusliche Kirche. Ein kanonistischer Beitrag zum Grundverständnis der sakramentalen Ehe als Gottesbund und Vollzugsgestalt kirchlicher Existenz,” *Archiv für Katholisches Kirchenrecht* 147 (1978): 424–446; Jean Beyer, *Ecclesia domestica*, *Periodica de re morali, canonica, liturgica* 9 (1990): 293–295, 293–326; Salvatore Berlingò, “Chiesa domestica’ y derecho de familia en la Iglesia,” in *El matrimonio y su expresión canónica ante el III milenio*, 641–692.

⁵³ DA 11, 3 (= Decree *Apostolicam actuositatem*); FC (Exhortation *Familiaris Consortio*) No. 55: “The Christian family too is part of this priestly people which is the Church. By means of the sacrament of marriage, in which it is rooted and from which it draws its nourishment, the Christian family is continuously vivified by the Lord Jesus and called and engaged by Him in a dialogue with God through the sacraments, through the offering of one’s life, and through prayer.” C.f. Michel Philippe Laroche, *Mały Kościół. Mistyczna przystojność małżeństwa*, trans. J. Grzegorzczak (Hajnówka, 2006, based on: Poznań: “W drodze,” 1989), 11–13.

⁵⁴ Cf. 1 Corinthians 16:19–20. Until the third century, Christians did not have their own places of worship. This fact was recalled by Pope Benedict XVI during a catechesis delivered at a general audience on February 7, 2007, stressing that every home can become a small church. Both in the sense that Christian love, characterized by altruism and mutual concern, should reign there, and in the sense that faith-based family life should be centered around the person of Jesus Christ, see also: 1 Kor 14, 34–35; Ef 5, 25–33; Rz 16, 23; Flm 2; Kol 4,15. Tomasz Drożyński, “Oblicza wspólnoty Kościoła w czasie pandemii COVID-19,” *Studia Paradyskie* 30 (2020), 67–83.

⁵⁵ See Barbara Filarska, “Domowy Kościół. Miejsce,” in *Encyklopedia Katolicka* 4, col. 105.

experience the exceptionally lonely 2020 *Triduum Sacrum* and the Solemnity of the Resurrection, pray the Rosary every day.⁵⁶ Due to the incredible development of the media, the word “participation” has taken on a much broader meaning than in the past.⁵⁷

The Pontifical Council for the Social Communications in 2002, in a document issued: *The Church and Internet* noted that “Although the virtual reality of cyberspace cannot substitute for real interpersonal community, the incarnational reality of the sacraments and the liturgy, or the immediate and direct proclamation of the gospel.” However, it can complement these areas and “attract people to a fuller experience of the life of faith, and enrich the religious lives of users.”⁵⁸ The Sars-CoV-2 epidemic turned into a pandemic, with the most dramatic events unfolding in 2020–2021, associated with high population mortality rates and restrictions on religious worship, meant that television broadcasts, or online transmissions from churches and chapels where the sacraments, especially the Eucharist, were celebrated, helped many people get through this difficult period by keeping hope alive in them. They also provided essential information about the life of the Church and often allowed people to remain connected to their own parish community.

Conclusions

Cardinal Robert Sarah, Prefect of the Congregation for Divine Worship and the Discipline of the Sacraments, on August 15, 2020, in a letter addressed to the Presidents of the Catholic Church’s Bishops’ Conferences, stressed the need to recognize and respect the right of the faithful to receive the Body of Christ and to worship the Lord present in the Eucharist without restriction.⁵⁹ However,

⁵⁶ From March 16 to June 11, 2020, a daily rosary prayer was broadcast from the chapel at the home of Archbishop Stanisław Gądecki for the intention of stopping the coronavirus pandemic, accessed May 14, 2023, <https://misyjne.pl/abp-gadecki-dziekuje-za-3-miesiace-wspolnej-modlitwy-rozancowej-wideo/>.

⁵⁷ Benedict XVI Pp., Apostolic Exhortation *Sacramentum caritatis*, No. 57. In the exhortation, the pope drew the attention of celebrants to the proper celebration of the Eucharist: “The Mass broadcast by television undoubtedly has the character of a certain pattern. Particular care must therefore be taken to ensure that in the celebration, in addition to taking place in dignified and well-prepared places, the liturgical norms are respected.”

⁵⁸ Pontifical Council for the Social Communication, “Kościół a Internet” (February 22, 2002), *KAI Bulletin* 10, no. 5 (March 10, 2002): 31–35.

⁵⁹ “The faithful should be recognized as having the right to receive the Body of Christ and to worship the Lord present in the Eucharist in the manner provided for, without limitations

the rapid spread of the Sars CoV-2 virus formally restricted the participation of the faithful in the Holy Sacraments in many countries (in Poland from March 12, 2020, till June 20, 2021). While it was possible to receive Holy Communion in a real or spiritual way, or, in certain situations, to make perfect contrition for sins and receive Holy Communion on the tongue or in the hand without prior individual confession, due to government-imposed restrictions on the number of faithful present in the church at the same time, the greatest restrictions were maintained with relation to the most vulnerable, that is, the sick. Mandatory bans on direct human contact in hospitals, or the nationwide lockdown introduced in March/April 2020, as well as the multi-day isolation covering the infected for the period of the declared pandemic, as well as the quarantine of relatives in physical contact with the infected, resulted in many thousands of people, both faithful of the Catholic Church and those belonging to other churches and religious associations, in danger of dying without being able to contact their proper chaplain or priest. Catholics were left without the possibility of being provided with the viaticum and sacrament of anointing of the sick. In Poland, the bishops have not issued specific guidelines for priests to follow in the circumstances indicated. Invoking the ban on the use of cell phones, even just for voice amplification, is not convincing in an emergency time when thousands of newly infected patients arrive every day. The Apostolic Penitentiary gave consolation in the form of assurances of prayer and the promise of the grace of indulgence, which the sick may not even have had a chance to hear about. Church officials relied on decisions issued by secular authorities and failed to take action aimed at those most in need of the sacraments—the faithful in danger of their lives. The Congregation for the Doctrine of the Faith on July 14, 2020, that is, after the first wave of coronavirus had passed through Europe, issued a letter entitled *Samaritanus bonus* on caring for people in the critical and final stages of life, stating that “Every person has the natural right to be cared for, which at this time is the highest expression of the religion that one professes. [...] Through the closeness of the Church, the sick person experiences the nearness of Christ who accompanies them on their journey to his Father’s house (cf. Jn 14:6) and helps the sick to not fall into despair, by supporting them in hope especially when the journey becomes exhausting”⁶⁰ (no. 10). It seems that this support in

that go even beyond what is provided for by the norms of hygiene issued by public authorities or Bishops,” Let Us Return to the Eucharist with Joy, Letter on the celebration of the liturgy during and after the COVID-19 pandemic to the presidents of the Episcopal Conferences of the Catholic Church, accessed May 14, 2023, <https://www.ewtn.com/catholicism/library/let-us-return-to-theeucharist-with-joy-20402>.

⁶⁰ Congregation for the Doctrine of Faith, Letter *Samaritanus bonus on the care of persons in the critical and terminal phases of life*, July 14, 2020, accessed June 23, 2023, https://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_20200714_samaritanus-bonus_en.html.

hope was not sufficient, due to which the right of the faithful to the spiritual goods of the Church gave way to restrictions and limitations imposed by state and church authorities and was not fully protected.

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Elżbieta Szczot

Entre l'octroi et la restriction du droit aux sacrements pendant le Sars-CoV-2 Internet comme moyen de transmission et de communication avec les fidèles

Résumé

Cet article présente le droit des fidèles aux sacrements et ses limites résultant de l'apparition de la pandémie du virus Sars-CoV-2 en 2020. On a présenté l'étendue du droit aux biens spirituels de l'Église, qui est garanti par le canon no 213 du Code de Droit Canonique de 1983, ainsi que les limites de l'espace pour le rassemblement des fidèles, introduites par le droit national et les décrets épiscopaux. L'accès à Internet et la préservation de la communication en ligne ont permis, dans un contexte d'isolement social, d'établir une communication entre les ministres et les fidèles, et de survivre plus facilement aux restrictions d'accès aux saints sacrements.

Mots-clés: droit des fidèles aux sacrements, pandémie, restrictions, internet

Elżbieta Szczot

Tra concessione e limitazione del diritto ai sacramenti durante Sars-CoV Internet come mezzo di trasmissione e comunicazione con i fedeli

Sommario

L'articolo presenta il diritto dei fedeli ai sacramenti e le sue limitazioni conseguenti allo scoppio della pandemia del virus SarsCov-2 nel 2020. È stato riportato l'ambito del diritto sui beni spirituali della Chiesa garantito a norma del can. 213 del Codice di Diritto Canonico del 1983, e dei limiti spaziali per gli assembramenti introdotti dalle leggi statali e dai decreti episcopali. L'accesso a Internet e il mantenimento della comunicazione online hanno permesso di stabilire una comunicazione tra i ministri e i fedeli durante l'isolamento sociale in corso e di sopravvivere più facilmente alle restrizioni sull'accesso ai santi sacramenti.

Parole chiave: diritto del credente ai sacramenti, pandemia, restrizioni, Internet



Lucjan Świto

University of Warmia and Mazury in Olsztyn, Poland

<https://orcid.org/0000-0002-6392-4599>

Legal Aspects of the Sacraments at a Distance

Abstract: The article addresses the problem of the possibility of administering the sacraments of marriage, penance and Eucharist at a distance, that is, using information and communication technologies. Electronic means of communication change not only our understanding of time and space, but also the experience of building a community and contact with other people. The conducted analysis led to the conclusion that taking into account the spiritual good of the faithful, especially those who found themselves in danger of death or as a result of a great distance or due to isolation, they have no access to a priest and the real community of the faithful, as well as the fact that the Holy See did not give an authoritative answer opposing the administration of the sacraments by means of new communication tools, this form should not be excluded from the practice of the Church.

Keywords: sacraments, power of attorney, media, broadcasting, telecommunications

Introduction

We live in very interesting times. Technological advancement is taking place like never before. One of its great achievements is the ability to communicate over a distance. Without leaving home, without overcoming long and tiring routes, you can not only lead an intense and extensive social life thanks to the widely available various types of telecommunication devices, but also participate in very serious debates using professional teleconferences, and even take part in complex medical operations. The recent lockdown experience caused by the

global COVID-19 pandemic has forced the need to use instant messaging on an unprecedented scale to undertake professional activities, for example, in the field of education.

This arouses real admiration, but also poses very specific questions, going beyond the sphere of our work and social contacts, and also touching the sphere of religious life related to the sacramental life of the Catholic Church. Will the sacrament be effective only when we experience it in one place and time? Is it possible to participate in the sacramental life of the Church remotely? Is it possible to transmit the invisible grace of God—as defined by the old Catechism—hidden in the sacrament, that is, the visible sign of Christ’s saving action, using the electronic means of communication available today, such as telephones, computers, and various types of communicators connected to the Internet?

Electronic means of communication change not only our understanding of time and space, but also the experience of building a community and contact with other people. The article is an attempt to answer the questions posed, focusing on three sacraments: marriage, penance, and the Eucharist.

The Sacrament of Matrimony

One of the necessary conditions for a valid marriage is the expression of a marriage consent act by the prospective spouses present at the same place and time. The aforementioned presence of the parties means, in principle, personal presence, which is a *de iure* and *de facto* presence.

However, canon law, strongly based on Roman law, allows for the possibility of contracting a marriage at a distance, that is, taking a marriage vow by the bridegroom who is not physically present at the wedding ceremony. The Romans considered the marriage consent itself to be so important that until the Justinian period, no formalities were required when expressing consent to marriage, that is, neither the direct participation of contractors, nor the utterance of certain formulas, nor even the drawing up of an official document of marriage. The mere declaration of two persons that they were married was enough for secular authorities to consider them as such. Therefore, if there were reasons that prevented the prospective couple from expressing their will in person by means of words or signs (e.g., due to illness, military service, distance from the permanent place of residence or imminent danger), this message could be sent either by letter or by messenger. The role of the messenger was then limited to verbally conveying the marriage will of the one who sent him, and that was

the end of his task. It was considered only a “living tool” used by the sender. In other words, the person concerned—being actually absent at the time of the marriage—gave their consent through a messenger, which in this case served as a kind of “mechanism” to transfer someone else’s words, or through a letter expressing the appropriate content.¹

In the Latin Church, the first information about a marriage concluded between absentees appears in the 12th century in the “Decree of Gratian,” which, based on the marriage of Isaac and Rebecca, devoted two canons to this issue. They draw attention to the fact that the authorization granted to the envoy was very broad—he could choose any person at his discretion (but only from the lineage of Abraham), and after Rebecca’s family consented to the marriage, and through them to leave, Isaac was already entitled to the legal title “husband.” These references indicate that, according to Gratian, not only marriages contracted by letter or messenger, but also by proxy were considered valid. Gratian norms were confirmed in later legal collections.

According to the law in force, sacramental marriage can be concluded at a distance (can. 1104 and 1105 CIC). The condition for this is that the absent prospective party appoints their proxy. They will then replace the absent spouse by expressing the marriage consent on their behalf.

Contracting a marriage by proxy is based on a legal fiction, which is related to the understanding of the canonical form of contracting a marriage. Although marriage is a personal act by which the spouses mutually give each other and accept each other as wife and husband, it does not change the fact that in the internal law of the Latin Church canonical consent has a constitutive character, and marriage is a bilateral legal act, similar to a contract. One of its necessary conditions is the requirement to express this act of consent by both prospective spouses, present at the same place and time. The aforementioned presence of the parties means, in principle, personal presence, which is a *de iure* and *de facto* presence. The requirement of presence, and thus the requirement of the unity of the act in time and place, is also met when the party is present only *de iure*, that is, when it is represented by a substitute, that is, when the marriage consent is expressed on its behalf and for its benefit, proxy.

Therefore, since the law of the Latin Catholic Church allows for a marriage to be concluded at a distance, that is, between those who are absent, through a proxy, the question arises whether instead of a proxy it would be possible to use some kind of telecommunication, video-phone, for example, Skype? Thanks to this kind of technical possibilities, will the fundamental principle of unambiguous presence of both parties at their own wedding ceremony—which is required by canon law—be preserved?

¹ Lucjan Świto, *Zawarcie małżeństwa przez pełnomocnika w formie wyznaniowej ze skutkami cywilnymi w prawie polskim* (Olsztyn: Wydawnictwo UWM, 2019).

Although the above question is not groundless, following the current position of the Church, the answer should probably be negative.

According to the well-established position of the doctrine, developed under the rule of the Code of Canon Law of 1917, in relation to marriages concluded between absentees, the church legislator—unlike the principles adopted in Roman law—excluded the possibility of contracting marriages by letter (*per litteras*) and the messenger (*per nuntium*), unambiguously stipulating that marriage between absentees is allowed only through a proxy. Thus, the proxy is not only a kind of “transmission belt” used to recreate the principal’s position, but this person replaces the physical absence of the prospective party, their role requires reasonable and to some extent even autonomous action. The proxy is not a messenger, that is, a person who only mechanically transfers the words of the person who commissioned this action. The proxy is the one who in a reasonable and real way expresses the will of another person and ultimately—in the event of finding any formal and legal obstacle to the conclusion of marriage—may refrain from doing so. The power of attorney in this case is based on trust and conviction that in the event of circumstances where the principal would not marry, the proxy will not do so either. For this reason, the attorney is obliged to perform the task entrusted to them personally.

The Sacrament of Penance

Repentance and reconciliation bring a little more hope for the celebration of the sacrament at a distance. The usual way of celebrating the sacrament of penance is individual and integral confession and absolution (can. 960 CIC), and the proper place for receiving confessions is the church and chapel, where the confessional should be located. However, in the case of a justified reason, canon law allows the possibility of confession outside the confessional (can. 964 § 3 CIC), for example, a hearing impaired person in a closed sacristy room, a sick person in a hospital, etc.

Therefore, the question arises whether in special situations (e.g., due to difficult direct access to the priest or in danger of death) it is possible to confess, during which the penitent and the confessor are at a considerable distance from each other?

This question was raised in the 16th century, 200 years before the invention of the telephone, before modern devices for distance communication appeared.²

² Zbigniew Janczewski, “Sprawowanie sakramentu pokuty i pojednania ‘na odległość,’” *Prawo Kanoniczne* 50, nr 1–2 (2007): 111–126.

The Congregation of the Holy Office received an inquiry: can a penitent write down their sins on paper, send them by postal courier to a confessor, and expect a return letter containing absolution?

In response, Pope Clement VIII not only disapproved of the practice of confession by mail, but in 1602 introduced the penalty of excommunication *latae sententiae* reserved to the Holy See for those who would use or propagate such a practice. The reason for this very firm and sharp decision was the principle that the sacrament of penance must be celebrated simultaneously in the same place and time.³

More than 200 years later, less than ten years after the invention of the telephone, the Holy See was asked again about the possibility of remote confession, this time by telephone. However, this question has not received a clear answer. On July 1, 1884, the Apostolic Penitentiary replied briefly: *Nihil est respondendum*.⁴

It is not known why the answer was such. Also after that, no other congregation took a clear position on this matter. On the other hand, many comments appeared in the doctrine, which, when addressing the issue of the validity of confession over the phone, were radically different from each other.

Among the arguments justifying the inappropriateness of confession over the phone, the artificiality of the telephone conversation, the lack of physical presence of the penitent and the confessor preventing eye contact between them were pointed out, which—according to these representatives of the doctrine—strikes at the naturalness of the sign required by each sacrament.⁵ Concerns were also raised about the possibility of eavesdropping on confessions, for example, by mistakenly picking up the phone by a third party as a threat to the secrecy of confession.⁶

The above arguments were refuted by supporters of the validity of confession over the phone,⁷ claiming—and rightly so—that in the confessional the confessor does not always hear and see the penitent's face clearly, as is the case during a telephone conversation, and confession can also be overheard in the confessional. Naturally, the proponents of telephone confession pointed out that there must be a serious reason for telephone confession to be undertaken.

³ Marian Pastuszko, *Sakrament pokuty i pojednania* (Kielce: Wydawnictwo Jedność, 1999), 464.

⁴ Janczewski, *Sprawowanie sakramentu*, 116.

⁵ Felix M. Capello, *Tractatus canonico-moralis de sacramentis. Depaenitentia*, t. 2 (Roma: Marietti, 1951), 72.

⁶ Pastuszko, *Sakrament pokuty*, 467.

⁷ Stanisław Witek, *Sakrament pojednania* (Poznań–Warszawa: Pallotinum, 1979), 169; Piotr Hempterek, *Komentarz do Kodeksu Prawa Kanonicznego*, t. 3, *Uświęcające zadanie Kościoła* (Lublin: Wydawnictwo KUL, 1986), 155; Reichard Weigand, “Das Bussakrament,” in *Handbuch des katholischen Kirchenrechts*, ed. Joseph Listl, Hubert Müller, Heribert Schmitz (Regensburg: Verlag Friedrich Pustet, 1983), 698.

The evolution of information and communication technology, of course, did not stop at the telephone. Therefore, with the emergence of new communication devices using the Internet at the turn of the 21st century, the questions returned as to whether the use of these means of communication to celebrate the sacrament of penance could be acceptable? The more so that they allow you to have a conversation, during which you can see both the face of the interlocutor. Thus, many of the objections raised by the opponents of telephone confession have been dropped.

Also these latest questions have not received a clear answer from the Magisterium of the Church. Although on February 22, 2002, a document of the Pontifical Council for Social Communications entitled “The Church and the Internet,” in which you can read that “virtual reality is not a substitute for the Real Presence of Christ in the sacramental Eucharist, the sacramental reality of the sacraments and participation in worship held in a living community”⁸ and “there are no sacraments on the Internet; and even religious experiences, made possible by the grace of God, are not sufficient in isolation from cooperation with other believers in the real world.”⁹

However, according to some doctrine, there are no final decisions regarding the use of modern communicators to celebrate the sacrament of penance. In their opinion, this document, although it is an important voice of the Church, is, first of all, not a church law by its nature. Secondly, the possible possibility of confession via the Internet would not be any replacement for the existing forms of the sacrament of penance, but only the possibility of supplementing and extending them via the Internet in certain specific situations and under clearly defined conditions. Thirdly, the statement that “there are no sacraments on the Internet”¹⁰ does not have to and in fact does not mean that there is no and never can be the celebration of sacraments via the Internet. Fourthly, the document itself does not settle anything definitively, but clearly opens up certain areas, encouraging “study and reflection” on the use of the Internet in the Church.

⁸ Pontifical Council for Social Communications, “The Church and the Internet,” https://opoka.org.pl/biblioteka/W/WR/rady_pontyfikalne/r_komunik_spol/kosciol_internet_22022002.html (published: 01.03.2002).

⁹ https://opoka.org.pl/biblioteka/W/WR/rady_pontyfikalne/r_komunik_spol/kosciol_internet_22022002.html (published: 01.03.2002).

¹⁰ Dariusz Kowalczyk, “O możliwości spowiedzi przez internet” [On the Possibility of Confession over the Internet], https://opoka.org.pl/biblioteka/T/TA/TAP/spowiedz_internetowa.html (27.05.2002).

The Sacrament of the Eucharist

The cited document of the Pontifical Council for Communications is undoubtedly also the basis for reflection on the possibility of participating in the celebration of another sacrament at a distance—the Eucharist. The first broadcast of the Holy Mass by television took place on December 25, 1948, in Paris and New York. In later years, regular transmissions of masses began in Italy, France, the United States, Cuba, Germany, Great Britain, Switzerland, and Venezuela. Nowadays, the holy mass is broadcast not only by television or radio, but also via the Internet, which we could experience massively in the last months of the coronavirus pandemic.

Although the broadcast of the Eucharist in real time, that is, the so-called *live streaming* has become an inseparable part of many social media, such as Facebook, YouTube or Instagram, and is developing at a fairly high pace, not everyone is in favor of such forms of getting closer to the Eucharist. One of the great opponents was, for example, the Archbishop of Paris, Cardinal Jean-Marie Lustiger, who, during the international conference on electronic media organized in the United States in Denver in 1998, stated that the transmission of the Holy Mass via electronic media is a blow to the very essence of the Eucharist.¹¹

The church thus faces another challenge. Although the requirement to participate in the Eucharist in real time thanks to modern media is fulfilled, a whole range of other related questions arise. Can the space gathering real believers be replaced by a new space of virtual connections where the Resurrected Christ will be present? Do the words: “Where two or three are gathered in my name, I am in the midst of them” (Mt 18:19) apply to this new virtual space? Is it possible to transmit God’s grace flowing from the Eucharist through the media, that is, certain spiritual goods, similar to what the popes have been doing for years, giving the city and the world, *urbi et orbi*, Christmas and Easter blessings? But these questions must probably be left to theologians and liturgists.

¹¹ Maciej Makuła, “Transmisje mszy świętych w live streamingu w internecie. Analiza możliwości, postulaty i propozycje,” *Seminare* 40, nr 1 (2019): 37–49.

Conclusion

The technological revolution in the field of communication that took place at the turn of the 20th and 21st centuries is a fact. Being able to freely communicate in real time with a group of other people is not a problem. It seems, therefore, that, taking into account the spiritual well-being of the faithful, especially those who are in danger of death or as a result of great distance or isolation, they have no access to a priest and a real community of the faithful, and also the fact that the Holy See has not given an authoritative response opposing the administration of the sacraments by means of new communication tools, this form should not be excluded from the practice of the Church.

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Lucjan Świto

Aspects juridiques des sacrements à distance

Résumé

L'article aborde le problème de la possibilité d'administrer le sacrement du mariage, de la pénitence et de l'eucharistie à distance, c'est-à-dire en utilisant les technologies de l'information et de la communication. Car les moyens électroniques de communication modifient non seule-

ment notre compréhension du temps et de l'espace, mais aussi l'expérience de la construction d'une communauté et du contact avec les autres. L'analyse effectuée a permis de conclure que, compte tenu du bien-être spirituel des fidèles, en particulier de ceux qui sont en danger de mort ou qui, en raison de la distance ou de l'isolement, n'ont pas accès à un prêtre et à une véritable communauté de fidèles, ainsi que du fait que le Saint-Siège n'a pas donné de réponse autoritaire s'opposant à l'administration des sacrements au moyen des nouveaux outils de communication, cette forme ne doit pas être exclue de la pratique de l'Église.

Mots-clés: sacrements, procuration, médias, radiodiffusion, télécommunication

Lucjan Świto

Aspetti Giuridici dei Sacramenti a Distanza

Sommario

L'articolo affronta il problema della possibilità di amministrare i sacramenti del matrimonio, della penitenza e dell'Eucaristia a distanza, ovvero utilizzando le tecnologie dell'informazione e della comunicazione. I mezzi di comunicazione elettronica cambiano infatti non solo la nostra comprensione del tempo e dello spazio, ma anche l'esperienza di costruzione di una comunità e di contatto con altre persone. La presente analisi ha portato alla conclusione che, tenendo conto del bene spirituale dei fedeli, in particolare di quelli che si trovano in pericolo di morte oppure a causa della grande distanza o dell'isolamento non hanno accesso al sacerdote e alla comunità reale dei fedeli, e dato il fatto che la Santa Sede non ha fornito una risposta autorevole contraria all'amministrazione dei sacramenti utilizzando nuovi strumenti di comunicazione, questa forma non deve essere esclusa dalla pratica della Chiesa.

Parole chiave: sacramenti, procura, media, broadcasting, telecomunicazioni



Tomasz Galkowski

University of Cardinal Stefan Wyszyński, Warsaw, Poland

<https://orcid.org/0000-0001-9166-9516>

Protection of the Ecclesial Community against Internet Abuses in Book VI of the Code of Canon Law

Abstract: Pope Francis, promulgating new canonical provisions in the field of criminal law, made an in-depth analysis of the ecclesial community, both in itself and through its reference to the secular community. From this perspective, the study presents the reasons for normative solutions: theological, church-social, and social. They constitute a point of reference for considering the abuses and crimes committed by the faithful using the Internet. The presence of the Internet has significantly changed the perception of the secular and ecclesial community, which does not release the faithful from the obligation to guard the faith and bear witness to it. This is also served by normative solutions, the observance of which contributes to building the unity of the community.

Keywords: Church community, protection, Internet abuse, criminal law

The result of the reform of criminal law initiated by Pope Benedict XVI in 2009 is the new text of Book VI of the Code of Canon Law, which entered into force on December 8, 2021. It can be largely called a new text, as only 19% of disciplinary provisions from the previous version of the book remained unchanged (seventeen unchanged canons), nine canons (10%) changed their place in the current systematics, and as much as 71% (63 canons) of disciplinary provisions have been changed.¹ This is the first reform of the existing code

¹ Juan Ignacio Arrieta, *The new Book VI of the Code of Canon Law. Intervention*. Press Conference to present the new Book VI of the Code of Canon Law (1.06.2021), <https://press.vatican.va/content/salastampa/en/bollettino/pubblico/2021/06/01/210601e.html>, accessed November 2, 2021.

provisions on such a large scale. The previous ones concerned individual canons. The only thing that can be compared to the current reform is the comprehensive reform of the matrimonial process by Francis for the Western Church and Eastern Catholic Churches. In the case of the reform of the marriage process, it had a pre-emptive character, directing new rules of conduct towards the future.

The revision of Book VI is an example that *ius sequitur vitam*, as Francis clearly points out. It is a reaction to certain shortcomings, not only difficulties as in the case of the process reform. The difference between them concerns not only the smaller number of reformed canons in the case of the process reform, but, above all, the scope of the material. As far as the matrimonial process is concerned, the reform concerned the legal institution which is the procedure for annulment of marriage, while in the case of Book VI, the reform applies to the entire branch of law. And, as in the first case, we were dealing with disciplinary norms, in the discussed situation the legal solutions refer to the constitutional norms of the Church expressing its communal and unity character, for the development of which the law delimits a certain space allowing for the expression of what a community is. On the other hand, the law, by delimiting the boundaries for the development of life-giving elements that build the Church, that is faith, love, graces, and charisms, also protects her unity in multiplicity. It guards unity against disintegration, dismemberment, temptations of individualism, and sinful confusion, at the same time showing ways of returning through appropriate compensation for situations improper for its unity.

For this reason, in the further part of the study I will pay attention to several issues: (1) theological reasons for the changes in criminal law; (2) church and social reasons; (3) social reasons; (4) reasons for including normative solutions in criminal law regarding sinful and criminal situations in which the use of the mass media plays a role.

Theological Reasons

The rationale behind the revision of Book VI of the Code of Canon Law can be seen in the theological and social dimensions. The first of them were emphasized in the Apostolic Constitution of Pope Francis, by which he promulgated the new text of the normative act.

(1) First of all, attention should be paid to the very title of the Constitution: *Pascite gregem Dei*,² which phrase was taken from 1 Pt 5, 2. However, for a full understanding of the papal intention, it is worth quoting the full words from which the title was taken, namely: “Tend the flock of God that is your charge, not by constraint but willingly, as God would have you, not for shameful profit but eagerly. Do not lord it over those assigned to you but be examples to the flock” (1P 5, 2–3). The above recommendation of St. Peter shows that on bishops, as on the foundation on which the Church was built, lies the responsibility for maintaining this building in its entirety. The stability of the building is evidenced by all the elements that form it. Francis, referring to the Conciliar Constitution on the Church, points to advice, encouragement, examples, authority, as well as the holy authority.³

The shepherds of the Church were committed, and therefore pre-elected, to guard and preserve the unity of God’s people. They are to do this by setting an example of observing the rules of conduct that are characteristic of the entire people of God. The example for the herd is connected with the obligation to exercise authority in the only possible form for the ecclesial community, which is pastoral service. All kinds of remedial measures at the disposal of pastors should be viewed from this very perspective. Their establishment and application should be made from the perspective of the community to which the injured persons belong, as well as persons committing crimes, in need of repair (improvement) and a sense of mercy in the form of conversion and re-finding their place in the community.

Francis points out that these rules reflect faith, which is a bond of unity. Faith, as a free-given grace, has an element that obliges us to communicate it further through the testimony of life arising from it. The Pope goes much further in his formulations, at the same time stating that the rules express “maternal mercy of the Church,” which clearly indicates that they should be read in an educative, but also forgiving aspect. Both these aspects are united by the common goal of law in the Church, which is the salvation of souls. The goal seems to be meta-canonical, but in its depth it reaches the earthly life of the ecclesial community which anticipates eternal salvation by starting its process in the earthly life of the Church. After all, adherence to canonical norms aims to build a community, as John Paul II stated during the presentation of the Code of Canon Law in 1983.

(2) The pastoral task of bishops, the Pope emphasizes, is carried out in the use of the above-mentioned tools, but always with an indication of their salvific and corrective purpose. Correcting wrongdoing is therefore inseparable from

² Francis, *Pascite gregem Dei* (23.05.2021), https://www.vatican.va/content/francesco/en/apost_constitutions/documents/papa-francesco_costituzione-ap_20210523_pascite-gregem-dei.html, accessed November 2, 2021.

³ *Lumen gentium*, 27.

directing the members of the Church to salvation, which is realized in the Church and through the Church, which is a sign and instrument of salvation. The protection of the community is thus carried out by the protection of its members. The community does not exist except through its members, and the sure path of salvation is in the community. The individual and the community are mutually dependent. The rules and norms of life in an ecclesial community should be perceived in the mutual relationship between the community and the individual. The norms addressed to the individual, indicating his appropriate conduct in the proper sense, apply to the entire community, as they are intended to provide the faithful with an environment for their own development of faith.

(3) Writing about the responsibility for the correct application of the norms of the church community, the Pope reminds that the obligation to maintain criminal discipline rests with the entire community. The expression used by the Pope is significant, as it does not address individual members of the community, but the entire People of God. He points out that the essence of criminal law is not to direct individual solutions against individual believers and stigmatize them for wrongdoing, but to protect the People of God. He emphasizes the role of collective conscience as a dimension of unity in relation to the temptations of particularism centered around oneself. It is about the good of this community in which other believers will be able to fulfill their vocation, and which, through the actions of the individual, is exposed to wounds and losses. Indeed, causing harm does not only affect an individual member of the community, but is harm done to the community. The Church is not a community based on social bonds but is a living organism in the body of Christ.

(4) Another reason, which I also classify as theological, relates to the pastoral office of bishops, who in the Church are not keepers of order, but shepherds. Addressing them several times in the Constitution, Francis emphasizes that their pastoral task, carried out with love and mercy, requires that they “make every effort to correct deviations.” In order not only to recall the task arising from the office, but also the obligation to take action, a new canon 1311 §2 was introduced at the very beginning: “The one who is at the head of the Church must safeguard and promote the good of the community itself and of each of Christ’s faithful, through pastoral charity, example of life, advice and exhortation and, if necessary, also through the imposition or declaration of penalties, in accordance with the provisions of the law, which are always to be applied with canonical equity and having in mind the restoration of justice, the reform of the offender, and the repair of scandal.” This imperative of pastoral action coexists with the statement in the same canon of the Church’s own inherent right “to constrain with penal sanctions Christ’s faithful who commit offences.” The new wording incorporated into the normative text together with can. 1317 (“Penalties are to be established only in so far as they are really necessary for the better maintenance of ecclesiastical discipline”) change the point of view on the place and role of

criminal discipline in the Church. For in the previous provisions in can. 1341, penal measures could be applied (*tunc tantum promovendam curet*) only if other pastoral measures “cannot sufficiently repair the scandal, restore justice, reform the offender.” The punitive measures were considered equivalent to other possibilities to prevent an irregular situation in the Church. Thus, penalties could not be invoked when other measures were able to prevent irregularities. The current provisions are dominated by the need to react when it needs to be done. The application of a criminal sanction is not one of the possible measures on an equal footing with the others, nor the last to be invoked. It is a remedy for the situation that has arisen. In the current canon of 1341 we read⁴: “The Ordinary must start (*promovere debet*) a judicial or an administrative procedure [...]” The earlier lack of compulsory application of a penal sanction in the new wording was replaced by an explicit order addressed to the ordinaries to apply sanctions when other measures turned out to be ineffective. The new way of regulating sinful and criminal situations has thus become the ordinary means of exercising the pastoral ministry of bishops to remedy scandal and to rectify broken justice in accordance with the second principle of the revision of Book VI, namely, the protection of the community by preventing the above-mentioned goals.

The obligation to issue a penal order (can. 1319 §2) and to initiate a sanctioning procedure (can. 1341) always exists whenever the ordinary considers them necessary (not only possible, permissible) for the achievement of repair of the scandal, compensation for the violated justice, and correction (conversion) of the guilty. Changing the perspective of the use of foundation-strengthening measures therefore falls within the scope of the pastoral care of bishops and ordinaries. What was possible now becomes necessary. Ordinaries cannot flee from this. Francis recalled their task, which is not something added but results from their office and the way they exercise it. The provision of the code is in line with the understanding of the bishop’s office and the role of the superior of the church community, always for its good.

The reminder of Francis has a reason, as he himself mentioned in the Constitution. It is not the necessity of penalizing criminals modeled on secular communities and the common opinion or will of the people, and the lack of adequate responses to the situation of pedophile scandals in recent years. The reasons are deeper and go back to the situation that developed under the influence of the Second Vatican Council. Contrary to other norms, which were revised with the Council and after it, which, as it were, confronted the life of the Church and changed in order to best reflect the life of the ecclesial community in a changing world, thus contributing to its evangelization, more clearly and more simply

⁴ Can. 1341: “Ordinarius proceduram iudicalem vel administrativam ad poenas irrogandas vel declarandas promovere debet cum perspexerit neque pastoralis sollicitudinis viis, praesertim fraterna correctione, neque monitione neque correptione satis posse iustitiam restitui, reum emendari, scandalum reparari.”

expressing the faith of the Church, the norms of criminal law have only been reduced in relation to the previous code. They have not been established like the others, nor have their effectiveness and power of influence been reviewed. The provisions of the code in the criminal matter clearly felt the principle underlying the revision of the entire code, namely the reevaluation of particular legislation, leaving bishops and superiors the possibility of preventing irregular situations in accordance with their pastoral judgment. Experience has shown, however, that the application of the binding norms remained on the sidelines or was considerably pushed aside by privileging other pastoral measures, emphasizing the elements of love and mercy along with the failure to rectify the requirements of justice.⁵ Pope Francis points to this reason when he writes about the lack of recognition of the internal connection existing in the Church between the service of love and the reference, whenever circumstances and justice so require, to criminal discipline. The consequence of this state of affairs is the risk of life forms which become contrary to ecclesiastical discipline and which cannot be prevented merely by prescriptions or instructions. In the longer term, this threatens to consolidate inappropriate behavior, which ultimately results in a scandal, misunderstanding between the faithful, making it more and more difficult to rectify the situation. In his argument, he adds a firm statement referring to the nature of the bishop's pastoral office, stating that the negligence of pastors in referring to the penal system shows that they do not fulfill their pastoral function properly and faithfully. Hence the new normative provision that shepherds are obliged to resort to the penal system whenever the situation requires it, always having in mind the goals which this system serves: repairing scandal, restoring justice, and reforming the guilty.

Ecclesial and Social Reasons

(1) Emphasizing the theological reasons behind the pastoral office can only remain a deepened reflection. This, however, should lead to specific actions that use the position and tasks resulting from the office held. The person endowed with it was destined to perform an office and should be qualified for it (can. 149). This ability is also manifested by the selection of appropriate means or favoring some over others that are at the disposal. The law itself has so far implied it. However, the selection of measures must not lead to the omission of others that may prove to be more effective. Such measures also include the imposition of penalties, which may be carried out in view of their goals, always

⁵ Arrieta, *The new Book VI of the Code of Canon Law*.

taken jointly, and not only selectively, that is, restoring justice, reforming the offender and repairing the scandal.⁶ A single selection of the implementation of the objectives of the punishment leaves other effects of the committed crimes unsatisfied.

In the Apostolic Letter issued *motu proprio* *As a Loving Mother*,⁷ Francis pointed to the ineffectiveness of the actions taken so far. In it, the Pope emphasized the obligation to care for, love, and protect the smallest and the most vulnerable, which is a task entrusted by Christ to the entire Christian community. This obligation rests in particular with shepherds and it “must be exercised” by conscientiously protecting “the weakest of those entrusted to her care.” Therefore, there is a special bond between an office which is by its nature permanently established and a person capable of fulfilling it, and, consequently, the necessity to react in the form of removal from the office related to the failure to fulfill the tasks related to it. Among such serious reasons for dismissal, Francis included “the negligence of a Bishop in the exercise of his office, and in particular in relation to cases of sexual abuse inflicted on minors and vulnerable adults.”

(2) Pope Francis supports the episcopal ministry by promulgating new disciplinary norms allowing bishops to properly exercise their pastoral office that combines the requirements of charity and justice. As the chairman of the Pontifical Council for Legal Texts, Bishop Filippo Iannone, recently stated, “the relationship of interpenetration between justice and mercy has at times been misinterpreted, fueling a climate of excessive laxity in the application of criminal law, in the name of an unfounded opposition between pastoral care and law, and criminal law in particular.”⁸ This is also related to the changes he noticed taking place in connection with the new requirements of the People of God, which he, however, does not explicitly mention. However, they can be read from the promulgated legal text by analyzing the changes introduced by Pope Francis regulating new challenges faced by the faithful of the contemporary Church.

To illustrate the situation of changes taking place in the community of the Church and requiring reactions in the form of penal norms, one can recall those that are related to the sensitivity of the faithful to offenses committed against the sixth commandment of the Decalogue. The existing crimes in this matter were classified as crimes against special obligations. After the changes introduced by Francis, they belong to crimes against life, dignity, and human freedom.

⁶ Can. 1341.

⁷ Francis, *As a Loving Mother* (4.06.2016), https://www.vatican.va/content/francesco/en/apost_letters/documents/papa-francesco_lettera-ap_20160604_come-una-madre-amorevole.html, accessed November 2, 2021.

⁸ Filippo Iannone, *Intervention*. Press Conference to present the new Book VI of the Code of Canon Law, 1.06.2021, <https://press.vatican.va/content/salastampa/en/bollettino/pubblico/2021/06/01/210601e.html>, accessed November 2, 2021.

Changing the place of placing the nature of the crimes under a different editorial title confirms the burden of the criminal act and indicates the need to care for the aggrieved part in order to restore justice and redress the wrongs caused. In addition, the extension of the scope of crimes to members of the Institutes of Consecrated Life and persons performing relevant functions in the Church confirms that for the Church this type of crime is not only associated with special tasks and offices in the Church, but concerns the protection of human dignity regardless of these who engage in criminal activities. Additionally, the inclusion of such norms in the Code of Canon Law makes the norm, which until now was a special norm, a universal norm confirmed by the legislator in the universal set of Church laws.

The innovations of penal regulations, which are a response to the changing conditions of the life of the Church community, include those that concern economic and financial matters in order to ensure absolute transparency of the institutional activity of the Church. Such activity, as Pope Francis would like it,⁹ should always remain exemplary for all administrators of property. The administration of goods concerns the goods of the Church, the possession of which depends on the goals they are to fulfill.¹⁰ Francis also identified new criminal situations and specified new features of the crimes existing in the Church so far. It is noteworthy that other members of the Church are also to suspension, previously reserved only for the clergy.

(3) In the constitution *Pascite gregem Dei*, Francis also draws attention to the inadequacy of the measures taken so far, which, as Archbishop Filippo Iannone stated, led to a climate of excessive relaxation and privilege of the attitude of mercy towards the obligations arising from justice. As a consequence, it resulted in a form of “privileging” the guilty party to the detriment of the aggrieved party. The first form of reaction to this type of situation is the introduction of the obligation to apply penal norms as opposed to their existing permissibility and to treat them on an equal footing with other remedial measures that do not have the same goals as penalties, nor do they concern the same situations. The lack of this distinction was often the cause of corruption in the attitude of pastors and caused a situation of scandal in the ecclesial community. The second form of response is the issuance of new, specific standards that must be applied. The third, however, is the possibility of removing from the office those shepherds who do not use these norms to rectify the situation within the community. It is not a form of disciplining shepherds, but an indication of new tools that are part of the exercise of the office entrusted to them. Thus, Francis emphasizes the role of the bishop in the ecclesial community entrusted to him.

⁹ Francis, *Inauguration of the Judicial Year of Vatican City State Tribunal* (27.03.2021), https://www.vatican.va/content/francesco/en/speeches/2021/march/documents/papa-francesco_20210327_tribunale-scv.html, accessed November 2, 2021.

¹⁰ Can. 1254 §2.

The Pope did likewise by reforming the provisions on the process of annulment of marriage, reminding bishops of the judicial dimension of their ministry, granting them the possibility of judging cases of nullity of marriage in a short trial before the bishop.

Social Reasons

During the audience granted to the employees of the Roman Curia on the occasion of Christmas on December 21, 2019, Francis pointed out the rapidly occurring social changes, while stating that “we are experiencing *not simply an epoch of changes, but an epochal change*.”¹¹ He also made this statement in the constitution promulgating Book VI. Therefore, he indicates that the changes taking place in society, and even the change of society itself, also influenced the need to react by means of penal regulations to the situations which, under the influence of these changes, take place in the Church. The changes Francis mentioned in his Christmas speech concern the way of living, relating to each other, communication and developing thinking, inter-generational relationships, understanding, and living based on faith and knowledge.

(1) The first perceived social change to which the Pope responds stems from “human weakness.” In his speech to the staff of the Roman Curia, the Pope pointed to changes that do not take place in a linear but epochal way. They are manifested in a change consisting in taking up new forms of life offered by society without an appropriate response resulting from the adopted attitude to life. Francis is concerned with the mismatch between what a person admits to and how they begin to live. This lack of correlation affects the authenticity of life and distorts the image of reality. Referring to an earlier speech in the document promulgating the new criminal law of the Church, Francis indicates the above situations of social life as penetrating the attitudes of the faithful in the Church. The example that was cited is the inadequacy of the office and position of the shepherd to the need to react to criminal situations in the Church, which, as Francis said, are a consequence of “human weakness.”

(2) In this context, the Pope proposes a new view of the reality in which the Church exists in the perspective of the parousia. It shows that the change should

¹¹ Francis, *Christmas Greetings to the Roman Curia* (21.12.2019), https://www.vatican.va/content/francesco/en/speeches/2019/december/documents/papa-francesco_20191221_curia-romana.html, accessed November 2, 2021.

take place in the transition from external elements influencing people's life to transformations to create a more human and Christian world. In this perspective, he also sees the aim of the ecclesiastical criminal law, which combines a salvific and corrective element, both human and Christian.

(3) Promulgating the new provisions of the criminal law, Francis points out that they must be closely related to social changes and the requirements of the People of God. The juxtaposition of the secular community, in which the ongoing changes affect the church law, and the church community, allows us to look at the requirements of the latter, to whom the criminal law is addressed, in a broader perspective. On the one hand, there is certainly concern for the preservation of ecclesiastical discipline that protects its good and, on the other hand, with an emphasis on its identity as a testimony to the world and its evangelizing function. The observance of clearly defined ecclesiastical disciplines is directed to the external expression of the truth of the life of this community, so that the external behavior corresponds to the internal faith that requires testimony. The law of the Church is part of her fundamental task of being a sign and instrument of salvation, and as such has its place in the mission of the Church herself.

Normative Reasons

In carrying out her mission, the Church uses tools that enable her to proclaim Christ's message.¹² Among them, a significant place belongs to modern forms of broadly understood information and communication. The media of social communication, however, do not remain only a tool of information and communication, but create a new environment, a new culture, contributing to many changes that, after Francis, can be described as epochal. At the same time, it is a "new world" which, apart from information and communication, is a challenge both for the changing forms of human relations and for the new space of proclaiming the message of salvation. In the already cited message, Pope Francis emphasized the need to be present in such an epochal change of human and Christian elements, or rather to regain them, due to the loss of the relationship between what is internal and external in a man.

¹² Arkadiusz Domaszek, *Możliwości zastosowania Internetu w misji Kościoła katolickiego* (Kraków: Poligrafia Inspektoratu Towarzystwa Salezjańskiego, 2013), 7.

The issue on which the Church's attention is focused is not whether or not to use these resources, but how to use them.¹³ This problem is noticed by both the secular and church community, regulating the ways of using the Internet, especially where there are legal contacts. In the Code of Canon Law of John Paul II, there are no direct norms relating to the Internet for natural reasons, as this medium began its presence on a large scale in the early 1990s. It quickly became mass media. For this reason, the Internet is recognized along with the other means by which the Church's evangelizing mission is carried out and complies with the existing regulations.

The rapid development of the Internet and the perceived threats related to its use require reactions not only indicating the proper way of using them, but also those related to the need to protect the goods exposed to their violation. The means of protection are disciplinary regulations of a criminal nature, which support values essential from the point of view of the ecclesial community. In addition, they aim to redress the damage and restore justice within the Church community, in which there is an equal place for the aggrieved and the harming ones who bear the consequences of criminal acts.

(1) There are provisions in Book VI of the Code of Canon Law relating to the misuse of the mass media. Although there is no direct wording pointing to the Internet in them, in terms of a broader scope, we are able to find those related to the Internet. I would divide them into two groups. To the first of them, I would classify crimes defined, for example, in can. 1364 §1 (offenses of apostasy, heresy, schism), 1365 (teaching a doctrine condemned by the pope or a general council or stubbornly rejecting the doctrine mentioned in can. 750 §2 and 752), to the other one, the crimes defined in can. 1368, 1386 §3, 1398 §1.30.

(2) The criterion allowing for the above distinction is the matter of the crime itself, which exists (as in the first group) regardless of its relationship with the mass media. The internal act of apostasy, heresy, and schism precedes its dissemination or public announcement also through the mass media. The rejection of a doctrine to be adopted as well as the teaching of a condemned doctrine need not be done through the mass media. The indicated crimes exist regardless of the means of their diversification. The mass media may be one of the tools for the public existence of a crime, constituting a means of proving its existence. Therefore, they do not fit into the matter of the crime. A similar situation occurs in the case of the betrayal of the secret of confession (can. 1386 §1) or the disclosure of its secret (can. 1386 §2). Crimes included in the second group

¹³ The Church commented on this in documents issued by Pontifical Council for Social Communication *The Church and Internet* (22.02.2002), https://www.vatican.va/roman_curia/pontifical_councils/pccs/documents/rc_pc_pccs_doc_20020228_church-internet_en.html, accessed November 2, 2021 and *Ethics in Internet* (22.02.2002), https://www.vatican.va/roman_curia/pontifical_councils/pccs/documents/rc_pc_pccs_doc_20020228_ethics-internet_en.html, accessed November 2, 2021.

are characterized by the fact that their occurrence requires the presence of the mass media. Therefore, they fall within the scope of the crime, allowing for its existence to be verified.

(3) The first crime in the systematics of the code is a crime against the faith and unity of the Church (can. 1368) consisting of uttering blasphemy, serious violation of morals or insulting religion or the Church, or causing hatred or contempt, provided that it takes place in a public spectacle or speech, in a disseminated letter or otherwise by means of the mass media. This canon, in the same wording, was present in the law previously in force (can. 1369).

The crime described in this canon concerns the dissemination, that is, the public expression of beliefs that are against the faith and unity of the Church. With its occurrence, however, a problem arises related to the possibility of detecting the perpetrator in the face of anonymous activity on the Internet. Personal data along with individual IP addresses are protected by Internet providers and, unless they constitute a state crime or other situation requiring reaction, remain unavailable to the Church justice. At this point, the question arises as to the responsibility of pastors and the exercise of their judicial power over those who commit crimes. It does not seem that in this not only hypothetical situation there is a possibility to initiate any procedure aimed at punishing the guilty. However, the protection of the Church community can be achieved by presenting its correct image in the media and influencing the recipients of the message so that its content is not reflected in the thinking and attitude of the faithful and is not further disseminated. The best protection in this matter is the positive transmission of faith.

(4) Another crime against the sacraments, for which the use of mass media is required, concerns the recording and dissemination of the words of a confessor or penitent from a true or simulated sacramental confession. This crime and punishment had already been established by the Congregation for the Doctrine of the Faith.¹⁴ Two things are worth noting in this crime. The first of them indicates that the applicability of the technique was not taken into account by the legislator at the time of the promulgation of the code in 1983. The development of the mass media, along with the possible emerging situations, contributed to the definition of the crime that was intended to protect the good which is the sacrament of reconciliation. The unity of the professed faith is stabilized around the sacraments, through them and in them. The second issue concerns the change of the code systematics. The present provision exists as the third paragraph of canon 1386 relating to the protection of the Sacrament of Reconciliation in its various manifestations. Earlier can. 1388, containing two paragraphs repeated in the

¹⁴ Congregation for the Doctrine of the Faith, *Decree regarding the excommunication of those who divulge confessions* (23.09.1988), https://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_19880923_scomunica-confessioni_en.html, accessed November 2, 2021.

current canon 1386, was placed in the title referring to the crimes of usurpation of ecclesiastical tasks and their performance. Currently, the crime is classified according to the new systematics as crime against the sacraments. The change is significant and deepens the importance of the ecclesial community, which is based on the sacraments and not on the exercise of authority. The emphasis placed on the sacraments directs the action at their protection, and not at the usurpation of power or its improper exercise.

(5) A new crime that found its place in the code in can. 1398 §1.30 was defined by Francis in the Apostolic Letter *Vos estis lux mundi* (May 9, 2019).¹⁵ It is now in the title on crimes against human life, dignity, and freedom. The first two paragraphs of this canon relating to offenses against the sixth commandment of the Decalogue were offenses against special duties. The change in the crime category is significant. It is about protecting human dignity against violations by others who commit sexual crimes, and not about offenses related to duties arising from the position and office held. The indicated offence consists of “immorally acquiring, retaining, exhibiting or distributing, in whatever manner and by whatever technology, pornographic images of minors or of persons who habitually have an imperfect use of reason.” Classifying this offense to the category of crimes against human dignity and freedom, and not to those related to the duties of the state and church office, again indicates that the protection of goods is not carried out on the basis of fulfilling duties. Positive attitude and respect for man is the starting point of interpersonal relations, not prohibitions directed at its addressees.

Conclusion

Do the new criminal law provisions protect the Church community? This is what they are supposed to serve. They can certainly contribute to this. But their earlier existence did not eliminate the sinful situations that arose after these laws came into force.

Will the law eliminate the shortcomings highlighted by Francis? The Pope places a great responsibility on the shepherds. But the legal solutions also show his confidence in those who have been selected as pastors, in their awareness of fulfilling the pastoral office in the Church and the possibility of non-selective use of what belongs to their office.

¹⁵ Francis, *Vos estis lux mundi* (9.05.2019), https://www.vatican.va/content/francesco/en/motu_proprio/documents/papa-francesco-motu-proprio-20190507_vos-estis-lux-mundi.html, accessed November 2, 2021.

The Church has her own law inherent in her nature. It is not based on a social contract and standards do not condition it. Faith is obligatory and foundations for mutual references should be sought in it. And such elements appear in the new legal regulations, which indicate protected goods and not only prohibited acts. Law is a carrier of values, not a norm that organizes them.

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Tomasz Gałkowski

Protection de la communauté ecclésiale contre les abus sur Internet dans le Livre VI du Code de droit canonique

Résumé

Le pape François, en promulguant de nouvelles dispositions canoniques en matière du droit pénal, a fait une analyse profonde de la communauté ecclésiale tant en elle-même que par sa référence à la communauté séculière. Dans cette optique, l'article présente les justifications théologique, ecclésiale-sociale et sociale des solutions normatives qui fournissent un point de référence pour l'examen des abus et des crimes commis par les fidèles à l'aide d'Internet. La présence d'Internet a considérablement modifié la perception de la communauté séculière et ecclésiastique, ce qui ne dispense pas les fidèles de leur devoir de garder la foi et d'en témoigner. Ce devoir est également servi par des solutions normatives dont le respect contribue à la construction de l'unité de la communauté.

Mots-clés: communauté ecclésiale, protection, abus sur internet, droit pénal

Tomasz Gałkowski

La tutela della comunità ecclesiale dagli abusi in Internet nel libro VI del Codice di diritto canonico

Sommario

Papa Francesco, promulgando nuove disposizioni canoniche in materia di diritto penale, ha compiuto un'analisi approfondita della comunità ecclesiale sia in sé sia nel suo rapporto con la comunità dei laici. In questa prospettiva, l'articolo presenta le ragioni delle soluzioni normative: teologiche, ecclesiale-sociali e sociali. Costituiscono un punto di riferimento per le riflessioni sugli abusi e sui crimini commessi dai credenti utilizzando Internet. La presenza di Internet ha cambiato significativamente la percezione della comunità laica ed ecclesiale, il che non libera i fedeli dall'obbligo di tutelare la propria fede e di testimoniarla. Tutto ciò si realizza anche attraverso soluzioni normative, la cui osservanza contribuisce a costruire l'unità della comunità.

Parole chiave: comunità ecclesiale, tutela, abusi in Internet, diritto penale



Damián Němec

Palacký University Olomouc, Czech Republic

<https://orcid.org/0000-0002-9960-2452>

Juridical Relations between Freedom of Artistic Expression and Protection of the Dignity of Religion in the Light of a Lawsuit over Theatrical Performances in the Czech Republic

Abstract: This paper deals with the legal regulation of the relationship between two human rights, freedom of artistic creation and protection of the value of religion as part of freedom of religion in the Czech Republic. It first gives an overview of three models of this relationship in three historical epochs: the period of democratic Czechoslovakia in the years 1918 to 1948 (excluding the period of World War II, where the protection of human rights was completely ignored), the period of domination of the Communist Party of Czechoslovakia in 1948 to 1989, that is, a period of general violations of human rights, and in a democratic society from 1989 (until 1992 in Czechoslovakia, from the disintegration of the Czechoslovak federation to January 1, 1993, in the Czech Republic). Most attention is paid to litigation caused by the presentation of two theater performances at the Brno Theater Festival in 2018. Both performances were directed by the Croat Oliver Frljić, known for controversial means of expression, often with a religious theme. The ensuing lawsuit, in which the then president of the Czech Bishops' Conference was one of the plaintiffs, showed that the general courts preferred the protection of artistic freedom in the conflict between the two constitutionally guaranteed freedoms with only one significant restriction: vituperation or downsizing of beliefs. However, the dispute is not yet fully resolved: the plaintiffs have filed a complaint with the Constitutional Court of the Czech Republic, which has not yet ruled on the matter. Consequently, an application to the European Court of Human Rights in Strasbourg cannot be ruled out.

Keywords: human rights, constitutional law, criminal law, freedom of artistic expression, religious freedom

Introduction

Human rights and freedoms are a very important area of both legal regulation and (or above all) the practical life of individuals and their groups. In this article, we deal with the legal relationship between freedom of artistic expression and freedom of religion, specifically regarding the protection of the value of religion.

To better understand the current situation, it is necessary to be acquainted with the up-to-now legal models of the relationship between the two freedoms. The first section is devoted to the period of democratic Czechoslovakia in the years 1918 to 1948 (omitting the period of World War II, where the protection of human rights was completely ignored). The second section of this article deals with the period of domination of the Communist Party of Czechoslovakia in the years 1948 to 1989, that is, the period of general human rights violations. The third section introduces the current legal regulation in a democratic society: until 1992 in Czechoslovakia, from the disintegration of the Czechoslovak federation to January 1, 1993, in the Czech Republic.

The subject of the most extensive fourth section is a lawsuit caused by the presentation of two theatre performances at the Brno Theatre Festival in 2018. Both performances were directed by the Croat Oliver Frlić, known for using controversial means of expression, often with a religious theme. The subsequent lawsuit, where one of the plaintiffs was the then chairperson of the Czech Bishops' Conference, may point to the current solution of the relationship (or sometimes conflict) between the two named freedoms. In this section in particular, it will be necessary to draw on information from electronic media, both for the drafting of the article and even for the judicial authorities themselves.

Legal Definition of Religious Freedom and Freedom of Artistic Creation and Their Relationship in the Years 1918–1948

After the establishment of the Czechoslovak Republic in the year 1918, the existing legal order of Austria-Hungary was retained in Czechoslovakia, namely, in the Czech land the Austrian system and in Slovakia the Hungarian one.¹

¹ Act No. 11/1918 Coll., on establishment of the independent Czechoslovak state, Art. 2.

Establishment and Form of the Czechoslovak Constitution from the Establishment of Czechoslovakia Until the Communist Party Took Power in February 1948

The new republican establishment of the state required the drafting of a new constitution. Adoption of a textually short temporary constitution in November 1918² was a temporary solution.³ This constitution (having only 21 sections) did not contain provisions on basic civil rights, which therefore followed the provisions of the current Austrian constitution, drafted in 1867 after the Austro-Hungarian settlement, the so-called December Constitution.⁴

The first proper Czechoslovak constitution was adopted in February 1920⁵ and was valid until 1948 (with a de facto interruption in connection with the events around World War II, which does not apply to our topic). The final form of the constitution was the result of many long political struggles, so it was a compromise on some points, which also applies to the rights of inhabitants.⁶

Constitutional Guarantees of Religious Freedom in the 1920 Constitutional Charter

Issues of religious freedom were among the controversial topics, where the negotiations were sometimes very heated. However, the final text of the constitutional charter ultimately contains a broad definition of religious freedom:

§ 121

Freedom of conscience and religion is guaranteed.

§ 122

All inhabitants of the Czechoslovak Republic have, within the same limits as citizens of the Czechoslovak Republic, the right to exercise, publicly and privately, any confession, religion or belief, provided that the exercise is not in conflict with public order and good morals.

§ 123

No one shall be compelled, directly or indirectly, to engage in any religious activity, with the exception of the rights of paternity or guardianship.

² Act No. 37/1918 Coll., on the Provisional Constitution.

³ Karel Schelle, “Ústava Československé republiky—prozatímní [Constitution of the Czechoslovak Republic—Provisional],” in *Encyklopedie českých právních dějin* [Encyclopedia of Czech Legal History], vol. XIX, ed. Karel Schelle and Jaromír Tauchen (Plzeň: Aleš Čeněk, 2020), 468.

⁴ Staatsgrundgesetz Nr. 142/1867 RGBl. vom 21. Dezember 1867, über die allgemeinen Rechte der Staatsbürger für die im Reichsrathe vertretenen Königreiche und Länder.

⁵ Act No. 121/1920 Coll., which introduces the Constitutional Charter of the Czechoslovak Republic.

⁶ Karel Schelle, “Ústava Československé republiky (1920) [Constitution of the Czechoslovak Republic (1920)],” in *Encyklopedie českých právních dějin* [Encyclopedia of Czech Legal History], vol. XIX, ed. Karel Schelle and Jaromír Tauchen (Plzeň: Aleš Čeněk, 2020), 472–73.

§ 124

All religions are equal before the law.

§ 125

It may be prohibited to perform certain religious acts if they are contrary to public order or public morality.

It is clear from the text of the Constitutional Charter that the legal limit for the exercise of religious freedom is the violation of public order and good morals (or public morals). The possibility of a ban on a certain religious activity emerges from these boundaries—the very wording of Section 125 allows for both an administrative ban (especially in a specific case) and legislative measures of a general nature. It can therefore be seen that the limits to the exercise of religious freedom are set quite broadly.

Constitutional Guarantees of Freedom of Artistic Creation in the Constitutional Charter of 1920

The guarantees of freedom of artistic creation are discussed in a much more concise way in the 1920 Constitutional Charter:

§ 117

(1) Everyone may, within the limits of the law, express an opinion in words, writing, printing, images, etc.

(2) The same applies to legal entities within the limits of their competence.

(3) The exercise of this right may not be to the detriment of anyone in their work or employment relationship.

§ 118

Scientific research and the proclamation of its results, as well as art, is free as long as it does not violate penal law.

The freedom of artistic creation and its communication is defined much more narrowly. On the one hand, the Constitution stipulates that it may be limited by law without giving clear criteria for the legitimacy of such laws, and, on the other hand, it provides for its limitation by penal law. Therefore, we must become familiar with the rules of penal law, dealing with the protection of the value of religion.

Criminal Protection of the Dignity of Religion

Czechoslovakia adopted its Czech part of the Austrian Penal Code of 1852,⁷ that is, from the time of the demolition of Josephinism. The Penal Code was amend-

⁷ Kaiserliches Patent Nr. 117/1852 RGBl., wodurch eine neue, durch die späteren Gesetze ergänzte, Ausgabe des Strafgesetzbuches über Verbrechen und schwere Polizei-Uebertretungen vom 3. September 1803, mit Aufnahme mehrerer neuer Bestimmungen, als alleiniges Strafgesetz

ed quite often both before 1918 and in Czechoslovakia itself, without changing its basic line. This Penal Code was in force in the Czech part of Czechoslovakia until the end of July 1950—however, since February 1948, penal practice has taken a significantly different path, with regard to the requirements of the class struggle.

The protection of the dignity of religion, especially of Christianity, was strongly emphasized in the Austrian Penal Code:

§ 122

Religious disturbance.

The crime of religious disturbance is committed by:

- a) anyone who blasphemes God through speech, actions, in printed works or in widely distributed writings;
- b) anyone who disrupts an existing religious practice in the state, or through dishonourable mistreatment of the devices dedicated to worship services or otherwise publicly showing contempt for religion through actions, speeches, printed works or disseminated writings;
- c) anyone who induces a Christian to apostasize from Christianity, or
- d) anyone who spreads unbelief, or a heresy contrary to that which the Christian religion seeks to spread.

§ 123

Punishment.

If the religious disorder caused public nuisance or seduction or public danger associated with the enterprise, this crime is to be punished with heavy imprisonment from one to five years, but also up to ten years in case of great malice or danger.

§ 124

If none of the circumstances mentioned in the preceding paragraph occur, the religious disorder is punishable by imprisonment from six months to one year.

§ 303

Vituperation of a legally recognized church or religious society.

Anyone who publicly or in front of several people, or in printed works, disseminated pictorial representations or writings, mocks or seeks to derogate the teachings, customs or institutions of a church or religious society recognized by law in the state, or who insults a religious servant of the same when performing worship services, or during their public activities religious practice is indecent in a way that is suitable to scandalize others, is guilty of a crime, insofar as this practice does not constitute a crime of religious disturbance (§ 122), and is to be punished with strict detention of one to six months.

über Verbrechen, Vergehen und Uebertretungen für den ganzen Umfang des Reiches, mit Ausnahme der Militärgränze, kundgemacht, und vom 1. September 1852 angefangen in Wirksamkeit gesetzt wird.

Freedom of artistic expression was quite significantly defined or rather limited by these provisions of the Penal Code. This allowed religious entities and their leaders to seek widespread protection of religion and its manifestations (especially ceremonies) from contempt or other attacks.

Summary of the Legal Definition in the Years 1918–1948

In my opinion, freedom of religious expression and of the expression of artistic creation was in an asymmetrical position in the period 1918–1948. Already in the 1920 constitutional charter, religious freedom was expressed more clearly and broadly, and public order and public morality are stated as its boundaries. Restrictions on the freedom of expression of artistic creation were set out more broadly in the Constitutional Charter and without specifying the criteria for such restrictions—with the exception of restrictions imposed by criminal law. The Penal Code of 1852, which was in force during this period, significantly protects religious freedom, especially for Christians, and thus prefers it to manifestations of artistic creation (and of scientific work).

Legal Definition of Religious Freedom and Freedom of Artistic Creation and Their Relationship in the Years of Communist Party Supremacy in 1948–1989

The Origin and Style of Two Czechoslovak Institutes During the Supremacy of the Communist Party in 1948–1989

The new constitution of the Czechoslovak Republic had been in preparation since 1946, but during the preparation, there were great differences in the attitudes of the Communists and representatives of other permitted political parties.⁸ The leadership of the Communist Party of Czechoslovakia (with personnel significantly overlapping with the leadership of the state), after seizing power in the state (25th February 1948), had the text of the constitution quickly finalized according to the communist postulates. Parliament approved it on 9 May 1948 (hence the name Constitution on 9th May),⁹ President Edvard Beneš refused to

⁸ Zdeněk Ryšavý, “Ústavní návrhy (1946–1948) [Constitutional Proposals (1946–1948)],” in *Encyklopedie českých právních dějin* [Encyclopedia of Czech Legal History], vol. XIX, ed. Karel Schelle and Jaromír Tauchen (Plzeň: Aleš Čeněk, 2020), 524–25.

⁹ Zdeněk Ryšavý, “Ústava Československé republiky (1948)—příprava [Constitution of the Czechoslovak Republic (1960)—Preparation],” in *Encyklopedie českých právních dějin* [Encyc-

sign it and abdicated.¹⁰ This constitution nominally contained some guarantees of freedoms taken over from the 1920 constitution charter, but in practice it was decided according to other, so-called accompanying laws, which fully took into account the then decisive aspect of the class struggle.

In 1960, the preparation of a new constitution began, which was to reflect the final victory of socialism in Czechoslovakia and led society to build a communist society, which was expressed above all in the text of its preamble.¹¹ The constitution was adopted in July 1960 and, among other things, changed the name of the state to the Czechoslovak Socialist Republic.¹² Its character is clearly evidenced by the fact that it enshrines the leading role of the Communist Party of Czechoslovakia in Article 4. The most significant change in this constitution occurred in 1968 with the adoption of the Constitutional Act on the Czechoslovak Federation,¹³ however, this did not affect the issue of civil rights. Other significant changes have taken place in connection with the democratization process since the end of November 1989, which we will discuss in the next chapter.

Constitutional Guarantees of Religious Freedom in the 1948 Constitution

Religious freedom was one of the formally guaranteed constitutional rights, but—which is symptomatic—the 1948 constitution uses a much shorter wording than the previous constitution:

§ 15

(1) Freedom of conscience is guaranteed.

(2) A world opinion, faith or belief may not be to the detriment of anyone, but it may not be a reason for someone to refuse to fulfil a civic duty imposed on them by law.

lopedia of Czech Legal History], vol. XIX, ed. Karel Schelle and Jaromír Tauchen (Plzeň: Aleš Čeněk, 2020), 554–56.

¹⁰ Constitutional act No. 150/1948 Coll., Constitution of the Czechoslovak Republic; Karel Schelle, “Ústava Československé republiky (1948) [Constitution of the Czechoslovak Republic (1948)],” in *Encyklopedie českých právních dějin* [Encyclopedia of Czech Legal History], vol. XIX, ed. Karel Schelle and Jaromír Tauchen (Plzeň: Aleš Čeněk, 2020), 556–57.

¹¹ Karel Schelle, “Ústava Československé socialistické republiky (1960) [Constitution of the Czechoslovak Socialist Republic (1960)],” in *Encyklopedie českých právních dějin* [Encyclopedia of Czech Legal History], vol. XIX, ed. Karel Schelle and Jaromír Tauchen (Plzeň: Aleš Čeněk, 2020), 561.

¹² Constitutional act No. 100/1960 Coll., Constitution of the Czechoslovak Socialist Republic.

¹³ Constitutional act No. 143/1968 Coll., on the Czechoslovak Federation; Karel Schelle, “Ústava Československé socialistické republiky (1960) [Constitution of the Czechoslovak Socialist Republic (1960)],” in *Encyklopedie českých právních dějin* [Encyclopedia of Czech Legal History], vol. XIX, ed. Karel Schelle and Jaromír Tauchen (Plzeň: Aleš Čeněk, 2020), 564.

§ 16

- (1) Everyone has the right to profess privately or publicly any religious belief or to be without religion.
- (2) All religions and denominations are equal before the law.

§ 17

- (1) Everyone is free to carry out acts connected with any religion or confession. However, the exercise of this right must not be in conflict with public order or good morals. It is not allowed to abuse it for non-religious purposes.
- (2) No one may be directly or indirectly compelled to participate in such an act.

It is clear from the text of the constitution that the legal limit for the exercise of religious freedom remains a violation of public order and good morals. However, another criterion of restriction has been added: a ban on abuse for non-religious purposes. This rather vague criterion is then developed by current laws and by-laws, but, above all, by the administrative practice of the party-government apparatus, often without legal basis, mainly on the instructions of the Communist Party and/or State (secret) Police.

Constitutional Guarantees of Religious Freedom in the 1960 Constitution

This constitution also contained a formal guarantee of religious freedom, this time even more succinctly:

Art. 32

- (1) Freedom of religion is guaranteed. Everyone can profess any religious faith, or be without religion, even perform religious acts, as long as it is not against the law.
- (2) Religious faith or beliefs may not be a reason for someone to refuse to fulfil a civic duty imposed on him by law.

The exercise of religious freedom was thus entirely subject to any restrictions laid down by any law, or by a by-law, if the law provided for empowering provisions to that effect. In fact, however, previous practice continued, albeit less often with the use of drastic means and punishments.

Constitutional Guarantees of Freedom of Artistic Creation in the 1948 Constitution

Freedom of artistic creation is included in the provisions on freedom of speech and protection of cultural property:

§ 19

- (1) Freedom of creative mental activity is guaranteed. Scientific research and the proclamation of its results, as well as art and its manifestations, are free, provided that they do not violate penal law.

(2) Cultural property is under the protection of the state. The state makes them accessible to all and supports science and the arts in order to develop national culture, progress and general well-being; in particular, it ensures that creative workers are provided with favourable conditions for their work.

§ 20

(1) Everyone has the right to make their views and results of their creative intellectual activity known to the general public and to disseminate and demonstrate them in any way.

(2) This right may be restricted by law only with regard to the public interest and the cultural needs of the people.

The freedom of artistic creation and its communication is more narrowly defined than in the previous constitution. It is again stated that this freedom may be restricted by law without giving clear criteria for the legitimacy of such laws, and leaves its restriction by penal law. In addition, however, it introduces restrictions “in the public interest and the cultural needs of the people,” and only the Communist Party, as the vanguard of the working class, is entitled to determine what is in the public interest and for the benefit of the people.

Constitutional Guarantees of Freedom of Artistic Creation in the 1960 Constitution

The guarantees of freedom of artistic creation are dealt with in the 1960 Constitution in two places: within the section on Social Establishment (Article 16) and under the section on the Rights and Obligations of Citizens (Article 28):

Art. 16

(1) All cultural policy in Czechoslovakia, the development of education, upbringing and teaching are conducted in the spirit of scientific worldview, Marxism-Leninism, and in close connection with the life and work of the people.

(2) The state, together with social organizations, makes every effort to support creative activity in science and the arts, strives for ever wider and deeper education of workers and their active participation in scientific and artistic creation, and ensures that the results of this activity serve all people.

(3) The state and social organizations are constantly striving to eliminate the survivors of an exploitative society in the consciousness of the people.

Art. 28

(1) In accordance with the interests of the working people, all citizens are guaranteed freedom of expression in all areas of society, in particular freedom of speech and of the press. Citizens use these freedoms both to develop their personalities and their creative efforts, and to exercise their active participation in the administration of the state and in the economic and cultural construction of the country. To the same end, freedom of assembly and freedom of street processions and demonstrations are guaranteed.

(2) These freedoms are ensured by making publishing and printing enterprises, public buildings, halls, open spaces, as well as radio, television and other means available to workers and their organizations.

Freedom of artistic creation and its communication are defined far more strictly than in the 1948 constitution. It is newly required that this must be in accordance with the interests of the working people, which is again interpreted—as usual—by the Communist Party. There is no explicit reference to penal law, but even that played a significant role here.

Criminal Protection of the Dignity of Religion

It was only after 1948 that legal dualism was overcome in Czechoslovakia (totalitarian regimes are faster and more effective than democratic regimes in enforcing legal changes). This was significantly reflected in the field of penal law, which underwent a rapid development, especially in the years 1949 to 1959.

Penal codes are the fundamental norms. During the Communist Party's supremacy, two penal codes were passed: the first in 1950¹⁴ which was very punitive (and sharpened by other accompanying laws), the second in 1961 as milder, but still very restrictive and class-conditioned.¹⁵

The Penal Code of 1950 provides protection of religion very briefly:

§ 119

Whoever publicly defames a group of the population of the republic for their nationality, race or religion, or for being without religion or supporters of the people's democratic order, will be punished by imprisonment for up to one year.

§ 234

Restrictions on freedom of religion.

Whoever by violence, threat of violence or other serious harm

- a) compels another to participate in a religious act,
 - b) delays another without authorization from such participation; or
 - c) otherwise prevents another from exercising freedom of religion,
- will be punished by imprisonment for one to five years.

An even shorter provision is contained in the Penal Code of 1961:

§ 198

Defamation of a nation, race and belief.

Whoever publicly and insultingly defames

¹⁴ Act No. 86/1950 Coll., Penal Code.

¹⁵ Act No. 140/1961 Coll., Penal Code.

- a) a nation, its language or a race; or
 - b) a group of inhabitants of the republic because they are supporters of a socialist social and state establishment, for their religion or because they are non-religious,
- will be punished by imprisonment for up to one year or by corrective measures.

Freedom of artistic expression was not explicitly mentioned in these provisions of the Penal Code. Legal protection of the exercise of religious freedom was formally guaranteed by individuals in the Penal Code of 1950, but only by a group of persons in the Penal Code of 1961. In fact, however, there was a systematic struggle against religion as a “bourgeois survival,” primarily through administrative restrictions, but often also personal ridicule, especially of primary school pupils.

Summary of the Legal Definition in the Years 1948–1989

Freedom of religious expression and freedom of expression of artistic creation were formally guaranteed in the period 1948–1989, but to a significantly limited extent compared to the previous period. Religion was generally fought against as a bourgeois relic, in all areas of social life, including artistic creation.

Artistic creation was subject to even more restrictions: art had to serve the public interest. The 1960 Constitution even required that art be developed in accordance with the scientific worldview—Marxism-Leninism. In practice, both criteria were determined by the Communist Party, and so there was a de facto distinction between permitted (and possibly also supported) art and non-permitted art, of which the creators and distributors were persecuted.

Penal law then continued to reduce the protection of religious beliefs, especially by abolishing the protection of individuals in the Penal Code of 1961.

Although visually it may seem that more pronounced legal restrictions were placed on the arts, both areas came under the control repressive party and state policies of the Communist Party, thus many manifestations of both religious and cultural life were pushed into illegality.

Legal Definition of Religious Freedom and Freedom of Artistic Creation and Their Relationship since the Velvet Revolution in November 1989

Establishment and Form of Constitutional Guarantees of Civil Liberties after November 1989

The Velvet Revolution of November 1989 significantly changed the situation in terms of real respect for human rights and freedoms. Already on 29th November 1989, the Czechoslovak parliament (still in its original “communist” composition!) adopted an amendment to the constitution,¹⁶ which deleted the passages guaranteeing the leading position of the Communist Party of Czechoslovakia and also amended the above-cited Article 16, which also includes freedom of artistic creation.¹⁷

Its new wording was the following:

- (1) All cultural policy in Czechoslovakia, the development of education, upbringing and teaching are conducted in the spirit of scientific knowledge and in accordance with the principles of patriotism, humanity and democracy.

The Constitution was amended more than ten times by the end of 1992, mainly in the area of property rights and the powers of state and self-governing bodies.

However, the newly created legislation has played a crucial role, especially since 1991. It includes the creation and enactment of the Charter of Fundamental Rights and Freedoms, adopted on 9th January 1991 as part of the Czechoslovak constitutional order.¹⁸

This constitutional law contains quite exceptional final provisions in § 6:

- (1) Laws and other legal regulations must be brought into line with the Charter of Fundamental Rights and Freedoms by 31 December 1991 at the latest. On

¹⁶ Constitutional act No. 135/1989 Coll., amending constitutional act No. 100/1960 Coll., the Constitution of the Czechoslovak Socialist Republic.

¹⁷ Pavel Polakovič, “Ústavní návrhy politických stran (1990–1992) [Constitutional Proposals of Politic Parties (1990–1992)],” in *Encyklopedie českých právních dějin* [Encyclopedia of Czech Legal History], vol. XIX, ed. Karel Schelle and Jaromír Tauchen (Plzeň: Aleš Čeněk, 2020), 589.

¹⁸ Constitutional act No. 23/1991 Coll., which introduces the Charter of Fundamental Rights and Freedoms as a constitutional act of the Federal Assembly of the Czech and Slovak Federal Republic. This act also amended some provisions of the constitution.

that date, provisions which are incompatible with the Charter of Fundamental Rights and Freedoms shall cease to have effect.

This Charter still plays an extremely important role, especially in the Czech legal system. In connection with the split of Czechoslovakia into two independent states, the Czech Republic and the Slovak Republic, on 1st January 1993 both successor states adopted new constitutions. These constitutions differ significantly in enshrining the guarantee of human rights and freedoms. While the Constitution of the Slovak Republic¹⁹ contains its own provisions in this area, while maintaining the Charter of Fundamental Rights and Freedoms for its territory, the Constitution of the Czech Republic²⁰ does not contain provisions on the rights and freedoms of citizens and in this matter refers to the Charter, which the then Czech National Council re-enacts as a constitutional law in a formally unquestionable manner.²¹ For this reason, we will continue to rely on the provisions of this Charter.

Constitutional Guarantees of Religious Freedom in the Charter of Fundamental Rights and Freedoms

Religious freedom is guaranteed quite widely²²:

Article 15

(1) The freedom of thought, conscience, and religious conviction is guaranteed. Everyone has the right to change her religion or faith or to be non-denominational.

Article 16

(1) Everyone has the right freely to manifest her religion or faith, either alone or in community with others, in private or public, through worship, teaching, practice, and observance.

¹⁹ Constitutional act No. 460/1992 Coll., Constitution of the Slovak Republic; Eubor Cibulka and Marek Domin, “Ústava Slovenské republiky (1992) [Constitution of the Slovak Republic (1992)],” in *Encyklopedie českých právních dějin* [Encyclopedia of Czech Legal History], vol. XIX, ed. Karel Schelle and Jaromír Tauchen (Plzeň: Aleš Čeněk, 2020), 651–52.

²⁰ Constitutional act No. 1/1993 Coll., Constitution of the Czech Republic; Karel Klíma, “Ústava České republiky (1992) [Constitution of the Czech Republic (1992)],” in *Encyklopedie českých právních dějin* [Encyclopedia of Czech Legal History], vol. XIX, ed. Karel Schelle and Jaromír Tauchen (Plzeň: Aleš Čeněk, 2020), 611–12.

²¹ Resolution of the Presidency of the Czech National Council No. 2/1993 Coll., on the promulgation of the Charter of Fundamental Rights and Freedoms as part of the constitutional order of the Czech Republic.

²² For the English text of the Charter, we use the official published version at the website of the Chamber of Deputies of the Parliament of the Czech Republic: <https://www.psp.cz/en/docs/laws/listina.html> (accessed December 20, 2021), although some shortcomings of this translation could be objected to.

- (2) Churches and religious societies govern their own affairs; in particular, they establish their own bodies and appoint their clergy, as well as found religious orders and other church institutions, independent of state authorities.
- (3) The conditions under which religious instruction may be given at state schools shall be set by law.
- (4) The exercise of these rights may be limited by law in the case of measures necessary in a democratic society for the protection of public safety and order, health and morals, or the rights and freedoms of others.

The relatively large scope of the text stems from the efforts of legislators to explicitly guarantee religious freedoms in those areas where it was most violated during the communist regime.

It is clear from the text of the Charter that the legal limit for the exercise of religious freedom remains a violation of public security and order, health and morals, as well as respect for the rights and freedoms of other persons (physical and legal). The necessary restrictions must be set by law (by legislative power), not by administrative measures not supported in a legal text.

Constitutional Guarantees of Freedom of Artistic Creation in the Charter of Fundamental Rights and Freedoms

Freedom of artistic creation is expressed very briefly in the Charter:

Art. 15

- (2) Freedom of scientific research and artistic creation is guaranteed.

Interestingly, the Charter does not explicitly state any restrictions on the guarantee of this freedom. However, this does not mean that the fundamental rights and freedoms are absolute in freedom of artistic creation: the exercise of other constitutionally guaranteed rights and freedoms, the rights and freedoms of others, and the provisions of criminal law must certainly be taken into account, although this is not explicitly stated here.

Criminal Protection of the Dignity of Religion

The current Penal Code of 1961 was amended many times after November 1989. However, the new Penal Code of 8th January 2009 is the starting text to describe the current situation.²³

The Penal Code of 2009 provides very briefly for the protection of religion:

§ 176

Restrictions on freedom of religion.

- (1) Whoever by violence, threat of violence or threat of other harm

²³ Act No. 40/2009, Penal Code.

- a) compels another to participate in a religious act,
 - b) delays another without authorization from such participation; or
 - c) otherwise prevents another from exercising freedom of religion,
- will be punished by imprisonment for up to two years.
- (2) The offender shall be punished by imprisonment for one to five years or by a fine if he commits the act referred to in paragraph 1
- a) on at least three persons, or
 - b) with a weapon.

§ 352

Violence against a group of people and against an individual.

- (1) Whoever threatens a group of inhabitants with death, injury or large-scale damage shall be punished by imprisonment for up to one year.
- (2) Whoever uses violence against a group of individuals or individuals or threatens to kill them, injure them or cause extensive damage because of their actual or perceived race, ethnic group, nationality, political beliefs, religion or because they are actual or perceived without religion, will be punished by imprisonment for six months to three years.
- (3) As in paragraph 2, he shall be punished,
- a) who associates or tumults in the commission of such an act; or
 - b) if he commits the act referred to in paragraph 1 by printing, film, radio, television, a public computer network or any other similarly effective means.

§ 355

Defamation of a nation, race, ethnic or other group of persons.

- (1) Whoever publicly defames a nation, language, race or ethnic group; or a group of persons for their actual or perceived race, ethnicity, nationality, political beliefs, creed or belief, or because they are genuinely or allegedly non-denominated, shall be punished by imprisonment for up to two years.

Freedom of artistic expression is mentioned by these provisions of the Penal Code only indirectly, in the case of § 355: defamation of a nation, race, ethnic or other group of persons.

Legal protection of the exercise of religious freedom is guaranteed in the Penal Code of 2009 by both a group of persons and individuals. However, in the case of defamation on the grounds of religion or belief, protection is only guaranteed for a group of people.

Summary of the Legal Definition after November 1989

Freedom of religious expression and freedom of expression of artistic creation were, after November 1989, that is, after the Velvet Revolution (removal of the communist regime), both more realistically observed and also legally enshrined in the 1991 Charter of Fundamental Rights and Freedoms readopted for the Czech Republic as part of its constitutional order. The longer text is devoted to religious freedom; the much shorter text is devoted to the freedom of artistic creation. While in the case of religious freedom, the Charter itself explicitly

states how it may be restricted, in the case of freedom of artistic creation any explicit restriction is missing in the Charter.

The protection of religious freedom is guaranteed in the Penal Code of 2009 for individuals and groups of people, both in the event of a violation of religious freedom by violence and the threat of violence, as well as the threat of other harm. Artistic creation is not explicitly mentioned in this context. It is therefore clear that—in the absence of explicit legislation—the relationship between religious freedom and the freedom of artistic creation must be sought primarily through case law, if they come into conflict and the case is brought before a court.

Searching for the Relationship between Two Constitutionally Guaranteed Freedoms Regarding the Example of a Civil Litigation Concerning Theatre Performances Held in 2018 in Brno

The Holding of Controversial Theatre Performances in Brno in 2018 and Discussions around Them

The Center for Experimental Theater presented two author's performances guided by Croatian director Oliver Frljić as part of the annual Theatre Brno Festival in 2018: *The Malediction* (24th May 2018) and *Our Violence and Your Violence* (26th May 2018).²⁴

Both performances included controversial scenes with religious undertones. In the first performance, the actor on a statue commemorating Pope John Paul II depicted fellatio, the pope was subsequently labelled the “protector of paedophiles” and, in the end, symbolically hanged, and the actors also cut down a wooden cross with a chainsaw. At the end of the second performance, the

²⁴ Contradictory information is provided regarding these performances. While all the reports on the performances in the press speak of the author's work of stage director Frljić, the court writings of the first instance, which we will discuss below, mention the Slovenian Youth Theatre as the author. However, the mentioned name was the actor, not author, and this ensemble performed only the performance *Our Violence and Your Violence*, while the performance of *The Malediction* was performed by the Polish ensemble Teatr Powszechny, cf. the programme of the festival at “Divadelní svět Brno 2018: Divadlo, tanec a svoboda [Theater World Brno 2018: Theater, Dance and Freedom],” 26.02.2018, accessed November 16, 2021, <http://www.mestohudby.cz/zpravodajstvi/divadelni-svet-brno-2018-divadlo-tanec-a-svoboda>.

figure of a young man with signs of the crucified Jesus Christ descends from the cross and, signifying violence, depicts coitus with a young Muslim woman (who had previously pulled the national flag of the Czech Republic out of her vagina).

In the Czech Republic, as in other countries, these performances have also caused controversy.²⁵ On the one hand, there were people who defended freedom of artistic expression, but, on the other hand, there was a wave of resistance to the performances. The Czech Bishops' Conference distanced itself from the performances in its declaration of early April 2018,²⁶ and Muslims also joined their protest.²⁷ A petition was signed against the performances by about 6,000 people, and the organizers handed it to the mayor of Brno on 11th May 2018.²⁸ Protest demonstrations took place in several places in the city of Brno. A group of twenty-five persons from the movement Decent People burst onto the stage of the Theatre Goose on a String after the beginning of the production *Our Violence and Your Violence* and formed a chain in front of the actors, thus separating the actors and spectators and interrupting the performance. However, most of the audience disagreed with them, applauding the actors and shouting "Decent People away!" After about an hour, an anti-conflict police team arrived at the theatre and the performance continued. The whole controversy resulted in the filing of several criminal reports from both sides, but the police discontinued the investigation.²⁹

²⁵ For example, the performance *The Malediction* was presented at the Teatr Powszechny in Warsaw in 2017, which also provoked strong protests and criminal reports (still pending). It is interesting that the semi-monthly revue *Divadelní noviny* [Theatre Newspaper] submitted a detailed article about this event, in which it states (in the original Polish version) the reactions to the presentation of this performance and controversies that arose. See "Skandal s papežem v Teatru Powszechny [Scandal with the Pope at the Teatr Powszechny]," 23.02.2017, accessed November 17, 2021, <https://www.divadelni-noviny.cz/skandal-s-papezem-v-teatru-powszechny>.

²⁶ Česká biskupská konference [Czech Bishops' Conference]. Biskupové nesouhlasí s divadelní hrou Naše násilí a vaše násilí [Bishops Disagree with the Performance *Our Violence and Your Violence*], 18.04.2018, accessed November 15, 2021, <https://www.cirkev.cz/cs/aktuality/180418biskupove-nesouhlasi-s-divadelni-hrou-nase-nasili-a-vase-nasili>.

²⁷ "Biskupové nesouhlasí s divadelní hrou Naše násilí a vaše násilí. Muslimové se přidávají [Bishops Disagree with the Performance *Our Violence and Your Violence*. Muslims are joining]," 20.04.2018, accessed November 15, 2021, <https://islam.cz/2018/04/20/biskupove-nesouhlasi-s-divadelni-hrou-nase-nasili-a-vase-nasili-muslimove-se-pridavaji/>.

²⁸ "Jsou křesťané občané druhé kategorie? tážou se odpůrci kontroverzní hry [Are Christians Second-class Citizens? Opponents of the Controversial Performance Ask]," 15.05.2018, accessed November 15, 2021, https://www.idnes.cz/brno/zpravy/nase-nasili-a-vase-nasili-kontroverzni-hra-petice-krestansti-aktiviste.A180515_140626_brno-zpravy_krut.

²⁹ "Kontroverzní hra Naše násilí a vaše násilí spustila smršť trestních oznámení [The Controversial Performance *Our Violence and Your Violence* Has Triggered a Whirlwind of Complaints]," 29.05.2018, accessed November 15, 2021, <https://brnensky.denik.cz/zlociny-a-soudy/kontroverzni-hra-nase-nasili-a-vase-nasili-spustila-smrst-trestnich-oznameni-20180529.html>.

However, it is far more beneficial for our research to follow another court case that has the nature of a civil dispute.

Civil Litigation Concerning Theatrical Performances Conducted by Representatives of the Catholic Church—Basic Data and Time Path

The plaintiffs are Card. Dominik Duka, then President of the Czech Bishops' Conference, and his lawyer Roland Němec.

The defendants are the Center for Experimental Theater in Brno and the National Theatre in Brno.

The plaintiffs filed a lawsuit with the Court of First Instance, Brno Municipal Court, 11th July 2018; they requested that both defendants publish an apology on their websites. The Municipal Court ruled on 18th March 2019, rejecting the plaintiffs' claims.³⁰ The Court of Appeal of the second instance, the Brno Regional Court, handed down a judgment on 20th November 2019, in which it again rejected the plaintiffs' claims.³¹ The plaintiffs lodged an extraordinary appeal against this judgment: an appeal to the Supreme Court of the Czech Republic, which also dismissed the lawsuit on 28th April 2021.³²

After exhausting the procedural steps in the general judiciary, the plaintiffs lodged a constitutional complaint with the Constitutional Court of the Czech Republic on 4th August 2021.³³ The Constitutional Court has not yet ruled on this complaint. If its decision is negative from the applicants' point of view, they are considering bringing an action before the European Court of Human Rights.

Arguments of the Plaintiffs and of the Court in the Proceedings before the Court of First Instance

In the action sent to the court of first instance (Brno Municipal Court), the plaintiffs state:

- The right to equality has been violated (Article 1 of the Charter), in which a group of persons is denied the right enjoyed by others without a fair justification for such a situation. Their portrayal of equality was affected by the portrayal of Jesus in this way, as the plaintiffs, for example, cannot stage a performance where Muhammad has sex with a puppeteer.
- The performance may therefore be aimed at promoting the hatred of a group of the population towards another, that is, conduct contrary to Article 2 (3) of the Charter, when in this way the security and life of the plaintiff, Card.

³⁰ Sentence of the Municipal Court in Brno File no. 112 C 88/2018-190 of 18th March 2019.

³¹ Sentence of the Regional Court in Brno File no. 70 Co 170/2019-243 of 20th November 2019.

³² Sentence of the Supreme Court of the Czech Republic File no. 25 Cdo 1081/2020-282 of 28th April 2021.

³³ Constitutional complaint of His Eminence ThLic. Dominik Duka and of JUDr. ICLic. Ronald Němec, Ph.D. of 4th August 2021.

Duka, as a herald of the teachings of Jesus Christ as well as the security of the prosecutor JUDr. Němec, resp. the right to safety of his children.

- Interference with the right to freedom of religion and expression of faith, as well as the freedom of thought and conscience of the plaintiffs (Articles 15 and 16 of the Charter), as they cannot identify with a person that is being reported as raping a woman, or with a person representing a religion that rapes Islam. If the depiction of rape should have any symbolism, then it was malicious symbolism, which also applies to the treatment of the flag and of figure of John Paul II. Jesus Christ was portrayed in *Our Violence*, and if not, it is not clear why the character was endowed with the attributes and appearance that are usually attached to Jesus. These performances do not lead to any dialogue.
- Violation of the dignity of the plaintiffs—the said woman pulling the flag of the Czech Republic from her vagina during the same performance interfered with the plaintiffs' rights so that as Czech citizens they have the right to use the Czech Republic symbols only in a way that does not harm the seriousness of the symbols and of the state.

The court first recapitulated the de facto findings where the role of the media plays a significant role:

- From an annotation of the play *Our Violence and Your Violence*, the court found that it should question Europe as a whole and ask, among other things, “whether we are aware that our wealth depends on thousands of deaths in the Middle East, whether we have equal access to the dead after the terrorist attacks in Europe like those in Baghdad. When were we supposed to convince ourselves of the greater power of our God than the others?” The second theatrical performance *The Malediction* was then to ask questions such as “to what extent our decisions are influenced by Catholic morality, how the Church influences the behaviour of atheists, or to what extent contemporary art is within the limits of censorship and avoidance of accusations of insulting the faith.”
- The court investigated the course of the theatrical performance *The Malediction* of video recording on the website www.youtube.com (the performance *The Malediction* held in Poland), from an article in the magazine *Konteksty* 3/2018, which talks about oral sex, and the performance *Our Violence and Your Violence* with an (abbreviated) video recording of the Czech Television, which contains almost complete scenes, except for the alleged rape, where the recording ends with the actor taking off the actress' shorts, but the rest is evident from an interview with the director of the National Theatre Brno on the website www.aktualne.cz from 16th April 2018.
- The court rejected the plaintiffs' proposals for the examination of witnesses (director, actors, Prof. Osolobě): they could not contribute to the outcome of the proceedings or to supplement the facts. The intention of the actors

and the overall impression of the results of their activities can be completely missed, and in the opinion of the court, this was the case. The plaintiffs interpreted the actors' intention in a certain way, but the court concluded that the actual execution and the impression created did not coincide with the claims.

The Court of First Instance (based on the defendants' replies and the applicants' replies) dismissed the action in its entirety, arguing:

- Lack of active legitimacy of the plaintiffs—they did not see the mentioned performances in the Brno version.
- Depictions of John Paul II and of Jesus Christ are not historical, but allegorical, in the context of the targeting of the performances, evident from their annotations. Both performances in a portrayed form showed phenomena that existed or still exist, they only did so in a form that is not very common and is non-standard, on the other hand, the court is not here to determine the level of taste of the audience and decide what happens on scene, only because it does not like the performance or, on the contrary, it likes it, the court could not decide what is or is not good to act, which is not the task of the plaintiffs too.
- Equality of rights (Article 1 of the Charter)—the plaintiffs have the right to stage theatrical performances with the content what they want. This provision of the Charter does not apply to horizontal relations, that is, between entities that are gifted in equality of rights, but to vertical relations, that is, between them and the state, which is obliged to act equally in relation to all and also to respect their same position. It was not relevant to the present case if it was claimed that according to the current mood in society, Muslims and Christians did not have the same rights. This is why it is always appropriate to judge every action from the point of view of the potential for interfering with rights from the point of view of the average person, not the “extremist.”
- The dignity of the plaintiffs was to be violated by the fact that the actress pulled the flag of the Czech Republic from her vagina. The applicants' rights could not be affected. The factual substance of the offense within the meaning of Section 13 of Act No. 352/2001 Coll., on the use of state symbols, could have been fulfilled to the maximum. The plaintiffs do not have standing to bring an action for the protection of such a symbol when infringement proceedings should be instituted by the competent authority.
- The objection to the dignity, honour and reputation of the depiction of Jesus Christ or John Paul II is also unfounded, with regard to the reasonable and average viewer. In any case, the institute of John Paul II's post-mortem protection may seem to be more appropriate in the given case in the performance *The Malediction*, to which, however, in the opinion of the court, the plaintiffs do not have active legitimacy.

— Regarding freedom of conscience and religion (Articles 15 and 16 of the Charter), in the court's view, theatrical performances cannot change society's view of the nature of the teachings in which the plaintiffs believe and thus endanger the plaintiffs in their professional and family lives. The findings of the Austrian Constitutional Court do not support the reasoning, because the penal law protection of religious symbols applies there.

It is important that the court also based its argument on the wording of the provisions of the Civil Code³⁴ for the protection of personality:

§ 81

(1) Personality of an individual including all his natural rights are protected. Every person is obliged to respect the free choice of an individual to live as he pleases.

(2) Life and dignity of an individual, his health and the right to live in a favourable environment, his respect, honour, privacy and expressions of personal nature enjoy particular protection.

§ 82

(1) An individual whose personality rights have been affected has the right to claim that the unlawful interference be refrained from or its consequence remedied.

(2) After the death of an individual, the protection of his personality rights may be claimed by any of his close persons.

Even in this area, the court did not find the plaintiffs actively legitimated and rejected their arguments.

Arguments of the Plaintiffs and of the Court in the Proceedings before the Court of Second Instance

The plaintiffs state in the appeal sent to the court of the second instance (Regional Court in Brno):

- They do not agree with the conclusion of the Court of First Instance that the performances in question did not infringe the applicants' rights.
- They claim that the performances are extreme and extremist and as such do not enjoy protection. It is the duty of the plaintiffs not to remain silent, to draw attention to acts of violence and, if they consider such conduct to be dangerous to the plaintiffs, their families and the society in which they live, to respond adequately to them by bringing an action.
- They believe that they have fewer rights because they are Catholic and defend their rights against interference in the Catholic faith. They complained

³⁴ Act No. 89/2012 Coll., Civil Code. The official English translation is available at: <http://obcanskyzakonik.justice.cz/index.php/home/zakony-a-stanoviska/preklady/english>, accessed November 20, 2021.

that the Court of First Instance had unjustifiably suspended their rights from those of others and that it had not carried out a proportionality test in that case.

- They did not agree with the average viewer’s criterion of a European growing up in a legal environment.
- Regarding the removal of the flag from the vagina, the plaintiffs stated that it was not at all decisive whether it was “just” an offense, because the flag as a symbol of the state is not just a thing, it is a morality, a principle and the values it carries. They insisted that the performances served to support or promote movements aimed at suppressing the rights and freedoms of citizens.

The court of second instance dismissed the appeal in its entirety with the following arguments:

- Freedom of speech, although not absolute, is worthy of protection even for such thoughts as they offend, shock or disturb. This freedom may be restricted by law in favour of the fundamental values of a democratic society. However, the present case does not constitute a restriction on freedom of artistic expression for any conceivable legitimate reason, generally provided for in the Charter or the European Convention for the Protection of Human Rights and Fundamental Freedoms, but solely a restriction on the protection of the rights and freedoms of others (Article 17 (4)), resp. protection of the reputation or rights of others (Article 10 § 2 of the Convention). However, the protection of any possible public interests (e.g., to maintain morality or prevent religious unrest in society, etc.) as limits of freedom of expression is not at all in this type of court proceedings, and such public interests cannot therefore be given in this context when exercising the right to privacy (private interest of the applicants). The protection of human personality cannot be confused with the protection of public order.
- However, the right to hold a particular religious belief is not automatically affected if the individual is exposed to a different religious opinion from third parties.
- Regarding the protection of artistic freedom: works of art can also be critical, offensive, shocking or disturbing. The guide here is the criterion of rational thinking of an independent person with the reason of an ordinary person, able to use his reason in the position of a spectator.
- In resolving conflicts between freedom of expression and the protection of religious sentiment of believers, there is in the ECHR case law both decisions favouring the protection of religious sentiment of believers (e.g., *Otto-Preminger-Institut v. Austria*, judgment of 20th September 1994, complaint no. 13470/87, *E.S. v. Austria*, judgment of 25th October 2018, complaint no. 38450/12) as well as decisions favouring freedom of expression (e.g., *Giniewski v. France*, of 31st January 2006, complaint no. 64016/00,

Sekmadienis Ltd. v. Lithuania, judgment of 30th January 2018, complaint no. 69317/17). That part of the ECHR's decision, which ultimately favoured the protection of religious sentiment over freedom of expression, is understood very critically and controversially in the local context and does not meet with understanding. In relation to freedom of religion, the ECHR mentions in a number of decisions that standards in this area differ from country to country, given national traditions and requirements given the need to protect the rights and freedoms of others and to maintain public order.

- With regard to the active legitimacy of individuals, the court recognizes that unjustified interference with the right to protection of personality may violate the right to protection of personality of several natural persons and then all at the same time, or any of them (independently), have the right to bring their claims to court. On the other hand, in an intervention addressed not to an individualized individual (person) but to a group of persons, the courts must always examine how an individual attack will affect the individual sphere of a particular individual. The plaintiffs were not directly affected by the intervention in question, either as the characters covered by the scenes in question, or directly as eyewitnesses (spectators) to either of the two performances. The immediate factual, temporal and local connection between the intervention and the person affected is therefore not given here. Immaterial property damage to religious sentiment could only be caused to the plaintiffs by the reflection of parts of the performances in which they were not present in person, in the media, resp. in public space. In that situation, in the light of all the foregoing, the Court of Appeal makes the logical conclusion that the protection against non-pecuniary damage caused by the reflection of an intervention cannot be so broad that, as such, the perpetrator should be required to make good any individual Christian (as a character that the scenes deal with) or directly (as an eyewitness to the performance) and affected only by the reflection of isolated parts of the performance in public space.
- Regarding the flag, the protection of state symbols is reserved to public law and does not form part of the right to the protection of human personality.
- The Court of Appeal reviewed the decision of the Court of First Instance and the proceedings before it to the extent challenged on appeal and went beyond the grounds of appeal, and concluded that the applicants' appeal should be denied of any justification.

Arguments of the Plaintiffs and of the Court in the Proceedings before the Supreme Court

The plaintiffs state in the appeal sent to the Supreme Court of the Czech Republic:

- The Court of Appeal was then criticized for having erred in its assessment of the conflict of rights in the present case. It is not the right to freedom of expression and the right to protection of honour and good repute, but the right to freedom of expression under Article 10 of the Convention and the right to freedom of thought, conscience and religion under Article 9 of the Convention, which includes the right not to be challenged in their religious beliefs.
- Although the right to hold a particular religious belief is not directly affected if an individual is exposed to another religious opinion by third parties, if such activity does not reach the intensity of intolerable psychological coercion or physical coercion, the right not to be exposed can also be considered another internal fori component grossly offensive to religious sentiment, especially if it is a targeted attack or exercise of another religion.
- The appellants do not consider the Court of Appeal's conclusion correct that the performances in question could not have outraged the average viewer. On the one hand, the Court of Appeal did not define such a viewer in any way, and, on the other hand, it ignores the fact that Czech culture is based on Christian roots, which is why even an average, albeit unbelieving, person can be affected by a blasphemous statement. The Court of Appeal errs in considering the Czech population to be mostly atheistic; most of the society has a positive attitude towards the Church; according to discussions on the Internet, the performance has offended a number of people who do not actively profess Christianity.
- The appellants consider that the applicants were not directly concerned by the mention of the play in question as incorrect. It follows from the fact that the applicants feel affected by their rights that the interference actually took place. The Court of Appeal also erred in finding that the plaintiffs lacked active standing to bring proceedings.
- They reiterated that they felt discriminated against as Christians, and were granted fewer rights in the public sphere than adherents of Islam, which they concluded that they themselves could not make similar offences in relation to Islam.

The Supreme Court rejected the appeal in its entirety with the following argument (selected only as regards the conflict between the right to religious freedom and the right to freedom of artistic expression):

- If our legal system guarantees citizens the right to freely choose their religion and its uninterrupted practice, including the right not to be subjected to grossly offensive acts against the foundations of their faith, and if the law

guarantees freedom of expression, locution of own opinions and uncensored ideas, it is clear that there may be a conflict between the two rights in their exercise.

- The legal limit of the right to freedom of expression of one person is the limits set out in Article 17 (4) of the Charter and Section 81 of the Civil Code to protect the freedom, dignity, respect, honour and privacy of another.
- Freedom of religion is restricted by freedom of expression, including speech that supports other religions or atheism or criticizes or disputes certain religions and its manifestations. Freedom of expression applies not only to information and ideas that are received favourably or are considered harmless or insignificant, but also to those that are offensive, shocking or disturbing the state or any group of the population. If the exercise of one right exceeds the acceptable limits of the protection of another right, the originally permitted exercise of the right becomes illegal.
- In the event of a conflict between two fundamental human rights, it is necessary to carefully consider in each case which of them should be given priority and protection, as these boundaries cannot be well-defined and specifically described prohibitions and guidelines.
- If it were a grossly offensive and derogatory expression, directed against a religious symbol or an expression of faith without justifiable motive, such an expression would be to deny protection and grant it to the affected right to freedom of religion. On the contrary, speech dealing with a religious symbol could be found to be both controversial and negative, if it were driven by a desire for dialogue, an expression or an opinion, and its aim would not only be to shock and offend those for whom the symbol is sacred. Such speech would be appropriate to provide protection at the expense of the protection of religious sentiment, this internal component of the right to freedom of religion.
- The expression of the realization of the right to freedom of expression is, among other things, a work of art, and if its main goal is not to attack a religion without insignia, insult and disparage its symbols and representatives, then it does not interfere with the right to freedom of religion.

Arguments of the Plaintiffs and of the Court in the Proceedings before the Constitutional Court

The complainants state the main reasons for their constitutional complaint:

- The complainants disagree with the opinions of the courts, which argued that the defendants had the right to present the performances as they were presented, because in a democratic state freedom of speech is so wide that its restriction can only be in exceptional cases. One can agree that freedom of speech should be wide, but that the river must not be the sea. It is easy to drown in a river without borders.

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- The complainants allege that the reasons of the ordinary courts for dismissing the action are unconstitutional. Protection of complainants, resp. of their Christian faith is much less than the rights of Muslims or other non/religious denominations.
 - The merits of the dispute are three points:
 - I. Who has the right to defend the honour and reputation of Jesus Christ and St. John Paul II, as prominent representatives of the faith practised by the complainants?
 - II. Who has the right to insult and ridicule non/faith, resp. where the limits of freedom of artistic creation are?
 - III. Does a citizen of the Czech Republic have the right to defend the basic symbols of the Czech Republic in court?
 - The complainants alleged that the decision of the ordinary courts had infringed their constitutional rights. These are rights based on the Charter of Fundamental Rights and Freedoms:
 - Articles 1 and 3 (3) and the Charter of Fundamental Rights of the European Union, Article 20 (equality of rights);
 - Article 5 and Article 7 (2), in conjunction with Article 10 (1) and (2) Article 15 (1), incl. European Convention on Human Rights Article 9 (Jesus Christ and John Paul II are denied the right to protection of personality);
 - Article 16 (1) and (2), with reference to the Charter of Fundamental Rights of the European Union Article 10 (1) (the right to manifest one's religion, including the defence of the honour and reputation of religious representatives and societies);
 - Article 36 (2) with reference to the Charter of Fundamental Rights of the European Union Article 47 (violation of the right to a fair trial, as the general courts did not teach the complainants their obligations to assert and demonstrate a general perception that the general average person would feel the flag being pulled out of a woman's vagina, as unworthy and it caused him mental suffering—the absence of this proof was judged by the Supreme Court).

The Constitutional Court rejected this complaint in its decision of 4th October 2022,³⁵ stating:

- on the one hand, on the basis of a summary of the case law of the European Court of Human Rights and the ordinary courts of the Czech Republic, the court admitted that the personality rights of persons who were not physically present at the theatre performances themselves could be violated by the content of those performances;

³⁵ Decision of the Constitutional Court of the Czech Republic File No. II.ÚS 2120/21 of 4 October 2022, published on 11 October 2022.

- on the other hand, the Constitutional Court finds that both games pursued a legitimate aim, to provoke public discussion about religious violence and sexual incidents within one of the churches;
- they did so by means which, although partly blasphemous, did not, on the whole, suppress the underlying message;
- the substance of the content of the plays, including the controversial scenes, was made known to the public in advance and it was everyone's free choice whether to attend the performance;
- the inevitable public awareness of the scenes complained of in the constitutional complaint, as well as of the incident during one of the plays, was accompanied by a wide media discussion; thus, even in terms of the intensity of the effects of the facts complained of, there was no substantial interference with the applicants' fundamental rights and freedoms;
- the Constitutional Court concluded that the contested sentences of the Municipal Court in Brno, Regional Court in Brno and the Supreme Court did not violate the fundamental rights and freedoms of both complainants, it therefore dismissed the constitutional complaint pursuant to Article 82(1) of the Constitutional Court Act.

Summary of the Results of the Search for a Relationship between Two Constitutionally Guaranteed Freedoms

It is clear that in a conflict between constitutionally guaranteed freedoms religious freedom and freedom of artistic expression, the ordinary courts give priority to the protection of artistic freedom with only one significant restriction: if the offensive artistic expression did not pursue a justifiable aim other than insulting religious beliefs or downplaying religion.

It is a question of how the Constitutional Court, and possibly also the European Court of Human Rights, will deal with this dilemma.

Moreover, it is clear that the media play a major role in both creating the factual situation and proving the facts.

Conclusion

The legal relationship between freedom of religion and freedom of artistic expression has been resolved in significantly different ways in the territory of today's Czech Republic in the period since the founding of Czechoslovakia, that is, since 1918.

The first model of regulation of this relationship was characteristic for the period 1918 to 1948. The starting point was mainly the wording of the Czechoslovak Constitution of 1920, which enshrined both freedoms (in the case of freedom of artistic expression with explicit reference to penal law), and the wording of the Austrian Penal Code of 1852, which was carried over into the Czechoslovak legal system. In particular, the wording of the Penal Code set relatively strict boundaries of artistic expression in relation to freedom of religion. It can therefore be stated that freedom of religion enjoyed greater legal protection during this period.

The second model is characteristic for the period of the supremacy of the Communist Party of Czechoslovakia in the years 1948 to 1989. Both Czechoslovak constitutions of 1948 and 1960 formally guaranteed the exercise of both investigated freedoms. The Penal Codes of 1950 and 1961 severely reduced the protection of religious freedom; the 1961 Code penalized only violations of the religious freedom of entire groups, not individuals. In fact, however, both other laws and by-laws, as well as administrative practices, severely limited the exercise of both freedoms examined; in the case of freedom, this was all the more so as the 1960 Constitution itself required that all artistic creation be in accordance with the scientific worldview—Marxism-Leninism. The third model is characteristic for a democratic society, which began to develop after the Velvet Revolution in November 1989. The key texts for the current description of the legal relationship are the 1991 Charter of Fundamental Rights and Freedoms and the Penal Code of 2009. While in the case of religious freedom it is explicitly stated in the Charter itself how it may be restricted, in the case of freedom of artistic creation, explicit restrictions are missing in the Charter. The Penal Code sanctions violations of freedom of religion in the form of oppression, but not through the exercise of freedom of artistic expression. It is therefore clear that—in the absence of explicit legislation—the relationship between religious freedom and the freedom of artistic creation must be sought primarily through case law, if the freedoms come into conflict and the case is brought before a court. The most significant court proceedings in the area of the relationship between freedom of religion and freedom of artistic expression is a lawsuit between the then President of the Czech Bishops' Conference and his lawyer on the one hand, and the Center for Experimental Theater in Brno and the National Theatre in Brno on the other. The subject of the conflict was the presentation of two theatrical performances directed by the Croatian director Oliver Frlijić: *The Malediction* and *Our Violence and Your Violence*. The plaintiffs alleged violation of personal rights and incitement to interfaith conflict on the basis of the controversial means of expression with a religious subtext used in these performances. The ordinary courts (Brno Municipal Court, Brno Regional Court, and the Supreme Court of the Czech Republic) consistently rejected their arguments, after which the applicants lodged a constitutional complaint, which was

finally rejected by the Second Chamber of the Constitutional Court in its decision of 4 October 2022. It is clear that in the conflict between these two constitutionally guaranteed freedoms, the ordinary courts prefer the protection of artistic freedom with only one significant restriction: when the offensive artistic expression does not lead to any justifiable goal other than insulting religious beliefs or downplaying religion.

A very important role of the media also emerges from the description of the case in question. The courts themselves stated that the entire court proceedings would almost certainly not have taken place without such great information about the controversial performances in the media. The courts themselves drew information from the media in evidentiary proceedings. In addition, the whole case was massively published in the media. All this shows how important the media are in today's society.

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Damián Němec

Relations juridiques entre la liberté d’expression artistique et la protection de la dignité de la religion à la lumière d’une affaire judiciaire concernant les représentations théâtrales en République tchèque

Résumé

Cet article traite de la réglementation juridique de la relation entre deux droits de l’homme, la liberté d’expression artistique et la protection de la valeur de la religion dans le cadre de la liberté de religion en République tchèque. Le texte donne un aperçu de trois modèles de cette relation à trois époques historiques : la période de la Tchécoslovaquie démocratique de 1918 à 1948 (à l’exclusion de la période de la Seconde Guerre mondiale, au cours de laquelle la protection des droits de l’homme a été complètement ignorée), la période de domination du parti communiste de Tchécoslovaquie de 1948 à 1989 – période de violations généralisées des droits de l’homme, et dans une société à nouveau démocratique depuis 1989 (jusqu’en 1992 en Tchécoslovaquie, depuis l’écroulement de la fédération tchécoslovaque, depuis le 1er janvier 1993 en République tchèque).

La plus grande partie de l'article est consacrée à la description du litige causé par la présentation de deux représentations théâtrales lors du festival de théâtre de Brno 2018.

Le metteur en scène des deux représentations était le Croate Oliver Frljić, connu pour son utilisation de moyens d'expression controversés, souvent sur des thèmes religieux. Le procès qui en a résulté, dans lequel le président de la Conférence épiscopale tchèque de l'époque était l'un des plaignants, a montré que les tribunaux ordinaires privilégiaient la protection de la liberté artistique dans un conflit entre deux libertés garanties par la Constitution, avec une seule restriction importante : les moyens artistiques devaient avoir un but autre que celui d'offenser ou d'humilier les sentiments religieux. Toutefois, le litige n'a pas encore été entièrement résolu : les plaignants ont fait appel devant la Cour constitutionnelle de la République tchèque, qui n'a pas encore statué sur la question. Par conséquent, une plainte auprès de la Cour européenne des droits de l'homme de Strasbourg n'est pas à exclure.

Mots-clés : droits de l'homme, droit constitutionnel, droit pénal, liberté d'expression artistique, liberté religieuse

Damián Némec

Rapporti giuridici tra libertà di espressione artistica e tutela della dignità della religione alla luce del caso giudiziario sugli spettacoli teatrali nella Repubblica Ceca

Sommario

Questo articolo riguarda la regolamentazione giuridica del rapporto tra due diritti umani, la libertà di espressione artistica e la tutela dei valori religiosi nel quadro della libertà di religione nella Repubblica Ceca. Il testo presenta una panoramica di tre modelli di questo rapporto in tre epoche storiche: nel periodo della Cecoslovacchia democratica nel 1918–1948 (escluso il periodo della Seconda Guerra Mondiale, in cui la tutela dei diritti umani fu completamente ignorata), nel periodo della dominazione del Partito Comunista Cecoslovacco nel 1948–1989, con una diffusa violazione dei diritti umani, e di nuovo in una società democratica dal 1989 (fino al 1992 in Cecoslovacchia, dallo scioglimento della federazione cecoslovacca il 1° gennaio 1993 nella Repubblica Ceca). Gran parte dello spazio è stato dedicato alla descrizione del contenzioso legale derivante dalla presentazione di due spettacoli teatrali al Festival teatrale di Brno nel 2018. Il regista di entrambi gli spettacoli è stato il croato Oliver Frljić, noto per l'uso di mezzi espressivi controversi, spesso con temi religiosi. Il conseguente processo, nel quale fu parte ricorrente l'allora presidente della Conferenza episcopale Ceca, dimostrò che i tribunali comuni preferivano la tutela della libertà artistica nel conflitto tra due libertà costituzionalmente garantite con un'unica significativa limitazione: che i mezzi artistici avevano uno scopo diverso da quello di offendere o umiliare i sentimenti religiosi. Tuttavia, la controversia non è stata ancora del tutto risolta: le parti attrici hanno presentato ricorso alla Corte Costituzionale della Repubblica Ceca, che non si è ancora pronunciata sul caso. Non è quindi da escludere un ricorso alla Corte europea dei diritti dell'uomo di Strasburgo.

Parole chiave: diritti umani, diritto costituzionale, diritto penale, libertà di espressione artistica, libertà religiosa

Part Two

Reviews



Ginter Dzierżon,
Dyspensa w kanonicznym porządku prawnym
Studium prawno-historyczne
[Dispensation in the Canonical Legal Order
A Legal and Historical Study]. Warszawa:
Wydawnictwo Naukowe UKSW, 2020, pp. 186

The content of the reviewed book presents the institution of the dispensation throughout the history of Christianity, with particular reference to the contemporary regulations included in canons 85–93 of Chapter V of Book I “General Norms” of the 1983 Code of Canon Law. This is the first publication in the Polish language that treats about dispensation in a historical manner, despite the fact that, as the author puts it, all the faithful have enjoyed its benefit for years. The book is divided into three chapters, which constitute its parts. The first chapter, entitled “The Formation of Doctrine and Discipline from the Beginning of Christianity to the Promulgation of the 1917 Code of Canon Law” (pp. 11–30), on the one hand, covers the historically widest time span—nineteen centuries of Christianity, and, on the other hand, is the most modest in terms of content. Chapter Two: “Discipline and Doctrine in the Period from the Promulgation of the 1917 Code of Canon Law to the Promulgation of the 1983 Code of Canon Law” (pp. 31–58) discusses content relating to the solutions introduced from the time of the promulgation of the 1917 Code to the promulgation of the 1983 Code, thus covering more than 60 years of the 20th century, including the period before and after the Second Vatican Council. The third chapter, “Dispensation under the 1983 Code of Canon Law” (pp. 59–156), is content-wise the most extensive section and covers only 37 years of the new law (1983–2020). In his Introduction, Rev. Ginter Dzierżon formulates the purpose of the work, indicating that it is dispensation that serves to mitigate the provision of the applicable

norm, while noting that in interpreting the law it is important to seek its *ratio legis*. The formation of the institution of dispensations began at the beginning of Christianity, hence the book has a legal-historical character. The author's intention was to present not only the development of the doctrine and discipline throughout history, but also to answer the questions to what extent the dispensation and the doctrine, formed at different historical stages, influenced the provisions of modern regulations, and whether the regulations in force today are in line with modern reality, as well as what should be changed in them to facilitate the realization of the redemptive mission of the faithful.

In the first chapter, the author pointed out that until the ninth century, no text was known in which the definition of dispensation would be mentioned, since by that time it had not yet been developed. The Church Fathers used such terms as *oikonomia* (Basil of Caesarea), *indulgentia*, *relaxatio a summo iure* (Jerome of Stridon), or *dispensatio*, *misericordia*, *humanitas*, *liberatio*, *venia relaxata* (Pope Siricius). Noteworthy is the formulation of St. Jerome of Stridon: *mitigatio seu relaxatio quamcumque legis* indicating a dual understanding of dispensation, in the meaning of a relaxation of the law pertaining to the good of the Church, allowing actions next to the generally accepted rules, and in relation to a particular act or multiple acts. According to Eduardo Labandeira, quoted by the author of the book, the dispensation was used in three situations: as an exception to the existing law, as a mitigation of the law, and to resolve conflicting norms that occur. In the *Decretum Gratiani*, dispensation has the character of an exception to the existing law, for reasons of mercy, for example, *relaxatio rigoris disciplinae ex misericordia* (Dictum, c. 5, C. 1, q. 7). The doctrine of dispensation was not yet sufficiently worked out and there was no distinction between privilege and dispensation. It was only Rufinus of Aquileia who, in the definition he prepared in the 12th century in the "Summa decretorum," stated that: *Est itaque dispensatio, iusta causa facientis, ab eo cuius interest, canonisci rigoris causalis derogatio*, and pointed out its essential elements: derogation of law, necessity of just cause and special case. There was still no indication of a competent authority to make the decision, although the power of dispensation belonged to bishops with regard to universal legislation, provided that the popes did not reserve certain specified matter to themselves. Medieval Study of Canon Law also defined the limits of dispensation, which was the Church's positive law. During the Council of Trent, dispensation was not the main subject of discussion. Its concept was debated only in the context of solving other problems, such as the obligation of bishops to reside in their sees, or marriage impediments. After the Council of Trent, a new definition was not developed, but the practice was to refer to the concept adopted in the classical period (Thomas Sanchez, Francisco Suárez), and the dispensation was understood as a relaxation of the law due to the occurrence of a specific reason.

The second chapter of the book is dedicated to the discipline and doctrine of dispensation, covering the regulations contained in the first codification of 1917 and in the inter-codification period of the 20th century. Initially, in the work on the code, the consultors' interest was in the problem of legal normalization, as a result of which title VI of *Codex Iuris Canonici* was named *De dispensationibus*, which included seven canons (80–86). The author of the book analyzes six canons in this section due to the fact that the content of can. 86 of the CIC concerning the cessation of dispensation overlaps with the text of the existing can. 93 of the CIC and, as Rev. Dzierżon points out, will be discussed in the third part of the work (pp. 151–154). The Church legislator in can. 80 of the CIC contains a definition according to which “a dispensation is a relaxation of the law in a special case, made by the author of a legal act, his successor, or a superior or whoever is equipped by them with the power to dispense.” The content of can. 81 specifies the authority competent to grant a dispensation, distinguishing between ordinary and extraordinary situations, and in can. 82 indicates the authority of bishops and local ordinaries with regard to dispensation from particular law, while in can. 83 the authority of pastors is presented. Then, in can. 84 the reason for dispensation was regulated, which was to be, according to the legislator, just and reasonable. The object of the legislator's concern in can. 85 was the matter of interpretation, emphasizing that both the act of dispensation and the authority to dispense are subject to strict interpretation and relate to the individual case. The norms of *Codex Iuris Canonici* were still based on the principle of centralism, since in principle bishops could not dispense from laws issued by the pope, except in certain special situations. After the Second Vatican Council, the first changes regarding the decentralization of authority in the Church appeared. In the conciliar decree on the pastoral tasks of bishops, *Christus Dominus*, a reform was made in no. 8, giving bishops in the dioceses entrusted to them complete ordinary, proprietary, and direct authority, while retaining in all things the authority that the Bishop of Rome has by virtue of his office to reserve matters to themselves or another authority. Pope Paul VI issued two documents in the form of *motu proprio* *Pastorale munus* (1963) and *Episcoporum muneribus* (1966) expanding the powers of bishops. Gradually, there was a move away from the concessionary system in favor of expanding the powers of the bishops, reserving to the Holy See only matters of greater importance. In 1969, the codification work on the new code began, and the concepts of the idea of dispensation and the possibility of dispensation in cases of doubt as to the existence of a cause and its sufficiency were reconsidered.

The third chapter of the book revolves around the current regulations in the 1983 Code of Canon Law. The matter of dispensations is placed in Book One, title IV “Singular Administrative Acts,” in chapter V “Dispensations,” covering canons 85–93. The regulations begin with the definition in canon 85, according to which: “A dispensation, or the relaxation of a merely ecclesiastical law in

a particular case, can be granted by those who possess executive power within the limits of their competence, as well as by those who have the power to dispense explicitly or implicitly either by the law itself or by legitimate delegation.” The author stresses that the new formulation is based on the principles adopted in the reform of the Code, including subsidiarity, decentralization, and takes into account the protection of the rights of the faithful. In doing so, it is characterized by personalism, since Church law should be understood in terms of service to the faithful. Rev. Dzierżon considers the concept of dispensation more broadly, also in relation to figures similar to it, including privilege, epikeia, permission, dissimulation, tolerance, and also points out the differences between abrogation and derogation of the law. He also presents special dispensations, including from a marriage concluded but not fulfilled, from a wedding, and points out the privileges of faith that occur. He provides a detailed analysis of the question of the author of the dispensation as well as the limitations on dispensations. He also presents the powers of the ordinary of the given place, the parish-priest and the other clergy, as well as the reasons for granting the dispensation to the addressees of the dispensation who are: subordinates, travelers, and the author of the dispensation himself. The chapter concludes with interpretive principles and the cessation of dispensation. The concluding materials include an extensive list of source and bibliographic materials. It is noteworthy that the division and systematization of sources and literature takes into account the historical scopes adopted in the book, that is, the sources of the classical canonical era, the universal councils, and the sources published after the CIC of 1917. Similarly, the literature is divided into publications after the CIC of 1917 and after the 1983 promulgation of the Code of Canon Law. What draws attention is the long list of foreign-language texts. Unfortunately, there are not many publications by Polish authors. One may wonder about the proportions of the book’s individual chapters, whether a more balanced division could have been adopted, especially of the third part. Nevertheless, Rev. Ginter Dzierżon has presented an interesting monograph in Polish on the dispensation from the legal and historical perspective.

Elżbieta Szczot

The John Paul II Catholic University of Lublin

 <https://orcid.org/0000-0002-8360-4250>



Ján Duda, *Manželské právo katolíckej cirkvi v kontexte súčasnosti* [Matrimonial Law of the Catholic Church in the Context of the Present]. Praha: Legis, 2021, pp. 207

We are currently witnessing numerous crises resulting in many values being threatened or becoming “fluid.” Typical of the modern society today is that the values—which once were a cornerstone of society with clearly defined rules—are now becoming vague or disappearing altogether. This shift in values has impacted the institution of marriage the hardest. The Church has always considered the institution of marriage as one of her priorities and of vital importance. It is because the marriage itself, in line with the teachings of the Catholic Church, provides one with an opportunity to create a happy union between a man and a woman as a place for welcoming and raising children.

Ján Duda’s monograph entitled *Matrimonial Law of the Catholic Church in the Context of the Present* is a response to those tendencies. At the same time, it is a result of many years of his scholarly research as a renowned expert in the field of canon and marriage law.

In the introduction of his monograph, Prof. Duda aims to present the valid canon law pertaining to the institution of marriage, pointing to the strengths and weaknesses of this legislation. Also, the author emphasizes what is divine and intrinsically inviolable in this law and what ought to be changed and modified given the present circumstances and needs of both individuals and society, having *de lege ferenda* in mind. The author stresses that marriage is above all a natural institution and stems from a natural composition of a human being. In the past, too, we have experienced several uproars regarding the institution of marriage. Despite that, it seems that the marital institution has been able to overcome these problems, just because it is a natural institution. Prof. Duda discusses to what extent the legal institution of marriage, and other legal insti-

tutions related to marriage, correspond to the natural foundation of this sacrament. The author also draws attention to the need to adopt pastoral and legal approaches used today to provide help to the faithful who are experiencing difficulties in marriage.

In the introduction to his monograph, Prof. Duda seeks the appropriate course of action for the Catholic Church in providing this assistance. Should it concern simplifying the canonical matrimonial substantive and procedural legislation, or should it concern providing better access to expert legal advice for those faithful of the Catholic Church who need it, while taking into consideration the complexity of the current understanding of canonical matrimonial law?

The monograph contains eight chapters. In the first chapter, entitled “Definition, Legal Nature and Typology of Marriage,” the author emphasizes that marriage is primarily a natural institution that is anchored in the natural physical and spiritual constitution of a human being. The anthropological natural constitution of human beings as a man and a woman, with a potential to procreation and child rearing, creates obvious and natural limitations for certain unnatural unions. In their own way, these limitations function as defence mechanism that are in favor of marriage as a lasting union between a man and a woman. That is why the canon law will always tend to express this true and natural reality through its legal concepts, such as those defined in can. 1055 CIC and can. 778 § 1 CCEO. In a way, the legal definitions of marriage according to the Roman law are still relevant because they were created and anchored in the natural law.

The author also focuses on pre-marital counselling pointing to the legislative regulation in this area. At the same time, he proposes a solution that it appears to be the post-synodal apostolic exhortation *Amoris Laetitia*. Quoting from the eighth chapter of the exhortation: “accompanying, discerning and integrating”—Prof. Duda points out that to accompany entails not only the currently effective legal solution to the problems of marriage. It also means showing closeness and trust.

Regarding the marriage preparation and the legal framework defining such preparation, Prof. Duda points out the need to emphasize the theological significance of marriage as a sacrament. Very interesting is the interpellation to the members of the Catholic Church to accentuate that it is worth to marry spiritually, socially, and legally “before the Lord” and to live “in conformity with the Lord.” Surely, this is primarily a task for theologians, but, as the author asserts, canonists too should have their say.

In the following chapters of his monograph, the author looks at the spousal consent, its definition, and the ways of expressing the spousal consent. He provides the view of CCEO, too. Prof. Duda also discusses in detail the distorted spousal consent, citing the practice of the ecclesiastical courts and relying on

renowned canonists such as Pompedda or Castaño and the judgments of the Roman Rota.

Regarding marriage impediments, the author mentions new realities that legal scholarship has not addressed in the past, including the problem of homosexuality or the surgically produced female vagina. The author brings the CCEO's perspective to this issue as well. He offers a more detailed historical outline while presenting the current legal regulations and challenges of mixed marriages.

In the chapter entitled "Assisting in Difficult Matrimonial Situations," Prof. Duda discusses validity or invalidity of a marriage. He focuses on the processes of matrimonial nullity starting with filing of a petition for a review of the validity of marriage. The faithful who have doubts about the validity of their marriage can find valuable information here.

Towards the end of his monograph, Prof. Duda discusses marriage nullity procedures. He states that these procedures are not a violation of the principle of the indissolubility of marriage. When thought of otherwise, it is because within the Church, the laity and oftentimes the clergy, too, find this procedure in comprehensible. For a better understanding, the author recommends improving communication when explaining the doctrine concerning the marriage nullity procedure, so that it is clearer. Prof. Duda does not omit to mention the juridical regulation to simplify the marital processes, as addressed by the Holy Father Francis in *Mitis Iudex*, where he expresses his wish to involve the bishops in the implementation of the marriage nullity procedures through the process of *coram Episcopis*.

The publication of the monograph discussing the institution of marriage in the Catholic Church today is an excellent contribution to the debate that has arisen in the Church following the Synod on the Family and the subsequent reform of the procedure concerning marriage nullity. I can recommend this monograph not only to the faithful and to clergy of the Catholic Church, but also to the broader public interested in learning about the institution of marriage and its perception by the Catholic Church.

Jurij Popovič

University of Presov in Presov, Slovakia

 <https://orcid.org/0000-0002-7631-7739>



Mirosław Chmielewski, Małgorzata Nowak,
Piotr Stanisław, Justyna Szlich-Kałuża,
and Dariusz Wadowski,
*Komunikacja Kościoła katolickiego w Polsce
w okresie pandemii COVID-19. Raport z badań
interdyscyplinarnych* [Communication
of the Catholic Church in Poland during the
COVID-19 Pandemic. Interdisciplinary Research
Report]. Kraków: Wydawnictwo “scriptum,”
2022, pp. 326

The book consists of five chapters of an interdisciplinary nature. Each chapter is the responsibility of an author who is a specialist in a particular academic discipline, although the leading discipline in the research conducted is theological sciences, especially pastoral theology. The first three chapters are dedicated to the communication of the Catholic Church in Poland with the faithful and the external environment during the period of the first wave of the COVID-19 pandemic, specifically between March 13, 2020, the day of the announcement of the state of the epidemic threat, and June 30, 2020, the time when the first strict sanitary restrictions imposed in connection with the outbreak of the Sars-CoV-2 pandemic were lifted, from the point of view of law and canon law, and then in pragmalinguistic and media terms. The fourth chapter includes a sociological diagnosis dedicated to the public perception of the Catholic Church's communication in Poland during the pandemic. The fifth chapter comprises theological and pastoral conclusions and recommendations, although each chapter of the

book ends with conclusions and recommendations. Hence, there are often repetitions of earlier remarks in this chapter. The publication as a whole is a kind of chronicle of the events of the first months of 2020, after the outbreak of the Sars-CoV-19 pandemic, especially from the issued state legislation and the Church hierarchy at four levels, specifically: the universal Church, the Polish Bishops' Conference, dioceses and parishes (p. 11). The language used by state and Church authorities to communicate with citizens and the faithful of the Catholic Church is also examined.

The main purpose of the research was the analysis of the legal, socio-cultural, and theological dimensions of the communication of the Catholic Church in Poland, while the specific objectives discussed and evaluated the relationship between the content of information and announcements issued by the Church in Poland in connection with the regulations issued by the Holy See and the Polish authorities. The level of pastoral, administrative, and media communication of the Catholic Church in Poland with the faithful was also studied from the point of view of the type of language used, the content, the language of the messages, the sender and receiver of the message, the communication strategies adopted, and the conveyance of specialized concepts. An important role was played by the media discourse of the Catholic Church in terms of: content, forms, purpose and achieved effects; the way of social reception, its conditions and consequences of church messages, regarding the pandemic state, the rules of safety behavior in religious facilities and during religious services and ceremonies. The analyses and conclusions presented in the book are based on Josef Cardijn's concept of three steps: "see—judge—act." The first step of the research, that is, "see," the Church's communication was discussed from four perspectives: legal, pragmatic, media and sociological. In this key, conclusions and recommendations were formulated in chapters one to four. On the basis of the obtained interdisciplinary research results, the second part of the research stage, "judge and act" in the theological-pastoral perspective, was implemented. Using the method of critical analysis and inference, a synthetic evaluation of the Church's communication in terms of its three basic functions: prophetic, priestly, and royal. A characteristic feature of the implementation during the first wave of COVID-19 in both the prophetic and priestly (cultic) functions was the mediatization of preaching and the administration of the sacraments, especially the Eucharist. The pandemic state brought about new ways of participating in worship, liturgy, and the sacraments. During this period of pandemic, the Internet undeniably became the medium of first communicative contact in the relationship between the hierarchical Church and the faithful. Thus, it has put the Church in a position to seek new forms of pastoral care.

In the analyzed messages, the so-called directive-type speech acts were dominated by the communicative function of language. Informing in this regard was aimed primarily at contributing to the mission of salvation of the faithful.

However, in pastoral texts, as the authors of the study note, there are deficiencies in the area relating to the “here and now” communication of the Gospel message. In an overall assessment, given the extraordinary nature of the situation and the unprecedented pastoral challenges, the Church’s communication with the faithful during the first wave of the COVID-19 pandemic was unanimously considered good by the authors. It is argued that the Catholic Church, in the situation of the first wave of the epidemic threat, demonstrated its proactivity and decisiveness. Official announcements regulating religious behavior quickly emerged: including, dispensation from attending Sunday Mass, proposals for individual experience of the sacraments (receiving Holy Communion spiritually), the practice of receiving Holy Communion “on the hand,” which became common in churches in Poland, information on experiencing Lent and the Paschal Triduum, pastoral aids and guides for the use of online broadcasting were issued, private adoration of the Blessed Sacrament was encouraged, collective Corpus Christi processions were cancelled, meetings of pastoral formation groups were cancelled, the services of extraordinary special ministers were suspended, or the ceremonies of Confirmation and First Holy Communion were postponed.

The interdisciplinary study of the Church’s communication with the internal environment during the first wave of the pandemic in Poland indicates that in the content layer, the emphasis was definitely placed on the conveyance of information about restrictions on religious practice and the observance of sanitary regulations. Less attention, on the other hand, was given, for example, to proposals for ways and forms of pastoral activity in the new pandemic conditions. Religious practices that had so far been prescribed, or at least recommended (e.g., the use of the holy sacraments) in the pandemic legal and social circumstances were restricted, sometimes banned.

Restrictions introduced by the Polish government during the first wave of the pandemic concerning the number of participants in liturgies and services at places of worship were, from the legislative side, a restriction on the realization of citizens’ right to public religious worship. On the other hand, for the Church community, they were a serious impediment to the realization of its salvific mission, including through the change of the priestly (cultic) function, expressed in the celebration of the liturgy, sacraments, sacramentals, and the celebration of services. What belongs to the essence of the indicated forms of manifestation of faith is their communal celebration, while the introduced restrictions and, in some cases, the periodic abandonment of the public performance of the cultic function, has been quite a challenge to the spiritual and religious life of individual Catholics. There has been a noticeable trend towards the privatization of faith. Religious practices that had so far been mandated, or at least recommended (such as the use of the holy sacraments) due to the pandemic and sanitary, legal and social restrictions were limited and often banned.

The last part of the book, which consists of a comprehensive Appendix and Bibliography, should be evaluated positively. The Appendix is made up of a photo gallery of 32 photographs capturing scenes from the life of the Church during the pandemic, and a sample online survey form is also included. Next, we can familiarize ourselves with a very extensive bibliography, covering all Church and state documents published during the period, legal sources and pastoral texts.

Elżbieta Szczot

The John Paul II Catholic University of Lublin

 <https://orcid.org/0000-0002-8360-4250>



Notes on Contributors

Tomasz Galkowski, CP (born 1967), graduated from the Pontifical Faculty of Theology, the Collegium Bobolanum: SJ in Warsaw. In 1991–1995, he studied Canon Law at the Pontifical Gregorian University in Rome, where on the basis of the dissertation *Il quid ius nellà realta umana e nella Chiesa* received his doctoral degree. He was awarded of the Bellarmin's Prize for his publication (*Analecta Gregoriana* 269, Roma 1996). In 2007, he received a postdoctoral degree at the Faculty of Canon Law of the University of Cardinal Stefan Wyszyński in Warsaw. His monograph *Right—Duty. Priority and Interdependence in the Law Orders: Canonical and the Secular Society* was awarded the Prize of the Rector of the University. Author of about 100 scientific publications. His scientific interests include issues related to the ratio legis of the canonical norms and issues of common law and canon law. Currently, he is a Professor and Chair of the Theory of Canon Law at the University of Cardinal Stefan Wyszyński in Warsaw.

Damian Němec, born in 1960 in Boskovice (Moravia, Czech Republic), his mother tongue is Czech. Dominican since 1986, ordained priest in 1991. In the years 1998–2002, he served as a provincial of the Czech Dominican Province. Associate Professor at the Palacký University in Olomouc, teaching canon law and ecclesiastical law at the Faculty of Theology and at the Faculty of Philosophy. Research worker at the Faculty of Law, University of Trnava (Slovak Republic). Translator of several official documents of the Catholic Church into Czech. Translator of liturgical texts of the Catholic Church into Czech. Member of the Canon Law Society (Prague) and its Institute of Ecclesiastical Law. Member of Consociatio Internationalis Studio Iuris Canonici Promovendo (Roma), Société International de Droit Canonique et de Législations Religieuses Comparées (Paris), International Consortium for Law and Religion Studies (ICLARS) (Milano), and the European Society for History of Law (Brno).

Andrzej Pastwa, Dr. iur. can. habil., Head of Department of Canon Law and Ecumenical Theology of the Faculty of Theology at the University of Silesia in Katowice; judge at the Metropolitan Ecclesiastical Court in Katowice. Member of Consociatio Internationalis Studio Iuris Canonici Promovendo, Consociatio Iuris Canonici Polonorum, as well as Commission for Polish-Czech and Polish-Slovak Relations of the Polish Academy of Sciences. He has published numerous papers on canon law, especially marriage law, most recently: *Il bene dei coniugi. L'identificazione dell'elemento ad validitatem nella giurisprudenza della Rota Romana* [Biblioteca Teologica, Sezione Canonistica, 7], Eupress FTL—Edizioni Cantagalli, Lugano–Siena 2018. Editor-in-chief of the English-language academic journals: *Ecumeny and Law* and *Philosophy and Canon Law*.

Jurij Popovič ICDr., was born on 16 December 1969 in Olenevo, Ukraine (former Carpathian Ruthenia). After completing his basic theological studies in Prešov (1991–1996), he was ordained as a priest and pursued his post-gradual study at the Pontifical Oriental Institute in Rome in the field of canon law. After completing his Licentiate study (1996–1998), he was awarded an academic degree of Licentiate of Canon Law (abbr. ICLic.). In 2010, he began his doctoral studies at the John Paul II Catholic University in Lublin, Poland. Upon completion of the PhD. program, he was awarded an academic degree of Doctor of Canon Law (abbr. ICDr.). From 2003 to 2006, he worked as a lecturer at the Faculty of Greek Catholic Theology in Prešov. From 2003 to 2007, he also served as a judge at the diocesan court in Prešov. In 2007–2008, he held an office of a judicial vicar at the ecclesiastical court of the Prešov eparchy and in 2008–2019, he served as a judicial vicar at the Metropolitan tribunal of the Prešov Metropolia. Currently, he is a judge at the ecclesiastical court. Since 1 October 2019, Dr. Popovič works as a lecturer at the Department of Systematic Theology at the Faculty of Greek Catholic Theology of Prešov University in Prešov. He specializes in canon law, confessional law, and Roman law. He currently works at the Department of Social Sciences and Humanities as a university associate professor.

Elżbieta Szczot, Professor at the John Paul II Catholic University of Lublin, she holds a post-doctoral degree, a lawyer, expert in canon law, Chair of the Department of Political Science at the Institute of European Studies at the John Paul II Catholic University of Lublin, associated with this university since 1993. She was awarded a Doctor of Canon Law (JCD) in 1998 and became an assistant professor in 2011. Her scientific interests are connected with the rights of the faithful in the Church, sacramental law, family policy, social rights. She is the author of two monographs: *Prawo wiernego do Eucharystii według Kodeksu Prawa Kanonicznego z 1983 roku* (Lublin 2000) and *Ochrona rodziny w prawie Kościoła łacińskiego* (Lublin 2011), and the editor

of *Kuria Rzymska i pomniki chrześcijaństwa na szlaku do Wiecznego Miasta* (Lublin 2007), *Bronisław Wenanty Zubert OFM "Pro iure et vita." Wybór Pism* (Lublin 2005). She is also a member of The Learned Society of the John Paul II Catholic University of Lublin, Consotiatio Internationalis Studio Iuris Canonici Promovendo (Rome). She is married with two children.

Lucjan Świto, Polish Roman Catholic clergyman, canonist, doctor of jurisprudence in canon law (2001), habilitated doctor of jurisprudence in canon law (2011), professor of social sciences in the discipline of canon law (2021). Head of the Department of Philosophy and Canon Law at the Faculty of Theology of the University of Warmia and Mazury in Olsztyn. Officer of the Metropolitan Court of the Archdiocese of Warmia in Olsztyn. Member of the Association of Polish Canonists. Consultor of the Legal Council of the Polish Bishops' Conference.

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