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The situation of religious orders in the light of the 1917 Code of Canon Law¹

Religious state derives from the teaching of Jesus Christ, who, recalling the obligation of the commandments, recommended the pursuit of perfection by fulfilling the evangelical counsels. “Only those who make evangelical perfection the goal of their life and commit themselves permanently to the exercise of the evangelical counsels by a promise given to God can duly adhere to it”².

The great breakthrough in the development of ecclesiastical law was its codification initiated by Pope Pius x’s motu proprio *Arduum sane munus* of 1904 and completed by Pope Benedict xv in 1917. The fruit of thirteen years of hard work was the concise and clear Codex Iuris Canonici promulgated on 27 May 1917. It became effective throughout the Catholic Church on 19 May 1918. This Code was modelled on the modern Napoleonic Code and contained 2414 canons. Despite its many imperfections, it remained in force until 1983³. In turn, Prof. Wojciech Góralski describes the value of this Code as follows:

1 Paper presented at the International Scientific Conference entitled *Monastery and independence of Poland*, 13–15 September 2018, Gosławice near Tarnów.

2 F. Bączkowicz, J. Baron, W. Stawinoga, *Prawo kanoniczne. Podręcznik dla duchowieństwa*, vol. 1, Opole 1957, p. 612.

3 J. Dudziak, *Wprowadzenie do nauki prawa kanonicznego. Pomoc akademicka dla studentów teologii*, Tarnów 1999, p. 38.

Promulgated after years of waiting, on 27 May 1917, the first Code of Canon Law⁴, departing from the traditional casuistic method of decrees and arousing widespread appreciation, although not free of certain shortcomings, became—as it turned out—for a period of 66 years an effective tool regulating the whole of ecclesiastical life. The consolidation, in a period of only thirteen years, of legislative material that had been growing for centuries, extremely rich and at the same time dispersed, into one organic whole, modelled methodically on the great European codifications of the 19th century, made it possible to consider the work of Pius X and Benedict XV as one of the most modern legal codes in general⁵.

The 1917 Code of Canon Law devoted Book II, Part II, Canons 487–681 to religious matters. This submission raises key matters of religious life, regulated by the laws contained in the 1917 Code⁶. Thus, it will discuss the definition of religious state, religious superiors, candidates for a religious order, the duties of religious, and finally, the departure and dismissal from a religious order. The aim of this submission is to familiarise readers with the legal framework of religious life and its structure, in force since 1918. The primary source for this publication is the 1917 Code of Canon Law⁷. The literature on the subject is abundant⁸ and it can be used when dealing in detail with a selected issue concerning religious life. This article does not aim at a detailed treatment of religious life in canon law, but only at sketching a general legal outline

4 Codex Iuris Canonici Pii X Pontificis Maximi iussu digestus, Benedicti xv auctoritate promulgatus, Romae 1947.

5 W. Góralski, „*Salus animarum suprema lex*”. W 25. *Rocznice promulgowania przez Jana Pawła II Kodeksu Prawa Kanonicznego*, „*Studia Płockie*” 36 (2008), p. 253.

6 An interesting article can be consulted on the origins of religious life: B. Szweczul, *Od reguł monastycznych do konstytucji zakonnych*, „*Prawo Kanoniczne*” 60 (2017) nr 1, p. 35–71.

7 Codex Iuris Canonici Pii x Pontificis Maximi iussu digestus Benedicti Papae xv auctoritate promulgatus praefatione fontium annotatione et indice analytico-alphabetico ab emo Petro card. Gaspari auctus, Romae 1918.

8 The following items from the interwar period may be consulted: J. R. Bar, *O zakonach i osobach świeckich*, Warszawa 1968; J. R. Bar, *Prawo zakonne po soborze watykańskim II*, Warszawa 1971; P. Bastien, *Directoire canonique*, Bruges 1933; A. Battandier, *Guide canonique pour les constitutions des Instituts a vœux simples*, Paris 1923; F. Bogdan, *Przegląd piśmiennictwa z dziedziny prawa zakonnego*, „*Rocznik Teologiczno-Kanoniczny KUL*” 6 (1960) z. 3, p. 99–134; I. Chelodi, *Ius de personis*, Tridenti 1922; L. I. Fanfani, *De iure religiosorum*, Taurini–Romae 1925; A. M. Sobradillo, *Tractatus de religiosarum confessariis*, Torino 1931; F. X. Wernz, P. Vidal, *Ius canonicum ad Codicis normam exaractum opera Petri Vidal*, vol. 3: *De religiosis*, Romae 1933.

concerning religious orders, in order to place the situation of religious orders after Poland regained independence against this background.

Definition and division of religious state

An important achievement of the 1917 Code is the definition of religious state. Well, the Code defines it as a permanent way of life in common, approved by the Church, by which the faithful wish not only to keep the commandments common to all, but also to strive for perfection, committing themselves by public vows of obedience, chastity and poverty to the fulfilment of the evangelical counsels and living together according to the constitution, under the authority of their superiors⁹. In the above definition, we can distinguish four elements:

- A permanent way of life, it is a state of striving for perfection based on a permanent, unchanging basis such as the vows;
- Life in common, that is, in a community with legal personality, under the authority of superiors and according to an approved rule. According to the Code, hermitic life is not religious state, even if those leading it have committed themselves by vows. Living in common means either incorporation, i.e. being incorporated into an approved community, or living under the same roof with participation in a common table and dress. Both are required under current law;
- The obligation to fulfil the evangelical counsels, i.e. it is not only a matter of keeping the commandments, but religious differ from the general faithful in that they voluntarily choose evangelical perfection as the goal of their lives;
- Public vows, which are a source of obligation for religious to strive for evangelical perfection. By their very nature, public vows are not necessary for one to be religious. The obligation to fulfil the evangelical counsels and the constancy of one's way of life could derive from an oath, a pledge, a contract or a rule of the Church. On the basis of the canon law in force during the interwar period, vows are required to the essence of religious.

Canonistics, on the basis of the *Codex Iuris Canonici* 1917, distinguishes between several types of religious orders¹⁰:

9 Cf. *Codex Iuris Canonici* 1917, canons 477, 488, n. 1; F. Bączkiewicz, J. Baron, W. Stawinoga, *Prawo kanoniczne*, p. 609.

10 F. Bączkiewicz, J. Baron, W. Stawinoga, *Prawo kanoniczne*, p. 613–616. F. Bogdan, *Prawo Instytutów Życia Konsekwowanego. Nowe prawo zakonne*, Poznań–Warszawa 1977, s. 43–91.

- by vows: strict (regular) orders and religious orders (congregations). By a strict (regular) order we mean an order in which solemn vows (*vota sollemnia*) are taken. By religious orders (congregations), on the other hand, we mean an order in which simple (*vota simplitia*) or perpetual or temporary vows are taken¹¹;
- by general purpose: contemplative, active and mixed orders. The contemplative ones devote themselves mainly to pondering the mysteries of God, prayer and ascetic exercises (the Benedictines, the Camaldolese, etc.). The active ones aim at works of mercy for the soul and body, such as nursing the sick, caring for the poor, teaching, educating the young, etc. Mixed ones combine active and contemplative life (e.g. canons regular, mendicant orders, clerical orders, etc.);
- by the extent of poverty: mendicant orders in the strict sense, mendicant orders in the broader sense and non-mendicant orders. The first ones, as a religious order, cannot possess immovable or movable property with a certain and fixed income, but live on alms. The second ones, with certain restrictions, may own property. The third ones can collectively own property, without any restrictions;
- by ordination: clerical and lay orders. The first ones are those in which the majority of members are ordained. The second ones are those in which members are generally not ordained;
- by their dependence on the local ordinary: exempt and non-exempt. The exempt orders are not subject to the jurisdiction of the local ordinary, the non-exempt are;
- by their approval: under papal law and under diocesan law, depending on from whom they have received approval or at least a decree of commendation;
- by governance: hierarchical and non-hierarchical. In hierarchical orders, authority is exercised by superiors of various subordinate ranks. In non-hierarchical orders, each monastery has autonomy, i.e. is autonomous (*sui iuris*);
- by rule: those adhering to one of the four great rules and those with only statutes of their own. The great rules include: the rule of St Basil, St Benedict, St Augustine and St Francis of Assisi;

¹¹ Codex Iuris Canonici 1917, can. 488, n. 2.

- second orders: they are female branches of some male orders and true strict orders (e.g. the Poor Clares, the Benedictines, etc.). Third orders for people living among the world under the direction of some first order. These are not religious orders, but associations of laymen (can. 702 § 1)¹².

Governance of religious orders by ecclesiastical superiors

According to the provision of can. 499 § 1 of the Codex Iuris Canonici 1917, the pope has supreme authority over religious and not only by virtue of jurisdiction, but also by virtue of religious profession, i.e. by virtue of the vow of obedience. For the majority of religious orders, the pope appoints a cardinal protector who should seek the good of the order with his advice and protection. This cardinal, however, has no authority over religious orders or individual religious, unless otherwise stipulated in individual cases, and cannot interfere in internal discipline or the administration of property¹³.

The local ordinary has authority over non-exempt religious orders, greater authority over orders under diocesan law than under papal law. “Exempt” religious are subject to the local ordinary only in cases expressly defined in the law¹⁴.

According to Bączkowicz,

the parish priest, by virtue of his office, has the right and duty to exercise pastoral care to all the faithful who are permanently or temporarily resident in the territory of the parish, unless they have been excluded from his authority, and those who are diocesan residents and itinerants are also subject to him if they are currently residing in the parish (can. 664 §1). Religious are also subject to the parish priest, unless they have the privilege of exemption, either by common law or by indult from the Holy See, or unless they are excluded from his authority by the local ordinary according to canon 464 §2; common law may provide otherwise in individual cases. With regard to non-excluded religious, the parish priest exercises his authority within the limits of his office; however, he may not interfere in the internal administration or property affairs¹⁵.

12 F. Bączkowicz, J. Baron, W. Stawinoga, *Prawo kanoniczne*, p. 613–617.

13 Codex Iuris Canonici 1917, can. 499 § 2.

14 Codex Iuris Canonici 1917, can. 500.

15 F. Bączkowicz, J. Baron, W. Stawinoga, *Prawo kanoniczne*, p. 632–633.

Religious superiors

In addressing the question of religious superiors, it is first necessary to state the general principle that the governance of a religious order is exercised by religious superiors and monastic chapters. Religious superiors are those who, by virtue of their office, govern the order or a part of it, and who are to be obeyed by virtue of the vow of obedience. Among religious superiors, a distinction can be made between major and minor superiors. The former ones are those who preside over the whole order, province or autonomous monastery, and their deputies¹⁶. In different religious orders, religious superiors have different names:

- the highest superior is called, for example, superior general, moderator, minister, master, preceptor, director general;
- provincial superior: visitor, inspector, minister, provincial provost;
- house superior: superior, prior, guardian, rector, director.

Analogous names are found in related female orders. In the exempt clerical order, the major superiors have external jurisdiction and are called ordinaries¹⁷.

A chapter is the meeting of all the religious of a house, province or order, entitled to vote and deal with the matters entrusted to the chapter by common law and the constitutions. In addition to the chapter, there is the so-called Council in religious orders, i.e. a group of several religious added to the superiors of the house, province or order to assist in the administration. Who elects or appoints the council and how is determined by the constitutions; they also determine the composition of the council and the number of its members¹⁸.

The authority of superiors and chapters over their subjects can be described as superior and flows from the fact of joining the order or from religious profession. It gives superiors the authority to “command the subjects, distribute offices, manage property, admit and dismiss members”¹⁹. In addition, the supreme superior of an order has the authority over all provinces, houses and members of the order as defined by the constitution; the other superiors within the limits of their own office²⁰.

16 Codex Iuris Canonici 1917, can. 488, n. 8.

17 Codex Iuris Canonici 1917, can. 198 (1).

18 F. Bączkiewicz, J. Baron, W. Stawinoga, *Prawo kanoniczne*, p. 634.

19 F. Bączkiewicz, J. Baron, W. Stawinoga, *Prawo kanoniczne*, p. 635.

20 Codex Iuris Canonici 1917, can. 502.

The conditions of fitness for local superiors are defined by the constitutions of individual orders. By contrast, according to can. 505 of the Codex Iuris Canonici 1917, the following are unfit for the office of major superior:

- those who do not come from a legitimate marriage (however, legitimacy through the subsequent marriage of the parents is sufficient);
- those who are under forty years of age in the case of a superior general or superior of a nunnery, and thirty years of age in the case of other major superiors;
- those who have not been professed members of their order for at least ten years, counting from their first profession. However, the constitutions remain in force and they may impose other requirements²¹.

Duties of religious superiors

According to the legal provisions contained in the 1917 Code of Canon Law, the duties of superiors can be reduced to the following:

- superiors of clerical orders should, on assuming office, make a profession of faith and an anti-modernistic oath before the chapter which elected them or the superior who appointed them or before their delegate;
- all superiors are obliged to reside in their house in accordance with the provisions of the constitution²²;
- superiors should acquaint their subjects with the ordinances of the Holy See concerning religious and see to their execution²³;
- local superiors should see to it that at least once a year their own constitutions and the ordinances of the Holy See, which it prescribes, are read; that at least twice a month catechism instruction is given to lay brothers, sisters and household members; and that in lay orders an exhortation is given to the whole religious family²⁴. The exhortation may be combined with religious instruction. It can be preached by any religious or nun;

21 According to Article x of the Polish Concordat of 1925, without the consent of the Government, foreigners could not hold the offices of provincial superiors. After the Second World War, according to the Decree of 31 December 1956, Article 3, this consent was also required for house superiors.

22 Codex Iuris Canonici 1917, can. 508.

23 Codex Iuris Canonici 1917, can. 509 § 1.

24 Codex Iuris Canonici 1917, can. 509.

- the abbot primate, the superior of a religious congregation and the superior general of any order under papal law, should submit to the Holy See every five years, or more frequently if the constitutions so prescribe, a written report on the state of the order, bearing the signature of the superior and the members of the council, and, in the case of female congregations, also the signature of the ordinary of the place where the superior general with her council has her permanent seat²⁵;
- duty of visitation. Major superiors, appointed for this purpose by the constitutions, should personally, or in the event of an impediment, by their deputies, visit all the houses under their authority at the times determined by the constitutions;
- in clerical orders, exempt and non-exempt, superiors have the right and duty to administer the last anointing and viaticum to their subjects. The subjects in this case are the professed, novices, postulants and all those who are day and night in the religious house because of service, education, hospitality or illness²⁶;
- major superiors, provincial superiors and the superiors of houses should have their own advisors and ask their consent or advice in cases provided for in the constitutions or in ecclesiastical law²⁷.

Religious property and its management

The Pio-Benedictine Code stipulates that the whole order, each of its provinces and individual houses have the legal capacity to acquire and possess movable and immovable temporal goods with fixed i.e. foundation income.

²⁵ Codex Iuris Canonici 1917, canons 510; 511.

²⁶ Codex Iuris Canonici 1917, can. 514 § 1. In a house of nuns, the administration of the last sacraments belongs to the ordinary confessor or one who takes his place (can. 514 § 2. In lay orders, the right and duty to administer the holy sacraments belongs to the local parish priest or to the chaplain whom the local ordinary names to take the place of the parish priest (can. 514 § 3).

²⁷ Codex Iuris Canonici 1917, can. 516 § 1. Whenever common law or the constitutions require the consent or opinion of the council, the superior is obliged to summon all the members without exception and hold a council. If he has not summoned more than one third of the members and those who have been omitted have therefore not come to the council, the act done by the others would be null and void. The summoning of the members of the council must be correct and suitable to reach them, either orally or by letter, indicating the day and time. Cf. Codex Iuris Canonici 1917, can. 162.

The constitutions or rules of the orders may, however, exclude or limit this capacity²⁸.

In the management of property, the Code distinguishes between ordinary and extraordinary management. Ordinary management is that which is necessary, such as the payment for labour, the purchase of tools, the collection of interest, the keeping of books of income and expenditures. Extraordinary management, on the other hand, is that which is exceptional and more important such as alienation, allocation of money on new terms, etc.

The way in which assets are managed can be boiled down to the following principles:

- the property of the order, province and house is to be managed according to the constitution with due regard for the rules of common law²⁹;
- management is carried out by superiors and economes³⁰;
- superiors are entitled to make expenditures and perform legal acts of ordinary administration; while the officials established according to the constitution, such as the librarian, the prefect of the church and especially the econome, within the limits of their offices³¹;
- administrators of religious property must comply with the ecclesiastical provisions on alienation contained in can. 1531 and thus the value of property is to be assessed by honest appraisers; the sale is to take place by public tender, or at least be publicly announced; the property is to be given to the one who pays the most; the sum received is to be safely and profitably allocated³².

²⁸ Codex Iuris Canonici 1917, can. 531. It is excluded or limited in mendicant orders; in the Capuchins and Friars Minor *de observantia*, churches, houses and estates are the property of the Holy See. Codex Iuris Canonici 1917, can. 582. According to Article XVI of the Concordat of 1925, all Polish legal persons of religious orders have, in accordance with the provisions of universally applicable law, the right to acquire, cede, possess and administer, according to canon law, their movable and immovable property. Religious legal persons are recognised as Polish insofar as their purposes for which they have been established relate to the religious affairs of Poland. Others, not corresponding to these conditions, enjoy the civil rights granted by Poland to foreigners.

²⁹ Codex Iuris Canonici 1917, can. 532 (1).

³⁰ Codex Iuris Canonici 1917, can. 516.

³¹ Codex Iuris Canonici 1917, can. 532 (2).

³² Codex Iuris Canonici 1917, can. 1531.

Admission to a religious order

The Code of Canon Law of 1917, in can. 538, gives the general rules for admission to a religious order, namely, a Catholic, free of canonical impediments, capable of bearing the burdens of religious life and guided by right intention, may be admitted to a religious order.

1. The candidate must be a Catholic. A religious order is part of the Catholic Church, so whoever does not belong to the Catholic Church cannot be admitted to a religious order. An unbaptised person or a baptised person who has broken communion with the Church through deviation from the faith, heresy or schism does not belong to the Church;
2. Canon law places certain requirements on the candidate. Canonical impediments can be divided into prohibitive and diriment. Diriment impediments include the following:
 - adherence to non-Catholic sects. This impediment is extended to a person who belonged to the Catholic Church, then left it and joined a non-Catholic sect, and finally returned to the Church³³;
 - the impediment of premature age. A certain degree of mental development and a certain degree of mental maturity are required to enter religious life. Common law excludes immature children from entering a religious order and prescribes an age of at least 15 for validity or liceity of admission. The constitutions sometimes demand a higher age for the validity or liceity of admission. "Nuns who run errands, for example, in contemplative orders must be 18 years of age to be validly admitted to a convent"³⁴;
 - the impediment of coercion, fear and deceit. Entering a religious order requires complete awareness and total freedom of decision on the part of both the candidate and the superiors who receive him;
 - the impediment of matrimonial knot. The marriage knot binds the spouses into an indissoluble community of life, which does not allow

³³ Codex Iuris Canonici 1917, can. 542, n. 1. A Catholic sect is to be understood as a religious association, whether Christian (Protestantism, Lutheranism, Anglicanism) or non-Christian (Judaism, Buddhism, Mohammedanism). On a par with non-Catholic sects in terms of legal effects, there are associations of atheists, godless militant sects and similar associations directly aimed at spreading atheism and fighting against religion (Pontificia Commissione Interpretativa, 30.07.1934, „Acta Apostolicae Sedis” 26 (1934), p. 494).

³⁴ F. Bączkiewicz, J. Baron, W. Stawinoga, *Prawo kanoniczne*, p. 671.

them to accept religious duties which are contrary to their conjugal duties. Therefore, as long as the marriage lasts, they cannot be validly admitted to the novitiate. Widowhood is not an impediment, unless the constitutions provide otherwise;

- the impediment of the knot of religious profession. Those who are still or have been bound by the knot of religious profession, whether temporary or perpetual, simple or solemn, in the same or another order, cannot be validly admitted to the order;
- the impediment of threatened punishment. No person may be validly admitted to the order who is threatened with punishment for an offence of which he is or may be accused before a civil or clerical court;
- the impediment of episcopacy. Bishops, resident bishops and titular bishops cannot be validly admitted to the novitiate after they have received official notification that the Pope has appointed them to that dignity;
- the impediment of service to a diocese or mission. Religious who, by order of the Holy See, are obliged by oath to serve their own diocese or mission cannot, for the duration of their oath, be validly admitted to the novitiate.

The 1917 Code of Canon Law, on the other hand, includes the following among the prohibitive impediments:

- the impediment of higher ordination;
- the impediment of insolvent debt. A person who is an insolvent debtor, and thus exposed to litigation, is bound by the impediment and cannot be licitly admitted to the order;
- the impediment of threatened trials or annoyances due to accounts or entanglement in secular affairs³⁵;
- the impediment of the children's duty to maintain their parents and the parents' duty to maintain and bring up their children;
- the impediment of irregularity to ordination. Candidates destined in the order for the religious state, if they have an irregularity or other impediment to ordination, cannot be licitly admitted to the novitiate. Candidates

³⁵ According to Bączkiewicz, Baron and Stawinoga "The Code does not specify when a persons should be considered to be entangled in secular affairs. Those who are entangled in the affairs of political, party or secret organisations, those who hold positions of responsibility, those who have custody of minors, etc. are to be considered as such" (F. Bączkiewicz, J. Baron, W. Stawinoga, *Prawo kanoniczne*, p. 676).

- who have obtained a dispensation from an irregularity or ordinary impediment before entering the order are not subject to this impediment;
- the impediment of the Eastern rite. Candidates who belong to any of the Eastern rites cannot be licitly admitted to the novitiate of the Latin rite.
3. The candidate must be fit to bear the burdens of religious life. This refers to the totality of the moral, intellectual and physical conditions that make someone fit to perform the functions of the state and to carry out his duties. Health is a condition of fitness. Natural law forbids the admission of persons dangerous to the environment, such as those suffering from tuberculosis. “Also dangerous and threatening to religious life are kidney diseases, mental illness, epilepsy”³⁶.
 4. The candidate must have a sincere intention. “It is not merely a draw to the religious life, an emotional predilection, but a conscious will to consecrate oneself to God in a religious order, to sanctify oneself and a readiness to fulfil religious duties from a supernatural motive”³⁷.

Duties of religious

Religious have duties common to all the faithful referred to in can. 487, they are subject to the duties of the clergy (canons 124–142). In addition, they have duties derived from their religious vows, from the constitution and from ecclesiastical laws issued specifically for religious.

1. Obligations flowing from religious vows:
 - vow of obedience;
 - vow of chastity;
 - vow of poverty;
 - additional vows;
2. Obligations flowing from the constitution:
 - Canon 593 reads: “Each and every religious should arrange their life according to the rules and constitutions of their own religious [institute] and strive for perfection in their state”. Some of the provisions of the constitutions and rules are identical to the precepts of divine and ecclesiastical law, or concern the object of the vow.

³⁶ F. Bączkowicz, J. Baron, W. Stawinoga, *Prawo kanoniczne*, p. 667.

³⁷ F. Bączkowicz, J. Baron, W. Stawinoga, *Prawo kanoniczne*, p. 667.

3. Obligations flowing from special ecclesiastical laws issued for religious:
- pious practices, the habit, the choir, pastoral care. Superiors should see to it that all religious make an annual retreat, that, unless prevented, they listen to Mass daily, meditate and go to confession at least once a week. Religious should always wear their own religious dress, that is, the habit, in and out of the house, unless an important reason exempts them from this obligation³⁸. Religious are obliged to celebrate the choral breviary prayer, prescribed by the constitutions approved by the Holy See. In both male and female choir orders, there must be a daily communal breviary according to the prescriptions of the constitutions, provided that there are at least four religious in the house who are obliged to the choir³⁹. In addition, superiors should endeavour to ensure that the religious under their charge willingly rush to assist in pastoral work whenever the local ordinary or parish priest requests it of them to meet the needs of the faithful. This assistance, however, must not violate religious discipline. On the other hand, ordinaries and parish priests should willingly make use of the assistance of religious residing in the diocese, especially in priestly functions e.g. in the administration of the sacrament of penance⁴⁰;
 - a cloister. A cloister, in the material sense, is called that part of a religious house outside of which religious or nuns are not allowed to go without permission, and to which strangers are not allowed to enter. The subject of the cloister is discussed by the 1917 Code of Canon Law in canons 597–604;
 - protection from the evil influences and dangers of the world. Ecclesiastical superiors should ensure that the monastic rule about leaving the house and visiting or receiving strangers is strictly observed. In addition, religious send their correspondence through the hands of their superiors, who may read, send or keep it. However, all religious are free to send their correspondence to the Holy See, to the papal legate in a given state, to the cardinal protector, to their major superiors, to the local ordinary. From these persons, religious may receive letters and no one has the right to open them⁴¹;

38 Cf. Codex Iuris Canonici 1917, can. 596.

39 Cf. Codex Iuris Canonici 1917, can. 610 § 1.

40 Cf. Codex Iuris Canonici 1917, can. 608.

41 Cf. Codex Iuris Canonici 1917, can. 611.

- religious privileges. Mention should be made here of exemption, i.e. a privilege by virtue of which persons or places are excluded from the jurisdiction of the local ordinary and submitted directly to the Pope or to the jurisdiction of religious superiors. Another privilege is the privilege of collection. To collect means to receive alms by going personally from house to house⁴².

Departure and dismissal from a religious order

Departure from a religious order can be either legal (legitimate) or illegal (illegitimate). It is legal by leaving the order at the end of temporary profession and by exclaustation and secularisation. It is illegitimate by apostasy and flight. Apostasy and flight from the order deserve explanation. An apostate from the order is called a professed religious with perpetual vows, whether solemn or simple, who has left the religious house without permission with the intention of not returning, or who, although with permission, has left the house but has not returned, with the intention of evading religious obedience forever. The intention not to return is presumed by the law itself to exist if a religious has neither returned within a month nor reported his intention to return to his superior⁴³. A religious is called a fugitive when he, without the permission of the superiors, either openly or secretly, leaves the religious house with the intention of returning⁴⁴ and stays away for at least two or three days. "Leaving the house without permission, even if secretly, for a few hours, or even for a day or a day and a half, is not generally considered a flight⁴⁵."

Dismissal is the exclusion of a religious from the religious community, carried out by the competent superior. It is the most severe measure that can be applied to a religious. Dismissal may be of various kinds:

1. Dismissal by law alone. The following are considered to be legally dismissed:
 - religious who have publicly abandoned the faith and converted to atheism, heresy or schism, paganism, Judaism;
 - religious who fled with a woman or nuns who fled with a man;

42 Cf. F. Bączkiewicz, J. Baron, W. Stawinoga, *Prawo kanoniczne*, p. 730–739.

43 Codex Iuris Canonici 1917, can. 644 § 1, Codex Iuris Canonici 1917, can. 644 (2).

44 Codex Iuris Canonici 1917, can. 644 § 3.

45 Codex Iuris Canonici 1917, can. 606 § 1. Cf. J. Kałowski, *Skutki prawne opuszczenia instytutu zakonnego*, „Prawo Kanoniczne” 32 (1989) nr 3–4, p. 21–59.

- religious who have contracted or attempted to contract a marriage or civil wedding. In such a case, dismissal takes place as soon as the offence has been committed.
2. Dismissal of religious after temporary vows. In this case, the reason must be serious. It may concern the moral, intellectual or social order. In general, such a reason is anything that brings considerable harm or inconvenience to the order, especially: a lack of religious spirit causing scandal, failure to observe spiritual exercises out of laziness, failure to fulfil the instructions of superiors, unfitness to fulfil religious duties. An illness of a professed member is not a sufficient reason, unless it is certainly established that he has deliberately concealed it before his profession⁴⁶.
 3. Dismissal of professed members after perpetual vows from exempt or non-religious clerical orders. According to the Code, there must be three offences against common or religious law, two warnings and an established failure of emendation according to canons 656–662. In female orders, there must be external reasons combined with failure of emendation such that, in the opinion of the superior, despite the application of appropriate measures to the guilty nun, there is no hope of improvement⁴⁷. A canonical offence is not necessary. “It is sufficient, in fact, to have a course of conduct which brings great spiritual or material harm to the order, such as sowing discord, murmuring against authority, recklessness in conduct, giving offence to lay people, etc.”⁴⁸.
 4. Dismissal of religious after perpetual vows from exempt clerical orders. According to the general rule, for the dismissal of a religious after perpetual vows from an exempt clerical order, it is necessary to undertake a process according to canons 655–667. A religious cannot be dismissed without a process, unless it is a case of urgency, in which case, according to can. 654, a process must be undertaken immediately after the dismissal. To initiate a process, there must be:
 - offences. There must be at least three external and grave offences against common or religious law and certain. “The delicts must be at least three of the same species (e.g. threefold insult, battery, theft, adultery, etc.) or, if different, such that taken together they manifest

46 Codex Iuris Canonici 1917, can. 647 § 2 n. 2.

47 Codex Iuris Canonici 1917, can. 651 § 1.

48 F. Bączkiewicz, J. Baron, W. Stawinoga, *Prawo kanoniczne*, p. 749.

a perverse will lingering in evil or, if it is only one on-going [offense], such that from the repeated warnings it becomes virtually triple (can. 657), e.g. drunkenness, open disobedience, violation of the vow of poverty, negligence in the fulfilment of duties”;⁴⁹

- admonitions. Before admonitions are given, there must be certainty based on serious evidence that an offence has been committed. The right to give admonitions is vested in the immediate major superior, either personally or through another by his mandate⁵⁰;
- failure of emendation. A religious is considered not to have emended himself if he commits an offence a third time after having been admonished twice. After the second admonition, it is necessary to wait at least six days for emendation before proceeding further⁵¹.

Conclusion

In 1917, the law of the Church was edited in the form of concise and clear norms. The Pio-Benedictine Code contained the old law in essential matters, but edited in a modern form. Numerous new provisions of a reformist nature were introduced. Many legal institutions with a basis in custom or doctrine were regulated. Ecclesiastical legislation was oriented more towards the internal sphere, with the aim of developing religious and moral life also in the matter of monastic law.

Poland’s regaining of independence coincided with the implementation of codified common law in the Catholic Church. Undoubtedly, the great value of the 1917 Code of Canon Law, as far as monastic law was concerned, was the systematisation of the matter. The Code does not regulate all matters related to monastic law; many issues are still left to the constitutions and special laws issued by the Holy See.

49 F. Bączkiewicz, J. Baron, W. Stawinoga, *Prawo kanoniczne*, p. 752.

50 Codex Iuris Canonici 1917, can. 659.

51 Codex Iuris Canonici 1917, can. 662.

References

- Bar J. R., *O zakonach i osobach świeckich*, Warszawa 1968.
- Bar J. R., *Prawo zakonne po soborze watykańskim II*, Warszawa 1971.
- Bastien P., *Directoire canonique*, Bruges 1933.
- Battandier A., *Guide canonique pour les constitutions des Instituts a voeux simples*, Paris 1923.
- Bączkiewicz F., Baron J., Stawinoga W., *Prawo kanoniczne. Podręcznik dla duchowieństwa*, vol. 1, Opole 1957.
- Bogdan F., *Prawo Instytutów Życia Konsekwowanego. Nowe prawo zakonne*, Poznań–Warszawa 1977.
- Bogdan F., *Przegląd piśmiennictwa z dziedziny prawa zakonnego*, „Roczniki Teologiczno-Kanoniczne” 6 (1960) z. 3, p. 99–134.
- Chelodi Joannes, *Ius de personis*, Tridenti 1922.
- Codex Iuris Canonici Pii x Pontificis Maximi iussu digestus Benedicti Papae xv auctoritate promulgatus praefatione fontium annotatione et indice analytico-alphabetico ab emo Petro card. Gaspari auctus, Typis Polyglottis Vaticanis 1918.
- Dudziak J., *Wprowadzenie do nauki prawa kanonicznego. Pomoc akademicka dla studentów teologii*, Tarnów 1999.
- Fanfani L. G., *De iure religiosorum*, Taurini–Romae 1925.
- Góralski W., „*Salus animarum suprema lex*”. W 25. rocznicę promulgowania przez Jana Pawła II Kodeksu Prawa Kanonicznego, „*Studia Płockie*” 36 (2008), p. 253–264.
- Kałowski J., *Skutki prawne opuszczenia instytutu zakonnego*, „*Prawo kanoniczne*” 32 (1989) nr 3–4, p. 21–59, <https://doi.org/10.21697/pk.1989.32.3-4.02>.
- Pontificia Commissione Interpretativa, 30.07.1934, „*Acta Apostolicae Sedis*” 26 (1934), p. 494.
- Sobradillo A., *Tractatus de religiosarum confessariis*, Torino 1931.
- Szewczul B., *Od reguł monastycznych do konstytucji zakonnych*, „*Prawo Kanoniczne*” 60 (2017) nr 1, p. 35–71, <https://doi.org/10.21697/pk.2017.60.1.03>.
- Wernz F. X., Vidal P., *Ius canonicum ad Codicis normam exactum opera Petri Vidal*, vol. 3: *De religiosis*, Romae 1933.

Abstract

The situation of religious orders in the light of the 1917 Code of Canon Law

The Code of Canon Law of 1917 was dedicated to the matters related to religious orders in Book II, part II, canons: 487–681. An important issue is providing the definition of the religious state by the ecclesiastical legislator. The Code defines it as a stable manner of living in common approved by the Church, by which the faithful, want not only to keep the commandments common to all, but they also want, through a public vow, to strive for perfection by following the evangelical counsels of obedience, chastity and poverty and by living in common and observing the statutes under a legitimate superior. This paper addresses the key issues of the life of religious, regulated by the law contained in the 1917 Code. Therefore, there will be a discussion of religious' superiors, candidates for a religious order, obligations of religious, and finally, of issues related to leaving and dismissal from a religious order.

Keywords: Code of Canon Law 1917, duties of religious, ecclesiastical superiors, religious orders

Abstrakt

Sytuacja zakonów w świetle Kodeksu prawa kanonicznego z 1917 roku

Kodeks prawa kanonicznego z 1917 roku poświęcił sprawom zakonnym księgę II, część II, kanony: 487–681. Ważną kwestią jest zaprezentowanie przez ustawodawcę kościelnego definicji stanu zakonnego. Kodeks określa go jako stały sposób życia wspólnego, zatwierdzony przez Kościół, przez który wierni chcą nie tylko zachować wspólne wszystkim przykazania, ale dążyć do doskonałości, zobowiązując się publicznymi ślubami posłuszeństwa, czystości i ubóstwa do wypełniania rad ewangelicznych oraz żyjąc wspólnie według konstytucji pod władzą przełożonych. Przedłożenie podejmuje kluczowe sprawy związane z życiem zakonnym, regulowane przepisami prawa zawartymi w kodeksie z 1917 roku. W związku z tym będzie mowa o przełożonych zakonnych, kandydatach do zakonu, obowiązkach zakonników, wreszcie o wystąpieniu i wydaleniu z zakonu.

Słowa kluczowe: Kodeks prawa kanonicznego z 1917, obowiązki zakonników, przełożeni zakonni, zgromadzenia zakonne