KOŚCIÓŁ I PRAWO 13(26) 2024, nr 2, s. 277-293
DOI: https://doi.org/10.18290/kip2024.32

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STYLUS ROMANAE CURIAE IN HISTORICAL AND POSITIVE CANON LAW *

INTRODUCTION

As is generally known, in the third decade of the 12th century, the Church succeeded in winning over the Empire through the Concordat of Worms (*Vormatiae concordatus*, 1222), which set an end not only to the investiture controversy, but for a certain time also to the secular interference in Church affairs in terms of until then strictly applied religio-political system of Western Caesaropapism [Bedouelle 2005, 74-75]. As the central position of the pope in the Church and secular society was also consolidated with respect to such regulatory treaty, from that time the era of relative freedom of the Church and independent papal power began, which foreshadowed the peak period of the medieval papacy of the second half of the 12th and the first half of the 13th century.[1] In relation to such trends, the papal court, in turn, began to resemble more and more the secular court of the monarch in its structure, and from the end of the 11th century, the term "Roman Curia" (*curia Romana*) [Špirko 1943, 428] be-

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* The paper is an output from the APVV-17-0022 scientific grant entitled "Roman-Canon Influences on Slovak Public Law".

[1] The ideas of Gregory VII (1073-1085), based on the understanding of the pope as the head of the whole world (*caput totius orbis*), resonated throughout the rest of the Middle Ages and determined the next directing of the relationship between the Church and the state [Fröhlich 2008, 82-84].

gan to appear regularly in papal documents in addition to the designation "sacred Lateran palace" (*sacrum palatium Lateranense*). When establishing the Roman Curia, the popes were not only influenced by the secular rulers of the time, but also by the government structure of the late Roman Empire, the model of which became more than once suitable tool for the visible manifestation of the primacy of Peter and his successors [Willock 1962, 92]. It was just right the papal curia which began to later use the collections of forms and rules of the Apostolic Office, following Roman law models, which significantly contributed to the later development and establishment of the *stylus Romanae curiae*.

1. LAW PRIOR TO CODIFICATION

1.1. Development until 1917

1.1.1. Basic Concepts

The concept of *stylus*, or *stilus*, originally meaning a spade intended for writing, later style, or style of writing, has been regularly used since Roman times to denote a certain standard that was possible or necessary to reach and adhere to.[2] Since medieval times, the concept of *stylus Romanae curiae* has also been understood as the procedural customary practice of individual Church central bodies (*laudamenta curiae*), which was initially manifested primarily in the usual and customary procedure for the preparation of documents [Bellomo 1995, 155]. It was typical for the papal curia to observe certain rules, and their observance was later legally assessed with to have *ad validitatem* effects.[3] They were soon collected into the so-called collection of forms (*libri diurni*, *libri formularum*), which gradually developed into the so-called *regulae Cancellariae Apostolicae*, i.e. papal instructions addressed to individual dicasteries of the Roman Curia [Kasan 1952, 17]. As for the collections of forms, they specifically contained ready-

[2] In this context, we can mention, for example, specifying the calendars used in a specific country. The Roman calendar compiled by Sosigen from Alexandria, which was put into practice by Gaius Iulius Caesar († 44 BC), was, for example, referred to as the *stylus communis* or *stylus antiquus*. For more details on this issue, see Owen 1990, 39 and Groom 2013.

[3] For more details on this specific example, see, e.g., McInerney 2011.

made samples (*formulae*) of legal acts and legal documents, together with an interpretation of some legal provisions [Augustine 1918, 13, 15 and 23]. First of all, they were focused on modifying the form in which they were to be produced, and later also on their content. The compilation of the above-mentioned works took place primarily in order to facilitate the work of the officials of the papal curia. The oldest collection of forms is clearly the *Liber diurnus Romanorum Pontificum*, the origin of which can be dated, according to some authors, to the 4th century; and it was demonstrably used until the 12th century [Michal 1967, 36]. Individual forms were initially established with the help of legal customs, later they were established directly by papal decrees [Bušek 1946, 93]. At the beginning, the so-called established rules of the curial agenda (*stylus curiae*) gradually developed mainly from the collections of forms, and later also under the great influence of the rules of the Apostolic Office.[4]

1.1.2. Methods of Application

(1) Administrative Power

As we indicated in the basic terminological introduction, the concept of *stylus Romanae curiae* was initially used to denote the procedures and sacred phrases used by the staff of the Roman Curia in the preparation of documents [Willock 1962, 97]. This idea was later extended to documents as a whole, whether in a formal or material sense [Helmholz 1996, 164]. These rules were then binding on all dicasteries of the Roman Curia, and the need to master them was soon extended to lower level bodies that operated on a particular level. It is therefore obvious that practically all documents had to be drawn up *iuxta stylem curiae* in order to be formally recognized [Martin 1913, 25]. Observance of the mentioned rules soon affected the granting of ecclesiastical privileges, indults, dispensations or rescripts throughout the Christian West [Paolo 2017, 2]. Quite naturally, due to the unstable and regularly changing situation regarding the understanding of Church properties, the *stylus Romanae curiae* was also applied to legal acts related to Church benefices [Hotz 2005, 197-220]. The Apostolic See's consent to disposal of ecclesiastical property was not exempted; and if the

[4] For more details on development of this institution until the pontificate of Innocent III, see Lane Poole 1915.

specified value was exceeded, such disposal required obtaining a special decree issued only if such act was to induce the obvious benefit to the Church. *Stylus curiae* were also commonly used when determining jurisdiction to judge certain ecclesiastical cases [Barbosa 1698, 312, 332, 376, 385 and 390]. The same applied to matrimonial cases, not only in relation to procedural guidelines, but also in granting dispensations from matrimonial impediments [Hilling 1909, 125]. The principles in question were also relevant in canonization processes, as well as in the conduct of criminal cases [Paolo 2018, 151]. In the case of the latter, for example, the necessity of imposing a sentence, including the conditions for its remission had to be assessed according to *stylus curiae* [Barbosa 1698, 56 and 398].[5] If we were to summarize the basic principles of the application of this institute in general, the basic principle was: *Stylus curiae facit ius* [Laymannus 1664, 202].

(2) Judicial Power

However, not only provisions of substantive administrative law, or directly procedural guidelines were exclusively subsumed under the concept of *stylus Romanae curiae*. An extensive interpretation led to the conclusion that it is also necessary to include the style of the courts there, especially the highest tribunals of the Apostolic See, which, as regards the force of legal custom (*usus forensis*, *stylus iudicandi*), were to be followed by the courts of the lower level [Bellomo 1995, 98]. Above all, the jurisprudence of the Roman Rota (*Rota Romana*) has had a special and exceptional position in canon-law jurisprudence and practice since Avignon times. In this regard, we can mention above all the post-classical Roman law approach of *auctoritas rerum perpetuo similiter iudicatarum*, which was observed in canon law science, at least in theory, from the 6th to the 15th century (at least in the judgments of the pope in relation to persons) [Willock 1962, 96; Wernz and Vidal 1938, 248; Crnica 1940, 41]. For this reason, the principle of *decisiones faciunt ius* generally prevailed in the late Middle Ages at the latest.[6] As a specific example, the influence of the decision-making activity of the Roman Rota on the operation of the tribu-

[5] For more details on the issue, see also Gomes 1547, 38.

[6] Cf. Grat., D. 20, c. 3; X 2,27,16; VI 1,3,14 and 1,5,1. For more details on the issue and interesting reflections, see Paolo 2018, 57-58.

nals of the Roman Inquisition can be mentioned.[7] As the Roman lawyer Quintiliano Mandosio († 1593) stated: *Rota loquente caetera tribunalia obmutescunt* [Schmalzgrueber 1843, 161]. It was the established rules and customs recognized by the Roman Rota that ultimately controlled the inquisition process and its working methods down to the smallest detail [Mayer 2013, 157-58 and 160]. Although in positive law it is considered that no judicial decision, not even the one issued by the tribunals of the Apostolic See, can have the force of universal law, everything indicates that the decisions of the Roman Rota issued repeatedly in similar cases in history introduced the so-called judicial custom (*usus forensis*), which was binding on lower level judges not only *de facto*, as it is nowadays, but also *de iure* [Polášek 2003, 13ff].[8]

1.1.3. Binding Nature

In addition to the wide possibilities of using the *stylus Romanae curiae* in ecclesiastical administration, it is appropriate to point out its perception in contemporary canon-law science and practice. The centralism of the papal administration was supported on the theoretical level by the successfully enforced postulates of the Gregorian reform, on the practical level by the bureaucratic apparatus developed during the Avignon papacy [Jacob 1953, 26ff]. Even in those times, it was customary to enforce the *stylus curiae*, primarily the rules of the Apostolic Office, under the force of universal law, while these insights were relevant not only in the 14th century, but also in the times that followed [Paolo 2017, 3]. Already the famous canonist Johannes Andrea († 1348) mentioned in his works *regulae cancellariae* right next to *leges*, specifying their binding nature while using the words *temporales ad vitam conditoris*, and specifying that laws applied, unlike them, forever. Finally, he commented similarly on the judgments of the highest courts, in which comment he was followed by other famous lawyers of the late Middle Ages, of whom we can especially mention Cino da Pistoia († 1336), but also Baldus de Ubaldis († 1400), who emphasized the customary nature of *stylus* and its binding relationship to the judicial practice of each court not only *de facto*, but also *de iure*.[9] Their

[7] For more details, see Aron-Beller Black, 2018.
[8] Cf. Ioannes Paulus PP. II, Allocutio ad Romane Rotae iudices, AAS 85 (1993), p. 141.
[9] For more details on the issue, see Prosdocimi 2001, 202.

force is evidenced primarily by the fact that they were to acquire the character of a source of law already upon the issuance of the first judgment by the court of the Apostolic See. The general binding nature of the *stylus Romanae curiae* not only in the Roman Curia itself, but throughout the world, was confirmed in 1484 also by the consistorial lawyer Alphonsus de Soto when making brief notes to the *regulae*, *ordinationes*, *et constitutiones cancellariae* promulgated by Pope Innocent VIII. (1484–1492) [Soto 1484].[10]

1.1.4. Before the Publication of the 1917 Code of Canon Law

As we have noticed, opinions on the binding nature of the *stylus Romanae curiae* differed among individual canonists. In general, however, it was considered that taking into account, or application, of *stylus Romanae curiae* dispositions comes into consideration under the conditions of *non obstanibus constitutionibus et ordinationibus apostolicis* [Paolo 2017, 13]. Even though several canonists tended towards the fact that it is necessary to recognize this institute to be a source of law with statutory force, with the rise of the commentary school, there was also an increasingly noticeable tendency to minimize its force. For example, the famous Francisco Suárez († 1617) presented a theory in which he tried to reconcile the *stylus curiae* with other sources of law. According to his view, it could thus explicitly acquire the force of law only if confirmed by the legislator or by legal custom. This opinion was later held by famous canonists such as Filipe Maroto († 1937), and Gommarus Michiels († 1965), thus returning to the conclusions of Cardinal Francesco Zabarella († 1417), who stated that without explicit papal confirmation, the decisions of individual dicasteries of the Roman Curia, including the Roman Rota, did not carry weight greater than the expert opinion of scholars [Michiels 1929, 47ff]. Nevertheless, everything indicates that from the period of the High Middle Ages until the beginning of the 20th century, the opinion on the universal binding nature of the *stylus Romanae curiae* prevailed, whether in the area of

[10] Nevertheless, several canonists of the mentioned period partially questioned the above statement. Among them, for example, Felinus Sandeus († 1503) and his work *Super titulo de rescriptis et nonnullis aliis* commenting on the collection *Liber sextus* (VI 1,2,1). Cf. Sandeus 1489.

administration or judicial power.[11] Thus, while the lower-ranking administrative bodies of the Church were supposed to reflect the procedures of the Roman Curia in their decision-making activities, the lower-level tribunals were supposed to take into consideration the conclusions of the Roman Rota and other central judicial bodies operating in Rome. With a more detailed look at canon law development, it can be concluded that only in relation to the promulgation of the first Code of Canon Law, the papacy made more drastic changes in the setting of its status. Pope Pius X (1903–1914) can be identified as their main initiator, who was not only behind the reforms in question, but also behind the first codification work in the history of the Latin Church [Willock 1962, 97].

2. CODIFIED CANON LAW

2.1. 1917 Code of Canon Law

Stylus Romanae curiae was reflected in a significantly different way by the legislator of the first Code of Canon Law from 1917, specifically in canon 20 discussing the possibility of creating a new rule in the absence of a relevant rule and the necessity to decide the case [Crnica 1940, 36]. At this point, legislator stated that if there was a lack of an explicit provision of the law, whether general or particular, it was necessary to apply the rule of the law issued for similar cases, taking into consideration the generally applicable legal principles applied with canonical equity (*aequitas canonica*), the style and the practice of the Roman Curia and the common and constant opinion of experts.[12] Quite naturally, first, it was necessary to consider the possibility of deciding the case using an authentic interpre-

[11] As an example from the beginning of the 20th century, the collections of forms at that time frequently stipulated for the conditions under which dispensation from matrimonial impediments could be granted. Cf. https://www.catholic.com/encyclopedia/dispensation [accessed: 17.06.2024].

[12] Cf. *Codex Iuris Canonici, Pii X Pontificis Maximi iussu digestus Benedicti Papae XV auctoritate promulgatus*, AAS 9 (1917), part II, p. 1-456 [hereinafter: CIC/17], can. 20. On the other hand, it is also necessary to specify that, apart from can. 42 § 1, which deals with the effectiveness and validity of the rescript on the institution known as *subreptio*, the word *stylus curiae* does not appear anywhere else in the Code. For more details on the issue, see Vermeersch and Creusen 1937, 121; Bouscaren 1934, 58 and Cocchi 1921, 106.

tation, i.e. basically without the creation of a new rule [Michiels 1929, 459]. Only provided that this procedure did not bring a solution, or the interpretation concluded the non-existence of the rule for deciding the case, it was possible to proceed with the application of this canon. With regard to history, it was then necessary to specify in more detail under what circumstances a certain rule was to be qualified as part of the *stylus et praxis curiae*.[13] Some canonists answered this question broadly and stated that if there was a permanent and consistent line of decisions coming from the highest courts of the Catholic Church and it met all the conditions for the creation of customary law, in terms of legal custom it unconditionally bound all lower level tribunals. Other canonists went further, stating that the lower courts were bound in such case regardless of custom, even in the case of one or two concurring decisions of the highest tribunals, since they were the courts of the supreme legislator, in which the authority of the Code, including canon 20, rested.[14]

Following the above, one of the canonists went even further and, drawing on historical arguments and the practice of the time, stated that if there was a certain gap (*lacuna*) or other defect in the law, the canon 20 and especially the judgments of the Roman tribunals were to be followed, provided they offered a principle applicable to the resolution of the case [Augustine 1918, 99-100]. He also stated that if there was no deficiency in the law, but there were certain clear legal rules derivable from the decision-making activity of the highest tribunals of the Catholic Church, the following rules were to be followed: 1) the decisions of the Roman Rota, after a certain adequate number of judgments had been reached and other conditions required for the establishment of custom had been met, had the force of customary law, and all judges of lower courts were bound to adhere to them. It was considered that, if the rotal judgment had been formally approved and issued by the pope, it had the force of law and bound all tribunals to render judgments in accordance with it; 2) Jurisprudence

[13] During the period of validity of the first Code of Canon Law, the Roman Curia itself was defined as a body made up of sacred congregations, tribunals and offices. Cf. can. 242; 246-257; 258-259 and 260-264 CIC/17.

[14] It is interesting to note that the courts of lower levels during the period of validity of the first Code did not always accept the above views. Some of them argued that Rota judgments are binding only in a specific case, while due to the diversity of factual situations in individual cases, it is not possible to deduce any legal rules from Rota judgments. Cf. Willock 1962, 95-96.

of the Rota not confirmed by the supreme legislator or established custom did not introduce legal rules to be followed by judges of a lower level; 3) Even if the decisions of the Roman Rota did not acquire such force, but several identical judgments were issued, they were to be highly valued by the lower courts which were not supposed to deviate from the same without convincing reasons to decide in a different manner [Wernz and Vidal 1938, 248]. As long as the first Code was applicable, however, it was not possible to think about the court judgments of the Roman Rota in the context of a precedent, i.e. a source of law, which was finally explicitly stated by the canon 17 § 3.[15]

2.2. 1983 Code of Canon Law

From the point of view of the valid Code of Canon Law, the concept of *stylus Romanae curiae* is mentioned in two cases, both more or less indirectly. It is thus left above all at the level of a legal institute applied on the basis of a tradition lasting several centuries, or it can be perceived as a mean acting under the power of customary law. In the first case, the Code explicitly mentions it in can. 19 discussing loopholes in the law, and then once again in canon 63 § 1, listing the specific conditions for the validity of the rescript when applying *subreptio*.[16] As for filling gaps in the law, it remains interesting that while the first Code used the expression *a stylo et praxi Curiae Romanae*, the applicable Code speaks of *iurisprudentia et praxi Curiae Romanae*.[17] From the above, one can deduce the legislator's attempt to emphasize the jurisprudential function of style, neglecting its traditional power as a mean of shaping the legal practice of

[15] Cf. can. 17 § 3 CIC/17. Since the publication of the Code of Canon Law in 1917, the *stylus Romanae curiae* can only be considered in the context of its *de facto* binding nature. Cf. Crnica 1940, 41 and Örsy 1985, 37.

[16] Codex Iuris Canonici auctoritate Ioannis Pauli PP. II promulgatus (25.01.1983), AAS 75 (1983), pars II, pp. 1-317 [hereinafter: CIC/83], can. 19. For more details on the issue, see Listl 1999, 903.

[17] As for the applicable Code of Canons of the Eastern Churches (*Codex canonum ecclesiarum orientalium*), it does not even mention the *praxis* or *stylus* of the Roman Curia when supplementing the law, but only mentions the concept of *iurisprudentia*. Cf. *Codex Canonum Ecclesiarum Orientalium auctoritate Ioannis Pauli PP. II promulgatus* (18.10.1990), AAS 82 (1990), pp. 1045-363 [hereinafter: CCEO], can. 1501.

lower administrative or judicial bodies.[18] Even contemporary canon law mentions a gap in the law when there is no relevant rule of universal or particular law, including legal custom, in a certain legal issue. In addition to the inconsistency indicated above, it is also interesting to note that while the first codification work mentioned filling gaps in the law in the context of *norma sumenda est*, the contemporary legislator used the expression *causa dirimenda est*, which naturally evokes the possibility of applying this canon only in the case of procedural issues [Ujházi 2012, 178].

As we have already mentioned, can. 19 of the applicable Code of Canon Law, following the model of the previous Code, states that if there is no express provision of a universal or particular law or custom, the case, if not criminal, must be decided taking into consideration the laws issued in similar cases, the general principles of law applied with canonical moderation, the jurisprudence and practice of the Roman Curia, and the common and constant opinion of experts.[19] As we have already indicated, the applicable Code does not use the concept of *stylus*, which was mentioned in can. 20 of the first Code of Canon Law together with the *praxis* of the Roman Curia. Most authors agree in the conclusion that the word *praxis* in this case should be perceived in the context of *stylus formalis*, i.e. in terms of practical elements of applied law. But some hold the opinion that it can also be understood in a broad sense, due to which there would not be a significant difference between the words *stylus* and *praxis*.[20] Contemporary canon-law science then deduces from the mentioned concept that the mere change of words in the text of the valid can. 19 and the omission of the concept of *stylus* does not in fact result in any change compared to the previous law, and the main goal of the potential application of this institute remains the elimination of gaps in the law.[21]

[18] In the mentioned contexts, the comments emphasize that jurisprudence itself should prevail over the practice of bodies endowed with executive power. On this basis, the creation of jurisprudence is transferred mainly to the Apostolic Signatura and the Roman Rota. Cf. Caparros, Thériault, and Thorn 2004, 46 and Ioannes Paulus PP. II, Allocutio ad Romane Rotae iudices, AAS 85 (1993), p. 143.

[19] The institutes of legal analogy are mentioned preferentially, firstly *analogia legis* (*legibus latis in similibus*) and finally, in the sense of general legal principles, *analogia iuris* (*generalibus iuris principiis*). Cf. Berlingò 1995, 140-41.

[20] With this respect, the already mentioned Gommarus Michiels stated: *Formula canonis stylus et praxis Curiae Romanae intelligatur per modum unius*. Cf. Michiels 1949, 593.

[21] In the contemporary doctrine, in accordance with the historical concept, the concept of *praxis* primarily refers to the formal element of administration (*stylus*

The wording of can. 19 following the model of can. 20 of the first Code further indicates that the practice of any ecclesiastical tribunal or office cannot be applied to resolve gaps in the law, but only the jurisprudence and practice of the Roman Curia may do so. Typically, canon-law science traditionally alleges that the first reason lies in the expertise and professionalism of the Roman Curia, whose premises should be followed not only in science, but also in practice. The second reason can be derived from the *communio Ecclesiarum*, that is, the effort to achieve relative unity between the jurisdiction of particular and universal ecclesiastical superiors. Based on historical experience, it can also be reasonably assumed that the legislator allows the creation of the own style (*praxis*) also at the level of administrative and judicial bodies of particular churches. However, it is similarly admissible only if it is in accordance with the practice of the Roman Curia [Hove 1930, 291-92]. In general, it is based on the premise that the practice of lower-ranking ecclesiastical bodies does not contradict the jurisprudence of the Roman Curia, if it does not show signs of custom being in conflict with the law (*consuetudo contra legem*) [Ujházi 2012, 184]. As for the concept of *iurisprudentia* itself, it can first of all be perceived in the context of the judiciary, but also of the executive power, even if the legislator expressed the second meaning rather by the concept of *praxis*. However, priority is given to the decision-making activity of tribunals and other dicasteries of the Apostolic See, not to courts and lower administrative bodies. Even if the universal legislator definitely assumes dealing with gaps in the decision-making activity of lower bodies, the same can happen in the jurisprudence and practice of individual bodies of the Roman Curia [Marzoa, Miras, and Rodríguez-Ocaña 2004, 363; Caparros, Thériault, and Thorn 2004, 34].

From the point of view of judicial power, the majority of canonists thought primarily of the judgments of the Roman Rota when using the concept of "jurisprudence of the Roman Curia". Finally, such conclusion is also supported by Article 200 § 1 of the new Apostolic Constitution on the Roman Curia and its service to the Church in the world *Praedicate Evangelium* (2022), which expressly granted this tribunal several special functions to promote the unity of jurisprudence, whether at the level of the

formalis), but also essential elements of legal practice (*stylus materialis*). Cf. Arrieta 1996, 100 and 104-105.

universal Church or individual particular churches.[22] However, based on the wording of can. 19 of the applicable Code and practice, it is not possible to exclude the competence of other ecclesiastical tribunals of the Apostolic See. In this regard, the Apostolic Signatura should not be forgotten, since in terms of competences it can reasonably be qualified as the highest court of the Roman Curia.[23] It should also not be forgotten that the functions of the Apostolic Signatura are not limited to court cases, but administrative matters also fall under its jurisdiction. In addition, it is the only administrative court operating in the entire Catholic Church. This indicates that its decisions should be decisive for lower ecclesiastical authorities and offices not only in judicial matters, but also in dealing with legal loopholes in the administrative law [Pompedda 2003, 173]. The Congregation for the Doctrine of the Faith (*Congregatio pro doctrina fidei*) can be mentioned among the other bodies of the Roman Curia proceeding through the administrative or judicial path [Ujházi 2012, 185].

CONCLUSION

Looking back at the earliest legal history, one may reasonably assume that an institution similar to the *stylus Romanae curiae* definitely existed already in the ancient times of Egypt and Mesopotamia, since the government structures there had demonstrably developed an extensive bureaucratic apparatus. However, the lack of sources does not allow us to draw bolder conclusions. As we have already indicated, something like the style of the imperial office existed in Rome during the late Principate and Dominate. Nevertheless, we can reasonably assume that, with regard to the time of the establishment of the Roman Curia, it was not the Roman models that were followed, but rather the models of the organization of the imperial courts of the Carolingian, Ottonian and then the Salian em-

[22] Cf. Ioannes Paulus PP. II, Constitutio apostolica de Romana Curia *Pastor bonus* (28.06.1988), AAS 80 (1988), p. 841-930, Article 126; Franciscus PP, Constitutio apostolica de Curia Romana eiusque servitio pro Ecclesia in mundo *Praedicate Evangelium* (19.03.2022), AAS 114 (2022), pp. 375-455, Article 196.

[23] Paulus PP. VI, Constitutio apostolica de Romana Curia *Regimini Ecclesiae Universae* (15.08.1967), AAS AAS 59 (1967), pp. 886-928, Article 105.

perors.[24] From the point of view of the Catholic Church, it was most strongly enforced in the times of centralizing tendencies, which came to the fore from the High Middle Ages, but also after the Council of Trent (1545-1563). *Stylus Romanae curiae* therefore soon became a model for secular rulers who similarly tried to centralize the government and achieve the greatest possible agreement between their will and practice not only at the central level, but also in the controlled regions. Also for this reason, one can only agree with the opinions of several researchers who stated that it was necessary to draw attention to the value of canon law as one of the most important subjects of comparative study, but also as a sample suitable for imitation, regardless of the fact that the legal system of the Catholic Church served in the first place to transcendence [Willock 1962, 89].

With regard to history, deduction can be made that it was the practical threats of changes to the papal *ius scriptum* that led the universal legislator to limit the scope of the *stylus Romanae curiae*. The indirect effect of such processes was, in turn, the narrowing of the canon-law-science definition of legal custom, the creation of which, since the time of codified law, can only be initiated by the custom-making community, not by the highest bodies of Church administration or the judiciary, which fact eliminates the creation of new customs practically to a minimum (can. 23 CIC/83; can. 1506 § 1 CCEO; can. 25 CIC/17). In most cases, the argument was based on the principle of legal certainty, consisting in the requirement to achieve a certain degree of consistency in the interpretation of *lex scripta*.[25] With regard to history and canonical tradition, however, it would be appropriate to re-assess the value of the jurisprudence and practice of the Roman Curia, whose decisions are *de iure* not characterized by general binding force, but if the required conditions are met, at least their qualification in the dimension of legal custom comes into consideration (can. 6 CIC/83;

[24] From the point of view of Roman law, we can mention mainly efforts to influence legal practice through imperial rescripts representing acts of administrative power, which, however, were further copied and spread within the Roman state administration. They became the model for the papal decretals (*litterae decretales*), which functioned practically in the same manner. Cf. Bartošek 1994, 99; Heyrovský 1910, 49-50.

[25] Cf. Ioannes Paulus PP. II, Allocutio ad Romane Rotae iudices, AAS 85 (1993), p. 143.

can. 2 CCEO; can. 6 CIC/17).[26] However, what could have been explicitly demanded when interpreting the Code of Canon Law from 1917 is nowadays considered a misunderstanding or at least a broad interpretation of the mentioned unwritten source [Ujházi 2012, 188]. As we have already stated, these authors completely forget that just due to degradation of the value of *stylus Romanae curiae*, the very conceptual definition of legal custom as a source of law has also changed, not the other way around. For that reason, when trying to apply such institute widely, it is more appropriate to speak about certain historical reminiscences, which, according to applicable canon law, can be partly invoked solely in the context of canonical tradition.

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[26] Many contemporary researchers also perceive several acts of dicasteries of the Roman Curia in terms of legal custom capable of creating and changing law. Cf. Willock 1962, 102.

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Stylus Romanae Curiae **in Historical and Positive Canon Law**

Abstract

Stylus Romanae Curiae, as an important element influencing, guiding and supplementing the application of the rules of canon law in practice, originally developed

from the collections of forms and rules of the Apostolic Office. The popes initially wished that the central administrative and judicial bodies, designed in a centralist manner and established by them, not only exercised control over the application of universal rules, but also supplemented them and acted as a guide to jurisprudence. Thus, the *Stylus Romanae Curiae* began to influence not only the further development of canon-law science, but also legal practice in a significant manner, which occurred mainly when filling gaps in the law, but also when interpreting and deciding recurring types of cases in terms of administrative instructions or judicial precedents. However, recognition of the value of the source of law by several canonists made it an undesirable element over time, which the papacy managed to eliminate only at the beginning of the 20th century. The main goal of the study is to point out the conceptual definition and practical functioning of the *Stylus Romanae Curiae* in history and the gradual weakening of its position in the codified law of the Catholic Church, which culminated in the positive law.

Keywords: papacy; Roman Curia; collections of forms; rules of the Apostolic Office; centralism; canon-law science; historical canon law; positive canon law.

***Stylus Romanae Curiae* w historycznym i pozytywnym prawie kanonicznym**

Abstrakt

Stylus Romanae Curiae, jako ważny element wpływający, kierujący i uzupełniający stosowanie zasad prawa kanonicznego w praktyce, pierwotnie rozwinął się ze zbiorów formularzy i zasad Urzędu Apostolskiego. Papieże początkowo chcieli, aby centralne organy administracyjne i sądownicze, zaprojektowane w sposób centralistyczny i ustanowione przez nich, nie tylko sprawowały kontrolę nad stosowaniem uniwersalnych zasad, ale także je uzupełniały i działały jako przewodnik po jurysprudencji. W ten sposób *Stylus Romanae Curiae* zaczął wpływać nie tylko na dalszy rozwój nauki prawa kanonicznego, ale także na praktykę prawną, co miało miejsce głównie podczas usuwania luk w prawie, jak też interpretowania i rozstrzygania powtarzających się spraw administracyjnych lub precedensów sądowych. Jednak uznanie wartości źródła prawa przez kilku kanonistów sprawiło, że z czasem stał się on niepożądanym elementem, który papiestwu udało się wyeliminować dopiero na początku XX w. Głównym celem opracowania jest wskazanie na definicję pojęciową i praktyczne funkcjonowanie *Stylus Romanae Curiae* na przestrzeni dziejów oraz stopniowe osłabianie jego pozycji w skodyfikowanym prawie Kościoła katolickiego, czego ukoronowaniem było prawo stanowione.

Słowa kluczowe: papiestwo; Kuria Rzymska; zbiory formularzy; reguły Urzędu Apostolskiego; centralizm; nauka prawa kanonicznego; historyczne prawo kanoniczne; pozytywne prawo kanoniczne.

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