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THE ORDINARY IN CANN. 134 § 1 AND 87 § 2

Abstract: Under the 1983 Code, there is a clear difference between those who enjoy ordinary power of governance and those who enjoy the title "ordinary". However, there are occasions when people confuse these two realities. This article, therefore, gives a wide exposition of the concept of ordinary to highlight the ecclesiastical authorities in the Church who enjoy the title "ordinary". A special emphasis is laid on religious ordinaries in relation to the power granted to them by the universal law under canon 87 § 2 , which dispenses from the universal disciplinary laws in extraordinary cases. Based on analysis of the provisions of cann. 134 § 1 and 87 § 2, the article identifies the ecclesiastical authorities who, thanks to holding some good positions within the ecclesiastical administrative apparatus, do not qualify as ordinaries. Therefore, the article explores the criteria used by the legislator to give this title to holders of certain ecclesiastical offices within the Church.

Keywords: jurisdiction; quasi-episcopal power; ordinary executive power; external forum; *opera propria*; *opera concredita*.

INTRODUCTION

Canon 134 defines the persons in the Code who enjoy the title of ordinary within the canonical system. Canon 87 § 2 addresses the powers enjoyed by ordinaries to dispense from the provisions of the universal laws in extraordinary situations. This article, therefore, intends to identify the competent ecclesiastical authorities who enjoy the title of ordinaries, and to highlight more specifically those superiors who qualify to be called "ordinaries" in religious institutes, and how they fit within the scope of these two canons.

1. THE CONCEPT OF "ORDINARY"

In the ordinary language, the term *ordinarius*[1] means that which is according to order, regular, ordinary, or that which happens frequently. In a technical-juridical context, it is used in the Code in two ways.[2] First, as an adjective qualifying a substantive (noun) such as *potestas ordinaria*, *minister ordinarius sacramentii*, *processus contentiosus ordinarius*, *iudex ordinarius*.[3] Therefore, when used predicatively (as an adjective), as in the case of *minister ordinarius*, it refers to the person who enjoys the stability of a function and ordinary jurisdiction as opposed to delegated power.[4] Second, it is used also as a substantive, like in the case of *ordinarius competens*, *ordinarius loci*, *ordinarius proprius*.[5] Used in this sense, it refers to specific holders of certain ecclesiastical offices, who exercise ordinary executive power of governance, a power referred to by some authors as a *quasi-episcopal* power.[6]

The second use of the term *ordinarius* is as a substantive (noun) referring to specific titulars of various ecclesiastical offices. This use has evolved from one epoch to another, with more specifications being made from one epoch to another. Before the Council of Trent, scholars quote some instances where this term was used.[7] A more stable use of the term is seen in the Council of Trent and in the documents of Pope Benedict XIV, where it used to designate

[1] See D. P. SIMPSON, *Cassell's Latin Dictionary, Latin-English, English-Latin*, Boston: Houghton Mifflin Hartcourt, 1968, p. 416.

[2] See C. F. DU CANGE, *Glossarium mediae et infimae latinitatis*, vol. 6, Graz: Akademische Druck u. Verlagsanstalt, 1954, p. 58-59; F. CLAEYS BOUUAERT, *Ordinaire*, in *Dictionnaire de Droit Canonique*, vol. 4, Paris: Letouzey et Ané, 1954, col. 1123; G. MICHIELS, *De potestate ordinaria et delegata. Commentarius tituli V Libri II Codicis iuris canonici canones 196-210*, Paris: Desclée et socii, 1964, p. 136; J. MARTÍN GARCÍA, *Ordinario e ordinario del luogo ai sensi del can. 134*, "Ephemerides Iuris Canonici" (2012), no. 52, p. 111.

[3] Cf. J. OCHOA, *Index verborum ac locutionem Codicis iuris canonici*, Commentarium pro Religiosis, Roma: Commentarium pro Religiosis, 1983, 296. He treats this use under the word "ordinarius, a, um."

[4] See J. MARTÍN GARCÍA, *Ordinario e ordinario del luogo*, p. 111.

[5] Cf. J. OCHOA, *Index verborum ac locutionum Codicis iuris canonici*, p. 294-296.

[6] See G. GHIRLANDA, *Ordinario (Ordinarius)*, in *Nuovo dizionario di diritto canonico*, ed. S. C. Salvador, V. De Paolis, G. Ghirlanda, Torino: San Paolo, 1993, p. 736.

[7] See DU CANGE, *Glossarium mediae et infimae latinitatis*, 59; G. MICHIELS, De *potestate ordinaria et delegata*, 136; J. MARTÍN GARCÍA, *Ordinario e ordinario del luogo*, p. 111-112. These scholars cite a text of the Theodosian Code which uses the term *ordinarii* to refer to the officials of the ordinary judge; other documents written before 1040 that used the term to refer to the canons of collegial churches; Pope Innocent III who used it to refer to canons entrusted with the care of cloistered nuns; Council of Lyon (1274) and Boniface VIII used the word *ordinarius loci* in various decrees in various contexts.

bishops and the Roman Pontiff at times. To distinguish between the two, the term *ordinarius diocesanus* was frequently used for a diocesan bishop while *ordinarius ordinarii* was used for the Roman Pontiff.[8] Therefore, terms *ordinarius* and *ordinarius loci* were preferably used to refer to the diocesan bishop, until the time of the reign of Pope Leo XIII when it was reinterpreted in relation to matrimonial dispensations.

Addressing the authorities who can grant matrimonial dispensations, the Sacred Congregation for the Holy Office declared that the title *ordinarius* includes bishops, administrators or apostolic vicars, prelates or prefects that have jurisdiction over a separate territory, the *officialis* or vicar general in spiritual matters, and during the *sede vacante*, the capitular vicar or the legitimate administrator.[9] Later, Pope Leo XIII[10] in his apostolic constitution *Officium et munerum* of 25 January 1897 restricted the use of the concept "ordinaries" only to those who governed the dioceses or quasi-dioceses. At all this time, the religious superiors of exempt pontifical clerical institutes were only referred to as regular prelates. Can. 198 of the 1917 Code extended the category *ordinarius* to include the religious superiors of exempt clerical religious institutes. This notion has been improved and refined further by the 1983 Code, can. 134.

2. THE CRITERIA FOR DESIGNATING AN ORDINARY

The 1917 and the 1983 Codes do not present us with a precise criterion with which the supreme legislator uses to designate an ecclesiastical authority as an ordinary. For this reason, the precise criteria may be inferred by looking at the common characteristics presented by these authorities designated as ordinaries.

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[8] An example of such a use is seen in one of the responses of congregation for the council in 1888. Cf. SACRA CONGREGATIO CONCILII, Resposta ad 1., 18 iulii 1888, in *Collectanea Sanctae Congregationis de Propaganda Fide seu decreta instructions rescripta pro apostolicis missionibus*, vol. 2, Roma: Typographia Polyglotta S.C. de Propaganda Fide, 1907, p. 230, n. 1689.

[9] Cf. SACRA CONGREGATIO SANCTAE OFFICII, Litterae ad Ordinarios locorum quoad dispensationis matrimoniales, 26.02.1880, no. 2, in *ASS* 20 (1888), 543. The faculties of dispensing from the matrimonial impediments were also attributed to the Superiors of Mission *sui iuris* by Propaganda Fide, but they were not given the title Ordinaries. We see this in the response by the Sacred Congregation for the Consistories. See SACRA CONGREGATIO CONSISTORIALIS, Dubia de competentia, II, in *AAS* 1 (1909), p. 149, 151.

[10] Cf. LEON XIII, Constitutio *Officiorum ac munerum*, 25.01.1897, art. 29, in *Codex Iuris Canonici, Fontes*, vol. 3, *Romani Pontifices, a. 1867-1917. Prot. N. 545-713*, ed. P. GASPARRI, Città del Vaticano: Typis Polyglottis Vaticanis, 1933, p. 509, n. 632.

A look at the provisions of can. 198 of the 1917 Code shows that the subjects designated as ordinaries were all ordained ministers. They enjoyed at least ordinary jurisdiction in the external forum,[11] a jurisdiction of *episcopal* character or at least of *quasi-episcopal* nature. However, having ordinary power of *episcopal* or *quasi episcopal* nature in the external forum was not sufficient for one to be called an ordinary because even the parish priests and local superiors of exempt religious institutes of pontifical right enjoyed ordinary power of jurisdiction, yet they were not ordinaries. In the same way, having a *quasi-episcopal* power was not sufficient for one to be an ordinary because cardinals (can. 240 § 2 CIC/17), minor or local religious superiors of exempt institutes, prelates or abbots who were not *nullius* enjoyed *quasi-episcopal* power of jurisdiction but were not considered ordinaries.[12] Also, the episcopal character was not enough to qualify one as an ordinary, because not all ordinaries were bishops. For instance, vicars general and capitular vicars were not bishops but were ordinaries yet auxiliary bishops who were not vicars general were not ordinaries.

Therefore, while it was necessary that those with the title "ordinary" enjoy the ordinary power of jurisdiction of episcopal or quasi-episcopal character in the external forum, it was necessary that the law itself attributes expressly the title "ordinary" to the holders of certain specific offices.[13] Therefore, as Maroto and Vermeersch expressed, though it would have been good that all who possess ordinary power of jurisdiction be called ordinaries; however, the title

[11] See P. MAROTO, *Institutiones iuris canonici ad normam novi Codicis*, Roma: Commentarium Pro Religiosis, 1921, 175; A. LARRAONA, *Commentarium Codicis. Can. 488 (cont.)*, "Commentarium pro Religiosis" (1923), no. 4, p. 107; G. MICHIELS, *De potestate ordinaria et delegata*, 137; J. MARTÍN GARCÍA, *Ordinario e ordinario del luogo*, p. 115.

[12] Cf. A. LARRAONA, *Commentarium Codicis can. 488, 8° (cont.)*, in "Commentarium pro Religiosis" (1923), no. 4, 107, footnote 339.

[13] It is worth mentioning that the threefold division of functions of power of jurisdiction was not yet well developed, so when referring to the power of jurisdiction it is not clear which power they were referring to, because the doctrine itself of power of jurisdiction was not well elaborated, as we can see in can. 196 and 201 CIC/17. It is difficult to tell whether all ordinaries, by having power of jurisdiction, enjoyed the legislative and administrative power, under the umbrella of voluntary jurisdiction. This confusion is manifested in various analyses concerning the powers enjoyed by the religious ordinaries as well as that of vicar generals, to whom it was not clear whether he enjoyed the same jurisdiction with the diocesan bishop or not (cann. 366 § 1 and 388 § 1). Secondly, there was an emphasis on territoriality, though it is not a defining criterion, because the Supreme Pontiff has no *territorium sui*, as well as the religious ordinaries. However, it remains a characteristic underlined and emphasized in the Pio-Benedictine Code. This characteristic is seen even in canons 216 and 293 § 2 on ecclesiastical circumscriptions as well as in characteristics defining the law. With this emphasis, the personal ecclesiastical circumscriptions were not exclusively addressed.

is reserved only to those who are designated as ordinaries by the legislator in this canon.[14] Therefore, the only criteria for which some subjects enjoying the power of jurisdiction are called ordinaries, is that the legislator defines it as such in the law.

The 1983 Code, in can. 134 § 1, provides that all Ordinaries enjoy the ordinary executive power. Since there is only one power of governance in the Church, and this power is divided into legislative, executive, and judicial power (can. 135 § 1), which are all united in the office of the diocesan bishop and Roman Pontiff,[15] then it implies that the diocesan bishop and his equivalents as well as the Roman Pontiff to whom all these three powers are invested, equally enjoy the ordinary executive power.

Therefore, in the current Code all ordinaries enjoy ordinary executive power of governance, whether proper or vicarious. However, to be called ordinaries, they are to be designated as such by law itself. The criterion employed by some authors, of using the possession of ordinary executive power as the only criterion for designating an ordinary is not sufficient,[16] because the possession of ordinary executive power alone is not sufficient, neither is epis-

[14] Cf. P. MAROTO, *Institutiones iuris canonici ad normam novi Codicis*, vol. 1, Madrid: Editorial del Corazón de Maria, 1929, n. 701; A.VERMEERSCH, *Epitome Iuris Canonici*, v. I, Roma: Mechliniae, 1963, n. 227; P. MAROTO, *Institutiones iuris canonici*, 833; F. X. WERNZ, P. VIDAL, P. AGUIRRE, *Ius canonicum, II, de personis*, 426.

[15] The threefold division of power of governance by the new Code into legislative executive and judicial power is more recent, even though a mention of this threefold division was made in cann. 335 § 1 and 2220 CIC/17, but the doctrine did not develop this much (see F. J. URRUTIA, *Administrative power in the Church according to the Code of canon law*, "Studia Canonica" 20 (1986), 254; V. DE PAOLIS, *Tipologia e gerarchia delle norme canoniche*, in *Fondazione del diritto: Tipologia e interpretazione della norma canonica. XXVII Incontro di studio centro Dolomiti* "*Pio X*"*-Borca di Cadore (BL) 26 giugno – 30 giugno 2000*, ed. Gruppo Italiano Docenti di Diritto Canonico, Milano: Glossa, 2001, 140). However, the argument by some scholars that with the threefold division of power, the Church was adopting a system familiar to the liberal political doctrine (Cf. J. GAUDEMET, *Réflexions sur le Livre I "De normis generalibus" du Code de droit canonique de 1983*, "Revue de Droit Canonique" (1984), no. 34, p. 112), seem to be a bit exaggerated because in the Church the power of governance always exists as one in the office of the diocesan bishop and Supreme Pontiff.

[16] This criterion is employed by Garcia Martin and J. Arrietta. These authors insist that an ordinary must be invested with the general ordinary power of governance as stated in the 1983 Code can. 134 § 1, about the offices of the vicar and vicar general. However, no clear explanation is provided why even the power of the religious superiors is included among the general ordinary executive power, when can. 134 § 1 says of the superior, that he must have at least ordinary executive power (see J. I. ARRIETA, *Governance structure of the Catholic Church*, Montréal: Wilson & Lafleur, 2000, 60-61). In fact, using this criterion, Garcia Martin insists the cardinal prefect or president and undersecretaries of the dicasteries of the Roman Curia are ordinaries because they can produce general administrative acts (Cf. J. MARTÍN GARCÍA, *Ordinario e ordinario del luogo*, p. 160).

copal character a necessary requirement because some Ordinaries do not have the episcopal character, like an apostolic prefect, or an episcopal vicar.

Those who enjoy delegated executive power are not *ordinaries*. Secondly, ordinaries must be expressly designated as such by the law promulgated by the Holy See, because it is a title reserved to specific subjects of executive power of governance who occupy certain ecclesiastical offices to which this power is attached. All those who are not designated as ordinaries by the law, are not ordinaries.

3. SUBJECTS OF THE TITLE "ORDINARY"

Can. 87 § 2 of the 1983 Code[17] grants the ordinary power to dispense from universal ecclesiastical laws to *Ordinarius quicumque* (any ordinary). That implies that all who bear the title "ordinary", be it the diocesan bishop and his equivalents, be it the local ordinary, or personal ordinaries, all enjoy this power. In the 1917 Code, can. 198 § 1 enumerated the following ecclesiastical authorities as ordinaries:

> In law by the name *Ordinaries* are understood, unless they are expressly excepted, in addition to the Roman Pontiff, a residential Bishop in his own territory, an Abbot or Prelate *of no one* [nullius] and their Vicar general, Administrator, Vicar or Prefect Apostolic, and likewise those who, in the absence of the above-mentioned, temporarily take their place in governance by prescript of law or by approved constitution, and, for their subjects, major Superiors of exempt clerical religious (institutes).

The 1983 Code, can. 134 § 1, has extended the range of subjects enjoying this title to the following authorities:

> In law the term Ordinary means, apart from the Roman Pontiff, diocesan Bishop and all who, even for a time only, are set over a particular Church or a community equivalent to it in accordance with can. 368, and those who in these have general ordinary executive power, that is, Vicars general and episcopal Vicars; likewise, for their own members, it means the major Superiors of clerical religious institutes of pontifical right and of clerical societies of apostolic life of pontifical right, who have at least ordinary executive power.

[17] The translations of CIC/17 and CIC/83 used in this article are detailed in the Bibliography.

In the 1983 Code, three new inventions are seen. First, a diocesan bishop and his equivalents in law are no longer qualified by the phrase "his territory" as it was in the former code. Second, the figure of the episcopal vicar introduced by Vatican II, and the major superiors of clerical religious institutes and societies of apostolic life have been added. And finally, vicars general, episcopal vicars and religious ordinaries have been qualified by ordinary executive power.

According to the new law the title *ordinarius* is reserved to the following authorities.

– The Supreme Pontiff is the ordinary for the whole universal Church (can. 331), for all Churches (can. 333 § 1) and for all institutes of consecrated life (can. 590 § 2). No other authority at the universal Church enjoys the title "ordinary", not even the dean of the college of cardinals or prefects of dicasteries of the Roman Curia as Garcia Martin claims,[18] even if they enjoy ordinary executive power.
– The diocesan Bishop and those who take his place during *sede impedita* or *sede vacante*[19] are *ordinaries*. The diocesan Bishop enjoys an ordinary, immediate, and proper executive power of governance over the diocese in his care. He is therefore the proper pastor and ordinary of the diocese.

However, not all those who have the episcopal character are ordinaries. Only those who are diocesan bishops, or those appointed as vicars general and episcopal vicars in a diocese are ordinaries (cann. 406, 409). An auxiliary bishop with or without special faculties, as well as a coadjutor bishop, even though he enjoys the right of succession (can. 403 §§ 1-3), if they are not made vicars general or episcopal vicars, they are not ordinaries, and they do not enjoy the ordinary power of dispensation prescribed in can. 87 § 2. To dispense from any law, they must be delegated. The same applies to emeritus bishops: once they leave the office, they are no longer Ordinaries. They enjoy all the advantages and privileges underlined in the communication of the Con-

[18] See J. GARCIA MARTIN, *Ordinario e ordinario del luogo*, 160

[19] During the time of *sede impedita*, the Holy See may provide an apostolic administrator *ad nutum Sanctae Sedis*, the coadjutor bishop, or when there is no coadjutor bishop, then the auxiliary bishop, or a vicar general, or an episcopal vicar, or any other priest (the order of persons to be followed is determined in the list of diocesan bishop after taking possession of his diocese); or a priest elected by the college of consultors when there is no coadjutor bishop or the drawn list. During *sede vacante*, an apostolic administrator *ad nutum Sanctae Sedis*, or a diocesan administrator (427 § 1). For the ecclesiastical circumscriptions of missionary nature, we have the pro-vicar and pro-prefect (can. 420).

gregation for the Bishops of 31 October 1988,[20] but they too do not enjoy the power proper to ordinaries.

Those who are in charge of particular Churches or communities equivalent to the diocese by law as stated in can. 368 are also ordinaries, and they equally enjoy all powers of governance which the diocesan bishop enjoys over his diocese.[21] Therefore, they are also included in the title of diocesan bishops, and enjoy ordinary powers to dispense from universal laws indicated in can. 87 § 1 as the diocesan bishop and can. 87 § 2 like any other ordinary for reserved cases. Among these ordinaries, we have first, territorial abbot (prelate *nullius*), normally endowed with an episcopal character, under the title the bishop prelate of the abbacy (since 1977) and is the titular bishop of the abbacy itself.[22] His power over the abbacy is ordinary and proper. An apostolic administrator for a permanently established apostolic administration, the apostolic vicar, and apostolic prefects who, enjoying the ordinary vicarious power,[23] govern these mission circumscriptions equivalent to the diocese by law. By law, they enjoy the faculty to dispense from laws granted in can. 87 §§ 1-2.

Two other figures have been included in this category of diocesan bishops hence ordinaries by the post-1983 Code legislations. First is the head of the military ordinariate (*ordinariatus castrensis*). According to the provisions of the apostolic constitution *Spirituali militum curiae*, the military ordinariate is an ecclesiastical circumscription of personal nature juridically equivalent to a diocese.[24] Their proper ordinary, usually a bishop, is juridically equivalent to the diocesan bishop (art. 1 § 2). His jurisdiction is personal, ordinary, proper, and cumulative (art. IV). He conserves the title of his own ordinary military see and not titular diocese.[25] The second subject is the ordinary of the personal ordinariate for the Anglicans.[26] The pastoral care of the ordinariate is entrusted

[20] Cf. SACRA CONGREGATIO PRO EPISCOPI, Normae de Episcopis ab officio cessantibus *In vita Ecclesiae*, 31.10.1988, "Communicationes" (1988), no. 20, p. 167-168.

[21] Cf. CIC/17, can. 198; CIC 1983, can. 381 § 2; PAUL VI, *De Episcoporum muneribus*, n. III.

[22] Cf. SACRA CONGREGATIO PRO EPISCOPIS, Comunicazione sul titolo dei Prelati (nullius), Prot. N. 335/67, 17.10.1977, "Communicationes" (1977), no. 9, p. 224.

[23] Cf. A. LARRAONA, *Commentarius Codicis. Can. 488 (cont.)*, p. 110, footnotes 350-351.

[24] See JOHN PAUL II, Constitutio apostolica *Spirituali militum curiae*, 21.04.1986, art. II § 1, in *AAS* 78 (1986), p. 483.

[25] Cf. CONGREGATIO PRO EPISCOPIS, Comunicazione sul titolo degli Ordinari militari *Ho l'onore*, Prot. N. 552/9, 20 novembris 1997, in http://www.clerus.org/clerus/dati/2004-03/31-13/Com OrMi.pdf.

[26] See BENEDICTUS XVI, Constitutio apostolica, *Anglicanorum coetibus*, 4.11.2009, art. 1 § 3, in *AAS* 101 (2009), p. 987. So far there are three ordinariates belonging to this category: Personal Ordinariate of our Lady of Walsingham (England and Wales, Scotland); Personal Ordinariate of

to an ordinary appointed by the Roman Pontiff, and his power is ordinary, vicarious, and personal (art. IV and V). The ordinariate is subject to the Dicastery for the Divine Faith, and the ordinary can either be a bishop, or a presbyter appointed by the Roman Pontiff *ad nutum Sanctae Sedis*.[27] All these authorities enjoy the power to dispense from laws which the law attributes to the diocesan bishop. All those who take the place of these ordinaries in their absence (*sede impedita* or *sede vacante*) are ordinaries, too.

An ecclesiastical circumscription called mission *sui iuris* is not equivalent to a diocese, neither is a personal prelature equivalent to a diocese. The argument by some scholars that their leaders ought to be included among ordinaries is still a matter of debate.[28] No precise definition nor consensus has been attained by authors, especially on the basis can. 295 § 1, which says that prelates of personal prelature govern the prelature as ordinaries (but not that they are ordinaries).

The vicars general and episcopal vicars enjoy the general ordinary executive power of governance of vicarious nature (cf. cann. 134 § 1, 475 § 1, 479 § 1). They have their competencies well defined in law (cf. cann. 475-481). However, the question concerning the possibility of pro-vicars and pro-prefects being included among the ordinaries remains subject to more reflection among the scholars. Another question concerns the practice of some diocesan bishops of electing lay religious brothers or sisters as their episcopal vicars for the religious in the diocese. Is this practice acceptable and according to the law? Whether this practice is justified by law or not is a question subject to debate and further research – research which is beyond the scope of this article. However, the law remains clear that episcopal vicars are to be priests (can. 478 § 1), because they are to assume offices with ordinary power of jurisdiction.

Finally, we have the major superiors of clerical religious institutes of pontifical right and societies of apostolic life of pontifical right. They are ordinaries and they enjoy the ordinary power of dispensation granted in can. 87 § 2.

Among these ordinaries who have the vicarious ordinary powers, we have the apostolic vicar, the apostolic prefect as well as the ordinary of the prelature

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the Chair of St. Peter (United States, Canada); Personal Ordinariate of our Lady of Southern Cross (Australia, Japan).

[27] See CONGREGATIO PRO EPISCOPIS, Norme complementari alla Costituzione apostolica *Anglicanorum coetibus Ciascun ordinario*, 19.03.2019, art. 1 and 4, in "Origins" (2019), no. 159, p. 7.

[28] See E. BAURA, *La dispensa dalla legge canonica*, 249; L. CHIAPPETTA, *Il Codice di diritto canonico. Commento giuridico-pastorale*, vol. 1, Napoli: EDB, 1988, p. 183.

for the Anglicans. According to the practice of the Holy See established already in 1919 by the Congregation for the evangelization of the people, these ordinaries nominate their vicars who enjoy delegated power of jurisdiction equivalent to that of the vicar general.[29] These officials therefore are not vicars general but *delegate Vicars*. Their power is delegated hence they do not belong to the category of ordinaries, in as far as the ordinaries are in office. However, they can only enjoy the power to dispense and fulfill functions proper to a vicar general in a delegated form. Without delegation, they enjoy no ordinary power to dispense a law described in can. 87 § 2, not even that in can. 88 of the 1983 Code.

A similar situation may arise in particular churches during the *sede vacante* where the administration of the vacant diocese is entrusted to an apostolic administrator *ad nutum Sanctae Sedis.*[30] Even if the apostolic administrator is granted all the faculties of the diocesan bishop, the diocese still remains vacant. Consequently, the offices of vicar general and episcopal vicars cease (cann. 481 §§ 1-2, 489 § 2), as well as the functions of the presbyteral and pastoral councils.[31] The apostolic administrator governs the diocese in the name of the Roman Pontiff, for this reason his powers are ordinary but vicarious. Though he enjoys the powers of the diocesan bishop, he does not enjoy the power to appoint the people to fill an office in the diocesan Curia, a right which belongs to the diocesan bishop alone (can. 470).

According to the reply by the Pontifical Commission for the Legislative Texts of 15 March 2015, the apostolic administrator can confirm in a delegated manner the former vicar general who continues to be in office until the new bishop takes canonical possession of the diocese or delegate another priest in the diocese to fulfill these tasks. In this case, they are not vicar generals, but delegate Vicars.[32] These delegate Vicars, even if they were formerly vicars general or episcopal vicars, in their capacity as delegate vicars, they do not enjoy the ordinary executive power proper to vicars general and episcopal

[29] See SACRA CONGREGATIO DE PROPAGANDA FIDE, Epistola ad vicarios et praefectos apostolicos qua potestas fit nominandi vicarium delegatum *Iuxta can. 198*, 8.12.1919, in *AAS* 2 (1920), p. 120.

[30] See CIC/83, can. 419; CONGREGATIO PRO EPISCOPIS, Directorium *Apostolorum Successores*, 22.02.2004, n. 235, in *DOMINICUS A. GUTIÉRREZ, Leges Ecclesiae post Codicem iuris canonici editae*, vol. 10, *leges annis 2000-2002,* Roma: Ediurcla, 2010, col. 17562, n. 6168.

[31] See CONGREGATIO PRO EPISCOPIS, Directorium *Apostolorum Successores*, n. 244.

[32] PONTIFICIUM CONSILIUM DE LEGUM TE, XTIBUS, Responsum, Prot. N. 14925/2015, 15.05.2015, www.delegumtextibus.va/content/dam/testilegislativi/risposteparticolari/cic/Circa%20la%20nomina%20del%20Vicario%20delegato%20nelle%20giurisdizioni%20vicarie.pdf.

vicar. They have delegated executive power, so they are not ordinaries and do not enjoy the power to dispense granted in can. 87 § 2.

4. RELIGIOUS ORDINARIES

The reality of religious ordinaries merits special treatment in this section because it has undergone various modifications from the time of the 1917 Code to the 1983 Code. Before the 1917 Code, the major superiors of exempt clerical orders of pontifical right were addressed as regular prelates.[33] These regular prelates enjoyed the power of jurisdiction over their subjects, which was understood to be of quasi episcopal nature.

4.1 RELIGIOUS ORDINARIES IN THE 1917 CODE

The very first innovation of 1917 Code was the recognition of some religious superiors as ordinaries. In fact, it amplified the term to include not only the major Superiors of exempt religious orders who were understood to enjoy the power of jurisdiction, but also other exempt clerical religious institutes.[34] In the Pio-Benedictine Code, among the ordinaries were included the major superiors of exempt clerical institutes over their members (can. 198 § 1 CIC/17). In this Code these major superiors were defined in can. 488, 8° as follows:

> 8°. Major Superiors are Abbots Primate, Abbots Superior of monastic congregation, and Abbots of independent monasteries, even though they belong to a monastic Congregation, the Supreme moderator of a religious institute, a provincial Superior, and their vicars having power like that of a provincial.

However, not all major superiors enjoyed the same powers in the Church. Only the major superiors of exempt clerical institutes were ordinaries. These Superiors enjoyed the ecclesiastical power of jurisdiction in the internal and external forum over their subjects, besides the common dominative power enjoyed by all superiors. Can. 50 §§ 1 and 3 of that Code stated:

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[33] See G. MICHIELS, *De potestate ordinaria et delegata*, 137. However, there are two exceptional occasions when they were included in the generic title of *Ordinarius proprius*. See also SACRA CONGREGATIO CONCILII, Decretum *Vigilanti studio*, 25.05.1893, *ASS* 26 (1893), p. 58; SACRA CONGREGATIO CONCILII, Decretum *Ut debita*, 11.05.1904, *ASS* 36 (1903-1904), p. 672-676.

[34] See J. GARCÍA MARTÍN, *Ordinario e ordinario del luogo*, p. 117.

> §1. Superiors and Chapters, according to the norm of constitutions and common law, have dominative power over subjects; in clerical exempt religious institutes, they have ecclesiastical jurisdiction both for the internal and external forum.
>
> §3. Abbot primate and the Superiors of the monastic congregations do not have all the powers and the jurisdiction that the common law grants to major Superiors, but rather their power and jurisdiction is assumed by the proper constitutions and particular decrees of the Holy See, with due regard for the prescriptions of can. 655 and 1594 §4.

The power of jurisdiction enjoyed by the superiors and chapters of these exempt clerical institutes was based on the privilege of exemption according to doctrine. All superiors of these exempt clerical institutes enjoyed the ecclesiastical power of jurisdiction, both the major and minor superiors, however, only the major superiors were ordinaries.[35] The outstanding challenge that surrounded this attribution of power of jurisdiction to Superiors was that the threefold division of the power of jurisdiction was not yet well developed. This power was understood to be composed of legislative, judicial, and coercive power (can. 335 CIC/17). Therefore, left at such a general level, this would imply that all superiors of the exempt institutes enjoyed both the legislative, judicial, and coercive power.

Not all subjects of jurisdiction enjoyed this power in the same measure, neither were all superiors subjects of power of jurisdiction in the same measure. To distinguish the religious superiors from other ordinaries, the doctrine attributed to them a primary or imperfect power of jurisdiction which authors called *quasi-episcopal* power.[36] To differentiate the major superiors from minor superiors, the authors distinguished two forms in which this power is enjoyed: a *non-sufficient* manner, for those who cannot be ordinaries such as the minor superiors of these exempt institutes, and second, the *sufficient* one, for the major superiors who are also ordinaries. This power of jurisdiction en-

[35] Some scholars holding that the power of jurisdiction was necessary for granting a dispensation, went to an extent of claiming that those who are not capable of power of jurisdiction like lay religious superiors, should not even be delegated to grant dispensations. See P. M. CONTE A CORONATA, *Institutiones Iuris Cononici ad usum utriusque cleri et scholarum*, vol. 1, Roma: Taurini, 1928, p. 106, n. 112.

[36] Cf. A. LARRAONA, *Commentarium Codicis, can. 488 (cont.)*, 107. He says: "… veniat nomine *Ordinarii* quidem ut habeat iurisdictionem ordinariam fori externi et partier ut haec iurisdictio sit saltem *quasi-episcopali*." After this affirmation, he then demonstrated in the footnote n. 339 of the same page, that quasi-episcopal power is not an exclusive domain of religious Superiors only, but also of other ecclesiastical authorities including the cardinals, prelates and Abbots who are not *nullius*.

joyed by religious ordinaries, according to doctrine, was not territorial but of personal character. Hence it could be exercised only over their own subjects everywhere they find themselves.

The following were considered as religious ordinaries in the 1917 Code: abbot primate, abbot superiors and abbots of exempt monastic congregations, the supreme moderators the provincial superiors as well as their vicars of exempt clerical institutes. On matters of dispensation, they enjoyed the faculty to dispense their members from general laws of the Church in urgent cases, just like any other ordinary according to the provisions of can. 81 of the 1917 Code.

There are several cases also in the Pio-Benedictine Code where they were granted the faculty by law in which they could dispense by virtue of being ordinaries. Can. 15 empowered them to dispense from general laws including the invalidating and incapacitating ones in cases of doubt of fact, provided it concerned the cases in which the Roman Pontiff used to grant the dispensation. Can. 998 on the publication of banns for the candidates to sacred orders; and can. 1245 on the observation of feast days and the law of fasting. Other cases which do not refer to dispensation in proper sense were those of dispensing from non-reserved vows and oaths in can. 1313 and 1320, as well as from remission from *latae sententiae* penalties in can. 2237. Since the other minor superiors of exempt clerical institutes enjoyed the power of jurisdiction, they were delegated by law to dispense from provisions of abstinence and observance of feast days according to can. 1245. Other superiors who enjoyed only dominative power had no power at all to dispense from general laws.

Therefore, generally, the religious ordinaries enjoyed the same faculty to dispense the universal laws just like the diocesan bishop and other ordinaries. However, on top of this, they also enjoyed the faculty to dispense from general laws by virtue of some privileges which they had obtained from the Holy See and were not abrogated by the Pio-Benedictine Code because there was no specific law made to deal with the cases of dispensation for religious.

4.2 Religious ordinaries in the 1983 Code

In the current Code, all major superiors of clerical institutes of pontifical right and clerical societies of apostolic life of pontifical right who enjoy at least ordinary executive power are ordinaries (can. 134 § 1 CIC/83).[37] The-

[37] The new Code has introduced several new elements concerning the religious Ordinaries. This was due to the influence of the doctrine which developed after the 1917 Code, the practice of the Holy See, as well as the Conciliar and post-conciliar reforms. The doctrine already saw the flaw

refore, the ordinary executive power is the first condition for which major Superiors are designated as Ordinaries, and not the privilege of exemption. The distinction between the exempt and non-exempt institutes is no longer the criterion for designating ordinaries.

According to the 1983 Code, superiors of clerical religious institutes (can. 588 § 2) of pontifical right enjoy the ecclesiastical power of governance, for both internal and external forum (can. 596 § 2). This applies both to major and local superiors of clerical institutes of pontifical right. They enjoy the ecclesiastical power of governance. However, the major superiors, that is, the supreme moderator,[38] the provincial superiors, and their respective vicars (can. 620),[39] enjoy ordinary executive power of governance (can. 968, § 2), and are ordinaries (can. 134 § 1). Therefore, they enjoy the ordinary powers proper to all ordinaries in law. Also included among ordinaries are the major superiors of the clerical societies of apostolic life of pontifical right who equally enjoy the ordinary executive power of governance (cann. 134 § 1 and 968 § 2). How-

that accompanied the understanding of the power possessed by the Superiors, as can be seen in the critic of Larraona on the conception of dominative power and confirmed by some authentic interpretations (see PONTIFICIA COMMISSIO AD CANONES AUTHENTICE INTERPRETANDOS, Responsa ad proposta dubia, n. VI *De applicatione praescriptorum cann. 197, 199, 206-209, potestati dominativae*, 26.03.1952, AAS 44 [1952], p. 497). The flaw and silence of the law on the distinction between the major Superiors of exempt clerical institutes and non-exempt clerical institutes of pontifical right as highlighted by Larraona (see A. LARRAONA, *Commentarium Codicis, can. 488 (cont.)*, "Commentarium pro Religiosis" [1923], no. 4, p. 113-119). This proposal of Larraona was bitterly opposed by some scholars who held that the silence of the law does not imply that the contrary position is admitted, or that it be supplied by a contrary position (see A. VAN HOVE, *De privilegiis. De dispensationibus*, Roma: Mechliniae, 1939, n. 399), as well as lack of specific laws governing the dispensation of religious. The protection of autonomy of religious institutes and reducing the control of local Ordinaries on matters of internal governance of institutes by Vatican II, as well as the various faculties given by the Holy See to cater for the matters of dispensation in religious institutes.

[38] The Supreme moderator as well as other major Superiors have their responsibilities towards the institute revolving around three principal levels. The Supreme moderator governs persons (members of the institute) and administers things (juridical persons, things, and temporal goods). Therefore, at the level of representation, he is the juridical representative of the institute before the juridical system, be it canonical or statal; at the level of office, talking of persons, he accomplished the responsibility *in eligendo*, and the responsibility *in vigilando*; at the personal level, the powers entrusted to the office is a personal power, not collegial. For a complete discussion on these three roles, see P. GHERRI, *Titoli di responsabilità dei Superiori generali degli IVC in ambito extracanonico*, "Commentarium pro Religiosis" (2014), no. 95, p. 31-55.

[39] With the designation of the vicars of the supreme moderator and of the provincial superior as major superiors, the debate among some scholars that they only become superiors in the absence of the supreme moderators or provincial superiors is overcome. They are major superiors by law and ordinaries in the proper sense of the word.

ever, the suggestion is to have the major superiors of clerical secular institutes of pontifical right with the faculty to incardinate clerics included among the ordinaries was rejected during the revision process.[40]

As Ordinaries, besides the ordinary power of dispensing from the universal laws, granted in can. 87 § 2 of the 1983 Code, the law also grants them the power to dispense from certain provisions of law in their capacities as ordinaries. They can dispense from observing a law when there is doubt of fact (can. 14), they can also dispense their subjects who are to receive the sacrament of holy orders from the irregularities and impediments for the reception of holy orders whose dispensation is not reserved to the Holy See (can. 1047 § 4). They can also dispense their subjects for the obligation of observing feast days of obligation and from observing the days of penance and fasting (can. 1245). This power is enjoyed by all major superiors of clerical religious institutes of pontifical right who are ordinaries.

In a more specific way, since the Code does not exclusively address the dispensing powers of religious superiors apart from the general umbrella of ordinaries, it is worth analysing the dispensing power of superiors over the *opera propria* and the *opera concredita* in their day-to-day cooperation with the ecclesiastical authority in the local Church, in the light of *Mutuae relationis* of 1978.

5. DISPENSING LAWS CONCERNING *OPERA PROPRIA* TO THE INSTITUTE (CANN. 611, 2° AND 677 § 1)

All institutes of consecrated life enjoy just autonomy in matters of internal governance, internal legislation, internal discipline, and spiritual patrimony (cann. 578, 586). Consequently, all matters which regard internal discipline, apostolate of the institute and internal life of the institute, the religious are under the authority of their religious superiors and in accordance with the proper law. In the documents of Vatican II and the post conciliar documents,

[40] See PONTIFICIA COMMISSIO DE LEGUM TEXTIBUS INTERPRETANDIS, *Acta et documenta Pontificiae Commissionis Codici iuris canonici recognoscendo. Congregatio plenaria diebus 20-29 octobris 1981 habita*, Citta del Vaticano: Typis Poliglottis Vaticanis, 1991, p. 530-535. In this plenary session, two additional agendas discussed this. Agenda 23 discussed the possibility of empowering moderators of secular institutes who enjoy the faculty to incardinate clerics the same faculties and obligations as Superiors of institutes of apostolic life. Then agenda no. 27 proposed that moderators of clerical secular institutes of Pontifical right who have the power to incardinate clerics be recognized as Ordinaries in the Code. Both proposals were defeated by vote after the discussion.

it is indicated that works proper to the institute are under the authority and supervision of the superiors and the chapters, in accordance with their constitutions.[41] In this case, therefore, these works are guided and governed by proper laws, and it is the proper law which then defines the dispensing power of the superiors over the provisions of the proper law concerning these *opera propria.*[42] In this case therefore, the obedience demanded by the law towards the ordinaries (can. 273) and the defined dispensing power for clerical religious institutes of pontifical right, is directed to the major superior of the institute.[43]

As a matter of clarity, proper works or apostolate of the institute refers to those works which are in accord with the spiritual patrimony of the institute in the sense of can. 578 and its basic norms on governance (*Perfectae Caritatis*, 20). So, if a matter on internal governance goes beyond the dispensing power of the internal authority (internal superiors), then it falls within the dispensing power of the external authority. That is, the diocesan bishop for institutes of diocesan right, and the Holy See for the institutes of pontifical right (cann. 593-595).

6. DISPENSING THE *OPERA CONCREDITA* TO THE INSTITUTE (CANN. 681-682)

The law defines three occasions in which the religious are subjected to the authority of the diocesan bishop: first, in matters concerning the care of souls;

[41] Cf. SACRA CONGREGATIO PRO RELIGIOSIS ET INSTITUTIS SAECULARIBUS – SACRA CONGREGATIO PRO EPISCOPIS, Notae directivae pro mutuis relationibus inter Episcopos et religiosos in Ecclesia *Mutuae relations*, 14.05.1978, art. 57 (a), in *AAS* 70 (1978), p. 502; PAUL VI, *Ecclesiae sanctae I*, nn. 28, 29, § 2.

[42] Benjamin Earl, in his article *Opera omnia: property or patrimony* recognizes the fact that from the presentation of the term *opera propria* as used in the apostolic exhortation, *Ecclesia sanctae,* and the *Mutuae Relationes* provide two possible sense of the term *opera propria* may be interpreted. He says "that here is an ambiguity about the term *opera omnia*, which can indicate either the works in accordance with the spiritual patrimony of the institute or works which are subject to the governance structures of the institute and therefore its 'properly'. In the light of the foregoing, the *opera propria* referred to in cann. 611, 2° and 677 § 1 seem to be proper in the sense of belonging to the spiritual patrimony of the institute, and perhaps it is best to leave the term 'proper' for that sense," B. EARL, *Opera propria:* property or patrimony, *Commentarium pro Religiosis* (2019), no. 100, p. 263.

[43] See S. M. MARTÍN DEL CAMPO, *La santità all'interno della nuova legislazione canonica*, "Commentarium pro Religiosis" (2004), no. 85, p. 289; M. J. ARROBE CONDE*, Il Superiore religioso e il servizio dell'ascolto. Limiti del diritto vigente*, "Commentarium pro Religiosis" (2013), no. 94, p. 13-15.

second, in matters of public exercise of divine worship; and other works of apostolate.[44] In these matters, they are subject to the authority of the diocesan bishop, and they are obliged to follow and obey the directives of the diocesan bishop on these matters. On these matters, according to prescriptions of can. 679, the diocesan bishop may even impose a penalty on the religious within his territory for the sake of protecting the Christians from scandals and prejudices (can. 1320).[45]

The laws emanated by the local ordinary and the episcopal conferences on these matters bind the religious under their circumscriptions, but under the supervision of the religious superiors. The same applies to various decrees, laws, and ordinances given by the episcopal conferences on relevant matters.[46] Hence, the dispensing power of the religious superiors does not extend over these laws, decrees, and ordinances. In these matters they are directly under the dispensing power of the local ordinary.

The universal law also recognizes that the local ordinary may entrust certain works to the institute within his jurisdiction, whether the works are proper and special to the institutes or not.[47] In cases concerning the works entrusted to the religious institute, the religious are under the authority of the local ordinary and are guided by the laws made by the local ordinary concerning those matters. These *opera concredita* to the institute by the local ordinary, since they are not subject to the superiors of the institute or at least in accordance with the constitutions, besides the provisions of general norms of the universal law, they would be governed by the *conventio*[48] or agreement signed between

[44] See PAUL VI, Costitutio apostolica *Ecclesiae sanctae*, I, nn. 25, 1; 26; 29, 2; CIC/83, cann. 678, 681 § 1.

[45] See also S. A. SZUROMI, *Obblighi e diritti dei membri degli istituti di vita consacrata*, "*Commentarium pro Religiosis*" (2014), no. 85, p. 58.

[46] See PAUL VI, *Ecclesiae sanctae II*, n. 25, § 2.

[47] Cf. CIC/83, can. 681 § 1; PAUL VI, *Ecclesiae sanctae I*, nn. 28, 29, § 2; SACRA CONGREGATIO PRO RELIGIOSIS ET INSTITUTIS SAECULARIBUS – SACRA CONGREGATIO PRO EPISCOPIS, *Mutuae relationes*, n. 57 (a): "The difference existing between *distinctive works* of an institute and *works entrusted* to the institute should be kept in mind by the local ordinary. In fact, the former depend on the religious Superiors according to their constitutions, even though in pastoral practice they are subject to the jurisdiction of the local ordinary according to the law."

[48] The 1983 Code establishes clear provisions concerning the agreements which ought to be established by competent ecclesiastical authorities at different levels in various canons. Between the bishops and the competent ecclesiastical superiors in matters concerning religious and members of societies of apostolic life we have cann. 271 § 1; 520 § 2; 681; 738 § 3; and 790 § 1, 2°. We equally see a convention between the Holy See and other nations addressed in cann. 3; 365 § 1, 2°. Between the diocesan bishops we have cann. 271 §§ 1 and 3. Then we have the agreement between competent ecclesiastical authorities and the state, can. 289 § 2; and 1714. Finally, private agreement

the local ordinary and the competent superior of the institute. For this reason the bishop is not the only protagonist of the agreement, the competent superior is equally a protagonist. However, the office or works granted to the institute appertain to and remains always under the diocesan Bishop, but not under the religious superior. In this case, therefore, in case of a breach of the *conventio* there is a possibility of hierarchical recourse against the breach.

Even though the religious are under the local ordinary in matters concerning these *opera concredita*, the superior still retains a considerable responsibility and authority over them. The superiors assign members of the institute to the works in accordance with the *conventio*; he retains the right to present the candidates to the bishop for appointment to ecclesiastical offices; he can remove the religious from the office *ad nutum Superioris.*[49] The religious remains subject to the superior not only in what pertains to the internal life and governance of the institute, but also in the exercise of apostolate towards the persons outside the institute (678 § 2). However, this work entrusted to the institute by the local ordinary remains under the authority and direction of the bishop. Hence the dispensing power over the norms guiding the exercise of this apostolate or norms belongs to the diocesan Bishop.

CONCLUSION

Having identified the subjects who enjoy the title "ordinary" under the Code, it is worth underlining that there are no clear criteria followed by the universal legislator to designate certain office holders as ordinaries in the

members of an *ipso facto* association we have can. 299 § 1. For the agreements mentioned in can. 681, the relationship between the bishop and the institute must be well defined, and it ought to highlight the possibilities and modes of cessation or revocation of the agreement. For more readings on this see J. BEYER, *Codice ai singoli canoni*, Milano: Giuffrè, 1986, p. 333; V. DE PAOLIS, *La vita consacrata nella Chiesa. Autonomia e dipendenza dalla gerarchia, II*, "Periodica" (2000), no. 89, p. 390; E. GAMBARI, *I religiosi nel Codice: commento ai singoli canoni*, Milano: Editrice Àncora, 1986, p. 333; V. DOS SANTOS, *Il c. 681 e la conventione tra vescovi e IVCRSVA: sfide e novità canonica*, "Commentarium pro Religiosis" (2018), no. 99, p. 49-77; V. DOS SANTOS, *La conventione e i suoi strumenti di controllo per un adeguato rapporto tra vescovi e religiosi*, "Commentarium pro Religiosis" (2019), no. 100, p. 39-55; PAUL VI, *Ecclesiae sanctae I*, nn. 28, 30, § 1; 31; SACRA CONGREGATIO PRO RELIGIOSIS ET INSTITUTIS SAECULARIBUS – SACRA CONGREGATIO PRO EPISCOPIS, *Mutuae relationes*, n. 57 (b).

[49] Cf. can. 682 § 2 CIC/83; PAUL VI, *Ecclesiae sanctae I*, nn. 28-33, § 2; SACRA CONGREGATIO PRO RELIGIOSIS ET INSTITUTIS SAECULARIBUS – SACRA CONGREGATIO PRO EPISCOPIS, *Mutuae relationes*, nn. 57-58.

Church. It entirely depends on his decision to designate the holders of certain offices as ordinaries within the church. While for the subjects defined in canon 134 § 1 the designation of authorities whose jurisdictions lie within designated ecclesiastical circumscriptions is clear, the matter becomes a little complicated for some subjects who exercise personal powers over their subjects like leaders of personal prelatures and that of superiors of religious institutes and societies of apostolic life.

Major superiors of clerical religious institutes of pontifical right are ordinaries. Therefore, they perform all functions attributed to ordinaries by law over their own subjects. They enjoy fully the power to dispense from universal laws in extraordinary situations as defined in can. 87 § 2 and can also grant the faculties of confessions to priests over their own subjects as defined in canons 868-869. For other institutes, their ordinaries are the ordinaries of the places where they find themselves. A new challenge that needs to be looked at with a critical eye is the real identity of the religious superiors constituted as major superiors in clerical institutes of pontifical right based on the faculty granted by Pope Francis to the Dicastery for Institutes of Consecrated Life and Societies of Apostolic Life on 18 May 2022. According to my humble opinion, the religious brothers who are elected as major superiors in clerical institutes of pontifical right are truly major superiors, but they are not ordinaries as such. Therefore, they do not enjoy the powers attributed to ordinary by law unless they receive them by special concession from the Holy See in the form of delegated powers and faculties.

BIBLIOGRAPHY

Canonical sources

Codex Iuris Canonici, auctoritate Ioannis Pauli PP. II promulgatus (25.01.1983), *AAS* 75 (1983), pars II, p. 1-355; English text in *Code of Canon Law*, *New Revised English Translation*, prepared by The Canon Law Society of Great Britain and Ireland, The Canon Law Society of Australia and New Zealand, The Canadian Law Society, Bangalore: Theological Publications in India, 1997.

Codex Iuris Canonici Pii X pontificis maximi iussu digestus Benedicti Papae XV auctoritate promulgatus (27.05.1917), *AAS* 9 (1917), pars II, p. 1-456; English translation in: Edward N. PETERS, *The 1917 Pio-Benedictine Code of Canon Law, in English translation with extensive scholarly apparatus*, San Francisco: Ignatius press, 2001.

Papal documents

BENEDICT XVI, Constitutio apostolica *Anglicanorum coetibus*, 4.11.2009, *AAS* 101 (2009), p. 985-990.

JOHN PAUL II, Constitutio apostolica *Spirituali militum curiae*, 21.04.1986, *AAS* 78 (1986), p. 481-486.

LEON XIII, Constitutio *Officiorum ac munerum*, 25.01.1897, art. 29, in: Pietro GASPARRI, ed., *Codex Iuris Canonici. Fontes*, vol. 3, *Romani Pontifices, a. 1867-1917. Prot. N. 545-713*, Città del Vaticano: Typis Polyglottis Vaticanis, 1933, p. 509.

PAUL VI, Motu proprio *De episcoporum muneribus*, 15.06.1966, *AAS* 58 (1966), p. 467-472.

Documents of the Roman Curia

CONGREGATIO PRO EPISCOPIS, Norme complementari alla Costituzione apostolica *Anglicanorum coetibus Ciascun ordinario*, 19.03.2019, "Origins" (2019), no. 159, p. 7.

CONGREGATIO PRO EPISCOPIS, Comunicazione sul titolo degli Ordinari militari *Ho l'onore*, Prot. N. 552/9, 20.11.1997, http://www.clerus.org/clerus/dati/2004-03/31-13/ComOrMi.pdf.

CONGREGATIO PRO EPISCOPIS, Directorium *Apostolorum Successores*, 22.02.2004, in DOMINICUS A. GUTIÉRREZ, *Leges Ecclesiae post Codicem iuris canonici editae*, vol. 10, *leges annis 2000-2002*, Roma: Ediurcla, 2010, coll. 17402-17562, n. 6177.

PONTIFICIA COMMISSIO AD CANONES AUTHENTICE INTERPRETANDOS, Responsa ad proposita dubia, n. VI *De applicatione praescriptorum cann. 197, 199, 206-209, potestati dominativae*, 26.03.1952, *AAS* 44 (1952), p. 496-497.

PONTIFICIA COMMISSIO DE LEGUM TEXTIBUS INTERPRETANDIS, *Acta et documenta Pontificiae Commissionis Codici iuris canonici recognoscendo. Congregatio plenaria diebus 20-29 octobris 1981 habita*, Citta del Vaticano: Typis Poliglottis Vaticanis, 1991, p. 530-535.

PONTIFICIUM CONSILIUM DE LEGUM TEXTIBUS, Responsum, Prot. N. 14925/2015, 15.05.2015, www.delegumtextibus.va/content/dam/testilegislativi/risposteparticolari/cic/Circa%20la%20nomina%20del%20Vicario%20delegato%20nelle%20giurisdizioni%20vicarie.pdf.

SACRA CONGREGATIO CONCILII, Decretum *Vigilanti studio*, 25.05.1893, in *ASS* 26 (1893), p. 56-59.

SACRA CONGREGATIO CONCILII, Resposta ad 1, 18.07.1888, in *Collectanea Sanctae Congregationis de Propaganda Fide seu decreta instructions rescripta pro apostolicis missionibus*, vol. 2, Roma: Typographia Polyglotta S.C. de Propaganda Fide, 1907, n. 1689, p. 230.

SACRA CONGREGATIO CONCILII, Decretum *Ut debita*, 11.05.1904, *ASS* 36 (1903-1904), p. 672-676.

SACRA CONGREGATIO CONCILII, Decretum *Vigilanti studio*, 25.05.1893, *ASS* 26 (1893), p. 58.

SACRA CONGREGATIO CONCILII, Decretum *Ut debita*, 11.05.1904, *ASS* 36 (1903-1904), p. 672-676.

SACRA CONGREGATIO DE PROPAGANDA FIDE, Epistola ad vicarios et praefectos apostolicos, qua potestas ipsis /fit nominandi vicarium delegatum *Iuxta can. 198*, 8.12.1919, *AAS* 2 (1920), p. 120.

SACRA CONGREGATIO CONSISTORIALIS, Dubia de competentia, II, *AAS* 1 (1909), p. 148-152.

SACRA CONGREGATIO PRO EPISCOPI, Normae de Episcopis ab officio cessantibus *In vita Ecclesiae*, 31.10.1988, "Communicationes" (1988), no. 20, p. 167-168.

SACRA CONGREGATIO PRO EPISCOPIS, Comunicazione sul titolo dei Prelati (nullius), Prot. N. 335/67, 17 octobris 1977, "Communicationes" (1977), no. 9, p. 224.

SACRA CONGREGATIO PRO RELIGIOSIS ET INSTITUTIS SAECULARIBUS – SACRA CONGREGATIO PRO EPISCOPIS, Notae directivae pro mutuis relationibus inter Episcopos et religiosos in Ecclesia *Mutuae relationes*, 14.051978, *AAS* 70 (1978), p. 478-506.

SACRA CONGREGATIO SANCTI OFFICII, Litterae ad Ordinarios locorum quoad dispensationis matrimoniales, 26.02.1880, *ASS* 20 (1888), p. 543.

Books and articles

ARROBE CONDE Manuel Jesús, *Il Superiore religioso e il servizio dell'ascolto. Limiti del diritto vigente,* "Commentarium pro Religiosis" (2013), no. 94, p. 7-22.

BAURA Eduardo, *La dispensa canonica dalla legge*, Milano: Giuffrè, 1997.

BEYER J., *Commento ai singoli canoni*, Milano: Giuffrè, 1986.

CHIAPPETTA Luigi, *Il Codice di diritto canonico. Commento giuridico-pastorale*, vol. 1, Napoli: EDB, 1988.

CLAEYS BOUUAERT Fernand, *Ordinaire*, in *Dictionnaire de Droit Canonique*, vol. 4, Paris: Lotouzey Ané, 1954, coll. 1123-1125.

CONTE A CORONATA P. Mattaaeus, *Institutiones Iuris Cononici ad usum utriusque cleri et scholarum*, vol. 1, Roma: Taurini, 1928.

DE PAOLIS Velasio, *Tipologia e gerarchia delle norme canoniche*, in *Fondazione del diritto: Tipologia e interpretazione della norma canonica. XXVII Incontro di studio centro Dolomiti* "*Pio X*"*-Borca di Cadore (BL) 26 giugno – 30 giugno 2000*, ed. Gruppo Italiano Docenti Di Diritto Canonico, Milano: Glossa, 2001, p. 123-151.

DE PAOLIS Velasio, *La vita consacrata nella Chiesa. Autonomia e dipendenza dalla gerarchia, II*, "Periodica" (2000), no. 89, p. 371-401.

DOS SANTOS Valdir, *Il c. 681 e la conventione tra vescovi e IVCRSVA: sfide e novità canonica*, "Commentarium pro Religiosis" (2018), no. 99, p. 49-77.

DOS SANTOS Valdir, *La conventione e i suoi strumenti di controllo per un adeguato rapporto tra vescovi e religiosi*, "Commentarium pro Religiosis" (2019), no. 100, p. 39-55.

DU CANGE Charles du Fresne, *Glossarium mediae et infimae latinitatis*, vol. 6, Graz: Akademische Druck u. Verlagsanstalt, 1954.

EARL Benjamin, *Opera propria: property or patrimony*, "Commentarium pro Religiosis" (2019), no. 100, p. 249-270.

GAMBARI Elio, *I religiosi nel Codice: commento ai singoli canoni*, Milano: Editrice Àncora, 1986.

GAUDEMET Jean, *Réflexions sur le Livre I "De normis generalibus" du Code de droit canonique de 1983*, "Revue de Droit Canonique" (1984), no. 34, p. 1-117.

GHIRLANDA Gianfranco, *Ordinario (Ordinarius)*, in *Nuovo dizionario di diritto canonico*, ed. Carlos Corral Salvador, Velasio De Paolis, Gianfranco Ghirlanda, Torino: San Paolo, 1993, p. 736-737.

LARRAONA Arcadio, *Commentarium Codicis. Can. 488 (cont.),* "Commentarium pro Religiosis" (1923), no. 4, p. 39-46, 111-112, 134-139, 168-170.

MAROTO Philippo, *Institutiones iuris canonici ad normam novi Codicis*, vol. 1, 3rd. ed., Madrid: Editorial del Corazón de Maria, 1929.

MAROTO Philippo, *Institutiones iuris canonici ad normam novi Codicis*, Roma: Commentarium Pro Religiosis, 1921.

MARTÍN DEL CAMPO, S.M, *La santità all'interno della nuova legislazione canonica*, in "Commentarium pro Religiosis" (2004), no. 85, p. 269-297.

MARTÍN GARCÍA J., *Ordinario e ordinario del luogo ai sensi del can. 134*, "Ephemerides Iuris Canonici" (2012), no. 52, p. 111.

MICHIELS Gommar, *De potestate ordinaria et delegata. Commentarius tituli V Libri II Codicis iuris canonici canones 196-210*, Paris: Desclée et socii, 1964.

OCHOA Javier, *Index verborum ac locutionem Codicis iuris canonici*, Roma: Commentarium pro Religiosis, 1983.

SIMPSON D. P., *Cassell's Latin Dictionary, Latin-English, English-Latin*, Boston: Houghton Mifflin Hartcourt, 1968.

SZUROMI Szabolc A., *Obblighi e diritti dei membri degli istituti di vita consacrata*, "Commentarium pro Religiosis" (2014), no. 85, p. 57-67.

URRUTIA Francisco Javier, *Administrative power in the Church according to the Code of canon law*, "Studia Canonica" (1986), no. 20, p. 253-273.

VAN HOVE Alphonse, *De privilegiis. De dispensationibus*, Roma: Mechliniae, 1939.

VERMEERSCH Arthur, *Epitome iuris canonici: cum commentariis ad scholas et ad usum privatum,* v. 1, Roma: Mechliniae, 1963.

WERNZ Franz Xaver, VIDAL Pedro, AGUIRRE Felipe, *Ius canonicum, II, de personis*, Roma: Pontificia Università Gregoriana, 1943.

TYTUŁ ORDYNARIUSZA W UJĘCIU KAN. 134 § 1 I 87 § 2

STRESZCZENIE

Choć Kodeks Prawa Kanonicznego wyraźnie odróżnia osoby posiadające zwykłą władzę rządzenia od osób noszących tytuł ordynariusza, pojęcia te jednak są często mylone. W artykule bliżej omówiono samo pojęcie ordynariusza, aby zwrócić uwagę czytelnika na dostojników, którzy noszą tytuł ordynariusza. Autor położył szczególny nacisk na ordynariuszy zakonnych w odniesieniu do władzy im nadanej przez prawo powszechne na zasadzie kanonu 87 § 2, według którego w nadzwyczajnych przypadkach dyspensy można udzielić od powszechnych regulacji dyscyplinarnych. Na podstawie analizy przepisów zawartych w kanonach 134 § 1 i 87 § 2 autor wyróżnia osoby duchowne, które piastują wysokie urzędy w aparacie administracyjnym, a przez to nie kwalifikują się jako ordynariusze. W związku z tym artykuł analizuje kryteria używane przez ustawodawcę i warunkujące nadawanie tego tytułu osobom piastującym pewne urzędy kościelne.

Słowa kluczowe: jurysdykcja; władza quasi-biskupia; zwykła władza wykonawcza; forum zewnętrzne; *opera propria*; *opera concredita*.