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## Freedom of Conscience in the Code of Canon Law

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Ecumeny and Law 4, 127-143

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2016

Artykuł został opracowany do udostępnienia w internecie przez Muzeum Historii Polski w ramach prac podejmowanych na rzecz zapewnienia otwartego, powszechnego i trwałego dostępu do polskiego dorobku naukowego i kulturalnego. Artykuł jest umieszczony w kolekcji cyfrowej [bazhum.muzhp.pl](http://bazhum.muzhp.pl), gromadzącej zawartość polskich czasopism humanistycznych i społecznych.

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## Freedom of Conscience in the Code of Canon Law

**Keywords:** freedom, Catholic Church, canon law, rights and duties, believers, liturgy, theology

### 1. Freedom within the full communion of the Catholic Church

It is clear that freedom of conscience of the faithful in the Church must be based on other principles than those of the secular law. The latter facilitates individual liberties through the principle of non-intervening of state power in the private sphere. This forms the so-called *status negativus* or *libertatis*, respectively.<sup>1</sup> A classic instance of this is the formulation found in the First Amendment to the US Constitution (1791): “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”<sup>2</sup>

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<sup>1</sup> “The negative status is characteristic especially for expressions of human freedom in the state and his autonomy towards the state. The essence of this concept is that the state must abstain from intervention in the special status of the citizen (this is the constitutionally delineated self-limitation of the state).” — V. PAVLÍČEK et al.: *Ústavní právo a státopěda. II díl. Ústavní právo České republiky*. Praha: Leges, 2011, p. 476.

<sup>2</sup> The Constitution of the United States of America. US Government Printing Press Office. Washington 2007, p. 13.

However, in the Catholic Church things are different. The goal of her legislation is to create a framework for passing on and celebrating the faith; only within this framework free choice can be variously exercised in the multiform manifestations of life lived in faith. While in the civil sphere legal order should primarily secure freedom, the canon law aims at assisting and pursuing life in faith. In this perspective, setting limits for professing faith — renouncing of which results in leaving the communion of the Church — does not contradict freedom of conscience of the Catholic faithful. The Code of Canon Law confirms this by establishing self-enacted penalty of excommunication *latae sententiae* in the case of those who apostatised (*apostatae*), committed an act of heresy (*haeretici*), or schism (*schismatici*).<sup>3</sup>

Nevertheless, we need to add that dogmatics typically distinguishes between a material and formal heresy. The 1917 Code of Canon Law knew both of the forms: non-Catholic Christians were called “heretics and schismatics”<sup>4</sup> and — similarly to the new code — it threatened with a penalty of excommunication for heresy currently held by a Catholic Christian.<sup>5</sup> However, with regard to ecumenical efforts, the post-conciliar code uses the terms “separated brothers (and sisters)” (*fratres seiuncti*)<sup>6</sup> or “brothers (and sisters) not in full communion with the Catholic Church” (*fratres qui in plena communione cum Ecclesia catholica non sunt*).<sup>7</sup>

Both codes also differ in determining the addressees of their merely ecclesiastical norms, but not in relation to the divine law whose norms are obligatory for all people. The former code did not respect the legitimacy of a different Christian identity other than the one in a visible communion of the Catholic Church,<sup>8</sup> therefore, it addressed its norms — albeit in vain — to all Christians regardless of confession<sup>9</sup>; the 1983 Code imposes self-limitation on its normativity only to the Christians in full communion with the Catholic Church based on ecumenical considerations: “Merely ecclesiastical laws bind those who have been baptized in the Catholic Church or received into it, possess the efficient use of reason,

<sup>3</sup> Cf. CIC/1983, can. 1364.

<sup>4</sup> See, for instance, can. 731 § 2 CIC/1917.

<sup>5</sup> CIC/1917, can. 2314.

<sup>6</sup> CIC/1983, can. 825 § 2.

<sup>7</sup> CIC/1983, can. 1124.

<sup>8</sup> “The position of the Church towards non-faithful is more moderate than towards non-Catholics, because non-Catholics are defiant according to the views of the Church: they understand Christianity, yet they detest Catholicism” — K. HENNER: *Základy práva kanonického. Část druhá. Právo platné*. Praha: Self-published, 1921, p. 428.

<sup>9</sup> Cf. CIC/1917, can. 12.

and, unless the law expressly provides otherwise, have completed seven years of age.”<sup>10</sup>

The visible unity of the Church is the goal of the ecumenical movement, however, it is not a reality yet; the code, therefore, imposes penal sanctions on those sacred ministers of the Catholic Church who would participate in sacred rites in a manner which does not correspond to the mutual communion of the Churches: “A person guilty of prohibited participation in sacred rites (*communicatio in sacris*) is to be punished with a just penalty.”<sup>11</sup> This form of prohibited inter-communion refers to Eucharistic inter-celebration: “Catholic priests are forbidden to concelebrate the Eucharist with priests or ministers of Churches or ecclesial communities who do not have full communion with the Catholic Church.”<sup>12</sup> However, if it relates to a type of worship where the Eucharistic communion as a sign of the visible unity of the Catholic Church does not need to be protected, it is not only possible, but desirable for Catholic Christians to freely make use of the options offered to them by the Ecumenical Directory, that is, a survey of the application norms concerning ecumenism: “In liturgical celebrations taking place in other Churches and ecclesial Communities, Catholics are encouraged to take part in the psalms, responses, hymns and common actions of the Church in which they are guests. If invited by their hosts, they may read a lesson or preach.”<sup>13</sup>

## 2. The priority of obligations over rights

In contrast to legal civilistics, the canon law does not structure its legislation on the basis of a hierarchy of legal force, whereby constitutional norms would stand on the top. Such a concept was considered in the project of the Fundamental Law of the Church (*Lex Ecclesiae fundamentalis*): it presupposed a single collection of norms for the entire Catholic Church (including the Oriental churches), similar to state constitutions also as regards the basic rights of the faithful. However, in the course of the work on the codification of the new Code of Canon Law, this project was abandoned.<sup>14</sup>

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<sup>10</sup> CIC/1983, can. 11.

<sup>11</sup> CIC/1983, can. 1365.

<sup>12</sup> CIC/1983, can. 908.

<sup>13</sup> *Directory for the Application of Principles and Norms on Ecumenism*, Art. 118.

<sup>14</sup> “[...] so — as regards the legal force — a canon stipulating the collegiality of the College of Bishops with the pope is just as weighty as the provision that every page of a court file should be numbered and signed by the notary. The result of this is that

As a result, the enumeration of the obligations and rights of Catholic Christians is doubled in both the Code for the Latin Church and in the Code of Canons of the Eastern Churches.<sup>15</sup> Anyway, the attempt to create a “Constitution of the Catholic Church” was subject to severe criticism.<sup>16</sup>

Contrary to the tendency to emphasise rights without the corresponding obligations, it is symptomatic for both of these catalogues that their very name stresses obligations (*obligationes*) of the Christians to the communion of the Church prior to claiming one’s rights (*iura*). This delineates the basic space within which Catholic Christians realize their free decision-making; in fact, this is also the difference as regards the status of the citizen in relation to the state power in a democratic state based on the rule of law.<sup>17</sup> The exercise of freedom alone does not imply individual licence: “In exercising their rights, the Christian faithful, both as individuals and gathered together in associations, must take into account the common good of the Church, the rights of others, and their own duties toward others.”<sup>18</sup> The ecclesiastical concept of the standing of a Catholic Christian should also be at a distance from the claiming attitude, which is nowadays represented especially in the multiplication of the so-called fourth generation of human rights.<sup>19</sup> However, this does not mean Cath-

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instead of a thorough awareness of the most important ‘constitutional norms’ among the general public — albeit at the expense of the other norms ‘for the specialists’ — there is no awareness at all (except for mediated information from other, non-legal sources” — A. I. HRDINA: “K vybraným aspektům zákonosti v církvi.” *Revue církevního práva* č. 10—2 (1998), pp. 81—90, especially p. 83.

<sup>15</sup> CIC/1983, can. 208—223; CCEO, can. 7—26.

<sup>16</sup> “Through indiscretion the proposals from 1969, 1971 and 1976 reached the public. This led to criticism among the professionals: from the theological point of view, the target of the criticism was the selection and the enactment of the theological theses, from the juridical point of view, the criticism targeted the intention to grant this constitution superior (constitutional) force, which could then be used to measure the other norms.” — W. BÖCKENFÖRDE: “Neuere Tendenzen im katholischen Kirchenrecht. Divergenz zwischen normativem Geltungsanspruch und faktischer Geltung.” In: N. LÜDECKE, G. BIER (eds.): *Freiheit und Gerechtigkeit in der Kirche. Gedenkschrift für Werner Böckenförde*. Würzburg: Echter Verlag, pp. 111—131, p. 114.

<sup>17</sup> “State constitutions, which seek to guarantee the citizens (at least in general outline) as broad a space of autonomy as possible and not to bother them with the contributions and performances, first talk about right and only then about obligations. In the canon law, however, obligations precede the rights [...] because through the supreme commandment of love, Christians are first called to give then to accept (cf. Acts 20, 35) and in case of necessity sacrifice one’s own benefit to the common good as fraternal mutuality requires” — L. CHIAPPETTA: *Il Codice di Diritto Canonico. Commento giuridico-pastorale* I. Napoli: Edizioni Dehoniane, 1988, p. 273.

<sup>18</sup> CIC/1983, can. 223 § 1.

<sup>19</sup> “Typically, this include the right to favourable environment, the so-called ‘solidarity rights’, right to peace, right to information in the cyberspace, right to development

olics should not rely on the dispensation of justice securing their own rights: “The Christian faithful can legitimately vindicate and defend the rights which they possess in the Church in the competent ecclesiastical forum according to the norm of law.”<sup>20</sup>

On the other hand, the Church requires that the faithful are not discriminated against from the outside, although even in their activities in the secular society the lay Christians should be mindful of their obligations to the Church: “The lay Christian faithful have the right to have recognized that freedom which all citizens have in the affairs of the earthly city. When using that same freedom, however, they are to take care that their actions are imbued with the spirit of the gospel and are to heed the doctrine set forth by the Magisterium of the Church. In matters of opinion, moreover, they are to avoid setting forth their own opinion as the doctrine of the Church.”<sup>21</sup> The canon law also makes an appeal to a responsible stance of the Christians accompanying their mature manifestations of obedience towards ecclesiastical superiors: “Conscious of their own responsibility, the Christian faithful are bound to follow with Christian obedience those things which the sacred pastors, inasmuch as they represent Christ, declare as teachers of the faith or establish as rulers of the Church.”<sup>22</sup>

### 3. Freedom to accept the Catholic faith and the choice of the state of life

Nevertheless, obedience must not be expanded beyond the Church: “No one is ever permitted to coerce persons to embrace the Catholic faith against their conscience.”<sup>23</sup> This covers not only external physical coercion, as we know it from numerous lamentable examples, but also the liberty from any psychological pressure which would deprive the individ-

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and a common human heritage, right to death or free use of drugs, rights of smokers and non-smokers, rights of some social minorities, human rights of animals, right to cleanliness in the ecospace (right to calm, quiet and darkness, etc.), right to sport, right to determine the sex of your future child, right not to be monitored, right to security (personal security) etc.” — V. ZOUBEK: *Pravověda a státovéda. Úvod do právního a státovédného myšlení*. Plzeň: Aleš Čeněk, 2010, p. 93.

<sup>20</sup> CIC/1983, can. 221 § 1.

<sup>21</sup> CIC/1983, can. 227.

<sup>22</sup> CIC/1983, can. 212 § 1.

<sup>23</sup> CIC/1983, can. 748 § 2.

ual of the possibility to make the choice or of the responsibility for the individual decision.<sup>24</sup> In the legislation we find in the code, the Catholic Church proclaims the principle of the freedom of conscience as internally obligatory. On a more general level, one could perhaps substitute the wording “to embrace the Catholic faith” with the formulation “to embrace any faith.” Nevertheless, once for all and in a definitive manner, the Church wished to clarify for herself and in the face of the world the ambiguities in the relation of its two defining principles: proclaiming the Gospel based on Christ’s mandate,<sup>25</sup> and the respect to the freedom of conscience in conformity with the conciliar and post-conciliar Magisterium.<sup>26</sup> The proclamation itself should take into account those who are addressed: “By the witness of their life and word, missionaries are to establish a sincere dialogue with those who do not believe in Christ so that, in a manner adapted to their own temperament and culture, avenues are opened enabling them to understand the message of the gospel.”<sup>27</sup> In the Code of Canons of the Eastern Churches, the dissemination of the Gospel should avoid any form of dishonest proselytism, of which the Church is sometimes accused:<sup>28</sup> “It is strictly forbidden to compel someone, to persuade him in an inappropriate way, or to allure him to join the Church; all the Christian faithful are to be concerned that the right to religious freedom is vindicated so that no one is driven away from the Church by adverse harassment.”<sup>29</sup>

The principle of free acceptance of faith can, however, collide with the understanding of baptism as a necessary means for salvation: “Baptism, the gateway to the sacraments and necessary for salvation by actual

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<sup>24</sup> “Nevertheless, can. 748 § 2 is criticised for being incomplete, because the protection of conscience against any form of coercion covers only the acceptance of faith, while no mention is made about the freedom of keeping the faith” — S. DEMEL: *Handbuch Kirchenrecht. Grundbegriffe für Studium und Praxis*. Freiburg im Breisgau: Herder, 2010, p. 529.

<sup>25</sup> Mark 16:15: “Go into all the world and preach the gospel to all creation.”

<sup>26</sup> “All coercion and claim to be the secular arm of the law, all *compelle intrare* is abandoned” — J. HANUŠ: *Křesťanství a lidská práva*. Brno: CDK—Praha: Vyšehrad, 2002, p. 24.

<sup>27</sup> CIC/1983, can. 787 § 1.

<sup>28</sup> “From the perspective of the Orthodox Church, this refers to the criticized proselytism of the Catholic Church on the canonical territories of Russian Orthodox Church. The Russian Orthodox Church perceives the activity of the Catholic Church in the Russian Federation as introducing Western, that is, alien cultural influences and forms of thinking” — M. ŠMID: “Ruská pravoslávna cirkev a Katolícka cirkev v kontexte zjednocovania Európy.” In: *Ročenka Ústavu pre vzťahy štátu a cirkvi 2003*. Eds. M. MORAVČÍKOVÁ, E. VALOVÁ. Bratislava: Ústav pre vzťahy štátu a cirkvi, 2004, pp. 166—173, p. 167.

<sup>29</sup> CCEO, can. 586.

reception or at least by desire [...].”<sup>30</sup> In dealing with the aporia, the code favours infant baptism: “An infant of Catholic parents or even of non-Catholic parents is baptized licitly in danger of death even against the will of the parents.”<sup>31</sup> This regulation reproduces a similar canon from the 1917 Code.<sup>32</sup> In the course of the codification, attempts were made to alter it, they, however, proved unsuccessful.<sup>33</sup> In the meantime, theological reflection on the salvation of non-baptised infants has progressed; nevertheless, even the conclusions of the International Theological Commission are not persuasive enough to lead to an alteration in regulation within the canon law.<sup>34</sup>

The decision of individual faithful should also be free as regards the choice of the state of life or of a particular spiritual vocation. The Church has been clear on this issue for ages, so although the post-conciliar canonical regulation of liberties in this field has adjusted to the current situation, basically it still follows the traditional doctrine of the Church: this was based on the natural law argumentation, as it is apparent in the case of the deficiencies of the marital consent, that is, the use of violence (*vis*) or the arousal of grave fear (*metus gravis*):<sup>35</sup> “A marriage is invalid if entered into because of force or grave fear from without, even if unintentionally inflicted, so that a person is compelled to choose marriage in

<sup>30</sup> Cf. CIC/1983, can. 849.

<sup>31</sup> CIC/1983, can. 868 § 2.

<sup>32</sup> CIC/1917, can. 750 § 1.

<sup>33</sup> “Major changes were introduced into this paragraph in the first draft of the sacramental law in 1975. Under this provision, a child may legally be baptised in peril of his/her life only unless both parents or legal representative explicitly express the wish not to do so. In the 1980 draft, one can again find the formulation ‘against the will of the parents’ with the limitation that baptism should not cause the danger of hating religion. However, it did not take long and the reference to the potential hatred towards religion was crossed out again. The rationale for this explained that the angry reaction to the baptism against the will of the parents is lesser evil” — F. BERNARD: “Svoboda rozhodování v novém církevním právu.” *Revue církevního práva* č. 7—2 (1997), pp. 65—80, pp. 70—71.

<sup>34</sup> “Our conclusion is that the many factors that we have considered above give serious theological and liturgical grounds for hope that unbaptised infants who die will be saved and enjoy the Beatific Vision. We emphasise that these are reasons for prayerful hope, rather than grounds for firm knowledge” — MEZINÁRODNÍ TEOLOGICKÁ KOMISE: *Naděje na spásu pro děti, které umírají nepokřtěné* (The hope of Salvation for infants who die without being baptised). Praha: Krystal, 2008, pp. 60—61.

<sup>35</sup> “According to the commentaries, grave physical violence excludes the validity of the marriage on the basis of natural law; as regards assessing the fear, the views differ: some state this is a provision of Church Law, fewer authors talk about natural law, and some pass over this question in silence.” — D. NĚMEC: *Manželské právo katolické církve s ohledem na platné české právo*. Praha: Krystal—Kostelní Vydří: Karmelitánské nakladatelství, 2006, p. 120.



order to be free from it.”<sup>36</sup> Accepting the sacrament of ordination also requires complete freedom: “A person must possess due freedom in order to be ordained. It is absolutely forbidden to force anyone in any way or for any reason to receive orders or to deter one who is canonically suitable from receiving them.”<sup>37</sup> Finally, regarding religious men and women, even for the profession of temporary vows (*professio temporaria*),<sup>38</sup> one must dispose of due freedom: “For the validity of temporary profession it is required that [...] the profession is expressed and made without force, grave fear, or malice.”<sup>39</sup> These entire component regulations concretize the fundamental right formulated in the code in a brief normative thesis: “All the Christian faithful have the right to be free from any kind of coercion in choosing a state of life.”<sup>40</sup>

#### 4. The right to worship in one’s own rite and spirituality

“The Christian faithful have the right to worship God according to the precepts of their own rite approved by the legitimate pastors of the Church and to follow their own form of spiritual life so long as it is consonant with the doctrine of the Church.”<sup>41</sup> This formulation succinctly expresses the fact that the Catholic Church is not (and has never been) a monolith: the faithful have, therefore, access to diverse forms of experiencing and practicing their spiritual life. Also in this case, the boundary of freedom is the conformity of a particular spirituality with the faith of the whole Church.

The right to worship in one’s own right cannot be granted without the corresponding willingness of the sacred ministers to comply with the approved liturgical books. Since the period after Vatican II was also marked by excessive creativity of the celebrants of the liturgy,<sup>42</sup> the Apos-

<sup>36</sup> CIC/1983, can. 1103.

<sup>37</sup> CIC/1983, can. 1026.

<sup>38</sup> “Primarily, their goal is pedagogical: confirming a comprehensive formation of the personality which began in the novitiate in the perspective of the profession of the solemn vows. The simple vows are not part of the ancient institutions of monastic law, as it is confirmed by the documents attached to Canon 574 § 1 CIC/1917.” — B. W. ZUBERT: *Řeholní právo. Instituty zasvěceného života a společnosti apoštolského života*. Olomouc: Matice cyrilometodějská, 1996, pp. 193—194.

<sup>39</sup> CIC/1983, can. 656 4°.

<sup>40</sup> CIC/1983, can. 219.

<sup>41</sup> CIC/1983, can. 214.

<sup>42</sup> “I believe the days are over when priests themselves created Eucharistic prayers virtually for every Sunday. This was time, when e.g. in Belgium or the Netherlands, there

tolitic See was trying to establish a disciplinary framework to make sure the Roman Rite was celebrated in accordance with the missal and other liturgical regulations: “it is the right of all of Christ’s faithful that the Liturgy, and in particular the celebration of Holy Mass, should truly be as the Church wishes, according to her stipulations as prescribed in the liturgical books and in the other laws and norms. Likewise, the Catholic people have the right that the Sacrifice of the Holy Mass should be celebrated for them in an integral manner, according to the entire doctrine of the Church’s Magisterium.”<sup>43</sup> The faithful are robbed of this right by arbitrary improvisation or uncontrolled liturgical creativity.<sup>44</sup>

In fact, it was also liturgical excesses which have led groups of Catholic faithful of the Latin rite to give preference to the liturgy according to the Tridentine Missal of Pius V, which was last revised by John XXIII, at the time when Vatican II was opened. Given the accomplished schism (the Lefebvre case) which Benedict XVI sought to remove, the very same pope deemed it as appropriate to expand and simplify the access of the faithful to “traditional” liturgy. This is also buttressed by the fact that the pope in the Apostolic letter of 2007<sup>45</sup> does not proceed straight to enumerating the individual normative articles, but first appreciates the spiritual richness reflected in the ancient rite: “It is well known that in every century of the Christian era the Church’s Latin liturgy in its various forms has inspired countless saints in their spiritual life, confirmed many peoples in the virtue of religion and enriched their devotion.”<sup>46</sup> From the perspective of the continuity of liturgical law, it is remarkable — according to the pope — that at no time was formally abrogated the existing liturgy: “It is therefore permitted to celebrate the Sacrifice of the Mass following the typical edition of the Roman Missal, which was promulgated

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were hundreds of them! Personally, I think this is more a verbiage: in fact, no one can really imagine that one can remould the same matter over so many times to arrive at a really new expression without endangering orthodoxy” — L. POKORNÝ: *Prostřený stůl*. Praha: Ústřední církevní nakladatelství, 1990, p. 119.

<sup>43</sup> *Redemptionis Sacramentum. Instrukce o tom, co se má zachovávat a čeho je třeba se vyvarovat ohledně eucharistie*, dokument Kongregace pro bohoslužbu a svátosti z 25. března 2004 (*Instruction Redemptionis Sacramentum*, the document of the Congregation for Worship and Sacraments, 25 March 2004), Praha: Česká biskupská konference, 2005, čl. 12, p. 6.

<sup>44</sup> “This communion with the single subject of the Church allows different forms and includes vital development. At the same time, however, it excludes wilfulness. This applies for individuals, for communities, for the hierarchy and the lay people” — J. RATZINGER: *Duch liturgie*. Brno: Barrister & Principal, 2006, p. 146.

<sup>45</sup> *Motu proprio Summorum Pontificum. Acta Apostolicae Sedis* 90 (2007), pp. 776—781; also in: *Acta České biskupské konference* 3(2008), pp. 50—54.

<sup>46</sup> *Summorum pontificium*, Introduction.

by Blessed John XXIII in 1962 and never abrogated, as an extraordinary form of the Church's Liturgy."<sup>47</sup> The subsequent instruction of the Papal Commission *Ecclesia Dei* presents the mutual connection of both rites: "The Roman Missal promulgated by Pope Paul VI and the last edition prepared under Pope John XXIII, are two forms of the Roman Liturgy, defined respectively as *ordinaria* and *extraordinaria*: they are two usages of the one Roman Rite, one alongside the other. Both are the expression of the same *lex orandi* of the Church. On account of its venerable and ancient use, the forma *extraordinaria* is to be maintained with appropriate honour."<sup>48</sup>

The right to one's own rite — not only liturgical, but encompassing also manifestations of spirituality — is even more weighty in relation to Eastern Catholic Churches. In the code, the Church expresses its resolve to protect these traditional manifestations of the faith. "The rites of the Eastern Churches, as the patrimony of the entire Church of Christ, in which there is clearly evident the tradition which has come from the Apostles through the Fathers and which affirm the divine unity in diversity of the Catholic faith, are to be religiously preserved and fostered."<sup>49</sup> This norm, together with others that implement it is directed against earlier detrimental practice of the so-called Latinization of Oriental Churches, whereby their faithful were often forced to accept elements of Western liturgy and spirituality. Moreover, when they moved to a place where the Latin Church was the majority one, in most cases it made them adopt their traditions.<sup>50</sup> However, as regards the obligation of Sunday worship, a Catholic can freely choose any Catholic rite: "The Christian faithful can participate in the Eucharistic sacrifice and receive Holy Communion in any Catholic rite [...]."<sup>51</sup>

<sup>47</sup> *Summorum pontificium*, Art. 1.

<sup>48</sup> PONTIFICAL COMMISSION ECCLESIA DEI: *Instruction on the Application of the Apostolic Letter Summorum pontificum of His Holiness Benedict XVI* (30 April 2011).

<sup>49</sup> CCEO, can. 39.

<sup>50</sup> "Canon 39 substantially changes Canon 11 of the Motu proprio *Cleri sanctitati*, which stipulates that 'baptized non-Catholics of an Oriental rite, who are received into the Catholic Church may embrace the rite they prefer (*ritum quem maluerint amplecti possunt*); it is to be hoped nevertheless that they retain their proper rite.' Canon 11 was severely criticised during the discussion about the decree about Eastern Churches at Vatican II, especially from the ecumenical perspective [...] but also from the perspective of supporting the survival and flourishing of Catholic Oriental churches given the concern that the choice will be always oriented towards the Latin Church." — D. SALACHAS: *Istituzioni di diritto canonico delle Chiese cattoliche orientali*. Bologna: Edizioni Dehoniane, 1993, p. 90.

<sup>51</sup> CIC/1983, can. 923.

One of the spiritualities which asserted itself after Vatican II from among the countless others in the Catholic Church, the charismatic renewal brought new elements into the Church, including those that need to be legally regulated. The point of such regulation is not to set limits to the choice of the faithful, but facilitate the conditions in order to make sure that the specifics of a particular spiritual movement is in accordance with the discipline valid in the whole of the Church: “Confusion between such free non-liturgical prayer meetings and liturgical celebrations properly so-called is to be carefully avoided. Anything resembling hysteria, artificiality, theatricality or sensationalism, above all on the part of those who are in charge of such gatherings, must not take place.”<sup>52</sup>

## 5. The right for free theological inquiry

The 1917 Code states: “Christ, our Lord, has entrusted to the Church the deposit of faith, in order that, by the continual assistance of the Holy Ghost, she might preserve the revealed doctrine and expound it faithfully.”<sup>53</sup> Post-conciliar code adopted this formulation; nevertheless, to the obligation to preserve and expound the faith it added the requirement to explore this deposit of faith.<sup>54</sup> This opens a space for progress in theology, whose objective is speculative grasping of the faith, which can be explored more profoundly (*intimius perscrutaretur*). Here the deposit of faith (*depositum fidei*) is not understood statically, as something completed and definitively exhausted. At the same time, the deposit of faith is not something created by the power of the Church: Christ has entrusted it to the Church (*concredidit*).<sup>55</sup>

This exploration of the faith, however, requires due freedom: “Those engaged in the sacred disciplines have a just freedom of inquiry and of expressing their opinion prudently on those matters in which they possess expertise, while observing the submission due to the Magisterium of the Church.”<sup>56</sup> The sensitivity towards the autonomy of the professional range of the theological work is clearly a consequence of the impulses

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<sup>52</sup> *Instrukce Kongregace pro nauku víry o modlitbách za získání uzdravení od Boha ze 1. září 2000 — Instruction on Prayers for Healing (1 September 2000)*, Art. 5 §§ 2, 3.

<sup>53</sup> CIC/1917, can. 1322.

<sup>54</sup> CIC/1983, can. 747 § 1.

<sup>55</sup> Cf. 1 Tim 6:20; 2 Tim 1:14.

<sup>56</sup> CIC/1983, can. 218.

coming from Vatican II.<sup>57</sup> The 1917 Code conceived the relations between the Magisterium and its addressees in a stricter way: “It is not enough to eschew heretical depravity, but those errors also must be carefully avoided which more or less closely approach heresy; and for this reason all must observe also those constitutions and decrees by which the Holy See proscribes and forbids such perverse opinions.”<sup>58</sup> In the past, the Church resorted to means of control that were outside the law, as it is documented in the monitoring and provocateur activity of the association *Sodalitium Pianum* during the pontificate of Pope Pius X.<sup>59</sup>

However, admitting the due, or to be precise “just” liberties (*iusta libertas*) by the legislator of the new code indicates an opposite problem in the post-conciliar period, which has been aptly expressed by the International Theological Commission already in 1976: “By its nature and institution, the Magisterium is clearly free in carrying out its task. This freedom carries with it a great responsibility. For that reason, it is often difficult, although necessary, to use it in such a way that it not appear to theologians and to others of the faithful to be arbitrary or excessive. There are some theologians who prize scientific theology too highly; not taking enough account of the fact that respect for the Magisterium is one of the specific elements of the science of theology. Besides, contemporary democratic sentiments often give rise to a movement of solidarity against what the Magisterium does in carrying out its task of protecting the teaching of faith and morals from any harm. Still, it is necessary, though not easy, to find always a mode of procedure that is free and forceful yet not arbitrary or destructive of communion in the Church.”<sup>60</sup>

<sup>57</sup> “Therefore, certain ‘prophetic function’ of theology necessarily requires space for the application of responsible freedom. Clearly, we should respect one another (cf. Phl 2:1–11) and love must prevail over individual charismas (cf. 1 Cor 12–13). The respect of the holders of the Magisterium, i.e. those who hold the charisma of the ultimate word, towards the theologians, who hold the charisma of the penultimate word, will in the end be manifested in a greater respect of the theologians towards the Magisterium whose natural authority will thus clearly be enhanced” — C. V. POSPÍŠIL: *Hermeneutika mystéria. Struktury myšlení v dogmatické teologii*. Kostelní Vydří: Karmelitánské nakladatelství, 2005, p. 202.

<sup>58</sup> CIC/1917, can. 1324.

<sup>59</sup> “*Sodalitium pianum* was named after the holy Pope Pius V with a clear allusion towards the then ruling pope. The founder of this secret organisation was papal subsecretary Mons. Umberto Benigni. Even though the society did not achieve papal authorisation, it was, nevertheless, supported by the pope with some financial contributions and frequent laudatory statements” — J. LENZENWEGER, P. STOCKMEIER, K. AMON, R. ZINHOBLE: *Geschichte der katholischen Kirche*. Leipzig: St. Benno-Verlag, 1989, p. 425.

<sup>60</sup> The Ecclesiastical Magisterium and Theology (International Theological Commission), thesis 8, point 1. In: *Dokumenty MTK věnované metodě do roku 1995 a Statuta MTK*. Kostelní Vydří: Karmelitánské nakladatelství, 2011, p. 32.

The Code recognised a vast space for free expression, that is, expression, which can be used by other faithful. However, even here clear limits are set putting emphasis on the doctrinal issues:<sup>61</sup> “According to the knowledge, competence, and prestige which they possess, they have the right and even at times the duty to manifest to the sacred pastors their opinion on matters which pertain to the good of the Church and to make their opinion known to the rest of the Christian faithful, without prejudice to the integrity of faith and morals, with reverence toward their pastors, and attentive to common advantage and the dignity of persons.”<sup>62</sup> A novelty in the 1983 Code is also the possibility of lay people to take part on the academic tuition of theological disciplines: “If the prescripts regarding the requisite suitability have been observed, they are also qualified to receive from legitimate ecclesiastical authority a mandate to teach the sacred sciences.”<sup>63</sup> However, the lack of legislation in this regard prior to Vatican II does not mean that it is now an automatic right resulting from subjective law.<sup>64</sup>

## 6. Conclusions

In respect to its forerunner, the 1983 Code of Canon Law simplified discipline and gave the Catholic faithful more room for autonomous decision-making and individual choice of conscience. This, however, also implies obligation to assume a greater share of responsibility. The canon law also grades free initiatives of the faithful, for instance, by reserving

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<sup>61</sup> “The soundness of faith and morals is an absolute condition. There neither is, nor can be right or freedom of expression with regard to the matters of the authentic teaching of the magisterium. However, even in the issues where various opinions are admissible, one needs to sustain discretion and caution, so that no wonder or scandal is caused” — L. CHIAPPETTA: *Il Codice di Diritto Canonico...*, p. 278.

<sup>62</sup> CIC/1983, can. 212 § 3.

<sup>63</sup> CIC/1983, can. 229 § 3.

<sup>64</sup> “For the teaching of sacred sciences, they should be given a mandate by an ecclesiastical authority. In order to achieve it, they must prove their qualification. Lay people do not have any right to be given the mandate, because ecclesiastical authority has no obligation to grant it. Rather, it is to be understood as a ministry which can be carried out by lay people when they teach sacred sciences at universities or church schools. The qualification refers both to the scientific and pedagogical profile which needs to be attested by appropriate certifications, but also by the integrity of the doctrine and of life” — J. IVAN: *Laici v kánonickej normatíve Katolíckej cirkvi*. Michalovce: Vydavateľstvo Misionár, p. 84.

the right to grant the “Catholic” status only on some of them: “Since they participate in the mission of the Church, all the Christian faithful have the right to promote or sustain apostolic action even by their own undertakings, according to their own state and condition. Nevertheless, no undertaking (*inceptum*) is to claim the name Catholic without the consent of competent ecclesiastical authority.”<sup>65</sup> The rights of which the faithful can make use of make sense only if they are realised in the organic communion of the whole Church and do not become a guise for the wilfulness of the individual faithful or their groups.

<sup>65</sup> CIC/1983, can. 216.

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STANISLAV PŘIBYL

## Freedom of Conscience in the Code of Canon Law

### Summary

Whereas the democratic state, as not bound by any religious confession, is not entrusted with delating of certain ideology or religion, the commission of the Church consists in announcing of a concrete doctrine. Another difference consists in the fact that there is a canon law catalogue containing predominantly duties of believers over their rights. However, it is not allowed to compel externally anybody to adopt the catholic faith, and the Church has to abstain from a dishonest proselytism. The acts of the



faith and of the cult within the Church should be also realized within the framework of liberty guaranteed to the faithful by the norms of canon law. The paper continues by concrete examples in which these possibilities of liberty and choice may take a place, for example free choice of state of life, right of proper spirituality and rite or freedom of theological research. However, no undertaking of believers may be denominated as Catholic if it not obtains the consent of competent ecclesiastical authority.

STANISLAV PŘIBYL

## La liberté de conscience dans le Code de droit canonique

### Résumé

Contrairement à un État démocratique et confessionnellement neutre dont le rôle n'est ni l'expansion de la religion ni l'idéologie, le devoir de l'Église est de professer une doctrine concrète. L'autre différence consiste dans le fait que dans le droit canonique catholique on trouve un catalogue où les devoirs des croyants l'emportent sur leurs droits. Cependant, on ne peut forcer nulle personne de l'extérieur à adopter la religion catholique, et l'Église elle-même doit s'abstenir d'un prosélytisme malhonnête. Aussi les actes de foi et de culte doivent-ils être réalisés dans le cadre de la liberté que les normes du droit canonique garantissent aux croyants. L'article contient des exemples concrets où ces possibilités de liberté et de choix peuvent être réalisées: ne fût-ce que le droit au choix libre du mode de vie, à son propre rite et à sa propre spiritualité ou encore à la liberté dans des recherches théologiques. Toutefois, aucune initiative individuelle des croyants ne peut être considérée comme catholique tant qu'elle n'aura pas reçu l'approbation de l'autorité ecclésiastique.

**Mots clés:** liberté, Église catholique, droit canonique, droits et devoirs, croyants, liturgie, théologie

STANISLAV PŘIBYL

## La libertà di coscienza nel Codice di diritto canonico

### Sommario

A differenza dello stato democratico religiosamente neutrale il cui ruolo non è la divulgazione né della religione, né dell'ideologia, il compito della Chiesa è quello di predicare una determinata dottrina. Un'altra differenza è costituita dal fatto che nel diritto canonico cattolico troviamo un catalogo in cui prevalgono gli obblighi dei fedeli sui loro diritti. Dall'esterno infatti nessuno può essere costretto ad accogliere la religione cattolica, e la Chiesa deve astenersi dal proselitismo disonesto. Anche gli atti di fede e di culto devono essere realizzati nell'ambito della libertà che viene garantita ai fedeli dalle norme di diritto canonico. L'articolo contiene esempi concreti in cui tali possibilità di libertà e di scelta possono essere realizzate; anche solo nel diritto alla libera scelta dello stato di

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vita, al proprio rito ed alla propria spiritualità o alla libertà negli studi teologici. Tuttavia nessuna iniziativa libera dei fedeli può essere riconosciuta cattolica, finché non avrà ricevuto l'approvazione dell'autorità ecclesiastica competente.

**Parole chiave:** libertà, Chiesa cattolica, diritto canonico, diritti e doveri, fedeli, liturgia, teologia