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Abstract: While the Code of Canon Law of 1917 was promulgated at a time when the social doctrine of the Church was still in the process of formulation, the new Code of 1983 comes after Vatican II and after the publication of the major documents of the social doctrine of the Church. The Code obliges all faithful to take their share of responsibility for the social issues in the world and the Church itself to provide social benefits to its employees following the standards found in the social doctrine of the Church. The Code also reflects the principle of subsidiarity whose classical definition is given in the encyclical *Quadragesimo Anno* of Pius XI (1931). This is reflected in the attitude towards the family and the education of children, towards the role of the lay faithful and their associations or in relation to the use of media of mass communication. The Council also enriched the doctrine on the supreme authority of the Church by emphasizing the role of the College of Bishops, which is reflected in the Code of Canon Law both in the generally formulated programmatic norm, but also in the regulation of the dispensational authority, which is now performed mainly by the bishops. The Pope is reserved to deal only with the gravest matters. The specifics of the constitutional framework of the Eastern churches show that the principle of synodality, which has been so typical for them is also remarkably in accordance with the requirement to implement subsidiarity within the Church itself.

Keywords: Canon Law, social doctrine, encyclicals, parents, education, the pope, the bishops, dispensation, Eastern churches

Introduction

Canon Law is a multi-layered phenomenon, which may be examined and treated also on the basis of principles, which have not been created in the canonical jurisprudence. A rich source of inspiration may be provided by civilistics (civil-

legal doctrine), for example, its notion of legality,¹ legal security,² or the proportionality principle.³ Among the many other fields related in certain aspects to Canon Law is also the social doctrine of the Church.

The Influence of the Social Doctrine of the Church on the Code of Canon Law

The Church invites its members to make use of their means to support the Church and the needy. The extensive catalogue of obligations and rights of Catholic Christians (*christifideles*) in the 1983 Code of Canon Law (CIC/1983) also contains a provision of Canon 222, whose first section talks in detail about the support of specifically ecclesiastical activities, including charity work. However, the social engagement of Christians dealt with in Section 2 is formulated in a more general manner: “§ 1 The Christian faithful are obliged to assist with the needs of the Church so that the Church has what is necessary for divine worship, for the works of the apostolate and of charity, and for the decent support of ministers. § 2. They are also obliged to promote social justice and, mindful of the precept of the Lord, to assist the poor from their own resources.” The efforts to establish social justice and support the poor in the form of the canonical norm in § 2 refers to the commandment of the Lord Himself. Presumably it refers to the statement found in the Gospel of St. John: “This is my commandment: love one another as I love you” (Jn 15:12).

This aspect of the activity of the Church and its members is aptly characterized by Pope John Paul II in his encyclical *Sollicitudo rei Socialis*, Article 31:

Thus, part of the teaching and most ancient practice of the Church is her conviction that she is obliged by her vocation—she herself, her ministers and each of her members—to relieve the misery of the suffering, both far and near, not only out of her “abundance” but also out of her “necessities.”⁴

¹ Antonín Ignác Hrdina, *K vybraným aspektům zákonnosti v církvi* [On Selected Aspects of Legality in the Church], in *Revue církevního práva* 10 (2/1998): 81–90.

² Ignác Antonín Hrdina, *Právní jistota křesťana v katolické církvi* [Legal Security of a Christian in the Catholic Church], in *Revue církevního práva* 20 (3/2001): 187–99.

³ Stanislav Příbyl, *Verhältnismässigkeitsprinzip auch im kanonischen Recht?*, in Piotr Szymaniec (ed.), *Zasada proporcjonalności a ochrona praw podstawowych w państwach Europy. The Principle of Proportionality and the Protection of the Fundamental Rights in the European States* (Wałbrzych: Wydawnictwo Państwowej Wyższej Szkoły Zawodowej im. Angelusa Silesiusa w Wałbrzychu, 2015), 389–400.

⁴ John Paul II, *Sollicitudo rei Socialis*, in *Sociální encykliky (1891–1991)* [Social encyclicals (1891–1991)] (Praha: Zvon – české katolické nakladatelství, 1996), 385.

It is no wonder, therefore, that it led to the emergence of the idea that the primary owners of all the property associated with the Church are precisely the poor: “The attempts to view the poor as those who are by right determined as the owners of the Church assets have a rather historical significance.”⁵ Nevertheless, they express an ideal to which any handling of the assets of the Church should be oriented.

The same principles which the Church expects from other subjects in accordance with its social doctrine are obligatory for her also in relation to the lay faithful and clerics if they are entrusted with a specific service within the Church. These servants, staff or employees of the Church have—in accordance with Canon 231 § 2 CIC/1983—“the right to decent remuneration appropriate to their condition so that they are able to provide decently for their own needs and those of their family. They also have a right for their social provision, social security, and health benefits to be duly provided.” Those who are in charge of Church legal persons with employees are directly obliged in Canon 1286 2° “to pay a just and decent wage to employees so that they are able to provide fittingly for their own needs and those of their dependents.”

The Good of the Spouses

Very remarkable is also the impact the Church’s social doctrine has had on the concept of the “good of the spouses” (*bonum coniugum*) as one of the two equal goals of marriage defined by Canon 1055 § 1 of CIC/1983:

The matrimonial covenant, by which a man and a woman establish between themselves a partnership of the whole of life and which is ordered by its nature to the good of the spouses and the procreation and education of offspring (*ad bonum coniugum atque ad prolis generationem et educationem*), has been raised by Christ the Lord to the dignity of a sacrament between the baptized.

By common good (*bonum commune*) one traditionally understands the benefit of all the members of a specific community. It has most frequently been used on the level of the state or even the entire mankind, but the *Compendium of the Social Doctrine of the Church* uses it also to refer to smaller groups or communities (Article 165):

⁵ Hans Heimerl, Helmuth Pree, and Bruno Primetshofer, *Handbuch des Vermögensrechts der katholischen Kirche* (Regensburg: Pustet Verlag, 1993), 61.

No expression of social life—from the family to intermediate social groups, associations, enterprises of an economic nature, cities, regions, States, up to the community of peoples and nations—can escape the issue of its own common good, in that this is a constitutive element of its significance and the authentic reason for its very existence.⁶

The term “good of the spouses” entered into general cognizance after it had been used by Dominicus M. Prümmer in his manual of moral theology. He identified it as the most important goal of marriage: “The primary principle of both the married life in general and the marital act in particular, is a spiritual good of the spouses.”⁷ We should be reminded that his thesis was a novelty in its own right, because according to the then canonical regulation of the issue the procreation and education of the offspring was put above the mutual help of the spouses (*mutuum adiutorium*) and the means of satisfying bodily concupiscence (*remedium concupiscentiae*). The concept of the “good of the spouses” was unknown to Canon 1013 of the 1917 Code of Canon Law (CIC/1917). The turning point was the Pastoral Constitution *Gaudium et Spes* of Vatican II: Article 48 states that “for the good of the spouses and their off-springs as well as of society, the existence of the sacred bond no longer depends on human decisions alone.” In fact, this is how the formulation *bonum coniugum* found their way to the canonical regulation of the new Code of Canon Law of 1983 and has remained an instance of the impact the social doctrine of the Church has had on the doctrine of the Canon Law.⁸

⁶ Papežská Rada pro Spravedlnost a Mír; *Compendium sociální nauky církve* [The Papal Council for Justice and Peace. *The Compendium of the Social Doctrine of the Church*] (Kostelní Vydří: Karmelitánské nakladatelství, 2008), 115–16.

⁷ Dominicus M. Prümmer, *Manuale Theologiae Moralis secundum principia S. Thomae Aquinatis* III (Friburgi Brisgoviae, 1936), 503.

⁸ “The expressed opinion of the Fathers of Vatican II as well as the text of CIC/1983 invites different interpretations. The advocates of the traditional (more legal) conception emphasize that the traditional doctrine expressed in CIC/1917 had not been rejected and so it is to be kept. However, looking at the preparatory documents and debates on the Council it seems as if this opinion is rather improbable or downright untenable.” – Damián Němec, *Manželské právo katolické církve s ohledem na platné české právo* [The Marital Law of the Catholic Church in Relation to the Valid Czech Law] (Praha – Kostelní Vydří: Krystal – Karmelitánské nakladatelství, 2006), 18.

The Primary Role of Parents in the Process of Educating Their Children

However, this is not only a terminological inspiration. In many ways, the Canon Law adopts the essential viewpoint of the social doctrine in relation to the world and the society. This has also been the case with the application of the principle of subsidiarity, as it was formulated in the classical definition in the encyclical of Pope Pius XI. *Quadragesimo Anno* (1931), Article 79:

Just as it is gravely wrong to take from individuals what they can accomplish by their own initiative and industry and give it to the community, so also it is an injustice and at the same time a grave evil and disturbance of right order to assign to a greater and higher association what lesser and subordinate organizations can do. For every social activity ought of its very nature to furnish help to the members of the body social, and never destroy and absorb them.⁹

Evidently, there is hardly a more important institution in need of protection in the sense delineated by this papal statement than the institution of the family. The connection is clear: the education of children—as one of the mentioned main goals of marriage—should remain in the hands of the parents. They should be given preference in determining the value orientation of their offspring. This obligation is defined more concretely in Canon 793:

Parents and those who take their place are bound by the obligation and possess the right of educating their offspring. Catholic parents also have the duty and right of choosing those means and institutions through which they can provide more suitably for the Catholic education of their children, according to local circumstances.

Clearly, the resonance of the social doctrine of the Church is apparent here, since the text of the legal norm is introduced with stating the general principle valid not only for the addressees of the legal norms, but also for all parents without exception. In fact, in relation to education they are to be given preference instead of the state or any other institution “further away” from the family. Catholic parents put this principle into practice as a duty rooted in the canon

⁹ “This encyclical for the first time defines the concept of subsidiarity: the state and the society are obliged to provide support and help to the citizens and small communities; however, they must also grant them freedom. The state should not interfere in family matters, in the rights of parents to raise their children, in politics and in church matters.”—*Předmluva k encyklice Quadragesimo Anno* [Preface to *Quadragesimo Anno*], in *Sociální encykliky* [Social encyclicals], 59.

law, as it is formulated in the Vatican II declaration *Gravissimum Educationis* inspired by Canon 226 § 2 of the Code:

Since they have given life to their children, parents have a most grave obligation and possess the right to educate them. Therefore, it is for Christian parents particularly to take care of the Christian education of their children according to the doctrine handed on by the Church.¹⁰

The Role of the School in the Education of Children

The role of the state and other mediating institutions is also respected in canon law, as it is clear from Canon 793 § 2 of the Code: “Parents also have the right to that assistance, to be furnished by civil society, which they need to secure the Catholic education of their children.”¹¹ The previous Code of 1917 held the assistance of the state to Catholic parents as a matter of course. Thus, in Canon 1217 it obliged parents to choose for their children only the confessionally formed Catholic schools: “Catholic children shall not attend non-Catholic, indifferent, schools that are mixed, that is to say schools open to Catholics and non-Catholic alike.”

The 1983 Code, however, reflects both the concept of religious freedom delineated in the declaration *Dignitatis Humanae* of Vatican II, and the understanding of the role of parents as found in the declaration of the Council on Christian education *Gravissimum Educationis*. CIC/1983 thus approaches the issue of choosing the school differently. Canon 797 gives the parents freedom of choice: “Parents must possess a true freedom in choosing schools; therefore, the Christian faithful must be concerned that civil society recognizes this freedom for parents and even supports it with subsidies; distributive justice (*iustitia distributiva*) is to be observed.”¹² In the field of education, the Church itself intends

¹⁰ “The care for the necessities of life and the education of children is not only a duty for the parents, it is also the basis of certain human rights. Parents are primarily entitled to make decisions about the form and contents of the education of their children. This right is often endangered by the excessive influence of the state in the field of education which inappropriately abridges the rights of the parents. These unjustified interventions violate basic human rights, and so it is necessary to oppose them in a resolute manner.” – Karl-Heinz Peschke, *Křesťanská etika* [Christian Ethics] (Praha: Vyšehrad, 1999), 487.

¹¹ “If the family cannot manage a certain task alone, e.g., in the field of education, the state must not consequently take over the role of the socialist state. Rather, it should—in accordance with the principles of subsidiarity—provide ensuring assistance stressing the personal aspect and only within the extent, which it is necessary.” – Franz Furger, *Etika seberealizace, osobních vztahů a politiky* [The Ethics of Self-Realisation, Personal Relations and Politics] (Praha: Academia, 2003), 137–38.

¹² In the Czech Republic, this requirement seems to be met to a large extent: “Schools and educational institutions established by churches or religious institutions which have been autho-

to apply its subsidiary role to the state rigorously. This confirms Canon 800 § 1 of the Code: “The Church has the right to establish and direct schools of any discipline, type, and level.” In order to make it possible for the Church to run the schools, the Code in Canon 800 § 2 imposes major duties on the faithful: “The Christian faithful are to foster Catholic schools, assisting in their establishment and maintenance according to their means.”

Forming Associations of Catholic Christians

The right to found schools can be understood as a specific expression of the right of association, which the Code in Canon 215 grants to all the Christian faithful: “The Christian faithful are at liberty freely to found and direct associations for purposes of charity or piety or for the promotion of the Christian vocation in the world and to hold meetings for the common pursuit of these purposes.” In the Church itself, one distinguishes between *public associations* (Canons 312–320 CIC/1983) and *private associations* (Canons 321–326 CIC/1983), which are formed by spontaneous initiative “from below.” The subsidiarity is thus expressed not only by the fact that Catholic associations orient their activities towards the benefit of civil society, but also in the actual structure of the Church, where private associations fill the space that has not yet been taken by the institutions established via direct initiative of the Church hierarchy.

Decades before Vatican II, the model for such a development was set by the existing so-called Catholic Action. At the turn of the 19th and 20th centuries, the reform Pope Pius X reflected on its lay character, which he found as a positive development: Catholic Action “in any manner, direct or indirect [...]

rized to carry out the special right to establish church schools [...] are financed from the state budget. The state covers salaries, compensations for salaries and wages, working emergencies, bonuses for work beyond the employment contract and severance/redundancy payments. Moreover, it covers the social insurance expenses, and the contribution to the state employment policy and other expenses of labor-law relations, expenses necessary for teaching tools and textbooks, if the School Law expects them to be provided for free. Furthermore, the state covers the expenses for the further training of the pedagogical staff, activities directly associated with the running of the schools and educational institutions. In this aspect, the church schools find themselves in the same position as the schools established by the Ministry of Education. – Zábaj Horák, *Církev a české školství. Právní zajištění působení církve a náboženských společností ve školství na území českých zemí od rok 1918 do současnosti* [Churches and Czech Educational System: The Legal Provision of the Activity of Churches and Religious Institutions in the Sphere of Education in Czech Lands from 1918 until the Present] (Praha: Grada Publishing, 2011), 112.

pertains to the divine mission of the Church.”¹³ In the interwar period, we saw a major increase in the spontaneous activities of the Catholic Action. However, Pope Pius XI understood its apostolate primarily as participation on the activities of the hierarchy. Therefore, it also required an explicit mandate from the hierarchy. Article 20 of the decree on the apostolate of the laity *Apostolicam Actuositatem* of Vatican II states the following:

Many decades ago the laity in many nations began to dedicate themselves increasingly to the apostolate. They grouped themselves into various kinds of activities and societies which, while maintaining a closer union with the hierarchy, pursued and continue to pursue goals which are properly apostolic. Of these associations, or even among similar and older institutions, those are especially noteworthy which followed different methods of operation and year produced excellent results for Christ’s kingdom. These societies were deservedly recommended and promoted by the popes and many bishops, from whom they received the title of “Catholic Action,” and were often described as the collaboration of the laity in the apostolate of the hierarchy.

Canon 225 of CIC 1983 symbolically expresses the outcome of this process and formulates the principle of the free initiative of the lay Christian faithful and the subsidiary role of their apostolate:

Since, like all the Christian faithful, lay persons are designated by God for the apostolate through baptism and confirmation, they are bound by the general obligation and possess the right as individuals, or joined in associations, to work so that the divine message of salvation is made known and accepted by all persons everywhere in the world. This obligation is even more compelling in those circumstances in which only through them can people hear the gospel and know Christ.¹⁴

¹³ “...Quocumque modo, directe aut indirecte, ad divinam Ecclesiae missionem pertineat.” – Pius X., Encyclical *Il fermo proposito*, in *Acta Sanctae Sedis XXXVII* (1904–1905): 741–67, 744.

¹⁴ “The field of apostolate delineated in Article 225 expresses the entirety of the mission of the Church. It is both a right and an obligation of the lay faithful to strive to spread the message of salvation, so that all the people in the world come to know and accept it. A lay person performs his/her service in the Church and in everyday life. In this Canon, the legislator does not distinguish between the Church and the world. Their activities become part of the missionary orientation of the Church, because they should perform this mission in those places, where this message may be heard only through them.” – Jozef Ivan, *Laici v kánonickej normative Katolickej cirkvi* [The Lay Faithful in the Canonical Normativity of the Catholic Church] (Michalovce: Redemptoristi, Vydavateľstvo Misionár, 2013), 96.

The Media of Mass Communication

The application of the subsidiarity principle in the public sphere is also related to the use of the media of mass communication. In this field, the state monopoly is undesirable. The Church too can make use of the mass media for preaching its doctrine and has the right to have them at its disposal, as it is stipulated in Canon 747 CIC/1983: “The Church [...] has the duty and innate right, independent of any human power whatsoever, to preach the gospel to all peoples, also using the means of social communication proper to it.”¹⁵ The canonical regulation is the outcome of the impulses of Vatican II, particularly the decree *Inter Mirifica* on the media of social communication. Article 3 of the decree expects that the lay faithful will be involved in this process:

The Catholic Church, since it was founded by Christ our Lord to bear salvation to all men and thus is obliged to preach the Gospel, considers it one of its duties to announce the Good News of salvation also with the help of the media of social communication and to instruct men in their proper use.

The Relation of Papal and Episcopal Power

Increasingly, the principle of subsidiarity has also been applied in the hierarchical system of the Church organization. This is evident when we compare the regulation of 1917 Code and the Code promulgated in 1983. The first does not attribute any importance to the principle of subsidiarity. At the time, when the 1917 Code was published the concept of subsidiarity typical for the Catholic social teaching was still taking form. According to Canon 218 § 2 CIC/1917, the pope as the successor of Peter, has the supreme and complete jurisdiction over the whole of the Church. His authority can shortly be defined as a public power to lead the baptised faithful to all things related to their salvation. This power

¹⁵ “In fulfilling the mission of the Church to preach the Gospel to all people, one cannot ignore the use of the media of mass communication, both classical/traditional and modern ones. The Church has a task and innate right to make use of them, because they are useful and necessary for the Christian formation and in fulfilling the work of salvation. That is why the Church, shortly after the invention of the printing press (1455), started to look for ways to make use of this invention for the benefit of its mission of evangelisation.” – Miloš Pekarčík, *Učiaca úloha cirkvi. Kánonicko-teologická analýza tretej knihy Kódexu kánonického práva* [The Teaching Office of the Church: A Canonical and Theological Analysis of the Third Book of the Code of Canon Law] (Levoča: MTM, 2013), 168.

is characterized as “truly episcopal, ordinary, and immediate (*vere episcopalis, ordinaria et immediata*), both over each and every pastor and faithful independent from any human authority. The authority of the bishops is stipulated in Canon 329: “Bishops are successors of the Apostles and by divine institution are placed over specific churches that they govern with ordinary power (*potestas ordinaria*) under the authority of the Roman Pontiff.”

The kind and extent of the competences thus overlap in both of the subjects, but the authorization is different: in the case of the Roman Pontiff, it is his position as the successor of Peter; for the bishop, it is his position as the head of a particular church. The pope can undoubtedly intervene “bossily” into the governance of a particular church which is legally valid in the same way as when the responsible bishop made the decision. However, even in the 1917 Code in Canon 228 § 1 stipulated that “an Ecumenical Council enjoys supreme power over the universal Church.”

Nevertheless, Vatican II focused its attention on the context of the primatial authority of the Roman Pontiff and the collective body of the assembly of bishops in the communion with each other and in communion with the pope. John Paul II called the 1983 Code of Canon Law “the last document of the Second Vatican Council” because many of the canons directly resonate the teaching of the Council. This is also the case of Canon 330, which reproduces the basic premise found in Article 22 of the Council’s dogmatic constitution on the Church *Lumen Gentium*: “Just as in the Gospel, the Lord so disposing, St. Peter and the other apostles constitute one apostolic college, so in a similar way the Roman Pontiff, the successor of Peter, and the bishops, the successors of the apostles, are joined together.”¹⁶

The outcome of this is the obligation of the pope to foster a permanent communion with the bishops, as it is formulated in Canon 333 § 2 of CIC/1983: “In fulfilling the office of supreme pastor of the Church, the Roman Pontiff is always joined in communion with the other bishops and with the universal Church.” His intervention into the matters concerning the local churches have an explicitly supportive, subsidiary character. In accordance with the 1917 Code (Canon 333 § 1), the Roman Pontiff “not only possesses power over the universal Church but also obtains the primacy of ordinary power over all particular churches and groups of them,” as it was already stipulated in the 1917 Code,

¹⁶ “Vatican II created an important sketch of the teaching about the episcopate and the synod of bishops. The teaching about the episcopate supplemented the teaching on the hierarchical constitution of the Church. The third chapter of the dogmatic constitution on the Church *Lumen Gentium* presents the second image of the dogmatic diptych on the hierarchical constitution of the Church which needs to be laid aside the first image, which is the dogmatic constitution *Pastor Aeternus* of Vatican I on the papal primacy.” – Pietro Fietta, *Cirkev, diakonia spásy. Základné rysy ekleziológie* [The Church as the Diakonia of Salvation: The Fundamentals of Ecclesiology] (Prešov: Vydavateľstvo Michala Vaška, 2001), 181.

however, what is new in the 1983 text, is that the papal power “strengthens and protects the proper, ordinary, and immediate power which bishops possess in the particular churches entrusted to their care.” Moreover, we find here also the regulation of Canon 334 which formulates in an obligatory manner the need for cooperative assistance, because “bishops assist the Roman Pontiff in exercising his office. They are able to render him cooperative assistance in various ways, among which is the synod of bishops.”¹⁷

Dispensational Authority

Clearly, these pronouncements of the Council reproduce above all the theologically based principles. About their canonical application, however, we need to refer to the concrete outcome of these emphases of the Council. This becomes evident, for example, in the dispensational practice of the Church. In the earlier conception, the bishop was in the exercise of his powers dependant on the powers assigned to him by the pope. Therefore, it was basically a concessional system. The new conception, based on the primary autonomy of the bishop’s powers, is labelled as reservational. The pope now reserves for himself only those powers that are important for the functioning of the entire Catholic Church, and their significance transcends the interior life of the particular dioceses and their faithful.

This is also evident in the exercise of the dispensational duties. The 1917 Code formulates the dispensational authority appertaining to the pope as its one and only source in Canon 81:

Ordinaries below the Roman Pontiff cannot dispense from the general laws in the Church, even in a specific case, unless this power has been explicitly or implicitly granted them, or unless recourse to the Holy See is difficult and there is also a grave danger of harm in delay and the dispensation concerns a matter from which the Apostolic See is wont to dispense.

In Canon 87 of CIC/1983, however, it is principally the bishop, who is entrusted with the dispensational authority: “A diocesan bishop, whenever he judges that it

¹⁷ “The objections against the principle of the primacy of the Roman Pontiff will fade away if we see in him not only an absolute power of some kind, but chiefly the center of unity and persistence of the Church and beyond that we notice that there is the college of the bishops represented by the synod and the permanent secretariat.” – Wincenty Granat, *K člověku a Bohu 3. Nástin katolické dogmatiky* [Towards Man and God: the Outline of Catholic Dogmatics]. (Řím: Velehrad – Křesťanská akademie, 1982), 42.

contributes to their spiritual good, is able to dispense the faithful from universal and particular disciplinary laws issued for his territory or his subjects by the supreme authority of the Church.” The pope exercises his dispensational powers only in the most pressing cases. Therefore, we may now talk about a reservational system.

The subsidiary character of the legal institution of the dispensation can also be seen in the fact that in accordance with Canon 80 of the previous Code, the dispensation could only be given by the legislator, whereas Canon 85 CIC/1983 gives the dispensational authority to those who carry the executive power. Thus, in everyday dispensational practice, the bishops can be replaced by general vicars. This is connected with the abandonment of the earlier canonistic idea that dispensation is a legislative act, given that by its exercise the law is “abolished” even in a single, unique case. The newer concept puts more emphasis on the singularity of the issue which does not revoke general validity of the law; the dispensation thus can also be given to those who exercise the executive power.¹⁸

The Eastern Catholic Churches

It is also necessary to pay attention to the specific issues of the Eastern Catholic churches, which present a particular pattern of relations in the organism of the universal Church. Its system may be described as being in accordance with the model of subsidiarity. The actual Code of Canons of the Eastern Churches (CCEO) is conceived as consolidated statutes for all these churches *sui iuris*, which consistently refer to their particular laws wherever it is possible. Its legal regulation is thus subsidiary to the law of individual Eastern churches.¹⁹

However, the very framework of the Catholic Eastern churches is different from the Latin church: while in the latter the patriarchal structure—the con-

¹⁸ “The first author who developed a legal definition of the dispensation was Rufinus. He defined it as “*canonici rigoris causalis derogation*.” In the course of time, another term started to take root in the doctrine: instead of the term ‘*derogatio*,’ ‘*relaxatio*’ came to be used. It is a term which better suits the state of things: in the act of dispensation, the law remains valid, but the subject is released from its obligatory character.” – Ján Duda, *Katolícke manželské právo* [Catholic Marital Law]. Spišská Kapitula – Spišské Podhradie: Kňazský seminár J. Vojtaššáka, 1996, 139–140.

¹⁹ “It is not a code in the modern sense of the word, i.e., a body of general laws of the Eastern churches which would abrogate and replace the existing laws. Neither is it a body of synthetic and abstract norms which would create a coherent and closed system. It is a kind of “*compilation*” adopting an aged-old law and adjusting it to modern requirements.” – Jiří Dvořáček, *Východní kanonické právo. Úvod do studia* [Eastern Canon Law: an Introduction] (Praha: Apoštolský exarchát řeckokatolické církve a Institut sv. Kosmy a Damiána, 2014), 30.

necting link between the papal and episcopal power—was “swallowed,” major Eastern churches have kept it. CCEO provides a definition of a patriarch in Canon 56: “A patriarch is a bishop who enjoys power over all bishops including metropolitans and other Christian faithful of the Church over which he presides according to the norm of law approved by the supreme authority of the Church.”²⁰ The patriarchal constitution thus presents an important connecting link between the papal and episcopal authority. One of the marks of autonomy is for example the fact that once a patriarch has been elected by the synod, he is not approved by the pope, but the patriarch has an obligation (Canon 76 § 2) “as soon as possible request ecclesiastical communion (*ecclesiasticam communionem*) from the Roman Pontiff by means of a letter signed in his own hand.”

Moreover, the Eastern churches, both Catholic and non-Catholic, are governed by the principle of synodality, “sobornost,” where the synod as a collective body of a certain group of hierarchs supports their individual decision-making whereby harmonic interconnection of both these elements is established and the lower level supports the higher one. This principle has found a classical expression in 34th Apostolic Canon.²¹ “The bishops of every nation must have their primate and respect him as the head. They must not undertake anything beyond their authority without his consent. Each bishop should take care of their eparchy and the places belonging to it. However, even the primate should not undertake anything unknown to the other bishops, since only in this way a unity may be established and God praised through the Lord in the Holy Ghost—the Father, the Son and the Holy Ghost.”²²

²⁰ “There is no definition of a patriarch in the Latin church (cf. Canon 438), but one can find it in the Code of Canons of the Eastern Churches. This definition, however, cannot be applied on the patriarchs of the Latin church, where a bishop of a particular diocese sometimes holds the title of a patriarch. A patriarch in an Eastern church possesses a legitimate jurisdiction over the bishops and faithful of his patriarchate, and a patriarchate is a collection of eparchies. In the Latin church, the Roman Pontiff holds the title of a patriarch, as well as the patriarch of Venice, Lisbon, the western Indies patriarch with the seat in Madrid and the patriarch for Eastern India with the seat in Goa.” – Ján Duda, *Náčrt právnej ekleziológie* [An Outline of Legal Ecclesiology] (Spišská Kapitula – Spišské Podhradie: Kňazský seminár J. Vojtaššáka, 2002), 186–87.

²¹ “The collection *Canones apostolorum* (Apostolic Canons) is clearly an apocryphal work coming most likely from Syria of the 4th and 5th centuries that [...] pretends that the author is St. Clement (92-around 101). Originally, it contained 50 canons, later their number increased to 85.” – Vojtech Vladár, *Pramene práva v Katolíckej cirkvi v historickom vývoji* [The Sources of Law in the Catholic Church in Historical Perspective] (Plzeň: Aleš Čeněk, 2009), 75.

²² *Pravidla všeobecných a místních sněmů i sv. otců pravoslavné církve* [The Rules of General and Local Synods and the Holy Fathers of the Orthodox Church] (Praha: Pravoslavná církev v Československu, 1955), 10.

Conclusion

The definition of subsidiarity, as conceived by the social doctrine of the Church, results in twofold requirement: firstly, what the individuals (or smaller and lower communities) can do with their own initiative should not be taken away from them and, secondly, “subsidiary assistance” should be provided, when larger and higher communities are supposed to intervene if individuals (or smaller and lower communities) are not able to reach what is necessary. In the life of the Church and its faithful, this presents a major challenge for the parents who should raise their children in accordance with their own worldview, without the intervention of the state. This doctrine is also reflected in the Code of Canon Law which regulates the rights of parents in the educational process. The Code also emphasizes the subsidiary role of the lay initiatives and their associations in the organism of the Church. The actual hierarchical constitution of the Church has benefited from this new impulse, because the exercise of the papal primacy is now placed into the wider context of the hierarchical community with the bishops and among the bishops themselves. The bishops carry their own autonomous responsibility which can be strengthened by further papal interventions. Looking at the Code of Canons of the Eastern Churches, we see that the synodal principle, typical for the churches of the Christian East, in their own right reflects the subsidiarity within the framework of the church organism.

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Stanislav Přibyl

Le principe de subsidiarité dans le Code de droit canonique

Résumé

Tandis que le Code de droit canonique de 1917 a été promulgué à l'époque où la doctrine sociale de l'Église était toujours en état de formation, le nouveau code de 1983 est apparu après le concile Vatican II et après la publication des documents principaux de la doctrine sociale de l'Église. Le code oblige tous les croyants à assumer une partie de responsabilité des affaires sociales au monde, et l'Église elle-même s'engage à assurer à ses employés des prestations sociales conformément aux standards adoptés dans la doctrine sociale de l'Église. Le code reflète aussi le principe de subsidiarité dont la définition classique a été donnée dans l'encyclique *Quadragesimo anno* du pape Pie XI (1931). Cela trouve son reflet dans l'attitude à l'égard de la famille et dans l'éducation des enfants envers leur rôle de croyants séculiers et leurs associations ou encore l'usage des médias de masse. Le Conseil a également enrichi la doctrine sur le pouvoir suprême de l'Église, en soulignant le rôle du collège d'évêques, ce qui a trouvé son reflet dans le Code de droit canonique, aussi bien dans la forme générale de programme que dans la régularisation du pouvoir de dispense qui est exercé aujourd'hui notamment par les évêques. Le pape s'occupe uniquement des affaires les plus importantes. L'examen précis du cadre constitutionnel des églises orientales montre que le principe de synodalité, tellement caractéristique de leur fonctionnement, est aussi remarquablement en accord avec l'exigence de l'application du principe de subsidiarité à l'Église elle-même.

Mots clés : droit canonique, doctrine sociale, encycliques, parents, éducation, pape, évêques, dispense, Églises orientales

Stanislav Přibyl

Il principio di sussidiarietà nel Codice di Diritto Canonico

Sommario

Mentre il Codice di Diritto Canonico del 1917 fu promulgato in un'epoca in cui la dottrina sociale della Chiesa era ancora in fase di formulazione, il nuovo Codice del 1983 è uscito dopo il Concilio Vaticano II e dopo la pubblicazione dei documenti principali della dottrina sociale della Chiesa. Il Codice obbliga tutti i fedeli ad assumersi una parte della responsabilità per le questioni sociali nel mondo mentre la Chiesa stessa si impegna a garantire ai suoi lavoratori le prestazioni sociali conformemente agli standard assunti nella dottrina sociale della Chiesa. Il Codice riflette anche il principio di sussidiarietà la cui definizione classica fu indicata nell'enciclica *Quadragesimo anno* di Pio XI (1931). Ciò trova riflesso nella condotta nei confronti della famiglia e dell'educazione dei figli, verso il ruolo dei fedeli laici e delle loro associazioni o rispetto all'uso dei mezzi di comunicazione di massa. Il Consiglio ha anche arricchito la dottrina dell'autorità suprema della Chiesa, sottolineando il ruolo del collegio episcopale, cosa che ha trovato riflesso nel Codice di Diritto Canonico, sia nella norma programmatica formulata genericamente, sia nella regolamentazione dell'autorità dispensatoria che attualmente è esercitata principalmente dai vescovi. Il Papa si occupa esclusivamente delle questioni più gravi. Uno sguardo dettagliato alle cornici costituzionali delle chiese orientali mostra che il principio di sinodalità così caratteristico per loro è anche eccezionalmente conforme al requisito di applicazione del principio di sussidiarietà nella Chiesa stessa.

Parole chiave: diritto canonico, dottrina sociale, encicliche, genitori, istruzione, papa, vescovi, dispensa, Chiese orientali