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## “Person” in the Law of Religious [Institutes]

**Abstract:** The emphasis on the human person and his dignity was significantly applied in the new regulation of the law of consecrated life, which is dealt with in the new Code of Canon Law of 1983 *in integrum* compared to the previous Code of Canon Law of 1917. This paper describes only some of the changes in the law of religious institutes in the Latin Church.

The first section regards mainly the person who has taken religious vows and focuses on the question of religious vows as the basis of religious life. It also discusses confessors viewed as a necessary tool for the renewal of religious life as well as modifications in the concept of poverty as a very important element of religious life. The second section focuses on the government of religious institutes, discussing the strengthened position of internal superiors over external superiors in religious congregations, the strengthened position of the superior of monasteries of nuns, and the extended powers of superiors on release from a religious institute due to illegitimate absence from a religious house.

As this is in some cases a very recent legal regulation, the author does not hesitate to express his critical observations.

**Keywords:** person, Catholic Church, canon law, religious, nuns, confession, property

## Introduction

The emphasis on the human person and his dignity was significantly applied in the new regulation of the law of consecrated life, which is dealt with in the new Code of Canon Law of 1983 (further CIC/1983) *in integrum* compared to the previous Code of Canon Law of 1917 (further CIC/1917). Due to the extent of the

changes, it is necessary in this paper to limit ourselves to discussions about only some of the changes that, however, significantly point to the personal emphasis in the new legal regulation.<sup>1</sup>

The personal emphasis is manifested both in the individual area, concerning the religious life, and in the institutional area, especially concerning the government of religious institutes. Although the two areas are really so interconnected in real terms that they cannot be completely separated from each other, it is possible to distinguish them according to the predominant focus of legal regulation.

For the sake of clarity, we will therefore divide our paper into only two sections. The first one targets mainly the person who has taken religious vows and focuses on the question of religious vows as the basis of religious life. It also discusses the role of confessors viewed as a necessary tool for the renewal of religious life, as well as modifications in the concept of poverty as a very important element of religious life. The second section focuses on the government of religious institutes, discussing the strengthened position of internal superiors compared to external superiors in religious congregations, the strengthened position of superior of monasteries of nuns, and the extended powers of superiors on release from a religious institute due to illegitimate absence from a religious house.

As this is in some cases a very recent legal regulation, we will not hesitate to express our critical observations in the text.

# 1. Emphasis on the Consecrated Person

## 1.1. Division of Religious Vows

The new CIC/1983 retained most of the divisions of religious vows contained in CIC/1917. At the same time, however, it introduced a significant drafting change in that it no longer usually speaks of vows (*vota*), but of religious profession (*professio*), therefore, it also puts more emphasis on the actions of the promiser.

In one thing, however, there is a clear fundamental difference: although CIC/1983 held in the general treatise on promises in can. 1192 § 2 the distinction into solemn and simple vows, this distinction does not apply at all in the field of the law of consecrated life.<sup>2</sup> Nevertheless, in the legal regulation of CIC/1917 this distinction had very significant consequences, for example:

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<sup>1</sup> We deliberately limit ourselves to the Latin Church *sui iuris*, because in the field of religious law the legal regulation in the Eastern Catholic Churches is so different that a treatise on it would require the elaboration of another study.

<sup>2</sup> Individual authors disagree on the importance of distinguishing between solemn and simple vows, which is stated, for example, by Joachim Roman Bar, *Prawo zakonne po soborze*

- according to can. 1073, the solemn vow of chastity by its nature acted as an obstacle to the conclusion of a marriage, but with a simple permanent vow of chastity only if it was given this effectiveness by a special rescript of the Apostolic See;
- when transferring to another order, according to the diction of can. 632–636 in the whole context of the former religious right to transfer to a religious institute of the same or higher nature (i.e., from an institute with simple vows to an order with solemn vows), or very exceptionally “below” (i.e., from an order with solemn vows to an institute with simple vows);
- other consequences were in the area of property, which we want to treat separately.

The legal regulation of CIC/1983 legally equates solemn vows with the simple ones, both in the area of the emergence of an obstacle to the conclusion of a marriage, which, according to can. 1088, is every perpetual vow of chastity in a religious institute (*votum publicum perpetuum castitatis in instituto religioso*), as well as in the regulation of transfer into another religious institute, which is no longer defined by the legal nature of vows in individual religious institutes (can. 684). In this way, it clearly prefers the element of personal response to God’s call to the legal distinction between the various types of religious institutes and the vows made in them.

## 1.2. Conditions for Admission to the Novitiate and for Religious Profession

The definition of the conditions for entry into the novitiate has changed in CIC/1983 in comparison to the more extensive regulation in CIC/1917. The new regulation no longer contains any conditions for illicit but valid admission to the novitiate, as defined in can. 542 of CIC/1917. Simplification is also apparent in the definition of circumstances giving rise to invalid acceptance on the following points:

- The minimum age for all religious is unambiguously set at a minimum age of 17, while the regulations of one’s own law were decisive for the entry into the novitiate, while the crediting of the novitiate according to can. 555 CIC/1917 required the age of 15;

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*watykańskim II* (Warszawa: Akademia Teologii Katolickiej, 19773), 187. The classical view accentuating the concept that only solemn vows are religious vows in the full sense of the word and simple vows, all the more temporary simple vows, are only analogous to them, is presented by, for example, José F. Castaño, *Gli istituti di vita consacrata (cann. 573–730)* (Roma: Millennium Romae, 1995), 35–38.

- The barrier to entry for those who previously belonged to a non-Catholic church or ecclesial society has been removed;
- The barrier to entry for bishops and clergy bound by the oath of service in a particular diocese or mission has been removed;
- The barrier to entry in the event of imminent punishment for a criminal offense (both according to secular and canon law) has been removed;
- For admission to the monasteries of nuns or to other religious institutes with simple vows, the composition of the dowry is no longer required, the details of the dowry being determined by one's own law—the constitution or, in the case of nuns, also by legal custom (cf. can. 547 of CIC/1917);
- In connection with the abolition of different classes of religious in individual institutes (especially choral brothers and lay brothers, choir sisters and auxiliary sisters), a different novitiate is no longer required for individual classes of religious (cf. can. 558 of CIC/1917).

Significant changes are also evident in the area of religious vows. On the one hand, CIC/1917 already orders temporary vows for all religious (can. 574)<sup>3</sup> but, on the other hand, there are also significant differences:

- For the temporary profession, CIC/1917 required the age of only 16 years (can. 573), while can. 656 of CIC/1983 requires the age of 18 years;
- If vows were to be made for another class of religious, according to can. 558 CIC/1917 the novitiate had to be undertaken again for the relevant class of religious, which CIC/1983 no longer presupposes;<sup>4</sup>
- The duration of the temporary vows was given in CIC/1917 primarily by reaching the minimum age for a permanent profession of 21 years (can. 573), this age was also maintained in CIC/1983 (can. 658), while superiors could extend the period of temporary vows according to can. 574 § 2 of CIC/1917 by a maximum of three years, while according to can. 657 § 2 of CIC/1983 superiors may provide for a longer extension, with the provision that the temporary vows may not last longer than nine years.<sup>5</sup>

It is clear that the legal regulation in CIC/1983 gives both a greater opportunity to take into account the personal situation of those candidates for

<sup>3</sup> Cf. Damián Němec, “Ewolucja regulacji CIC/1917 dotyczącej profesji czasowej,” in *Ko-deks pio-benedyktynski między tradycją a rozwojem*, ed. Zbysław Janczewski, Jan Dohnalik, and Igor Kilanowski (Warszawa: Spes, 2017), 115–146.

<sup>4</sup> The need to carry out the second novitiate was abolished by provision No. 27 of the Instruction of the Sacred Congregation for Religious and Secular Institutes *Renovationis causam* of January 6, 1969: *Sacra Congregatio pro Religiosis et Institutis saecularibus. Instructio Renovationis causam de accomodata renovatione institutionis ad vitam religiosam ducendam*, 6 Ianuarii 1969, AAS 61 (1969): 103–120.

<sup>5</sup> This new definition of temporary vows is contained in No. 37 of the *Renovationis causam* instruction, and the introduction of this new arrangement had to be given by a decision of the General Chapter under this provision—this restriction ceased with CIC/1983 entering into force.

entering the religious institute and also of novices and religious with temporary vows, as well as a far greater responsibility for superiors and chapters or councils co-deciding in the field of religious formation. It should be noted that this quite often creates difficult situations in which it is difficult to find a suitable solution.

### 1.3. The Position and Role of Confessors

CIC/1917 contained in can. 518– 528 detailed regulations concerning confessors. A sufficient number of confessors was to be appointed in each religious community. Their provision was tied to the prescription of can. 595 § 1 3°, obliging superiors to ensure that the religious make a confession once a week. In the case of nuns and lay communities of religious, regular and extraordinary confessors were to be appointed, or at the request of individual religious sisters a special confessor for them. There was an obligation to appoint a single full confessor to whom all members of the community were to come (with the exception of authorized special confessors), more of which could be appointed in the case of numerous communities. Extraordinary confessors were to come at least four times a year, and there was an obligation to speak to them and ask for blessings from them, even if they were not confessed. The appointment of confessors belonged – with the exception of clerical institutes – to the local Ordinary after consultation with the religious superiors, or if need be with the whole community. Can. 876 required special jurisdiction for the confession of religious sisters, given by the local Ordinary.

Changes were introduced by a short decree of the Sacred Congregation for Religious and Secular Institutes *Dum canonicarum legum* of December 8, 1970, which significantly modified the existing regulations. In particular, in No. 4, it abolished the requirement of a special jurisdiction for the confession of religious sisters and made it clear that they could confess to any priest authorized to confess in a given territory (this jurisdiction was most often tied to the territory of the local church). However, ordinary confessors should continue to be appointed for monasteries of nuns, houses of formation and more numerous cloisters, and extraordinary confessors should also be established for monasteries of nuns and for houses of formation without the obligation to come to them; regular confessors may be appointed by the local Ordinary for other cloisters, however, in consultation with the community. According to No. 3 of the same instruction, religious should confess at least twice a month.

This legal regulation was transferred to CIC/1983 with only minimal modifications. On the one hand, there is set out the duty to frequent the sacrament of penance (without a more specific definition of frequency) in the title on the rights and duties of religious in can. 664 but, on the other hand, there is en-

shrined the freedom of religious in the choice of confessor in the article on superiors and counsel in can. 630, while maintaining the obligation to appoint ordinary confessors in monasteries of nuns, houses of formation and in larger lay cloisters by decision of the local Ordinary after consultation with the community, without imposing an obligation to approach them.

Here, too, emphasis is placed on the possibility of personal choice of the confessor, although in fact quite limited, especially in contemplative monasteries. The absence of a more specific timing of the obligation to approach frequently the sacrament of penance often leads to a very diverse practice, even with the threat of spiritual damage that sometimes occurs.

## 1.4. Ownership of Property by Individual Religious

Property ownership is a fact that is strongly affected by the vow of poverty. CIC/1917 dealt with this area relatively strictly. According to can. 569, before taking simple vows, temporary or permanent, novices or a religious with temporary profession had to entrust the management of his or her existing property to persons selected by himself or herself for the duration of the vows, unless the constitutions of the religious institute provided otherwise. Every religious with simple vows continued to own his or her property and had the legal capacity to acquire additional property according to can. 580, with whatever he or she acquired as a religious belonging to the religious institute. In contrast, the religious became legally incapable of owning and acquiring property after solemn vows according to can. 582; therefore, the religious with temporary vows was obliged, according to can. 581, to give up his property within 60 days before the solemn vows and under the condition of professing the solemn vows.

This somewhat rigid division was mitigated by provision 13 of Decree *Perfectae caritatis* of Vatican Council II, by which religious congregations could allow their members in their constitutions to renounce already owned or future property.<sup>6</sup>

This provision was followed by the implementing norms of the *motu proprio* of Pope Paul VI *Ecclesiae sanctae*,<sup>7</sup> which in its second part in No. 24 empowers the General Chapters to decide and incorporate into the constitutions that individual members may or should renounce ownership of their property, either before or several years after permanent vows.

<sup>6</sup> Concilium Vaticanum II, "Decretum de accomodata renovatione vitae religiosae *Perfectae caritatis*," AAS 58 (1966): 702–712.

<sup>7</sup> Paulus VI, Litterae apostolicae *motu proprio* datae *Ecclesiae sanctae* quibus normae ad quaedam exsequenda ss. Concilii Vaticani II decreta statuuntur, 6 Augusti 1966, AAS 58 (1966): 758–787.

This norm was adopted by CIC/1983 in can. 668, where § 4 distinguishes between religious institutes in which religious are obliged to give up their property from other religious institutes, while in the latter the possibility remains for individual religious to give up their property, in whole or in part, with the permission of their superiors.

It is clear that also in the area of personal property of religious, there is a much greater emphasis on both the charism of entire religious institutes, which is also a personal gift, and the personal charisms of individual religious.

## 2. Emphasis on the Person in the Government of Religious Institutes

### 2.1. Strengthening of the Role of Internal Superiors in Religious Congregations

According to CIC/1917, religious congregations already enjoyed relatively great autonomy. The subordination of the female religious congregation (of which there was and is a majority) to the male order is in can. 500 § 3 understood as an exception and is bound to the apostolic indult, however, this situation was relatively common. It followed that the constitutions of individual female congregations enshrined the positions of the director and visitor of the congregation, who exercised care and management towards it (*cura et directio*).<sup>8</sup> In addition, the legal regulation brings relatively strong dependence on the local ordinary:

- The individual houses of the lay religious congregations were subject to visitation by a local Ordinary, according can. 512 § 2 3°, at least once every five years not only with regard to their external service but also in the field of internal discipline according to can. 618 § 2 2°;
- The election of the general superior in the female congregations was presided over by a local Ordinary or his delegate, according to can. 506 § 4, who, even in the case of congregations of diocesan law, had the power to confirm or revoke the election.

None of these provisions were retained in CIC/1983 and were gradually deleted from the constitutions of individual religious congregations, especially female ones, while it is still true that with the exception of the clerical religious

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<sup>8</sup> Bar, *Prawo zakonne*, 89–90.

institutes of papal law the proper ordinary of religious is the local ordinary, who does not have the authority to intervene in the internal government of religious congregations (cf. can. 683). In this way, the role of internal superiors has been effectively strengthened, especially in female religious congregations of papal law, and the role of women in general has been emphasized.

## 2.2. Strengthening of the Role of the Inner Superiors in the Monasteries of Nuns

External superiors have always been entrusted with the care and protection of monasteries of nuns. The legal matter in this area is quite extensive, even for the period since CIC/1917, and its proper elaboration would require more space than this paper allows, so it will only be possible to address recent developments based on the provisions of CIC/1983.

### 2.2.1. Subordination of individual monasteries

CIC/1983 distinguishes between two types of subordination of the monasteries of nuns to external superiors: either the religious superior (can. 614) or the local ordinary (can. 615).

Modification in this matter was brought about by norms in the time of the pontificate of Pope Francis: his apostolic constitution *Vultum Dei quaerere*<sup>9</sup> in Art. 9 § 1 orders the inclusion of all monasteries in federations (an exception is given by the Apostolic See) and in § 4 prefers the association of monasteries to the corresponding male order. Implementation instructions of the Congregation for Institutes of Consecrated Life and Societies of Apostolic Life *Cor orans*<sup>10</sup> in No. 75, dealing with the ecclesiastical supervision of the monastery, appoints in the first place the chairwoman of the Women's Congregation of Nuns, then the relevant superior of the male order, and only in the third place the local Ordinary.

Generally speaking, the *Cor orans* instruction gives great powers to the superiors of the Federation of Monasteries of Nuns, especially in the field of visitation: according to No. 111, the president of the federation may be not only the co-visitor during the ordinary canonical visitation, but according to No. 113

<sup>9</sup> Franciscus, Constitutio apostolica *Vultum Dei quaerere* de vita contemplativa mulierum, 29 Iunii 2016, AAS 108 (2016): 835–861.

<sup>10</sup> Congregazione per gli Istituti di vita consacrata e le Società di vita apostolica, Istruzione applicativa “Cor orans” della Costituzione apostolica *Vultum Dei quaerere* sulla vita contemplativa femminile, 1 aprile 2018, AAS 110 (2018): 814–864.



she can in the case of necessity hold the visitation herself, accompanied by one co-visitor selected from the councillors of the federation. The Apostolic See must be informed about the result of the visitation and, therefore, also about its holding. It must be stated that, on the one hand, these provisions entail an enormous strengthening of the mission and position of the nuns, and, on the other hand, they introduce an untested solution that is not free of pitfalls and risks and thus is sharply criticized by many voices.<sup>11</sup>

### 2.2.2. *Permission to leave the enclosure*

In the case of monasteries of nuns, the regulations on the papal enclosure play an important role. Unlike CIC/1917, these regulations are not included in CIC/1983 itself but are left to non-code regulation. Until recently, the starting documents in this matter were the apostolic constitution of Pius XII *Sponsa Christi* of 1950,<sup>12</sup> modified by the provisions of the instruction *Ecclesiae sanctae* of 1966<sup>13</sup> and supplemented successively by the implementing instructions of the relevant congregation of the Roman Curia *Inter cetera* of 1956,<sup>14</sup> *Venite seorsum* of 1969<sup>15</sup> and *Verbi sponsa* of 1999.<sup>16</sup> Pursuant to provision No. 17 of the latter instruction, it was within the authority of the superior of the monastery of nuns, with the possible consent of the council or of the chapter of the monastery, to grant permission to leave the enclosure for serious reasons for up to seven days, for up to three months with the approval of the religious superior or diocesan bishop, and for a longer time with the permission of the Apostolic See, while the provisions of can. 665 § 1 CIC/1983 concerning the permission of a long absence of a religious in a religious house must not be applied.

<sup>11</sup> Cf., for example, Aldo Maria Valli, *Claustrofobia. La vita contemplativa e le sue (d)istruzioni* (Hong Kong: Chorabooks, 2018), 26–65.

<sup>12</sup> Pius XII, Constitutio apostolica *Sponsa Christi* de sacro monialium instituto promovendo, 25 Novembris 1950, AAS 43 (1951): 5–24. This constitution distinguished between a larger papal enclosure (*clausura maior*) for purely contemplative monasteries and a smaller papal enclosure (*clausura minor*) for monasteries with limited apostolic activity.

<sup>13</sup> *Ecclesiae sanctae II*, n. 32: this provision abolished the minor papal enclosure and replaced it with a constitutional enclosure, usually called the “constitutional enclosure.” Cf. Bar, *Prawo zakonne*, 245–247.

<sup>14</sup> Sacra Congregatio pro Religiosis. Instructio *Inter cetera* circa monialium clausura, 25 Martii 1956, AAS 48 (1956): 512–526.

<sup>15</sup> Sacra Congregatio pro Religiosis et Institutis saecularibus, Instructio *Venite seorsum* de vita contemplativa et de monialium clausura, 15 Augusti 1969, AAS 61 (1969): 674–690.

<sup>16</sup> Congregatio pro Institutis vitae consecratae et Societatibus vitae apostolicae, Instructio *Verbi sponsa* de vita contemplativa deque monialium clausura, 13 Maii 1999, in *Enchirion Vaticanum* 18 (1999): 514–578, nn. 931–1000, [www.vatican.va/roman\\_curia/congregations/ccsclife/documents/rc\\_con\\_ccsclife\\_doc\\_13051999\\_verbi-sponsa\\_lt.html](http://www.vatican.va/roman_curia/congregations/ccsclife/documents/rc_con_ccsclife_doc_13051999_verbi-sponsa_lt.html), accessed July 20, 2020.

The recent regulation is represented by two documents: the Apostolic Constitution of Pope Francis *Vultum Dei quaerere* of 2016 and the implementing instructions of the Congregation for Institutes of Consecrated Life and the Societies of Apostolic Life *Cor orans* of 2018.

It should be remembered, however, that the path to a greater role for the nuns' superiors in the area of going out from the enclosure began with the specific exercise of episcopal collegiality—the Synod of Bishops' on consecrated life held on 2–28 October 1994 and the subsequent post-synodal exhortation of Pope John Paul II *Vita consecrata*.<sup>17</sup> On the one hand, No. 59 advises on extending the powers of the superior of monasteries of nuns to authorize leaving from the enclosure, and, on the other hand, for the first time in connection with these monasteries, it speaks not only of the papal and constitutional enclosure but also of the monastic enclosure.

A more concrete implementation of this recommendation was brought about by the Apostolic Constitution of Pope Francis *Vultum Dei quaerere* of 2016 in No. 31, which discusses three possible types of enclosure for monasteries of nuns, and in normative Art. 10, which empowers each monastery with regard to the constitution of its order to ask the Apostolic See for changing the current form of the enclosure, while explicitly admitting the possibility of different forms of the enclosure in the same order. Therefore, many constitutional provisions concerning the enclosure (including the prohibition of the application of the provisions of can. 665 § 1 of CIC/1983) have been explicitly repealed by this constitution but, at the same time, no new precise provisions are given—these are to be given by an implementing instruction. This led to the creation of a lacuna of law and, therefore, to practical uncertainties. On the other hand, great emphasis is placed on the personal distinction and subsequent decision of the nuns.

It was not until 2018 that the instructions of the Congregation for Institutes of Consecrated Life and Societies of Apostolic Life *Cor orans* in Nos. 172–218 gave a clearer definition for all types of enclosures. The fundamental changes regarding the leaving the papal enclosure are the following:

- Permission regarding the enclosure no longer falls within the competence of external superiors (religious superior or diocesan bishop) according to No. 174, although they are to continue to monitor compliance with the regulations on enclosure according to No. 173,
- The major superior herself gives permission regarding the enclosure within the term of 15 days according No. 175, despite this period with the consent of her council,
- The same superior may, with the consent of her council, grant permission to stay outside the community in accordance with can. 665 § 1 CIC/1983.

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<sup>17</sup> Ioannes Paulus II, Adhortatio apostolica post-synodalis *Vita consecrata* de vita consecrata eiusque missione in Ecclesia ac mundo, 25 Martii 1996, AAS 88 (1996): 377–486.

Moreover, the major higher superior can with the consent of her council give indult exlaustration for a maximum of one year according to No. 177. Extension of the exlaustration for a maximum of two years belongs to the president of the Federation of Monasteries of Nuns with the consent of her council according to No. 178.

It is quite obvious that the role of the inner superiors is enormously strengthened there compared to the external superiors, which also reflects respect for the value of the person of the nuns themselves. Again, it should be noted that this is a new and untested solution, which also arouses controversy.

### 2.3. Solution of the Irregular Sojourn of Religious Outside the Religious House

The regulations regarding the illegitimate stay of religious outside the religious house have changed significantly. CIC/1917 judged this situation strictly: according to can. 644, for several days, an illegitimately absent religious intending to return to the religious house in the future was called a runaway (fugitive); without an intention to return, he was called an apostate. According to can. 655 § 2, the superiors are to look for them carefully and, in the case of penance, to receive them; in the case of nuns, the local ordinary is obliged to look for them. If they do not return, such religious are subject to the punishments set forth in can. 2385 and 2386: automatic excommunication was reserved in exempt religious institutes to the superior, in other religious institutes—to the local ordinary of the place of the actual residence of the religious, and the religious automatically lose offices held in their order, and clerics with higher ordinations moreover fall into suspension reserved for the major superior.

CIC/1983 retained of these provisions in can. 665 § 2 only the obligation of the superiors to find an illegitimately absent member and to help him or her return and persevere in his or her vocation.

In addition, both codes know the sanction of the release of a religious *ipso facto* for particularly serious reasons: CIC/1917 lists in can. 646 public apostasy from the Catholic faith (*apostata a fide catholica*), a religious fugitive with a person of the opposite sex and a religious attempting to marry or becoming married, even if only in a civil form. Until recently, similar norms were contained in can. 694 § 1: public apostasy from the Catholic faith and the attempt to enter into or having entered into a marriage, even if only in a civil form.

However, because there have been many cases in which a religious has left the religious house with the intention of not returning without the circumstances listed in can. 694 § 1 CIC/1983, and it was not possible to establish contact with him or her, he or she could not be released from the religious institute for reasons leading to compulsory or optional release (can. 695 § 1 and 696)

because it was not possible to follow the procedure prescribed in can. 695 § 2 (gathering of evidence, communication to the dismissed and his defence) and in can. 697 (gathering of evidence, double reprimand, evaluation by the superior and his council). Therefore, it was necessary to resort to extraordinary measures similar to the case of release from the clerical state.<sup>18</sup> These measures were set out in the motu proprio of Pope Francis of 2019,<sup>19</sup> by which was added to can. 695 § 1 a new § 3 stipulating the possibility of declaring the release ipso facto of those religious who are illegally absent from the religious house according to can. 665 § 2 for at least a continuous 12 months. A new § 3 was added to the same canon, stipulating the obligation to confirm this declaration by an external superior: the Apostolic See, or in the case of religious institutes of diocesan law by the diocesan bishop according to the place of the seat of the institute. The effectiveness of this new norm of the Code of Canon Law was set for 10 April 2019, without retroactivity.

It should be noted that this amendment to CIC/1983 raised considerable questions about the method of its application. Therefore, as early as in September 2019, the Congregation for Institutes of Consecrated Life and Societies of Apostolic Life issued a circular paper specifying the application of the motu proprio *Communis vita*:<sup>20</sup>

- It must be not only an illegitimate absence from the community, but also untraceability (No. 1);
- Untraceability is also the case when only the phone, e-mail, social network profile or fictitious address is known (No. 2);
- In order to trace a religious, the major superior must request information from the confreres or co-sisters, former major superiors, bishops, the local clergy, family members or relatives, or—in accordance with state laws—from civil authorities (No. 3);
- The major superior must document in writing the attempts to trace the religious (No. 4);
- In the case of its untraceability, together with the Council, the major superior has to officially declare its untraceability and set the date of the beginning of the untraceability or *dies a quo* as well as the date of expiry of the period of 12 consecutive months (No. 5);

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<sup>18</sup> Congregazione per il clero, Lettera circolare a tutti gli Eminentissimi ed Eccellentissimi Ordinari loro Sedi, Prot. N. 2009 0556, 18 aprile 2009 and Congregazione per il clero, Lettera circolare a tutti gli Eminentissimi ed Eccellentissimi Ordinari loro Sedi, Prot. N. 2010/0823, 17 marzo 2010.

<sup>19</sup> Franciscus, Litterae apostolicae motu proprio datae *Communis vita* quibus nonnullae Codicis Iuris Canonici normae mutantur, 19 Martii 2019, *L'Osservatore Romano* (27 marzo 2019): 9.

<sup>20</sup> Congregazione per gli Istituti di vita consacrata e le Società di vita apostolica, Lettera circolare sul Motu proprio *Communis vita*, 8 settembre 2019 (Città del Vaticano: Libreria editrice Vaticana, 2019).

- After 12 consecutive months, it shall issue a declaration on the fact of absence for the required period (*declaratio facti*) and forward this declaration to the external superior, that is, the Apostolic See (the Congregation for Institutes of Consecrated Life and Societies of Apostolic Life), in the case of religious institutes of diocesan law to the bishop of the seat of the institute (No. 6); only with the confirmation of this declaration do the legal effects of the dismissal *ipso facto* from the religious institute occur.

It is clear that even in this difficult and delicate matter, the personal decision of the religious is seriously taken into account, albeit in this case in the negative direction—departure from the religious institute.

## Conclusions

It can be stated that the recent regulation of religious law, not only in the Code of Canon Law of 1983, but to a large extent in later documents, puts a real greater emphasis on the personal decisions and actions of religious in all the areas of research: religious vows as the basis of religious life, in particular by abolishing the legal effects of the distinction between solemn and simple vows; confessors as a necessary tool for the renewal of religious life, especially by guaranteeing the free choice of a confessor and abolishing the obligation to contact a regular or extraordinary confessor (although the freedom to choose a confessor is necessarily restricted in the case of contemplative monasteries); enabling the surrender of property as a result of canonical incapacity to own property and the acquisition of property, both for entire religious institutes with simple vows and, exceptionally, for their individual members; the strengthened position of internal superiors over external superiors in both religious congregations, especially female ones, and in nun’s monasteries, although the newly imposed obligation to include monasteries in federations and the strong position of president of the federation is an untested fact, provoking resistance even in professional circles; and finally, this time in a rather negative sense, the extended authority of the superiors in charge of dismissal from the religious institute due to illegitimate absence from the religious house.

We dare to say that there is again a frequent and intractable dilemma at play, not just a legal one: how to balance respect for the individual and his or her freedom and responsibility on the one hand, and to establish institutional instruments aimed more at protecting the common good, on the other.

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## La « personne » en droit monastique

### Résumé

L’accent mis sur la personne humaine et sa dignité a été appliqué de manière significative dans la nouvelle réglementation du droit de la vie consacrée, dont le nouveau Code de droit canonique de 1983 s’occupe ; ce droit est traité *in integrum* par rapport à l’ancien Code de droit canonique de 1917. Cet article ne décrit que quelques changements au droit des instituts religieux dans l’Église latine.

Le premier chapitre examine principalement la personne du moine et se concentre sur la question des vœux religieux comme base de la vie religieuse, sur les confesseurs comme outil indispensable pour renouveler la vie religieuse et pour modifier le concept de pauvreté, élément très important de la vie religieuse. Le deuxième chapitre est consacré à la gestion des instituts religieux ; y sont discutés la position renforcée des supérieurs internes par rapport aux supérieurs externes dans les congrégations religieuses, la position renforcée des supérieures des moniales et les pouvoirs étendus des supérieures en cas de renvoi d’un institut religieux en raison d’une absence illégale à la maison religieuse.

Comme il s’agit dans certains cas d’une toute nouvelle réglementation juridique, l’auteur n’hésite pas à exprimer ses critiques dans un texte professionnel.

Mots-clés : personne, Église catholique, droit de l’Église, religieux, religieuses, confession, propriété

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## La “persona” nel diritto monastico

### Sommario

L’accento messo sulla persona umana e sulla sua dignità è stato applicato in modo significativo nel nuovo ordinamento del diritto della vita consacrata, di cui si occupa il nuovo Codice di Diritto Canonico del 1983; tale diritto è trattato *in integrum* in relazione al vecchio Codice di Diritto Canonico del 1917. Questo articolo descrive solo alcune modifiche al diritto degli istituti religiosi nella Chiesa latina.

Il primo capitolo prende principalmente in esame la persona del monaco e si sofferma sulla questione dei voti religiosi come fondamento della vita religiosa, sui confessori come strumen-

to indispensabile per rinnovare la vita religiosa e sulla modificazione del concetto di povertà, elemento molto importante della vita religiosa. Il secondo capitolo è dedicato alla gestione degli istituti religiosi; si discutono la posizione rafforzata dei superiori interni nei confronti dei superiori esterni nelle congregazioni religiose, la posizione rafforzata dei superiori di monache e i poteri estesi dei superiori in caso di dimissione da un istituto religioso a causa di un'assenza illegale dalla casa religiosa.

Trattandosi in alcuni casi di una norma giuridica completamente nuova, l'autore non esita ad esprimere le sue critiche in un testo professionale.

Parole chiave: persona, Chiesa cattolica, diritto ecclesiastico, religioso, religioso, confessione, proprietà