

MODIFICATION OF THE SANCTION OF DISMISSAL OF MEMBERS LIVING IN SOCIAL FORMS OF CONSECRATED LIFE

MODYFIKACJA SANKCJI ZWOLNIENIA CZŁONKÓW ŻYJĄCYCH W SPOŁECZNOŚCIOWYCH FORMACH ŻYCIA KONSEKROWANEGO

Prof. Dr. Damián Němec OP

Palacký University in Olomouc, the Czech Republic
e-mail: damian.nemec@upol.cz; <https://orcid.org/0000-0002-9960-2452>

Abstract

The paper deals with the dismissal of members from religious institutes, secular institutes and societies of apostolic life (called “societies living in common without vows” in the 1917 Code of Canon Law) following its changes from the beginning of the 20th century to 2023 in the law of the Western Catholic Church and the Eastern Catholic Churches, with an emphasis on the legislation under the pontificate of Pope Francis. It deals with the changes in the legal nature of the dismissal procedure, the modifications of obligatory and optional dismissal, esp. in view of the decentralization of the procedure, and specially the modification of dismissal by the act itself (*ipso facto*), responding to the need to address the hitherto unsolvable situation of members who have left their community and avoid communicating with their superiors, also with analogy to the extraordinary method of dismissal from the clerical state in the case of clerics who have not exercised legitimately sacred ministry for at least five years and do not communicate with their superiors.

Keywords: Catholic Church, Eastern Catholic Churches, canon law, consecrated life, dismissal of members

Abstrakt

Artykuł dotyczy wydalenia członków z instytutów zakonnych, instytutów świeckich i stowarzyszeń życia apostolskiego (zwanym przez Kodeks Prawa Kanonicznego z 1917 r. „stowarzyszenia prowadzące życie wspólne”) w jego zmianach od początku XX w. do 2023 r. w prawie zachodniego Kościoła katolickiego i katolickich

Kościółów wschodnich, z naciskiem na ustawodawstwo za pontyfikatu papieża Franciszka. Omówiono zmiany w charakterze prawnym procedury wydalenia, modyfikacje wydalenia obligatoryjnego i fakultatywnego, w szczególności w kontekście decentralizacji, a zwłaszcza modyfikacji wydalenia przez sam akt (*ipso facto*), odpowiadając na potrzebę regulacji dotychczas trudnej do rozwiązania sytuacji członków, którzy porzucili swoją wspólnotę i unikają komunikowania się z przełożonymi, również z analogią do nadzwyczajnej metody wydalenia ze stanu duchownego w przypadku duchownych, którzy nie wykonywali legalnej posługi sakralnej i nie komunikowali się z przełożonymi przez co najmniej pięć lat.

Słowa kluczowe: Kościół katolicki, katolickie Kościoły wschodnie, prawo kanoniczne, życie konsekrowane, zwalnianie członków

Introduction

An indispensable part of the legal order is the resolution of undue situations, usually arising because of human weakness, by means of so-called conflict norms, even in the case of different societies (or social forms) of consecrated life¹ in which the members as consecrated persons accept the commitments of the evangelical counsels and, with the exception of secular institutes, the requirement of living together too.² These regulations include provisions for the dismissal of members.

In this paper, the first chapter will first examine the gradual transformation of the legal nature of the dismissal of members described in Church documents from the early 20th century to the present, focusing on the dismissal of members of different types of societies of evangelical counsels.

¹ The names of these entities changed significantly during the 20th century. While the 1917 Code of Canon Law used the terms orders, congregations and societies living in common without vows, the 1983 Code of Canon Law uses the terms religious institutes, secular institutes (introduced in 1947) and societies of apostolic life; the 1990 Code of Canons of the Eastern Churches uses the terms religious institutes (monasteries, orders, congregations), secular institutes, societies of apostolic life and societies of common life according to the manner of religious. Although the legislation did not and does not know an inclusive term for all social forms of consecrated life, we use the term “societies of evangelical counsels” (in the original *Die Rätegemeinschaften*) [Ruf 1989, 154] as an expression that includes all entities named so far.

² It is therefore logical that in this article we do not discuss members of third orders or similar associations, which are mentioned in the 1917 Code of Canon Law in can. 702-706 and in the 1983 Code of Canon Law in can. 303 (they are not mentioned in the 1990 Code of Canons of the Eastern Churches).

In the second chapter, we will look at the most recent regulation of a special type of dismissal, namely *ipso facto* dismissal, and in the third chapter we will discuss changes in the area of obligatory and optional dismissal, with an emphasis on the specification of the authorities entitled to dismiss. In the short fourth chapter having the character of a specific supplement we want to point out the analogy of *ipso facto* dismissal with the extraordinary form of dismissal from the clerical state.

Since too often only the Western, Latin Church *sui iuris* is discussed, for the sake of completeness we want to emphasize the legal regulation common to the Eastern Catholic Churches, which is too little known in our area.

In doing so, we will draw primarily on a large number of official Church documents, or even their drafts, and to a lesser extent on specialist literature.

1. The legal nature of dismissal

1.1. Transformations of dismissal in the 20th century

The procedure for dismissal was gradually changed and refined in the 20th century.

The basis was the decree of the Sacred Congregation for Religious *Quum singulae* of 16 March 1911,³ which distinguished four situations for religious: 1) the ordinary way of dismissal after a previous threefold admonition (nos. 4-15); 2) immediate dismissal in a particularly urgent situation (no. 16); 3) immediate expulsion from the religious house on the basis of a single offence involving great offence and the subsequent procedure of dismissal (no. 17); and 4) dismissal *ipso facto*, i.e. by force of law (no. 18); in addition, the way of dismissal of nuns and religious sisters (no. 21). The ordinary procedure of dismissal is subject to a conciliar hearing in the tribunal or curia of a competent superior – either the superior general in the case of central government or the abbot general in the case of monastic congregations, and in addition to the superior there must be at least four other members of the tribunal or curia (no. 1); in addition, there must always be a promoter of justice (no. 2), to whom must be sent the dossier

³ Sancta Congregatio de Religiosis, Decretum *Quum singulae* de methodo servanda in ferenda sententia expulsionis vel dimissionis ab ordinibus et institutis religiosis (16.03.1911), AAS 3 (1911), p. 235-38.

of the precedent hearing by the superior of the province or quasi-province (no. 13); should the religious appeal to the Sacred Congregation for Religious within ten days of the notification of the decree of dismissal, the decision on the dismissal devolves on that congregation (no. 15). In the case of the dismissal of nuns or religious sisters, it belongs to the abbess or superior, with the consent of her council expressed by secret ballot, to examine the reasons for the dismissal; the dossier is to be sent to the local Ordinary and before that to the religious superior of the nuns, if the nuns are subject to him, he transmits his *votum* to the local Ordinary; the decision of dismissal is always subject to the approval of the Holy See for its validity (no. 21). In the case of an *ipso facto* dismissal, that is, on account of public apostasy from the Catholic faith, apostasy from an order or institute without return within three months, flight from the convent with a woman, and still less on account of a civil marriage or an attempt to contract or validly enter into a canonical marriage, verification of the reasons by the Superior General or Provincial with his advice is sufficient to declare the dismissal.

The 1917 Code of Canon Law⁴ significantly elaborated this basis by distinguishing legally six situations: 1) *ipso facto* dismissal (Canon 646); 2) dismissal of members with temporary vows (Canons 647-648); 3) dismissal of members with permanent vows in non-exempt clerical orders or in lay orders, i.e., among others in women's orders, including nuns (Canons 649-652); 4) the special situation of the same persons in a situation of great scandal or very grave harm threatening the community (Canon 653); 5) the dismissal of members of exempt clerical religious orders (Canons 654-667); 6) the special situation of the same persons in a situation of danger of default because of great scandal or very grave harm threatening the community (Canon 668 with reference to Canon 653). In terms of procedure, several types of procedure are distinguished. In the case of an *ipso facto* dismissal, i.e., on account of public apostasy from the Catholic faith, flight from the monastery with a woman in the case of a religious man, or with a man in the case of a religious sister, or an attempt to contract or enter into a marriage canonical or civil, a simple verification of the reasons by the Superior General or Provincial with his council is sufficient to declare the dismissal. In the case of dismissal of members with

⁴ *Codex Iuris Canonici Pii X Pontificis Maximi iussu digestus Benedicti Papae XV auctoritate promulgatus* (27.05.1917), AAS 9 (1917), pars II, p. 1-593 [hereinafter: CIC/17].

temporary vows, the ordinary procedure according to the 1911 regulations is simplified by omitting the requirement of a threefold admonition, both for religious men and for religious sisters and nuns (with a further modification: in the case of nuns, the dossier is sent either to the local Ordinary or to the Superior of the monastery of nuns), while retaining the right of recourse (administrative appeal) to the Holy See (without specifying a time limit; this was set in 1923 at ten useful days)⁵ [Pejška 1927, 191]. In the case of members of non-exempt religious orders and institutes with permanent vows, the normal procedure of the 1911 regulations is maintained, both for religious men and for religious sisters and nuns, with the difference that the approval of the external superior is always required for validity: of the Apostolic See in the case of religious orders and institutes of pontifical law (and still in the case of nuns), or of the local Ordinary according to the domicile of the religious house in the case of religious orders and institutes of diocesan law. In the case of members of exempted clerical orders of pontifical law, the 1911 procedure is made more difficult by the requirement of an official determination of the incorrigibility of the member (both at the level of the religious province and at the level of the Superior General), by the strict requirements of written formalities, and by the necessity of approval by the Sacred Congregation for Religious, or in the case of remote areas, by the requirement of approval by at least three other experienced and prudent religious. There are no special provisions for recursion when the latter members are dismissed. The same regulations also obliged, according to canon 681, the members of the societies of men and women living together without vows (*societates sive virorum sive mulierum in communi viventium sine votis*) [Bar 1977, 325].

The same procedure was adopted for the Eastern Catholic Churches in the 1952 *motu proprio Postquam Apostolicis Litteris*⁶ in Canons 197-223 for religious, and in Canon 231 for societies of men and women living together without vows,⁷ albeit in a somewhat more logical arrangement of the subject and more precise wording.

⁵ Sacra Congregatio de Religiosis, *Dubium seu declaratio de recursu contra decretum dimissionis religiosi professi a votis temporariis*, AAS 15 (1923), p. 547-48.

⁶ Pius PP. XII, *Motu proprio Postquam Apostolicis Litteris de religiosis, de bonis Ecclesiae temporalibus et de verborum significatione pro Ecclesiis Orientalibus* (09.02.1952), AAS 44 (1952), p. 65-152.

⁷ The prescriptions of the *motu proprio Postquam Apostolicis Litteris*, in conformity with

For the recently established secular institutes, the provisions of Article VIII of the Apostolic Constitution *Provida Mater Ecclesia*⁸ were applied for the dismissal of members: the dismissal is to be regulated by its own rules of law, if they exist, and by the valid rules of law (i.e. especially CIC/17) designed for non-exempt congregations and societies of community life (*Societates vitae communis*),⁹ while the issuing of the decree of dismissal belongs to the local Ordinary for members with temporal bonds in all secular institutes and for members with permanent bonds in institutes of diocesan law, and to the Apostolic See in institutes of pontifical law [Escudero 1954, 272-80].

The procedure for dismissal was therefore quite complicated. While for most religious it was an administrative process, for exempt clerics in religious institutes, it was connected with a procedure (in Latin *processus*), which was by its nature a judicial one (in Latin *processus iudicialis*, Canon 654 CIC/17 and *motu proprio Postquam Apostolicis Litteris*, title before Canon 206) [Pejška 1927, 193-94; De Paolis 1992, 382], effectively a quasi-judicial penal procedure with many characteristics of an administrative (extra-judicial) procedure. It is not surprising that after the 1966 *motu proprio Ecclesiae Sanctae*¹⁰ many religious institutes made use of the provision of no. 6 of its Part II: to establish *ad experimentum* norms different from those of the CIC/17, and so for the dismissal of exempt members in clerical orders of pontifical law, reference was often made to the simpler pro-

the CIC/17, distinguished only two groups of persons: on the one hand, monks and other religious of both sexes (Canons 1-223) and, on the other hand, societies of men and women living together without vows, following the example of the religious (Canons 224-231).

⁸ Pius PP. XII, *Constitutio apostolica Provida Mater Ecclesia* de statibus canonicis institutisque saecularibus christianae perfectionis adquirendae (02.02.1947), AAS 39 (1947), p. 114-24.

⁹ It is interesting that a somewhat different term appears here than *societates sive virorum sive mulierum in communi viventium sine votis* contained in the CIC/17 and in the *motu proprio Postquam Apostolicis Litteris*, but it is clear from the context that it is the same reality.

¹⁰ Paulus PP. VI, *Litterae apostolicae motu proprio datae Ecclesiae sanctae*. Normae ad quaedam exsequenda SS. Concilii Vaticani II Decreta statuuntur (06.08.1966), AAS 58 (1966), p. 757-87; Congregazione per i religiosi e gli istituti secolari, Lettera circolare *La Sacra Congregazione* nec la quale si stabilisce la procedura di seguire in caso di dimissione di una religiosa di voti perpetui (1975), "Enchiridion Vaticanum" 5, nos. 1746-752, p. 1158-161.

cedure in Canons 649-653 [Bar 1977, 316-17]. This solution was generally approved by the Apostolic See in 1974.¹¹

The matter was significantly revised in the 1983 Code of Canon Law¹² and again described in detail in Title II dealing with religious institutes.¹³ In the establishment of norms, there was no longer a distinction between religious institutes with solemn and simple vows [Andres 1985, 56] or between exempt and non-exempt religious institutes [Castaño 1995, 128-30]; the distinction was done for *ipso facto*, obligatory and optional dismissal, as well as for expulsion from the religious house in the case of urgency. Dismissal *ipso facto* was linked to two reasons: notorious apostasy from the Catholic faith and the contracting or attempting to contract a marriage, even a civil one, reason is declared by the major superior with his council after the collection of proofs (Canon 694). The obligatory dismissal is discussed by the major superior with his council, gives the member the opportunity to defend himself, and then the superior sends the dossier to the superior general (Canon 695); the optional dismissal is, moreover, linked to (only) a double admonition (Canon 696). The superior general discusses the matter collegially (in the manner of a chapter) with his council, which has at least four members, and there is no longer any mention of a promotor of justice, and issues a decree of dismissal. The decree of dismissal required the approval of an external superior to be valid: of the Holy See in the case of institutes of pontifical law, of the diocesan bishop according to the seat of the religious house in the case of institutes of diocesan law. In the case of monasteries (*monasteria sui iuris*) dependent on the diocesan bishop (Canon 615), the local superior sent the dossier to the diocesan bishop (Canon 699 § 2), who would issue a decree of dismissal [ibid., 315-16] (monasteries of nuns subordinate to a religious superior according to Canon 614 thus sent the dossier to the Holy See). Expulsion from a religious house in an urgent case (grave

¹¹ Sacra Congregatio pro Religiosis et Institutis Saecularibus, *Decretum Processus iudicialis de dimissione religiosorum qui vota perpetua nuncuparunt in religione clericali exempta* (02.03.1974), AAS 66 (1974), p. 215-16.

¹² Pontificia Commissio Codicis Iuris Canonici authentice interpretando, *Codex Iuris Canonici fontium annotatione et indice analytico-alphabetico auctus*, Libreria Editrice Vaticana, Città del Vaticano 1989 [hereinafter: CIC/83].

¹³ CIC/83 distinguishes three types of societies of evangelical counsels: religious institutes (Canons 607-709), secular institutes (Canons 710-730) and societies of apostolic life (Canons 731-746).

external scandal or very serious damage threatening the institute) belongs to the major superior, in case of danger of default to the local superior with his council; after that, the dismissal procedure was to be initiated or the matter was to be referred to the Apostolic See (Canon 703). These proceedings were clearly of an administrative nature, leading to the imposition of a sanction. These regulations were also applied to the societies of apostolic life (Canon 746) and, in the situation of *ipso facto* and obligatory dismissal, to secular institutes, which are supposed to provide in their constitutions for other grounds for dismissal, that is, for both obligatory and optional one (Canon 729). At the same time, it is worth noting that the requirement of approval of the decree of dismissal by an external authority, resulting from the diction of Canon 700, was not included in the 1980 draft code, i.e. for religious institutes in Canons 620-628, for secular institutes in Canon 655, and for societies of apostolic life in Canons 688-672 [cf. Beyer 1988, 269-70].

The norms of the CIC/83 were taken over into the Code of Canons of the Eastern Churches¹⁴ not without modification, but only in a similar way. The greater decentralization characteristic of the entire CCEO is manifested here, namely without the requirement of approval of the decree of dismissal by the external superior. This is enshrined for the various groups of persons bound by the obligations of the evangelical counsels: for monks and nuns in Canons 497-503, for religious orders and congregations in Canons 551-553, for societies of community life according the manner of the religious (*societates vitae communis ad instar religiosorum*) in Canon 562 and for secular institutes in Canon 568 [Basile 1993, 256-71, 304-305, 313].

1.2. Manifestations of the debate on the nature of dismissal at the beginning of the 21st century

It is not surprising, therefore, that the question of the legal nature of dismissal from religious institutes (and consequently from societies of apostolic life and secular institutes) was also a subject of reflection and discussion at the beginning of the 21st century.

As part of the preparation of the new penal law of the Latin Church *sui iuris*, the question raised in the 2011 comprehensive draft of the new

¹⁴ *Codex Canonum Ecclesiarum Orientalium auctoritate Ioannis Pauli PP. II promulgatus* (18.10.1990), AAS 82 (1990), p. 1045-363 [hereinafter: CCEO].

Book VI of the CIC/83:¹⁵ “3. [...] What should be the nature of the dismissal from the religious institute: penal or other?” Answers were expected by February 2012.

It is a pity that the summary of the answers has not been published anywhere. Therefore, it is only possible to present our opinion. We are in favour of maintaining the nature of the administrative procedure for three reasons: 1) Penal proceedings are, generally considered, more difficult to implement on the part of the superiors, primarily because of the absence of a permanent judicial tribunal;¹⁶ 2) Proceedings for dismissal must also be conducted in religious institutes where the superiors are not ordinaries or even priests, and here the exercise of jurisdiction is also problematic from the point of view of legal and ecclesiological principles;¹⁷ 3) Since the obligatory dismissal in the cases mentioned in Canon 695 is the consequence of a juridically recognized crime (both by judicial and extrajudicial proceedings), the dismissal from the institutes of consecrated life and the societies of apostolic life should be either included among the penalties mentioned in Book VI of the CIC/83, which does not seem appropriate, or a dismissal proceeding could be duly initiated only after the end of a penal proceeding for the commission of the offence, which, as penal in nature, would result in the successive imposition of a second punishment for the same crime, which would be all the more evident if the first proceeding regarding the commission of the offence was conducted by a different authority than the dismissal proceeding (cf. Canon 695 § 2). It would therefore be a clear violation of the principle of *ne bis in idem* of penal law.

¹⁵ Pontificium Consilium de Legum Textibus, *Schema recognitionis libri VI Codicis Iuris Canonici: (Reservatum)*, Typis Vaticanis MMXI.

¹⁶ The absence of a permanent judicial tribunal composed of personnel with specialized training in canon law and the necessary experience was already evident from the provisions for dismissal contained in the CIC/17 and the 1952 *motu proprio Postquam Apostolicis Litteris*, when the tribunal for the implementation of the procedure officially called *processus iudicialis* was to be composed of at least four members of the council, together with the superiors, who were overwhelmingly persons without specialized training in canon law.

¹⁷ It should be noted, however, that under the pontificate of Pope Francis there is an obvious tendency to strengthen the competence of the laity in matters not necessarily linked to the ordination power, which calls into question the wording of Canon 129 CIC/83 and Canon 979 CCEO.

Finally, in the 2021 promulgated Book VI of the CIC/83, no changes were introduced regarding the dismissal of members of different communities of the evangelical counsels.¹⁸

2. Regulation of dismissal *ipso facto*

2.1. Addition of a new reason in 2019 by direct amendment of CIC/83

The practice of life has shown a considerable legal difficulty: the impossibility of a legal solution of the situation of those members of religious institutes and societies of apostolic life who have left their communities and refuse to communicate with their superiors. Therefore, the *ipso facto* dismissal was modified by the addition of another reason in 2019, with force from 10 April 2019, by a direct amendment of Canon 694. The Pope Francis, in Article 1 of the *motu proprio Communis vita*¹⁹ added a new para. 3 to § 1 and a new § 3:

<p>Can. 694 – § 1. Ipso facto dimissus ab instituto habendus est sodalis qui:</p> <p>1° a fide catholica notorie defecerit;</p> <p>2° matrimonium contraxerit vel, etiam civiliter tantum, attentaverit;</p> <p>3° a domo religiosa illegitime absens fuerit, secundum can. 665 § 2, duodecim continuos menses, prae oculis habita eiusdem sodalis irreperibilitate.</p>	<p>Canon 694 § 1. A member must be held as ipso facto dismissed from an institute who:</p> <p>1. has defected notoriously from the Catholic faith;</p> <p>2. has contracted marriage or attempted it, even only civilly;</p> <p>3. has been illegitimately absent from the religious house, pursuant to can. 665 § 2, for 12 consecutive months, taking into account that the location of the religious himself or herself may be unknown.</p>
--	---

¹⁸ Franciscus PP., *Constitutio apostolica Pascite gregem Dei* qua Liber VI Codicis Iuris Canonici reformatur + Adnexus Liber VI De sanctionibus poenalibus in Ecclesia (23.05.2021), AAS 113 (2021), p. 534-55.

¹⁹ Idem, *Litterae apostolicae motu proprio datae Communis vita* quibus nonnullae Codicis Iuris Canonici normae mutantur (19.03.2019), AAS 111 (2019), p. 483-85.

<p>§ 3. In casu de quo in § 1 n. 3, talis declaratio ut iuridice constet, a Sancta Sede confirmari debet; quod ad instituta iuris dioecesiani attinet, confirmatio ad principis Sedis Episcopum spectat.</p>	<p>§ 3. In the case envisaged by § 1 n. 3, in order to be juridically constituted, this statement must be confirmed by the Holy See; for institutes of diocesan right the confirmation rests with the Bishop of the principal See.</p>
--	---

By virtue of Canon 746 CIC/83, this regulation also applies fully to societies of apostolic life, although there is no such mention in the *motu proprio*.

On the other hand, in secular institutes there is usually no living together in the same house, hence the subsequent modification of Canon 729 in Article 2 of this *motu proprio*:

<p>Can. 729 – Sodalitas ab instituto dimittitur ad normam cann. 694 § 1, 1° et 2° atque 695; constitutiones praeterea determinant alias causas dimissionis, dummodo sint proportionate graves, externae, imputabiles et iuridice comprobatae, atque modus procedendi servetur in cann. 697-700 statutus. Dimisso applicatur praescriptum can. 701.</p>	<p>Canon 729 – Dismissal of a member of the institute proceeds pursuant to cann. 694 §1, 1 and 2; and 695. The constitutions may also define other causes for dismissal, provided that they be commensurately serious, external, attributable and juridically proven, and that the procedure established in cann. 697-700 also be observed. The provisions of can. 701 are applicable to the dismissed member.</p>
---	---

This is a legal declaration of an already existing factual state, theoretically *ex tunc*, albeit with actual legal effects *ex nunc*, and these changes also concern only the Latin Church *sui iuris*, not the Eastern Catholic Churches, since they are not reflected in the text of the CCEO (Canon 497).

2.2. Implementing guidelines on the *ipso facto* dismissal of 2019

Already in September 2019, the Congregation for Institutes of Consecrated Life and Societies of Apostolic Life issued the circular *Siamo consapevoli*, in which it set out how to apply the new legal reason for *ipso facto* dismissal.²⁰

The Congregation notes that in the daily performance of its tasks it has observed the following situations in particular: 1) religious who have left

²⁰ Congregazione per gli Istituti di vita consacrata e le Società di vita apostolica, Litterae circulares *Siamo consapevoli* de Litteris Apostolicis Motu datis «*Communis vita*» (08.09.2019), “Communicationes” 51 (2019), p. 423-26.

the religious house without the permission of their superior, i.e., illicitly with the intention of freeing themselves from the authority of the superiors (cf. Canon 665 § 2); 2) religious who, after having received permission for a licit absence (cf. Canon 665 § 1) or having been granted the indult of exclaustation (cf. Canon 686 § 1), have not returned to the community after the expiration of the prescribed period; 3) religious who have become unavailable after their unlawful departure or have not given to their superior a contact address or a place of residence or at least some information about where they can be reached.

Therefore, Canon 694, § 1, para. 3, applies exclusively to religious and to members of societies of apostolic life who are illicitly absent and unavailable. It does not apply to religious lawfully absent but unavailable, nor to religious illicitly absent but available.

The specification of unavailability is important too. The Circular states that a person is considered unavailable if only a telephone number, email address, social media profile or fictitious address is known. In all of these cases, if the contacted person does not respond, it is not possible to discuss the matter with him or her in person, nor can he or she legally defend him or herself, even though the absence of a defence is tied to his or her personal decision.

After twelve continuous months have elapsed during which the situation of the unavailability of the illicitly absent member has not changed in any way, the competent superior must proceed to a declaration of fact in order that the dismissal may be established through the juridical means provided for in Canon 694. This declaration must be confirmed by the Holy See in the case of institutes of pontifical law, or by the diocesan bishop of the principal see in the case of institutes of diocesan law.

3. Entry into force of obligatory and facultative dismissal of members and possibility of legal resistance

3.1. The 2002 correction of the internal reference in CIC/83

Although a draft of the new Book VI of CIC/83, sent out for comments in 2011, also included the consistent implementation of the necessary changes in other parts of the Code, this implementation is missing in the promulgated version of 2021. It was therefore necessary to correct

this error by a separate papal document: the motu proprio *Recognitum librum VI* of 2022:

<p>Can. 695 – § 1. Sodalis dimitti debet ob delicta de quibus in cann. 1397, 1398 et 1395, 1395, 1397 et 1398, nisi in delictis, de quibus in cann. 1395 § 2–1395 §§ 2–3 et 1398 § 1, Superior maior censeat dimissionem non esse omnino necessariam et emendationi sodalis atque restitutioni iustitiae et reparationi scandali satis alio modo consuli posse.</p>	<p>Canon 695 – § 1. A member must be dismissed for the delicts mentioned in cann. 1397, 1398 et 1395, 1395, 1397 et 1398, unless in the delicts mentioned in can. 1395–§ 2–1395 §§ 2–3 et 1398 § 1, the superior decides that dismissal is not completely necessary and that correction of the member, restitution of justice, and reparation of scandal can be resolved sufficiently in another way.</p>
--	--

There is no factual change here.

3.2. Entry into force of compulsory and optional dismissal of members amended in 2022

Changes regarding the dismissal of members were introduced in 2022 by Article 7 of the motu proprio of Pope Francis *Competentias quasdam decernere* with force from 15 February 2022,²¹ so now there is no need for confirmation of the decree of dismissal by an external authority. A change has occurred in both of the current codes of canon law.

The change in CIC/83 applies first to monasteries *sui iuris* (i.e. also monasteries of nuns) under the jurisdiction of the diocesan bishop in Canon 699 § 2:

<p>§ 2. In monasteriis sui iuris, de quibus in can. 615, dimissionem decernere pertinet ad Episcopum dioecesanum, cui Superior acta a consilio suo recognita submittat Superiorem Maiorem, de consensu eius Consilii.</p>	<p>§ 2. In the autonomous monasteries mentioned in can. 615, it belongs to the diocesan bishop, to whom the superior is to submit the acts examined by the council; major superior, with the consent of his or her council, to decide on dismissal.</p>
---	---

²¹ Franciscus PP., Litterae apostolicae motu proprio datae *Competentias quasdam decernere* quibus aliquae normae immutantur Codicis Iuris Canonici et Codicis Canonum Ecclesiarum Orientalium (11.02.2022), AAS 114 (2022), p. 290-95.

The second change in CIC/83 concerns other religious institutes and is reflected in Canon 700:

<p>Can. 700 – Decretum dimissionis vim non habet, nisi a Sancta Sede confirmatum fuerit, cui decretum et acta omnia transmittenda sunt; si agatur de instituto iuris dioecese- sani, confirmatio spectat ad Episcopum dioecesis ubi sita est domus, cui religiosus adscriptus est simul ac ei, cuius interest, notificatur. Decretum vero, ut valeat, indicare debet ius, quo dimissus gaudet, recurrenti intra decem dies a recepta notificatione ad auctoritatem competentem. Recursus effectum habet suspensivum.</p>	<p>Canon 700 – A decree of dismissal does not have effect unless it has been confirmed by the Holy See, to which the decree and all the acts must be transmitted; if it concerns an institute of diocesan right, confirmation belongs to the bishop of the diocese where the house to which the religious has been attached is situated from the time that it is communicated to the member concerned. To be valid, however, the decree must indicate the right which the dismissed possesses to make recourse to the competent authority within ten days from receiving notification. The recourse has suspensive effect.</p>
--	---

A corresponding change was introduced into the CCEO regarding the dismissal of members of monasteries with temporary vows in Canon 499, but with the preservation of the significant rights of the patriarchs (and, by the power of Canon 152, also of the major archbishops):

<p>Can. 499 - Perdurante professione temporaria sodalis dimitti potest a Superiore monasterii sui iuris de consensu eius consilii secundum can. 552, §§2 et 3, sed dimissio, ut valeat, confirmari debet ab Episcopo eparchiali vel, si ius particulare ita fert pro monasteriis intra fines territorii Ecclesiae patriarchalis sitis, a Patriarcha.</p>	<p>Canon 499 – A member can be dismissed during temporary profession by the superior of the monastery <i>sui iuris</i> with the consent of his or her council according to can. 552 §§2 and 3, but, for validity, the dismissal must be confirmed by the eparchial bishop or by the patriarch if particular law so establishes for monasteries situated with the territorial boundaries of the patriarchal Church.</p>
---	--

For the completeness it is worth recalling that for the dismissal of members of monasteries with permanent vows is, according to the provisions of Canon 500 § 1, competent the president of the monastic confederation or the superior of a non-confederated monastery with the consent of his council, consisting in this case of at least four other members.

For the dismissal of members of Eastern orders and congregations with temporary vows, the amended Canon 552 provides a solution similar to Canon 700 of the Western Code:

<p>Can. 552 § 1: Sodalis a votis temporariis dimitti potest a Superiore generali de consensu sui consilii, nisi in statutis dimissio reservatur Episcopo eparchiali vel alii auctoritati, cui ordo vel congregatio subiectus est.</p>	<p>Canon 552 § 1 A temporarily professed member can be dismissed by the superior general with the consent of his or her council unless the dismissal is reserved in the statutes to the eparchial bishop or another authority to which the order or congregation is subject.</p>
--	--

For the completeness: the dismissal of members of Eastern orders and congregations with perpetual vows, according to the provisions of Canon 553, and of members of the societies of community life with perpetual vows, according to the provisions of Canon 562 § 3, are governed by the regulations for members of monasteries (Canon 500). In contrast, the dismissal of members of secular institutes with perpetual vows is governed according to Canon 568 § 2 by the provisions of the statutes of the individual secular institutes, while retaining the requirement of approval of the decree of dismissal by the eparchial bishop or other designated higher authority. The dismissal of members of societies of apostolic life is governed according to the provisions of Canon 572 only by the particular law of the proper Church *sui iuris* or by the law established by the Apostolic See.

It is therefore clear that these changes aim at greater decentralisation by strengthening the principle of subsidiarity.

3.3. Legal possibilities to oppose the decree of dismissal – the original status and the 2022 and 2023 amendments

Since the dismissal is clearly an administrative procedure, the original diction of both CIC/83 and CCEO envisaged the application of the ordinary administrative recourse (Canons 1732-1739 CIC/83, Canons 996-1006 CCEO). Thus, it was first necessary to apply for a modification or revocation of the decision within the preemptory period of 10 days to the authority which had issued the decree of dismissal, followed by the recourse itself (according to Canon 700 CIC/83 within 10 days, although the general period according to Canon 1737 § 2 is 15 days; according to Canon 501 § 2 of the CCEO is 15 days, the same as the general time limit

for an administrative appeal under Canon 1001). Authentic interpretation of Canon 700 CIC/83 in 1986²² clarified that in the Latin Church *sui iuris*, the competent authority to accept an appeal against a decree of dismissal is the then Sacred Congregation for Religious and Secular Institutes, which brings from the 1988 Apostolic Constitution of John Paul II *Pastor bonus*, the name Congregation for Institutes of Consecrated Life and Societies of Apostolic Life²³ and, since the 2022 Apostolic Constitution of Pope Francis *Praedicate Evangelium*, the name Dicastery for Institutes of Consecrated Life and Societies of Apostolic Life.²⁴

The possibilities of legal resistance against all decrees of dismissal are provided for in CIC/83 by Canon 700, which has been amended twice: first in 2022 by the *motu proprio* *Competentias quasdam decernere*, then in 2023 by *motu proprio* *Expedit ut iura*.²⁵ The text below indicates the two changes, the latter modifications by the second mentioned *motu proprio* being indicated by a double strikethrough and bold italics.

²² Pontificia Commissio Codici Iuris Canonici authentice interpretando, *Responsiones ad proposita dubia* (28.02.1986), AAS 78 (1986), p. 1323.

²³ Joannes Paulus PP. II, Constitutio apostolica de Romana curia *Pastor bonus* (28.06.1988), AAS 80 (1988), p. 841-930; Articles 105-111.

²⁴ Franciscus PP., Constitutio apostolica de Romana curia *Praedicate evangelium* (19.03.2022), "L'Osservatore Romano" 162 (2022), n. 74 (31.03.2022), p. I-XII, Articles 121-127.

²⁵ Idem, Lettera apostolica in forma di *motu proprio* *Expedit ut iura* con la quale vengono modificati i termini di ricorso del membro dimesso da un istituto di vita consacrata (02.04.2023), "L'Osservatore Romano" 163 (2023), n. 78 (03.04.2023), p. 10.

<p>Can. 700 – Decretum dimissionis in sodalem professum latum vim non habet, nisi a Sancta Sede confirmatum fuerit, cui decretum et acta omnia transmittenda sunt; si agatur de instituto iuris dioecesanii, confirmatio spectat ad Episcopum dioecesis ubi sita est domus, cui religiosus adscriptus est simul ac ei, cuius interest, notificatur. Decretum vero, ut valeat, indicare debet ius, quo dimissus gaudet, recurrenti, absque petitione de qua in can. 1734, § 1, intra decem triginta dies a recepta notificatione ad auctoritatem competentem. Recursus effectum habet suspensivum.</p>	<p>Kán. 700 – A decree of dismissal issued in the case of a professed member does not have takes effect unless it has been confirmed by the Holy See, to which the decree and all the acts must be transmitted; if it concerns an institute of diocesan right, confirmation belongs to the bishop of the diocese where the house to which the religious has been attached is situated from the time that it is communicated to the member concerned. To be valid, however, the decree must indicate the right which the dismissed possesses to make recourse to the competent authority within ten thirty days from receiving notification without the petition mentioned in can. 1734, § 1 CIC. The recourse has suspensive effect.</p>
--	--

These changes to the CIC/83 have made the procedure for administrative recourse much simpler and clearer.

In CCEO, the legal situation is more nuanced. The possibility of recourse against the dismissal of members of monasteries is provided for in Canon 501 § 2 of the CCEO, and Canon 553 regarding recourse against the dismissal of members with permanent bonds from religious orders and congregations, and Canon 562 § 3 concerning the recourse against the dismissal of members with permanent obligations in societies of community life following the model of the religious. Canon 501 § 2 was amended in 2022 by Article 7 of the motu proprio *Competentias quasdam decernere*:

<p>Can. 501 § 2: Sodalis vero potest adversus decretum dimissionis intra quindecim dies cum effectu suspensivo sive recursum interponere sive; nisi decretum dimissionis a Sede Apostolica confirmatum est, postulare, ut causa via iudiciali tractetur.</p>	<p>Canon 501 § 2. However, the member can, within fifteen days, either make recourse with suspensive effect against the decree of dismissal or, unless the decree of dismissal has been confirmed by the Apostolic See, request that the case be handled judicially.</p>
--	---

4. Analogy of the new regulation of *ipso facto* dismissal with dismissal from the clerical state

In the practice of dismissal from the clerical state, there were also situations that were practically unresolvable using the standard means given by the provisions of CIC/83. Therefore, there were extraordinary empowerments granted to the Congregation for the Clergy, announced by two circulars of that Congregation:²⁶ of 2009, containing mainly substantive norms,²⁷ and 2010, containing detailed procedural norms.²⁸

The analogy with the *ipso facto* dismissal is the third extraordinary empowerment defined in 2009: “III. The special faculty to handle cases of clerics who having freely abandoned the ministry for a period of more than five consecutive years and who, after careful verification of the facts insofar as this is possible, persist in such freely chosen and illicit absence from the ministry, taking this situation into account, to declare then their dismissal from the clerical state, with dispensation from the obligations consequent to ordination, including that of celibacy.”

For the application of the third empowerment, the 2010 Circular provides for a preliminary investigation modelled on the procedure prior to a cleric’s request for a dispensation from celibacy, resulting in a dossier sent to the Apostolic See, with the following modifications: 1) the impossibility or extreme difficulty preventing the application of due process by way of a request by the cleric or by way of penal proceedings must be documented; 2) only priests may take part in the proceedings as officials; 3) the accused cleric may choose an attorney or deputy; 4) a promotor of justice (either permanently appointed by the court or appointed ad hoc) also intervenes throughout the proceedings; 5) in addition to the vota of the instructor of the case and the ordinarius, the opinion (*observationes*) of the defender of justice is required; 6) the Ordinary’s *votum* must include

²⁶ Since the topic of extraordinary empowerment for dismissal from the clerical state serves only for a brief comparison in this paper, we refrain in this case from referring to the already rich professional literature.

²⁷ Congregazione per il Clero, Lettera circolare Prot. N. 2009.0556 (18.04.2009), “Enchiridion Vaticanum” 26, nos. 407-450, p. 286-97.

²⁸ Congregazione per il Clero, Lettera circolare Prot. N. 2010.0823, “Ius Ecclesiae” 23 (2011), p. 229-35.

an evaluation of the evidence for each individual accusation, both *de iure* and *de facto*.

The Ordinary then sends the entire dossier of the application for the third empowerment to the Apostolic See, i.e. to the then Congregation for the Clergy, from 2022 to the Dicastery for the Clergy.

Here too, therefore, it is a legal declaration of an already existing state of fact, theoretically *ex tunc*, albeit with actual legal effects *ex nunc*, and these changes also concern only the Latin Church *sui iuris*.

Conclusion

In the early 20th century, the procedure for dismissal of members was understood in some cases as an administrative process, and for exempt clerical orders and congregations as a penal trial, although such a procedure in the vast majority of cases could not meet the requirements of a trial conducted by an established diocesan or higher tribunal. It thus necessarily contained elements characteristic of an administrative process, which is why it has been called a “quasi-judicial” process by some canonists. In the course of the preparation of the new Code of Canon Law (promulgated in 1983), the procedure for dismissal of members was established as a distinctly administrative procedure, including the remedies of administrative recourse or, in the case of the Eastern Catholic Churches, application for review by ordinary judicial process.

With the emphasis on decentralisation and the principle of subsidiarity, the role of internal superiors in dismissing members has been strengthened since 2022. The only exception is now the respect for the position of the Patriarch (or the Major Archbishop) in the Eastern Catholic Churches, if the particular law of the Church *sui iuris* so provides. Thus, in the Latin Church *sui iuris*, the solution contained in the 1980 schema of the Code of Canon Law, which did not provide for the confirmation of the decree of dismissal by an external superior, has been applied.

A specific issue is the introduction of a new reason for dismissal from a religious institute or society of apostolic life *ipso facto* in the case of at least twelve months of illegitimate absence and unavailability of a member, which was previously unresolvable by ordinary legal procedures. This brings the *de iure* situation into line with the *de facto* situation, as in the comparable

situation of the dismissal from the clerical state of those clerics who have not exercised a legitimate sacred ministry for at least five continuous years and whose situation cannot practically be resolved through the ordinary channels (the cleric's request for a dispensation from the clerical state or, rather, for a dispensation from celibacy or penal procedure leading to dismissal from the clerical state).

REFERENCES

- Andres, Domingo J. 1985. *El derecho de los religiosos. Comentario al Código*. Madrid: Publicaciones Claretianas y Comentarium pro religiosis.
- Bar, Joachim r. 1977. *Prawo zakonne po soborze Watykańskim II*. Warszawa: Akademia Teologii Katolickiej.
- Basile, Basile. 1993. *Le nouveau droit des moines et des religieux. Commentaire aux deux Codes Oriental et Occidental*. Kaslik: Université Saint-Esprit.
- Beyer, Jean. 1988. *Le droit de la vie consacrée. Commentaire des Canons 607-746. Instituts et sociétés*. Paris: Tardy.
- Castaño, José F. 1995. *Gli istituti di vita consecrata (cann. 573-730)*. Roma: Millennium Romae.
- De Paolis, Velasio. 1992. *La vita consacrata nella chiesa*. Bologna: Edizioni Dehoniane.
- Escudero, Gerardo. 1954. *Los institutos seculares. Su naturaleza y su derecho*. Madrid: Editorial Cculsa.
- Pejška, Josef. 1927. *Ius canonicum religiosorum*. Fribourg: Herder.
- Ruf, Norbert. 1989. *Das Recht der katholischen Kirche nach dem neuen Codex Iuris Canonici für die Praxis erläutert*. Freiburg im Breisgau: Herder.