

CANON LAW ASPECTS OF THE OFFICE OF PROVINCIAL SUPERIOR IN A RELIGIOUS INSTITUTE: A LOOK AT THE LAW OF THE ORDER OF PREACHERS

Mateusz Przytułski OP, MA

The Cardinal Stefan Wyszyński University in Warsaw, Poland
e-mail: m.przytułski@dominikanie.pl; <https://orcid.org/0000-0002-2764-862X>

Abstract

The study presents the office of provincial superior, starting with ordinaries and major superiors of religious orders. The office of prior provincial is characterised here on the basis of the law of the Order of Preachers (Dominicans). The following topics are covered: the relationship between the prior provincial and the ordinary of the place, authority in the Dominican Order, the basic powers of the prior provincial, requirements for a prior provincial candidate, and the functioning of the provincial during the provincial chapter.

Keywords: prior provincial, ordinariate, ecclesiastical superior, religious law, Dominicans

Introduction

The office of provincial superior in a religious institute may be variously designated depending on the tradition followed by a particular institute. However, all institutes will share certain properties of the office, which derive from the universal law of the Church stipulating the existence of major superiors in religious institutes, who are also ordinaries for clerical institutes. An exhaustive presentation of canon law aspects of the office of provincial superior is not possible if we examine solely the regulations issued for the entire Church. The abundance of institutes and their respective traditions, including legal ones, makes each institute unique and meriting separate research. For this reason, in order to characterise the office of provincial superior as accurately as possible, this study will focus specifically on the Order of Preachers (Dominicans). In terms of its structure, the article begins with the basic terminology concerning the ordinary and the major

religious superior with a view to discussing the law of the Order of Preachers and presenting the specific solutions used in this institute with regard to the office of provincial superior. Although this issue could benefit from an analysis of greater depth, for example at the level of a particular province, this study is limited to the law common to the entire Order. This is because the legal solutions adopted by the individual provinces of the Order strictly follow from competence norms, which apply uniformly in the entire Order. It is sufficient, then, to at the level of the entire Order, governed by its proper law, which is the *Book of Constitutions and Ordinations of the Friars of the Order of Preachers*.¹

1. The provincial superior as an ordinary within the meaning of Canon 134 of the 1983 Code of Canon Law

For the ecclesiastical system of governance, the concept of “ordinary” is crucial. Canon 134 of the 1983 Code of Canon Law² does not essentially differ from the corresponding Canon 198 of the 1917 Code of Canon Law³ [Jone 1950, 198-99]. Here, the most important elements of this concept are having ordinary power (*potestas ordinaria*) at least in the executive function and being in relation to “subordinates” [Sobański 2003, 219]. Each of the three paragraphs of Canon 134 CIC/83 provides for a concrete understanding related to power in the Church: 1) Canon 134 § 1 CIC/83 defines the notion of ordinary (*ordinarius*); 2) Canon 134 § 2 CIC/83 defines the notion of local ordinary (*ordinarius loci*); and 3) Canon 134 § 3 CIC/83 defines the notion of diocesan bishop (*episcopus dioecesanus*) [Pawluk 1985, 294-95].

The competences of ordinaries as bodies of authority are determined by the personal and territorial (also material) aspects [Krukowski 1985, 63-64; Lewandowski 2015, 15-16]. The ordinary of the place has jurisdiction

¹ *Liber Constitutionum et Ordinationum Fratrum Ordinis Praedicatorum*; several English translations are present, for example one available at https://www.friarly.com/uploads/1/2/7/2/127250680/the_book_of_constitutions_and_ordinations_-_2012.pdf [henceforth: BCO].

² *Codex Iuris Canonici auctoritate Ioannis Pauli PP. II promulgatus* (25.01.1983), AAS 75 (1983), pars II, p. 1-317; English text available at https://www.vatican.va/archive/cod-iuris-canonici/cic_index_en.html [henceforth: CIC/83]; legal state as of 18 May 2022.

³ *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 [henceforth: CIC/17].

over a specific territory (*aspectus primarius*) over Catholics (*christifideles – aspectus secundarius*) only, usually only of his Church *sui iuris* – and while he is also to take care of other persons, baptised and unbaptised, they do not fall under his jurisdiction. The jurisdiction of a major religious superior, such as a provincial, can be considered in a similar way. He has authority determined, first and foremost, by persons, typically by the members of his religious institute, but also by the territory of his province. The provincial superior, just like the local ordinary, is also tasked with the care of other faithful who are not under his jurisdiction, for example, regular visitors to religious churches. The authority of the provincial may extend to the entire province (territorial aspect) and those who belong to it (personal aspect) [Ruf 1983, 160].

Both the local ordinary and the provincial superior also have competence over things that are most often associated with persons or the territory. In this way they enjoy specific powers and responsibilities to take action [Krukowski 1985, 64; Lewandowski 2015, 15-16].

A clergy member is subordinate to the ordinary who holds his office within the structure to which the former is incardinated. Lay persons⁴ are subordinate to ordinaries who have jurisdiction over them by reason of their domicile or temporary residence, their state of life in the Church,

⁴ In this context, it is worth mentioning the problem of how the term ‘secular’ is understood. The Code’s definition of lay persons shows only that they are non-clerical – that is, ones who are not consecrated (cf. Canon 207 § 1). Canon 207 § 2 includes in the laity also consecrated persons who have not been ordained. However, Catholic ecclesiology is different and richer, because it speaks of three estates in the Church: clergy, consecrated persons, and laity. This understanding is grounded in Canon 399 of the Code of Canons of the Eastern Churches, no. 31 of the Dogmatic Constitution on the Church *Lumen Gentium*, and no. 31 of the apostolic exhortation *Vita Consecrata. Codex Canonum Ecclesiarum Orientalium auctoritate Ioannis Pauli PP. II promulgatus* (18.10.1990), AAS 82 (1990), p. 1045-363; English text available at https://www.intratext.com/IXT/ENG1199/_INDEX.HTM [henceforth: CCEO]; Vatican II, *Constitutio dogmatica de Ecclesia Lumen gentium* (21.11.1964), AAS 57 (1965), p. 5-71; English text available at: https://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_const_19641121_lumen-gentium_en.html; John Paul II, *Adhortatio Apostolica Post-synodalis Vita Consecrata Episcopis et Clero, Ordinibus Congregationibusque religiosis, Societatibus vitae apostolicae, Institutis saecularibus et cunctis fidelibus de vita consecrata eiusque missione in Ecclesia ac Mundo* (25.03.1996), AAS 88 (1996), p. 377-486; English text available at: https://www.vatican.va/content/john-paul-ii/en/apost_exhortations/documents/hf_jp-ii_exh_25031996_vita-consecrata.html.

or their affiliation with a particular church structure that has its proper ordinary.

The broadest competences related to the exercise of ecclesiastical authority are vested in the Roman Pontiff. Of all the ordinaries, he is mentioned by Canon 134 CIC/83 as the highest-ranking, for he is the ordinary for all those affiliated with each particular Church, and, as provided by Canon 590 § 2, the highest superior for all religious institutes and societies of apostolic life [García Martín 2015, 647].

The territorial hierarchical structures of the Church are headed by ordinaries of the place listed in Canon 134 § 2, of whom the diocesan bishop is the first. Next are all those who – being made equivalent to him – are even temporarily superiors of a particular Church or a community equivalent to it. Canons 392 § 2 and 368 provide that these are: vicars, prelates and territorial abbots, prefects and apostolic administrators [Aymans and Mörsdorf 1991, 409-10]. Canon 134 § 3 clarifies the understanding of the diocesan bishop.

The aforementioned ordinaries of specific persons (personal ordinaries) are as follows: the ordinary of a military or field ordinariate,⁵ the Apostolic Administrator of the Personal Apostolic Administration of Saint John Mary Vianney,⁶ the ordinary of the personal ordinariate for former Anglicans as well as their deputies and associates⁷ [Socha 1985, 134; Lewandowski 2015, 17-18].

Another group of personal ordinaries are the superiors of societies and communities that incardinate their members. Personal ordinaries are therefore the prelates of the personal prelature [Chiappetta 2011, 184; So-bański 2003, 220]. The next and the most relevant case for our study implementing the said disposition are the major superiors of clerical religious institutes of pontifical right and clerical societies of apostolic life of pontifical

⁵ John Paul II, II, Constitutio apostolica *Spirituali militum curae* qua nova canonica ordinatio pro spirituali militum curae datur (21.04.1986), AAS 78 (1986), p. 481-86, no. II § 1.

⁶ Congregation for Bishops, Decretum *Animarum bonum* de Administratione Apostolica personali “Sancti Ioannis Mariae Vianney” condenda (18.01.2002), AAS 94 (2002), p. 305-308.

⁷ Benedict XVI, Constitutio apostolica *Anglicanorum coetibus* qua Personales Ordinariatus pro Anglicanis conduntur qui plenam communionem cum Catholica Ecclesia ineunt (4.11.2009), AAS 101 (2009), p. 985-90; English text available at: https://www.vatican.va/content/benedict-xvi/en/apost_constitutions/documents/hf_ben-xvi_apc_20091104_anglicanorum-coetibus.html.

right, who at least have ordinary executive power [De Paolis and D'Auria 2008, 434; Dudziak 2002, 97]. A note should be made here: although Canon 134 § 1 provides that a religious ordinary is the ordinary for his members (*pro suis sodalibus*), the latest documents of the Holy See indicate that the major superior of a clerical religious institute of pontifical right can also be an ordinary for those who are not members of his institute. This applies to situations where this superior, according to the norm of Canon 614, is the ordinary for nuns living in associated monasteries.⁸

Thus, a provincial can be an ordinary, but this applies only to institutes of a clerical character of pontifical right [Skorupa 2019, 2357]. The provincial, who heads a part of a religious institute of pontifical right (a province), is a major superior and therefore an ordinary too [García Martín 2015, 649]. In line with no. 75, 2° of the instruction *Cor orans*, the provincial of such an institute is to meet the requirements to also be an ordinary for nuns living in associated monasteries. From what we have said so far, it follows that the provincial of the Order of Preachers (Dominicans), is an ordinary. The institute is, after all, a clerical order of pontifical right.

2. The provincial as a major superior of a religious institute

As we have shown earlier, the major superior of a clerical religious institute is an ordinary under Canon 134 § 1 of the 1983 Code. The superior is a physical person who is legally and morally responsible for his actions. The office itself is not a subject of rights and obligations; more specifically, it cannot constitute an ecclesiastical juridical person [Żurowski 1984, 194-95]. The status of the major superior of such an institute is regulated by Canon 620. In this way, the ecclesiastical legislator merely enumerates those who are major religious superiors without specifying the term. At the same time, despite the lack of a legal definition of a major religious superior, ecclesiastical law alone sufficiently regulates this office. The authority of the superior is provided for in Canon 596, and the manner of its exercise is stipulated under Canon 617, whereas the general rules for the exercise of the office

⁸ Congregation for Institutes of Consecrated Life and Societies of Apostolic Life, *Instructio applicationis Cor orans Constitutionis Apostolicae Vultum Dei quaerere de vita contemplativa feminarum*, 1.04.2018, AAS 110 (2018) p. 814-64, no. 75, 2°; English text available at https://www.vatican.va/roman_curia/congregations/ccsclife/documents/rc_con_ccsclife_doc_20180401_cor-orans_en.html.

based on the institute's proper regulations are stipulated in Canons 618, 619 and 622 [Syryjczyk 1984, 95-96]. The authority of the major superior encompasses the entire institute or province and their members [Ruf 1983, 160].

Every superior in a religious order, major or local, is a physical person who has the power of religious governance by virtue of their office. It follows that the superior is part of the internal hierarchy of the institute and governs it in whole or in part. The power of this superior is ordinary and attached to the office. So, those whose power is only delegated are not superiors. Nor are those who govern only a part of a religious house or just one category of its members. Those who have power in a religious order but are not part of its hierarchy are not superiors, either [Bar and Kałowski 1985, 71; Bar 1986, 93; Primetshofer 2003, 95]. Even though a superior is typically a physical person, religious chapters, by analogy, could also be called superiors since they are collegial organs [Sebott 1995, 100-101].

The constitutive element of the office of provincial is his or her relationship with persons subordinate to them by virtue of their vows of obedience. A particularly important manifestation of this relationship is the authority of the provincial as a religious ordinary, who instructs religious to reside in a particular monastery, as provided for in Canon 103 [Chiappetta 2011, 124; Aymans and Mörsdorf 1991, 365-66; Pinto 2001, 65]. Religious and member of the clergy, bound by ecclesiastical obedience, acquire the necessary (legal) domicile in the place (parish and diocese) to which they are lawfully assigned. The assignment is by a decree of the provincial superior.⁹ Besides determining the domicile of subordinates, the provincial, as an ecclesiastical superior, is also responsible for: 1) determining the scope of their duties, the filling of offices, as provided by Canon 626 [Chiappetta 2011, 748]; 2) making sure discipline and obedience are maintained, as mentioned in Canon 619 [ibid., 742]; 3) granting permissions and dispensations, as mentioned in Canons 14, 59 § 1, 85, 87 § 2, 91, 180 § 1 [Pinto 2001, 55; Gerosa 1999, 108]; 4) canonical visitation, stipulated in Canons 199, 7°, and 628 § 1.

The provincial, as a superior, is also responsible for the issuance of acts vis-à-vis individuals and for actions concerning the administration of material

⁹ In the law of the Dominican Order, affiliation with a particular monastery is by assignment (cf. no. 270 BCO); for a critical analysis of the necessary domicile of monks under the 1983 Code, see Skonieczny 2018, 101, 106.

goods [Michowicz 2019, 69-70]. In the exercise of their power, provincial superiors consult their councils, whose verdicts, depending on the subject matter, can be binding or advisory. The need to obtain the council's approval is provided for, for example, in Canon 638 § 3 (cf. Canon 127 § 2, 1°).

Although the maintenance of individual religious is the responsibility of individual religious houses and their local superiors, in unusual situations this duty rests directly on the provincial superior. Depending on the institute's proper law, the provincial may undertake to support a religious who legally resides outside his religious house,¹⁰ which may happen for various reasons such as supplementary studies, medical leave, or looking after ill parents. This obligation corresponds to the diocesan bishop's duty to maintain a clerical person. As duly noted by Paweł Lewandowski, "The diocesan bishop's obligation and the cleric's right are legally sanctioned by the fact of incardination, whereby the incardinating superior incurs the obligation of overall responsibility and concern for the cleric in terms of his spiritual good and livelihood, and the cleric acquires a certain entitlement in this regard" [Lewandowski 2016, 60]. By analogy, in regard to religious who are not members of the clergy, this obligation should be understood as stemming from membership in an institute and a vow of poverty.¹¹ The provincial's care of subordinate monks derives from the fact that he is an organ of the province who acts its behalf. Therefore, religious who belong to the province fall under its care. This is particularly evident in Canon 670. The superior is expected to take into account various issues, for example, the social insurance mandatory in a particular state [Sebott 1991, 197-98].

¹⁰ In the Polish Province of the Order of Preachers, according to its proper regulations, the upkeep of individual friars, even those who are legally outside the monastery, falls to the monastery to which they are legally assigned. However, in exceptional cases, the prior provincial is obliged to apply other special solutions – no. 56 § III of the Statute. *Statut Prowincji Polskiej Zakonu Kaznodziejskiego stan prawny z 29.06.2022 r. (wydanie 12. poprawione i uzupełnione)*, in: *Akta Zwyczajnej Kapituły Prowincjalnej Polskiej Prowincji Zakonu Kaznodziejskiego, Statut Ekonomiczny Polskiej Prowincji Zakonu Kaznodziejskiego, Statut Ekonomiczny Wikariatu Ukrainy*, Prowincja Polska Zakonu Kaznodziejskiego, Warszawa 2022, p. 71-136.

¹¹ The vow of poverty (Canon 600) is linked to the profession of the evangelical counsels and obliges one to be radical in the use of material goods so that they do not obscure the pursuit of unity with Christ and the realisation of the institute's mission. The merit of this vow and its apostolic nature are underscored by the fact that diocesan clergy, who are not bound by the vow, are also encouraged to practice poverty individually [Lewandowski 2022, 30].

3. Relationship between religious major superiors and local ordinaries

The relationship between the ordinary of the place and the major religious superior is closely related to the legitimate autonomy of the religious institute. The currently applicable source of law that provides for the autonomy of the institute is Canon 586 CIC/83. The contemporary understanding of the institute's legitimate autonomy derives from no. 35, 3° and 4° of the conciliar decree *Christus Dominus*¹² [Rincón-Pérez 2023a, 394]. This autonomy relates to, in particular, the protection and preservation of heritage [Sebott 1995, 46]. It provides that all religious depend on the local ordinary for public worship, that is, pastoral work. Specifically, these issues are the proclamation of holy doctrine, the religious and moral education of the Christian faithful, especially of children, catechetical instruction and liturgical formation, and the lifestyle pursued in the clerical state (cf. no. 35, 4° CD). Canon 678 § 1 mandates that, in keeping with CD, religious are subject to the authority of bishops in matters of pastoral care, the public performance of divine worship and other works of the apostolate, without prejudice to Canon 678 § 2-3. § 2 indicates that in the exercise of the external apostolate, religious are also subject to their proper superiors and should obey the institute's discipline. § 3 stipulates an agreement between diocesan bishops and religious superiors on the matter. Moreover, the continuation of the institute's mission and works is prescribed in Canon 677 § 1, which is the institute's proper work (*opus proprium*), which can, after all, be pertinent to the exercise of the apostolate. It follows that any act intended to banish a religious from the reality grounded in his unique vocation (also apostolic) is unlawful [Rincón-Pérez 2023b, 438]. This proper work, however, lies within the responsibility and indirect competence of the local ordinary by virtue of the norms contained in Canons 611 and 612. The norm of Canon 611, 2° stipulates that the diocesan bishop's consent to the erection of a house of a religious institute implies permission for the institute to exercise its proper works (*opera propria*) according to the norm of law. Further, Canon 612 contains a disposition requiring the diocesan bishop

¹² Vatican II, Decretum de pastorali episcoporum munere in Ecclesia *Christus Dominus* (28.10.1965), AAS 58 (1966), p. 673-701; English text available at https://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_decree_19651028_christus-dominus_en.html [henceforth: CD].

to give consent to the conversion of a religious house to apostolic works different from those for which it was established. The institute's character and operation are therefore restrictively protected by the law. As noted by Piotr Skonieczny, in line with no. 35, 2° CD, it is not without reason that the diocesan bishop entrusts a parish to a "religious institute", considering that it will be run precisely in a "religious" manner that is specific to this institute [Skonieczny 2014b, 287; Skonieczny 2014a, 67]. Given such an understanding of the distinctness of religious institutes from diocesan structures, both the authority of the diocesan bishop and those made equivalent to him, and the charism of the institute are in no way compromised.

As we have already demonstrated, the major superior of a clerical institute of consecrated life of pontifical right is the personal ordinary for the members of this institute, as mentioned in Canon 134 § 1. The members of such an institute are directly subordinate to him and, being bound by the internal religious discipline, are not subject to the ordinary of the place. However, if they reside in a diocese or other unit made equivalent to it, it is necessary for the major superior to cooperate with the local ordinary. The diocesan bishop (within the meaning of Canon 376) is in charge of his diocese, so he has an influence on the particular Church entrusted to his care. Although the autonomy of houses of religious institutes may vary, this autonomy, in keeping with Canon 586, concerns mainly governance (*praesertim regimini*). Diocesan bishops are obliged to take care of the consecrated life under their jurisdiction. They are supposed to foster and safeguard it [Socha 1983, 523]. Thus, the ordinary of the place has no jurisdiction over matters concerning the internal life of the religious community. He may not determine the personal composition of the monastery. This rests with the major superior of the institute in question, such as the provincial.

4. The office of provincial superior in the law of the Dominican Order

4.1. Authority in the Order, in particular the core competences of the provincial

We should start our reflections on authority by highlighting that all power comes from God [Calabrese 2011, 98]. Only if conceived in this way, does power appear as a means of helping the faithful to attain salvation – both subordinates and superiors. There is only one and only power in the Church,

and it comes from Christ. This power, under Canon 135, is distinguished as legislative, executive, and judicial. All shepherds of the Church, including the superiors of religious institutes, partake in this one power.

Today, it is essential to identify those who hold ecclesiastical authority (*potestas regiminis*) with the clergy, as prescribed by Canon 129 § 1, and to identify the authority of religious superiors in the case of non-clergy in the 1917 codification called *potestas dominativa* (cf. Canon 501 § 1 CIC/17). The possibility of appointing non-clerical superiors in clerical religious institutes of pontifical right, according to the rescript of 2022 on the derogation of Canon 588 § 2, is not compatible with that.¹³ A similar problem arises when non-clergy are appointed as ecclesiastical judges (cf. Canon 1421 § 2). By virtue of Article 1 of the motu proprio *Mitis iudex Dominus Iesus*¹⁴ concerning Canon 1673 § 3 and point 1° of the motu proprio *Mitis et misericors Iesus*¹⁵ concerning Canon 1359 § 3 CEO, non-clergy can even dominate the senate of an ecclesiastical tribunal. The office of judge (*officium sensu stricto*) unquestionably involves the exercise of ecclesiastical jurisdiction, but it can be exercised by a lay person. To give another example, lay persons can exercise ecclesiastical authority (*potestas regiminis*) by virtue of changes introduced by Pope Francis in his reform of the Roman Curia. For example, the Pope indicated in Article 14 § 3 of the Apostolic Constitution *Praedicate Evangelium*¹⁶ that the appointment

¹³ Dicastery for Institutes of Consecrated Life and Societies of Apostolic Life, *Rescriptum ex Audientia SS.mi* del Santo Padre Francesco circa la deroga al can. 588 § 2 CIC (18.05.2022), “Communicationes” 54 (2022), p. 194-95.

¹⁴ Francis, Litterae apostolicae motu proprio *Mitis Iudex Dominus Iesus* quibus canones Codicis Iuris Canonici de Causis ad Matrimonii nullitatem declarandam reformatur (15.08.2015), AAS 107 (2015), p. 958-70; English text available at https://www.vatican.va/content/francesco/en/motu_proprio/documents/papa-francesco-motu-proprio_20150815_mitis-iudex-dominus-iesus.html.

¹⁵ Francis, Littera Apostolica motu proprio data *Mitis et misericors Iesus* quibus canones Codicis Canonum Ecclesiarum Orientalium de Causis ad Matrimonii nullitatem declarandam reformantur (15.08.2015), AAS 107 (2015), p. 946-57; English text available at https://www.vatican.va/content/francesco/en/motu_proprio/documents/papa-francesco-motu-proprio_20150815_mitis-et-misericors-iesus.html.

¹⁶ Francis, Constitutio apostolica *Praedicate Evangelium* de Curia Romana eiusque servitio pro Ecclesia in mundo (19.03.2022), “Communicationes” 54 (2022), p. 161-93; English text available at https://www.vatican.va/content/francesco/en/apost_constitutions/documents/20220319-costituzione-ap-praedicate-evangelium.html.

of the Roman Curia officials should reflect the universality of the Church and the candidates' experience, who can be either clergy, consecrated persons or lay faithful. Thus, the lay faithful can hold offices in the Roman Curia, and thus, in some measure, depending on their position, can be part of ecclesiastical authority.

Superiors in religious institutes enjoy authority, defined by universal law and constitutions, as Canon 501 § 1 of the 1917 Code called dominative power (*potestas dominativa*), as mentioned above. This phrase is omitted from the current wording of the CIC/83, and no other has been introduced in its place. Religious superiors and chapters therefore do not have the power of governance in the proper sense (*in sensu proprio*). But they somehow have ecclesiastical authority [Krukowski 2011, 160-61]. It is called the power of jurisdiction, which in the most general sense can be understood as power of governance seen holistically, typical of a church community [Żurowski 1984, 45; Gambari 1998, 594-600]. The literature of the subject contains attempts at defining it. One of them states that it is "public authority of divine origin, serving to regulate the social structure of the Church, the position and activities of its members in order to a supernatural end" [Labandeira 1994, 71; Krukowski 2011, 160-61].

In the power structure of institutes of consecrated life the basic relationship is based on the superior-subordinate connection. It is the formal-legal system of interconnections that obtains between bodies of authority and the members of a specific institute [Chrapkowski and Krzywda 2006, 28-30]. The one who holds authority over a subordinate is a superior. Institutes of consecrated life employ a collegial mode of governance through chapters.

Governance in the Order of Preachers is characterised by a community dimension, because it finds its unique embodiment in provincial chapters. During such a chapter, key decisions for the province are made and a new provincial superior is elected. Authority in the Order of Preachers is a broad issue. For our deliberations, it is essential to analyze the authority the provincial enjoys, so it will be instructive to refer to no. 338 § I BCO. It provides that the prior provincial has similar authority in the province in his care to that of the Master in the entire Order and a prior in his convent.

The authority superiors exercise over their subordinates is: 1) lawful, because it exists independently of the will of the superior; 2) public, because

religious orders in the Church are public, not private associations; 3) full, because it encompasses all human activity [Bar and Kałowski 1985, 73].

Therefore, the power of the prior, provincial and general of the order is – in compliance with the 1917 Code (Canon 501 § 1 CIC/17) – dominative (*potestas dominativa*). In light of this, they can command their subjects by virtue of the latter's vow of obedience. Novices and friar candidates are not exempt from their power. Although they have not yet taken the vow of obedience, they stay at the monastery of their own accord intending to live their vows. Based on that, they are called to obedience to religious superiors. The religious superior's power is also authority over all those who, for various reasons, reside in a religious house day and night by virtue of service, education, hospitality or illness [ibid.]

In accordance with No. 338 § I BCO, the prior provincial is a major superior and the proper ordinary of the brothers (religious), which follows from the disposition of Canon 134 § 1. The Dominican notion of the office of provincial aligns with the concept of the major superior stipulated in Canon 620. The provincial superior is the head of a province [Pawluk 2010, 272]. He is also the proper (personal) ordinary of religious who belong to a specific religious province, which corresponds to the concept of ordinary under the aforementioned Canon 134 § 1 [Primetshofer 2003, 97-98].

The provincial superior holds his office for a term. He takes possession of his office for four years by canonical election approved by the highest superior, that is, the general of the order. He may be elected for a second term. He cannot be directly elected for another term of four years, unless he has a dispensation for the requisite interval, as provided for in no. 343 BCO in conjunction with Canon 624 § 2. After this time, he may be re-elected. This restriction is intended to prevent cases of uninterrupted and unlimited exercise of the office by one person [Andrés 1984, 105].

The prior provincial, as a superior, can fulfil his tasks under Canon 617 in keeping with the norms of universal law of the Church and the Order's proper law. The BCO specifies a great many concrete competences that are vested in the office of provincial in the Dominican Order. At this point, however, we need to indicate some of its tasks. In accordance with no. 339 BCO the prior's provincial duties include the following: "1. he should strive to do his utmost to promote in his province the spirit and authentic life

of the Order [...]; 2. he should have the common good of the Order very much at heart. He should willingly report to the Master of the Order about the life of the brothers and their apostolate, and he should encourage collaboration between the provinces of the Order; 3. he should promote cooperation between the province and the hierarchy and between the province and other religious families [...].”

Nos. 340 and 341 BCO provide that a) the prior provincial is to visitate brothers twice in four years, but the convents of the formation must be visited yearly, and at the end of a visitation, he is obliged to convey to the brothers his observations and ordinations in writing; b) after a visitation, the prior provincial must convey a report to the Master of the Order; c) within three months of his leaving office, he is to send a report on the state of the province to the Master of the Order.

Now, the duty to safeguard discipline and obedience must be mentioned. It results from the disposition in Canon 1341 (and 619). This provision requires the ordinary to react to a law violation. It may happen that a superior's inadequate response can provide grounds for holding him accountable [Przytulski 2023, 241-43].

4.2. Legal personal requirements *vis-à-vis* a provincial superior candidate

In order for a candidate to be elected prior provincial, it is necessary that he meet the requirements strictly defined by the universal law of the Church and the Order. Since the Order of Preachers is a clerical institute, it must be led by clerical persons [Andrés 1984, 36; De Paolis 2010, 317; Gerosa 1999, 318]. This order, by definition, undertakes the performance of holy orders and as such is recognized by the Church [Pawluk 2010, 268]. No. 443 § II, 1° BCO also mandates that candidates for superiors be presbyters. This applies to all kinds of superiors in the Order – the Master, the provincial, the prior, and those made equivalent to them. At this point, we should note the fact (already mentioned) that by virtue of the rescript *Ex audientia Ss.mi* on the institutes of consecrated life and societies of apostolic life of 18 May 2022 it was made possible – by derogation of Canon 588 § 2 CIC/83 – that non-ordained persons could be superiors, both local, major and supreme, in clerical institutes. However, admission to the office of major superior is to be made with the special approval of the Dicastery for Institutes

of Consecrated Life and Apostolic Life [Rincón-Pérez and Majer 2023, 395-96]. Since this option is fairly novel, the relevant amendments have not yet been included in the Dominican law.

Another criterion regarding the provincial is the passage of a specified time after the (solemn) perpetual profession of a candidate for superior, as required by Canon 623. This time is necessary for the validity of the election of a superior [Pawluk 2010, 272]. No. 443 § II, 2° BCO, addressing all kinds of superiors, provides that three years must elapse from the solemn profession before someone is elected or postulated. “For anyone to be eligible for the office of prior provincial [...], it is required that [...] he be thirty years old and ten years from first profession,” which is grounded in no. 505 § 1 BCO. The lapse of ten years from the first profession is an allusion to Canon 504 of the 1917 Code, which also stipulated the necessity of reaching the age of forty. In the current universal legislation of the Church (Canon 623 CIC/83), the provisions of Canon 504 CIC/17 were not reiterated. Instead, a reference is made to the institute’s proper law [Primetshofer 1983, 492-93; Chrapkowski and Krzywda 2006, 54-55; Calabrese 2011, 100]. For a candidate to be elected prior provincial, it is also essential that he has not been the provincial of the province for the two four-year terms immediately preceding (No. 505 § I, 2° BCO). This is linked to the abovementioned safeguard against the office being held by one person for too long [Andrés 1984, 105]. The next restriction under the Order’s proper law, no. 505 § I, 3° BCO, is that the candidate for the office of prior provincial is not currently a visitor general in that province. Such a limitation is intended to ensure the objectivity of the visitor general during the canonical visitation of the province. He is expected to be a person from outside the province, someone who does not participate in its life, but only observes it.

A candidate for provincial (as for any superior in the Order) must also have a current religious approval (mandate) to hear confessions, as set forth in no. 443 § II, 3° BCO. Despite gaining such a faculty from the mere fact of assuming the office, as provided for in Canon 968 § 2, it is nonetheless unbecoming for him to have had it. As prescribed by Canon 969 § 2, the provincial, as a religious superior, will be able to grant such authorization to all subordinate presbyters, which is indispensable for hearing the confessions of his subordinates and others living in the religious houses in his charge

day and night [Pastuszko 1999, 230-35; Bar and Kałowski 1985, 74-75; Bogdan 1977, 48-50; Gambari 1998, 598].

The office of prior provincial is assumed when the candidate is sworn in by making a profession of faith (cf. Canon 833, 8°), preceded by the approval of the election or postulation by the Master of the Order. On account of the vow of obedience, a monk designated to be a provincial is not entitled to assume this office. He will be when his superior approves the election (*ius ad rem*) [Dzierżon 2012, 125-32].

4.3. Limited power of the provincial superior during the provincial chapter

Although universal ecclesiastical law does not specify the manner in which provincial chapters should be conducted, their organisation must be subject to the definition and rules stipulated in provisions on general chapters (Canon 631). On this analogy, a provincial assembly gathers qualified provincial representatives who act as a college at a specific time. The existence of provincial chapters is well-established practice, so most institutes hold such meetings [Bogdan 1988, 142-43].

The time when a provincial chapter is held in the Order of Preachers is unique considering the functioning of the provincial as an ordinary with the power of governance in the executive function. The provincial chapter is the most important time in the life of the province and therefore has special powers in its governance of the province. The moment the provincial chapter commences, the incumbent provincial steps down. The province is now governed by the provincial vicar, who also presides over the meetings of the chapter until the election or postulation of a new provincial, as set forth in no. 349 BCO. For the whole duration of the provincial chapter, both the provincial vicar and the newly elected provincial superior have a limited ability to exercise the power of governance in the executive function. No other body but the chapter makes all the decisions. The Order's self-determination is closely associated with its autonomy [Henseler and Meier 1985, 586]. This need not apply to external influences on the Order's governance but is manifested in the communal formation of its law, rather than reliance on the decisions of a single person – the superior. In the Order of Preachers, this is particularly noticeable in the work of the capitular

diffinitorium, which assumes the functions of the ordinary.¹⁷ Although diffinitors are not ordinaries within the meaning of Canon 134 as they make up a collegial body, they possess extensive powers in the Order's law. The diffinitorium also handles all matters that pertained to the chapter. It prepares all kinds of admonitions, ordinations, declarations and petitions. It also fills provincial offices and, if necessary, issues decrees transferring monks from one monastery to another, according to no. 358 § V BCO.

When the provincial chapter is over, the provincial superior is now free to exercise the power of governance in the executive function. Such a constraint on the authority of the Dominican provincial underscores the communal nature of government in the Order. This also demonstrates the importance of the chapter for the life and law of the province. Due to its size and presence on different continents, the Order of Preachers does not regulate in detail all aspects of provincial life in a top-down fashion. Each province is competent to legislate only at a particular level. The document containing the law of each province is the provincial statute. It is where each province lays down its proper law concerning issues that are not sufficiently regulated by the general law of the Order or where it gives individual provinces leeway to normalize them [Przytulski 2022, 195].

Conclusion

The present study shows the office of provincial superior in a clerical religious institute of pontifical right as an ordinary, as provided for in Canon 134 § 1 of the 1983 Code of Canon Law, and as the major superior in a religious order referred to in Canon 620. Our analysis of this issue hinges on the identification of these two elements, which serves as the point of departure when examining concrete issues that specific institutes of consecrated life or associations of apostolic life have implemented in their legislation. Our presentation of selected and most relevant elements of the Dominican law pertaining to the said office has made it possible to outline how the Order of Preachers sees the office. The manner in which the Dominicans govern themselves and, in particular, the deliberations of the provincial chapter,

¹⁷ "The diffinitors of a provincial chapter are the brothers who are elected by all the voters of a provincial chapter to decide, together with the president, the more important affairs of the chapter" (no. 513 BCO).

highlight that although the provincial is the elected to exercise his executive power, the Order's system of governance is grounded in their sense of community.

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