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SUBJECTION OF RELIGIOUS INSTITUTES TO THE HOLY SEE

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Abstract

The ecclesiastical legislator grants religious institutes just autonomy so that they can carry out their mission, but this autonomy is not unlimited. This article explains the essence of this autonomy of religious institutes – both of pontifical right and diocesan institutes – while indicating and discussing their subjection to the Holy See. This interdependence is realised in such aspects as the approval of religious authorities, changes to constitutions and statutes, issues concerning the management of goods or broadly interpreted formation. An analysis of this research problem must factor in ecclesiological, juridical and teleological aspects of the subjection of religious institutes to the Holy See.

Keywords: religious institutes, autonomy, Holy See, subjection, supervision

Introduction

Religious institutes enjoy autonomy recognized by the highest ecclesiastical authority. This freedom is exercised in various areas of their functioning, such as practising the evangelical counsels, community life, realising the institute's proper charism, or broadly understood administration of goods. Religious institutes have the right of self-determination. What is more, the ecclesiastical legislator not only stipulates that it is their inherent right, but also codifies the duty of other entities to protect this right, which does not imply, however, that religious institutes function completely independently of ecclesiastical authority. This derives from the fact that this autonomy should be exercised in keeping with the Church's teaching, having regard to its good and the well-being of the faithful.

This article seeks to present the nature of the subjection of religious institutes to the Holy See. Using the theological-legal and the dogmatic-legal

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method, I will present the essence of this relationship, pointing out its ecclesiological and juridical grounding, as well as its purpose. In the next section, I will discuss the question of the subjection of religious institutes to the Holy See, with respect to the criteria of their approval, hoping to show the different nature of this dependence in the case of institutes of both pontifical and diocesan right. Finally, we will look at specific areas of the subjection and discuss the resultant obligations, taking into account acts reserved for the Holy See, as well as the need to submit reports to highest ecclesiastical authority.

1. The nature of subjection

In our analysis of the very idea of subjection of religious institutes to the Holy See we must first elucidate the concept itself. The term "religious institutes" in ecclesiastical legislation refers to a community whose members – in accordance with its proper law – take public vows, both perpetual and temporary, and undertake life in community.[1] Importantly, the term includes religious orders and congregations, but not secular institutes and associations of apostolic life [Daniluk and Kluza 1994, 142-43].

1.1. Ecclesiological and legal grounding

As regards the need for and the nature of the subjection of religious institutes to the Holy See, they are motivated, importantly, by the fact that the Church is, as it were, a sacrament in Christ, and therefore a visible sign of unity.[2] For this reason, however, the operation of religious institutes, which enjoy their own autonomy, must be considered from the ecclesial perspective. This is because the effectiveness of the apostolic works

[1] *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. Canon 607 § 2: "A religious institute is a society in which members, according to proper law, pronounce public vows, either perpetual or temporary which are to be renewed, however, when the period of time has elapsed, and lead a life of brothers or sisters in common."

[2] 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 [henceforth: LG], no. 26.

they embark on is closely linked to the need to maintain unity with ecclesiastical hierarchy. Thanks to that the charisms of religious life reveal the nature of the Church, especially its communion with God and the unity of the whole human family springing therefrom.[3]

At this point, we should underscore the existence of a special bond between religious institutes and the Roman Pontiff. The successor to St. Peter is "the guarantor of the identity of religious life, the structure of which is often linked to the universal Church – based on the Petrine ministry" [Skorupa 2002, 79]. The existence of religious institutes is a wonderful gift to the Church, and their importance makes it necessary, as it seems, to normatively define their dependence on ecclesiastical authority, in particular on the Holy See. Notably, after all, it belongs solely to the Holy See to approve new forms of consecrated life.[4]

In Canon 590, the ecclesiastical legislator provides clearly that institutes of consecrated life are subordinated to the highest ecclesiastical authority. Additionally, every member of such an institute is obliged to show submission to the Roman Pontiff as the highest superior. The pope's supreme authority over the institutes and their individual members stems, therefore, from the characteristics of the mission that these institutes pursue in their service to God and the whole Church, as well as from the bonds of obedience accepted by institute members [Zubert 1990, 23]. Worth mentioning is the fact that the dependence of religious on the pope is total and personal – this results from the primacy of St. Peter's successor and the aforementioned character of the vow of obedience. In practice, the Roman Pontiff does not exercise his authority over religious institutes personally, but through the various dicasteries of the Roman Curia, especially the Dicastery for Institutes of Consecrated Life and Societies of Apostolic Life, the Dicastery for Evangelisation, the Dicastery for the Doctrine of Faith, or the Dicastery for Divine Worship and the Discipline of the Sacraments.

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[3] John Paul II, Adhortatio apostolica post-synodalis *Vita consecrata*, (25.03.1996), AAS 88 (1996), p. 377-486; English text at: https://www.vatican.va/content/john-paul-ii/en/apost_exhortations/documents/hf_jp-ii_exh_25031996_vita-consecrata.html [henceforth: VC], no. 46.

[4] Canon 605: "The approval of new forms of consecrated life is reserved only to the Apostolic See. Diocesan bishops, however, are to strive to discern new gifts of consecrated life granted to the Church by the Holy Spirit and are to assist promoters so that these can express their proposals as well as possible and protect them by appropriate statutes; the general norms contained in this section are especially to be utilized."

1.2. Why religious institutes are subordinated to the Holy See

According to universal law, religious institutes carry out their works while retaining their dependence on the supreme ecclesiastical authority, without prejudice to Canon 586, in which the ecclesiastical legislator recognizes the principle of autonomy of each institute and, at the same time, sets a limit to it. This subjection has a purpose. The idea behind it is to minimize the likelihood of any negative consequences of misunderstandings that may arise, especially in the area of broadly perceived governance [Skorupa 2002, 111].

Moreover, their dependence on the Holy See makes it possible to demarcate the authority of the superior governing a particular institution. It follows that in exercising the office entrusted to him (or her), the superior always remains in a kind of subjection to the highest ecclesiastical authority, even when matters of internal authority in the institute are involved. The ecclesiastical legislator explicitly obligates superiors to exercise their function and power in accordance with the norms of the law, not only their proper law but, above all, universal law (Canon 617 CIC/83). Thus, dependence on the Holy See is intended to limit cases of insubordination among superiors, and to protect members of institutes against arbitrary decisions of those in authority. There is another fact that we must consider. The role of the dependence we are discussing here is also to reinforce the sense of community and ties between religious institutes and the Holy See. This is achieved, for example, by sending reports on the status of institutes, a requirement discussed in detail in what follows.

2. Subjects subordinated to the highest ecclesiastical authority

As well as enjoying autonomy, all religious institutes subsist in some degree of subjection to the Holy See. However, it will be instructive to outline the scope and subject of this dependence in respect of criteria for approving such institutes. Therefore, we need to show how the question of this subjection to the highest ecclesiastical authority presents itself in the case of institutes of pontifical right and those erected by a diocesan bishop.

2.1. Religious institutes of pontifical right

The ecclesiastical legislator precisely indicates that "an institute of consecrated life is said to be of pontifical right if the Apostolic See has erected it or approved it through a formal decree. It is said to be of diocesan right, however, if it has been erected by a diocesan bishop but has not obtained a decree of approval from the Apostolic See" (Canon 589). For that reason, the Holy See exercises external, direct and exclusive authority over such institutes [Rincón-Pérez 2023, 396]. The necessary implication of the notion of "exclusive subjection" is that no other ecclesiastical authority can interfere in the matters of the religious institutes in question. In practice, this means that issues related to the governance or discipline of the institute are within the jurisdiction of the Holy See in this case. This is embodied in, among other things, the recognition and approval procedure for the constitution of a particular religious order. Furthermore, religious institutes of pontifical right are exempt from the right to be visitated by the diocesan bishop.[5]

Practice shows that a religious institute of diocesan right can become an institute of pontifical right. This happens when an institute gradually widens the scope of its activity, in which case the next step is to obtain papal approval. Historically, with a *decretum laudis* (decree of praise), a diocesan right institute would become, as it were, an institute of pontifical right; then, a decree of approval was issued, whereby the institute obtained a definitive approval of the Holy See [Majer 2013, 342-43]. As of today, the law does not provide for the issuance of a decretum laudis. The ecclesiastical legislator refers only to formal decree that approves a particular institute. As a result of this approval, the institute's status changes to that of a papal right institute, and thus gains greater permanence in the Church, enjoys broader autonomy, but it is also a kind of confirmation that its activities are beneficial not only for the particular Church, but also for the universal

[5] Canon 683: "§1. At the time of pastoral visitation and also in the case of necessity, the diocesan bishop, either personally or through another, can visit churches and oratories which the Christian faithful habitually attend, schools, and other works of religion or charity, whether spiritual or temporal, entrusted to religious, but not schools which are open exclusively to the institute's own students. § 2. "If by chance he has discovered abuses and the religious superior has been warned in vain, he himself can make provision on his own authority."

Church. As Majer points out: "the transformation of an institute of diocesan right into one of pontifical right occurs when requested by the superior general, who, together with his council, submits to the Holy Father a request for pontifical approval" [ibid., 343].

What distinguishes institutes of pontifical right from those erected by a diocesan bishop – besides the fact that the Holy See approves the constitution of the institute – is that the major superiors of clerical institutes of consecrated life of pontifical right are ordinaries. This means that apart from the ordinary power they have being religious superiors over their subordinate members they gain power of governance in the Church (Canon 596 § 2). Also, Canon 397 § 2 contains a disposition that the diocesan bishop may not visit members of religious institutes of pontifical right and their houses, except in cases prescribed by law. Moreover, a clear difference can be noticed in asset management. It is precisely the role of the proper law of religious institutes of pontifical right to determine what actions should be considered acts of extraordinary governance.[6] In the case of alienation of goods whose value exceeds the so-called maximum sum (currently €1,700,000) determined by the bishops' conference,[7] the authorities of an institute of pontifical right ask the permission of the Holy See, rather than the diocesan bishop. The property matters of a congregation of pontifical right are not the concern of the diocesan bishop. He may not demand reports on how the temporal goods of such an institute are managed, as opposed to institutes of diocesan right and autonomous monasteries [ibid., 345].

Religious institutes of pontifical right are not exclusively subject to the Holy See, and thus remain completely outside the authority of the diocesan bishop of the place. The ecclesiastical legislator provides for specific cases where the bishop may intervene in the affairs of such an institute. This issue should be signalled, but we will not discuss it here.

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[6] In the case of religious institutes of diocesan right, it is the bishop who decides which acts are of extraordinary administration, the placement of which requires the permission of the ordinary (Canons 638 § 1 and 1281).

[7] Polish Bishops', *Dekret ogólny Konferencji Episkopatu Polski z dnia 11 marca 2021 r. w sprawie podwyższenia sumy maksymalnej alienacji* (19.04.2021), "Akta Konferencji Episkopatu Polski" 33 (2021), p. 72.

2.2. Diocesan institutes

Institutes of consecrated life are understood to be of diocesan right if they have been approved by the diocesan bishop but have not obtained a decree of approval from the Holy See (can. 589 CIC/83). The definition itself shows that the special competence regarding such religious institutes belongs to the diocesan bishop. However, although he alone has the right to erect institutes in question, he is to consult with the Holy See before establishing them. With this requirement in place the erection of institutes of similar charism, nature, purpose, character or spiritual heritage can be avoided. Thus, the diocesan bishop is bound by law to obtain a *nihil obstat* from the highest ecclesiastical authority before he erects an institute [Skorupa 2002, 95]. The rationale for this requirement can be found in the indications of the Second Vatican Council: "When the question of founding new religious communities arises, their necessity or at least the many useful services they promise must be seriously weighed. Otherwise communities may be needlessly brought into being which are useless or which lack sufficient resources."[8] It is of note that the first draft amendments of the 1983 Code contained proposals to make consultation with the bishops' conference mandatory, without which the diocesan bishop could not erect a religious institute. Ultimately, however, it was decided that the most objective assessment of the necessity and utility of a new institute would have to come from the highest ecclesiastical authority. A subsequent amendment to the canon, which took place in 2020, does not require consultation with the Holy See only, but explicitly requires that it gives written permission, without which the erection of an institute by a diocesan bishop would be invalid [Rincón-Pérez 2023, 392].

Institutes of diocesan right with respect to religious discipline are obviously subject to the diocesan bishop, but his competence is limited by the authority of the Holy See. The ecclesiastical legislator provides that diocesan right institutes can deal with matters that have been approved by the Holy See. No other ecclesiastical authority can change them without the approval of the Holy See [Skorupa 2002, 117]. For example, it can

[8] Vatican II, Decretum de accommodata renovatione vitae religiosae *Perfectae caritatis* (28.10.1965), AAS 58 (1966), p. 702-12; English text available at: https://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_decree_19651028_perfectae-caritatis_en.html, no. 19.

happen that the dicastery has issued some guidelines of its own or requested certain modifications in regard to the constitution of a particular religious institute, in which case, as emphasised earlier, content that has been approved by the Holy See cannot be altered without its approval (Canon 583 CIC/83).

We also need to keep in mind the legal norm of Canon 591, whereby "in order to provide better for the good of institutes and the needs of the apostolate, the Supreme Pontiff, by reason of his primacy in the universal Church and with a view to common advantage, can exempt institutes of consecrated life from the governance of local ordinaries and subject them to himself alone or to another ecclesiastical authority." This exemption relates mainly to the internal order of religious institutes, since their public activity is subjected to the jurisdiction of the local ordinary.

3. Areas of subjection and the resulting duties

The Second Vatican Council teaches that the Church is a sacramental community, being both a sign and an instrument of unity.[9] Religious institutes, which constitute the wealth of this Church, serve the entire people of God. Proper supervision of ecclesiastical authority is necessary so that their goals may be achieved. As we have seen earlier, religious institutes are subordinate to the Holy See in various areas of their functioning. In what follows, we will discuss selected aspects of this subordination, and the closely related obligations.

3.1. Selected acts proper to the Holy See

The above-presented entities are distinguished, importantly, according to the entity that erected them. If a religious institute was erected by the Holy See or approved by its decree, it is an institute of pontifical right; if the erection was effected by a diocesan bishop but no decree of approval was obtained from the Holy See, then we speak of an institute of diocesan right. When discussing the issue of calling individual institutes

[9] Vatican II, Constitutio pastoralis de Ecclesia in mundo huius temporis *Gaudium et spes* (7.12.1965), AAS 58 (1966), p. 1025-120; English text available at: https://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_const_19651207_gaudium-et-spes_en.html, no. 42.

to life, we should look at a requirement the fulfilment of which lies solely within the discretion of the Holy See – the erection of a monastery of nuns. In this case, the permission of the Holy See is required for validity.[10] However, the legal norm does not specify what form of consent is involved. According to Canon 616 § 4, it also belongs to the Holy See to suppress such a monastery. It should be noted at this point that the Holy See does not only erect individual religious institutes or issue requisite permissions, but it is within its exclusive competence to approve new forms of consecrated life (Canon 605).

The ecclesiastical legislator also stipulates in Canon 584 that only the Holy See is competent to suppress a religious institute, and the decision concerning temporal goods of the institute is also reserved to the Holy See. Other provisions, too, are reserved to the supreme ecclesiastical authority; for example, those governing mergers or unions of institutes or creation of confederations or federations (Canons 582-584). If it becomes necessary to suppress the only house of a particular religious institute, this can be done solely by the Holy See. It also belongs to the Holy See to make all decisions regarding its property (Canon 616 § 2).

It is important to note that Canon 632 of the 1917 Code of Canon Law[11] provided a norm prohibiting religious from transferring to another order without permission from the Holy See. In the current Code, the legislator only requires the authorization of the highest ecclesiastical authority when a person has resolved to transfer from a religious institute to a secular institute or association of apostolic life and vice versa [Rincón-Pérez 2023, 442].

It is also reserved for the Holy See to grant an indult of exclaustration to a religious who is a member of an institute of pontifical right. We are speaking here, among other things, of cases where such an indult is granted for a period exceeding five years or where an indult granted earlier is extended (Canon 686 § 1). But, with respect to Canon 691 § 2, it may occur that a perpetually professed religious resolves, after serious deliberation, to request an indult of departure. In this case, the indult is reserved to the Holy See.

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[10] Canon 609 § 2: "In addition, the permission of the Apostolic See is required to erect a monastery of nuns."

[11] *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.

3.2. The obligation to submit reports and their content

In Canon 592, the ecclesiastical legislator obligates the superiors to send reports of the state and life of the institute to the Holy See. The *ratio legis* of this legal norm is to strengthen the bonds between the institutes and the Holy See. Besides, considering that religious institutes are an important part of the Church's mission and Christ's mission (VC 9), we are not surprised that a custom has emerged – which later became a requirement – to send such reports to the Holy See. "In addition to supplying useful, factual information, an attentive reading of these reports enhances the theological, juridical and pastoral reflections of this Congregation for Institutes of Consecrated Life and Societies of Apostolic Life, thus helping to concretise the service which this Dicastery is called to offer to consecrated life in these times of social and cultural complexity."[12]

In line with the Guidelines of the Dicastery (formerly the Congregation) for Institutes of Consecrated Life and Societies of Apostolic Life, this report is to include a brief description of the institute, its charism and mission. Also, some statistical data must be supplied, including the number of houses, the number of institute members, plus the number of aspirants, postulants, novices, including the number of those leaving the institute. The report is also to include information on proper legislation, issues of community life, the mission and the pastoral care of vocations and formation, the economic situation. Also, attention must be paid to the challenges addressed, difficulties encountered, or projects for the future.[13]

The legal requirement to submit to the highest ecclesiastical authority an account of the life, status and activities of religious institutes has evolved over time for historical reasons and owing to the emergence of newer forms of living the evangelical counsels [Kałowski 1990, 98]. Nevertheless, the Guidelines, now issued by the Dicastery, are an effective instrument used by the superiors of religious institutes; they also further specify the legal norm contained in Canon 592).

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[12] Congregation for Institutes of Consecrated Life and Societies of Apostolic Life, *Suggested Guidelines for the Preparation of Periodic Reports on the Status and Life of Institutes of Consecrated Life and Societies of Apostolic Life (cf. CIC can. 592 § 1)*, Attachment to Prot. n. SpR 640/2008, https://www.vatican.va/roman_curia/congregations/ccscrlife/documents/rc_con_ccscrlife_doc_20080511_relazione-periodica_en.html.

[13] Ibid.

In this context, it is also worth looking more closely at the provision in Canon 636 § 2.[14] The legislator also notes the obligation to submit reports to internal superiors. Their content and frequency may vary, which is regulated by provisions of proper law. On the other hand, they usually deal not only with strictly economic matters, but also expenses related to cultural activities, journalism, accumulating library collections, apostolic works, and associations, commissions or institutes if there are any [Zubert 1990, 103]. Such reported information is undoubtedly used later to draw up a record that is sent to the Holy See.

Conclusion

The purpose of this article was to present and discuss the issue of subjection of religious institutes to the Holy See. Our scholarly reflection, based on ecclesiastical documents and the available literature, made it possible to identify the essence of and the reason why the ecclesiastical legislator has introduced specific regulations governing this subjection. The correlation differs slightly between pontifical right institutes and the ones of diocesan right. At any rate, the subordination of religious institutes to the Holy See is fully justified, and relevant arguments can be found both in ecclesiology and jurisprudence.

In the teaching of Vatican II, the *ratio legis* for this subjection of religious institutes to the supreme ecclesiastical authority can be found in many documents, without prejudice to their right to legitimate autonomy. This chiefly stems from the fact that the operation of individual institutes "undeniably belongs to [the Church's] life and holiness" (LG 44). For the reasons presented above, we are looking at a wealth of various issues pertinent to the relationship in question, which this article barely touches on. This confirms that religious institutes have a special place in the Church, and the need to ensure the proper fulfilment of their charisms and apostolic works calls for concrete legal regulations.

[14] Canon 636 § 2: "At the time and in the manner established by proper law, Finance officers and other administrators are to render an account of their administration to the competent authority."

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