

## NORM AND A SINGULAR ADMINISTRATIVE ACT

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### Abstract

Due to the terminological confusion and dispute in contemporary doctrine regarding the nature of singular administrative acts (Canons 35-95), the paper examines the interdependence between the canonical norm and this category of acts. The research goal is set in a broader context, as the issue of canonical norms and the normative system of the canonical legal order are examined synthetically. The author expresses the view that in relation to individual administrative acts it is inappropriate to use the term “norm”, but he considers it appropriate to use the category of “acts” in the sense of legal acts. This position is based on the following arguments: first, during the codification work, consultants did not use the category of “norm” but the category “singular administrative act”; secondly, the first chapter of the Code’s fourth title is “Common Norms” (*Normae communes*); in the name of the fourth title, “Singular Administrative Acts”, we find the term “acts”; thirdly, in the canonical system some acts (dispensations, privileges) are issued against or in addition to the law, being exceptions to general norm.

**Keywords:** norm, canonical norm, singular administrative act, law, administrative norm

### Introduction

The current codification includes a new category of acts, which are singular administrative acts (Canons 35-95).<sup>1</sup> Its introduction triggered some interpretation problems, one of them related to the nature of administrative acts. This is because in modern doctrine we observe some terminological confusion involving, for example, the use of the term “norm” in this regard. This state of affairs has largely determined the aim of this research, which

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<sup>1</sup> *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](https://www.vatican.va/archive/cod-iuris-canonici/cic_index_en.html); legal state as of 18 May 2022 [henceforth: CIC/83].

can be captured by the question: What is the nature of the various administrative acts addressed by the legislator in the CIC/83, Book One, Title Four, “General Provisions”?

A reflection on this rather complex subject would be impossible without putting it in broader context. This calls for a synthetic presentation of the concept of canonical norm, but we also need to discuss the normative system of the canonical legal order.

## **1. Canonical norm**

In doctrine, the term “norm” has many meanings [D’Ors 1979, 816-21; Sobański 1991, 142; Sobański 2001, 69]. We will take one as relevant for our considerations: the rule of behaviour that is the measure of human actions [Hervada 2000, 320; Baura 2012b, 570]. In the opinion of Remigiusz Sobański, a norm is a legal rule encoded in the law [Sobański 2001, 69]. As noted by Javier Hervada, a norm is constituted by its relationship to the law. A norm is a legal norm because it has a certain function in relation to the law [Hervada 2000, 320]. Its role is to determine what the law is, and consequently, what human behaviour or behaviours are appropriate. The declarative function of the norm is articulated in the norm of natural law, which in the canonical system, is closely linked to the positive human norm, whose efficient cause is a human act [Baura 2012a, 570].

Speaking of the norm, its anthropological dimension cannot be ignored, because it embraces man to protect him in the sense that not only his rights and duties are protected but also his subjectivity in the legal order. It is true that the norm does not exist by itself, just as the human being does not exist by itself [Lo Castro 1993, 165].

For this study, one aspect of the norm will be crucial, related to the nature of its content, manifested in such attributes as generality and abstractness, which Pedro Lombardía considered the natural characteristics of the canonical norm [Lombardía 2004, 156]. Generality is seen in that the norm addresses a certain category of objects, defined in general categories, and endowed with certain desirable generic characteristics; sometimes the content also indicates the conditions and circumstances of the addressees [Sobański 2001, 70]. In fact, the disposition of the norm accommodates all cases that fulfil the criteria of abstract situations captured therein [Miras, Canosa, and Baura 2001, 79].

Considering another of its attributes – abstractness – Sobański contends: “The abstractness of a legal norm lies in the fact that the regulated behaviour is identified by generic, typical features that occur in all cases. Based on experience, one constructs certain factual states that can predictably happen, disregarding specific individual characteristics that are irrelevant to the occurrence of the case” [Sobański 2001, 70-71]. The fundamental difficulty involved in making law is that the legislator must deal with the tension existing between abstractness and concreteness.

## **2. The normative system of the canonical legal order**

### **2.1. The law**

In the system of legal act hierarchization utilised by the canonical legal order, the overarching role is played by the law (statute). In Sobański’s opinion, it is a normative act serving to introduce legal norms in the Church [ibid., 52]. As regards its content, this act has a general and abstract nature. Its generality lies in the fact that its disposition does not address a specific subject or case, but subjects and cases at large that fall under its disposition. In other words, the law is not addressed to specific physical or moral persons, but to categories of persons conceived generically [Hervada 2000, 383]. Now, the abstractness of the law stems from its generality. In this case, we speak of a legislative principle serving the idea of generality. The act in question does not refer to a single case. For this reason, we do not typically find here references to special situations, as it only specifies universal requirements for a community [De Paolis, D’Auria 2008, 95].

In sum, we should note that the generality and abstractness of the law is manifested in that it does not regulate detailed hypotheses (or a hypothesis), but it applies to as many cases as possible [De Paolis and D’Auria 2008, 96].

### **2.2. Administrative norms**

Another category of norms found in ecclesiastical law are administrative norms. They are a new category. When considering this problem, we should recall that traditional doctrine identified a norm with an act of the legislative power [Labandeira 1994, 228; Hervada 2000, 304]. Interestingly, the original term was not *norma* but *lex*. In canon studies the term “norm” did not prevail until the mid-19th century [ibid.]. This was reflected in the title

of the first book of the Pio-Benedictine Code, called “Normae generales” (Canons 1-86)<sup>2</sup> [Baura 2012b, 572]. Things changed under the influence of the Second Vatican Council, whose teaching led to the devolution of ecclesiastical authority. It should be explained that the incorporation of a category of administrative acts into the system, which would not be laws, but acts of the executive power, was already proposed during the codification work.<sup>3</sup> Now this is the case, being reflected, as expected, in Book One, Title Four of the CIC/83, “Singular Administrative Acts” (*De actibus administrativis singularis*) (Canons 35-95).

Considering the current legal state, it is possible to legislate administrative norms of a general and abstract nature [Baura 2012a, 568]. It was aptly noted by Valesio De Paolis that distinguishing between legislative and administrative norms is rather difficult, as in most cases they are created by renowned authorities equipped with both legislative and administrative powers. Therefore, when evaluating an act, it is wrong to refer to its author because the canonical concept of power lacks an explicit distinction between these areas. De Paolis believes the difference between values of norms must be inferred from the criterion expressed thus: “those resulting from decisions made by the legislative power and those produced by administration” [De Paolis 2001, 125-26]. Elaborating on the issue of administrative norms, Eduardo Baura stated that these are dispositions intended to enforce the law [Baura 2002, 64]. Thanks to the system solutions, the competent authority may issue general executive decrees (Canons 31-33), instructions (Canon 34), statutes (Canon 94) and rules of order (Canon 95). In this case, such decisions are issued *infra legem*, because they may not contravene the legality principle [Baura 2012a, 568].<sup>4</sup> The first group (general executive decrees and instructions) is intended to introduce norms related to the application of the law to certain conditions; however, the second group (statutes and rules of order) can sometimes be independent, when areas not regulated by laws are subject to regulation, within the limits and according to the rules provided by law [idem, 2002, 65]. Consequently,

<sup>2</sup> *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].

<sup>3</sup> Pontifical Commission for the Revision of the Code of Canon Law, *Synthesis laboris “De normis generalibus”*, “Communicationes” 3 (1971), p. 82; idem, *Synthesis laboris “De normis generalibus”* 2, “Communicationes” 6 (1974), p. 53.

<sup>4</sup> For more on the principle of legality, see Serra 2018.

doctrine distinguishes between executive administrative norms and independent administrative norms [Labandeira 1994, 247].

In light of the above, we can enquire about the value and characteristics of this type of legal acts. Considering this theme, it is worth underlining that they are secondary to a law. Regarding their value, the first thing to point out is their content and substance. The norms of a law may include provisions creating the opportunity to enact norms of an executive character. This may be reflected in general executive decrees [Dzierżon 2005, 191-92] and instructions [Dzierżon, 2017, 21]. Incidentally, the issuance of independent administrative norms is not ruled out, and these may be certain types of statutes [Dzierżon, 2021, 75-76] and rules of order [Labandeira 1994, 252-54; Dzierżon 2022, 90].

However, the lack of link between legislative norms and administrative norms should not be viewed in terms of principal norms. Given the special status of the latter, they cannot be auxiliary norms, either, because, as we have demonstrated, there is a possibility of introducing independent norms that are subordinate to a law and non-complementary to it [De Paolis 2001, 126].

With this context at hand, we are ready to address the key issue by asking as follows: Is a singular administrative act a norm or a legal act?

### **3. Is a singular administrative act a norm or a legal act?**

#### **3.1. Characteristics of a singular administrative act**

Although Book One of the CIC/83 now contains Title Four (“Singular Administrative Acts”), the legislator, following the rule that “in law, it is dangerous to create definitions”, did not implement a legal definition of this category of acts [Amann 1997, 4], which meant leaving that to doctrine.<sup>5</sup> Józef Krukowski defined this category of acts thus: “The administrative act is an act placed by a competent body of executive power, characterized by concreteness, based on a legislative act, directly aimed at achieving the public good of the Church” [Krukowski 1984, 118]. Other canon law scholars, in contrast, have defined the singular administrative act as a unilateral legal act placed by an executive authority and addressed to a physical

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<sup>5</sup> For more on this, see Miziński 2011, 109-42.

or legal person, relevant to a concrete and singular case [Barbero 2014, 69; Kukla 2012, 1120]. Finally, Francesco D’Ostilio offered a definition in the broad and the strict sense. In the former sense, he believes, one speaks of any act of public administration that produces legal effects. In the latter sense, one deals with a declaration of will made by a public administrative body in the area of administrative authority dedicated to individuals or legal persons of a specific community, in a concrete and singular case [D’Ostilio 1996, 295].

It is highlighted in doctrine that the normative term “singular” should not be used to refer only to a particular physical person, since, in accordance with the system solutions, dispensations can also be granted to legal persons, such as parishes. It follows that singular administrative acts can be addressed to both individuals and legal entities. Their characteristic property is concreteness, which is linked to their effectiveness with regard to a specific case or a specific time period. What is more, the content of singular administrative acts is more detailed in comparison with the acts of general and abstract nature (a law, administrative norms) discussed earlier. It should be added that concreteness and singularity are not synonymous, however. Singularity refers to addressees, but concreteness relates to a case [Miras, Canosa, and Baura 2001, 79].

In view of our considerations above, let us ask: What is the difference between administrative norms and singular administrative acts? An attempt to answer this question was made by the authors of the *Compendio de derecho administrativo canónico*, who noted that the difference is visible in dichotomies like particularity–generality and concreteness–abstractness. Clarifying this point, they argue that, unlike a singular administrative act, an administrative norm is legislated for the entire community, but it is introduced, as already shown, to regulate a situation of an abstract nature [ibid., 78].

In this context, the commentators ask a question that is essential for our considerations: Is a singular administrative act a norm or a legal act? Opinions of canon law scholars are divided here.

### **3.2. A singular norm**

Coming back to the definition of norm conceived as a rule of human behaviour, but also considering the purpose of this paper, we can treat singular administrative acts as singular norms – in the sense that they constitute

the application of the law or the dispositions contained in administrative norms in individual cases. Hervada defined this act as a legal norm or rule placed by a public authority in a specific case, addressed to a specific physical person or a specific community [Hervada 2000, 393].<sup>6</sup> Note that with system solutions in place such a hypothesis could be confirmed in the case of singular decrees (Canon 48) and singular precepts (Canon 49). However, this – as we shall see – does capture the whole complexity of the issue. Therefore, the term “singular law” (*ius singulare*) has also emerged in modern doctrine.

### 3.3. A singular law (*ius singulare*)?

Currently, in reflecting on the category of individual administrative acts, some canonists also employ the term *ius singulare* [Baura 2012b, 572]. One possible meaning of this term is “regulations that apply by way of exception” [Sondel 1997, 547]. It seems that the use of this term is fully justified, due to the fact that in the case of dispensations (Canon 85) and privileges (Canon 76 § 1) the legislator allows addressees to act against or “in parallel to” the law. The issuance of this category of rescripts should therefore be regarded as an exception to the general norm.

As a result, since such are the system solutions, which are not homogeneous in this area of administrative law, a further question should be asked: Is a singular administrative act a norm or a legal act?

### 3.4. A singular administrative act as a legal act

Our analysis shows that in contemporary legal doctrine, besides the term “singular norm” referring to the category of singular administrative acts, the term “special norm” has been introduced. Given such a divergence it is pertinent to ask: Is the use of such terminology appropriate? Does it correspond to the legislator’s intent? It seems that the questions should be answered in the negative for the following reasons. First, looking at the codification work, it should be noted that at that time the consultants did not operate with the category of norm, but with the category

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<sup>6</sup> “Por tal entendemos la norma o regla de derecho dada por el poder público con un supuesto de hecho singular (no general), esto es, la norma dirigida a una persona física concreta o a una comunidad menor (esto es, que no forma parte de la estructura pública y orgánica de la *societas perfecta*) también concreta.”

of individual administrative act;<sup>7</sup> second, the first chapter of the fourth title of the 1983 Code was titled “Common norms” (*Normae communes*), and the fourth title itself, “De actibus administrativis singularibus”, contains the word “act”. In this way, as argued by Javier Otaduy, the legislator contrasted the generality of the law with the singularity of the administrative act [Otaduy 2002, 67]. For this reason, one would have to favour the thesis that a singular administrative act, in keeping with the legislator’s intent, is not a norm but a legal act.

## Conclusion

As we have noted in the introduction, there is terminological ambiguity in contemporary doctrine on the nature of singular administrative acts. Some commentators use the term “singular norm”, but scholarship also uses the concept of *ius singulare*.

Our analysis proves that the use of the word “norm” is imbued with normativism; however, this is not what the legislator intended. To prove that, let me refer to an opinion expressed by Janusz K. Bodzon, who claims that the legislator’s intent was that the category of act should be used whenever a reference is made to a singular administrative act, since “norm” is reserved for acts characterized by generality and abstractness. Besides, he pointed out that individual administrative acts are not characterized by innovation, which is true for acts of a general nature [Bodzon 1997, 105]. It should be clarified that when we speak of an administrative act as an act, we mean a legal act [Dzierżon 2002, 25-60; Pawicki 2023]. This understanding organically endorsed by a group of canonists who define a singular administrative act as a unilateral legal act of executive authority [Labandeira 1994, 297-306; Barbero 2014, 69; Kukla 2012, 1120]. Another argument in favour of this mode of interpretation is that, as shown, some acts (dispensations, privileges) are placed against or parallel to the law, thus being exceptions to general norm. Hence, in such hypotheses, it would be unfounded to employ the term “norm”, but it is legitimate to speak of a dispensation or privilege as an act.

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<sup>7</sup> Pontifical Commission for the Revision of the Code of Canon Law, *Liber I – De normis generalibus – Sessio II, 13-17.11.1967*, “Communicationes” 17 (1985), p. 43-44.



In conclusion, the position on the question of whether a singular administrative act is a norm or a legal act depends on the interpretative option adopted. Including them in the category of norms follows from a normativist approach. The second direction is grounded in the theory of general acts, which, notably, highlights the mechanism through which an act emerges – the fact that the will of the person placing the act aligns with the legislator’s intent [Dzierżon 2002, 28]. It follows from the wording of Canon 17 that an interpretation of the law should also take into account the idea envisaged by the legislator. Our study has demonstrated that the legislator’s intent was to use the category of act in reference to singular administrative acts, and this is chiefly the reason why we should come in favour of this option.

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