

REFLECTION ON IRREGULARITY INCURRED DUE TO *AMENTIA* AND OTHER PSYCHIC INFIRMITIES

REFLEKSJA NAD NIEPRAWIDŁOWOŚCIĄ SPOWODOWANĄ AMENCJĄ I INNYMI CHOROBYMI PSYCHICZNYMI

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Abstract

The pre-1983 Code legislations, right from the time of Decretals, classified irregularities into irregularities *ex defectu* and irregularities *ex delicto*. A classification retained by the 1917 Code of Canon Law (Canons 984-988) but later dropped by the 1983 Code. Despite throwing out this classification of irregularities the 1983 Code has retained insanity and psychological infirmities among those irregularities incurred *ex defectu*. This is an irregularity for the reception of holy orders when it is incurred before one receives sacred orders, but an impediment to the exercise of order already received if it is incurred after the reception of holy orders. This article, therefore, gives a critical reflection on the nature of this irregularity and how it should be understood properly by the Ordinaries when evaluating cases of this kind.

Keywords: doctrine, jurisprudence, *praxis*, *tria munera Christi*, Ordinaries

Abstrakt

Ustawodawstwo sprzed Kodeksu Prawa Kanonicznego z 1983 r., poczynsz od czasu dekretów, dzieliło nieprawidłowości na nieprawidłowości *ex defectu* i nieprawidłowości *ex delicto*. Klasyfikacja ta została zachowana w Kodeksie Prawa Kanonicznego z 1917 r. (kan. 984-988), ale później została porzucona przez Kodeks z 1983 r. Pomimo rezygnacji z tej klasyfikacji nieprawidłowości, Kodeks z 1983 r. zachował niepoczytalność i uposledzenie umysłowe wśród nieprawidłowości powstałych *ex defectu*. Jest to nieprawidłowość związana z przyjęciem święceń, jeśli została popełniona przed ich przyjęciem, która stanowi przeszkodę w wykonywaniu już otrzymanych święceń, jeśli została popełniona po przyjęciu święceń. Niniejszy artykuł zawiera

zatem krytyczną refleksję na temat natury tej nieprawidłowości i sposobu jej właściwego rozumienia przez ordynariuszy przy ocenie tego rodzaju przypadków.

Słowa kluczowe: doktryna, orzecznictwo, *praxis*, *tria munera Christi*, ordynariusze

Introduction

This irregularity and impediment is one of the most polemic one, both at the level of doctrinal interpretation and in praxis, especially when it comes to granting of dispensation. Two canons address the question insanity and psychological infirmity.¹

“The following are irregular for the reception of orders: 1°, One who suffers from any insanity or from any other psychological infirmity, because of which, he is, after the experts have been consulted, judged incapable of properly fulfilling ministry.” (Canon 1041).

“The following are impeded from the exercise of orders: 2°, one who suffers from insanity or from some other psychological infirmity mentioned in can. 1041, 1°, until such time as the Ordinary, having consulted an expert, has allowed the exercise of the order in question.” (Canon 1044 § 2).

Looking at the provisions of these two canons, one immediately notes that insanity and psychological infirmity are both an impediment and an irregularity. To one who has not received sacred orders it is an irregularity for reception of the orders, and if he receives sacred orders while bound by this irregularity, he is equally irregular for the exercise of the order he has received (Canon 1044 § 1, 1°). As an irregularity it is permanent and can only be removed by dispensation. For those who are affected by the condition after receiving sacred orders, it is an impediment for the exercise of the order already received, hence it is of temporary character and can cease by itself then one resumes the exercise of orders with the permission of the Ordinary after consulting the experts (Canon 1044 § 2, 2°). This way, if one is to return to the exercise of ministry before the condition is declared by the ordinary as having ceased, then it is necessary that the ordinary dispenses from this impediment before one resumes the ministry.

From the very formulation of these two canons, various questions are left unanswered by the Code. First, some forms of *amentia* and psychic

¹ *Codex Iuris Canonici auctoritate Ioannis Pauli PP. II promulgatus* (25.01.1983), AAS 75 (1983), pars II, p. 1-317 [hereinafter: CIC/83].

infirmities may heal completely under the intervention of experts, is there really any need for retaining this phenomenon as an irregularity, permanent by nature, or can it be reduced to a simple impediment whose nature is transitory? Second, is this irregularity and the impediment dispensable? Third, these canons do not clearly establish whether the ministry for which one is to be evaluated as unable to fulfil rightly is only a liturgical ministry, or the entire *tria munera Christi*. Fourth, how are the terms *rite* and *inhabilis* as used in these two canons to be understood?

1. Elements of this impediment and irregularity

The irregularity and impediment incurred due to insanity (*amentia*) and psychological infirmity (*Psychic illness*) are not incurred by someone *ex delicto* as it happens with the irregularity of schism, apostasy, or heresy, but *ex defectu* [Woestman 1999, 63-66; Kaslyn 2002, 176-77]. That is, this irregularity and impediment originates from the structural make-up of the person at psychic level. It is an irregularity and impediment with roots on psychic and psychological condition of a candidate. To constitute an impediment or irregularity *amentia* and psychological infirmities addressed here must have a direct impact on the performance of ministry by the candidate, that is, they must render the candidate or the already ordained person incapable of fulfilling ministry rightly.

Canon 984, 3° of the 1917 Code of Canon Law declared candidates irregular *ex defectu* for the reception and exercise of orders, those who suffered from epileptics (epilepsy), the insanity (*amentes*) and those who were possessed by demons.² However, the developments in ecclesiastical jurisprudence aided by the sciences of psychiatry and psychology, as well as the development in the understanding of the ministry of ministerial priesthood by Vatican II, form the basis of the formulation of the irregularity and impediment in the new Code, that is, the CIC/83 [see Keating 1973, 7; Beal 1996, 436-39]. This new Code has maintained *amentia* and dropped epilepsy and demonic possessions prescribed by the CIC/17 and added the phrase *any other psychological infirmity* as a basis of incurring this irregularity and impediment. This irregularity and impediment in Canons 1041, 1°

² *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].

and 1044 § 2, 2° must be understood in line with these new developments, but not only in the eye of the old doctrine.

2. *Amentia* (insanity)

Amentia (insanity) at times is so obvious, as in the case of one who walks naked along the road at midday. Sometimes it could be hidden, other times it could be seasonal or occasional. In cases where it is not truly manifest, the aid of experts may be needed in evaluating its impact on the ability of that person to fulfil the ministry. Ecclesiastical law has always excluded those with the condition of *amentia* from being ordained or from exercising the orders already received if the condition affects their ability to fulfil rightly the ministry.

In the CIC/17, Canon 984, 3° the *amentes* were declared irregular for the reception and exercise of orders because of the inhibiting effect of *amentia* in placing of several human acts that are juridically relevant. The 1917 Commentators such as Wernz and Vidal, faithful to the long canonical doctrine, held that even clerics who had lost the use of reason habitually or at intervals, were irregular for the exercise of orders [Wernz and Vidal 1934, 321]. In fact, *amentes* were considered irregular for the reception of orders even after they had recuperated because of *reverentia ac dignitas status clericalis et periculum relapsus*. However, even though all those who habitually lacked the use of reason were included in the larger category of *amentes*, the CIC/17 avoided reducing *amentia* to habitual lack of use of reason. The reason being that the developing jurisprudence aided by the developing sciences of psychiatry and psychology were making more clear the distinctions in various forms of mental impairment and their respective impact on validity of juridical acts performed under their influence.

The CIC/83 has retained the element of *amentia* and collected all other categories of psychological disturbances into a broad category of “psychological infirmities”. Therefore, *amentia* contracted prior to ordination and whose continuation is presumed during the time of ordination, renders someone irregular for the reception of orders. That which is contracted after one is ordained renders him impeded from exercising the orders received until he heals and the ordinary permits him to resume the exercise orders, after consulting the experts. The CIC/83 does not define precisely what is meant by the term “insanity”, that is *amentia*, though it uses this

term in three contexts: in cases of irregularities and impediments (Canons 1041, 1°; 1044 § 2, 2°); marriage by mandate (Canon 1105 § 2); and renewing temporary vows while one suffers from *amentia* (Canon 689 § 3).³

In analyzing the nature of *amentia* and its impact on reception and exercise of orders, the doctrine is divided along various lines of thought. Some authors identify *amentia* generically with the *lack of use of reason* [see Lagges 1996, 48-49; Keating 1973, 13]. This position does not precisely elucidate on the value of *amentia* in relation to the question of irregularity and impediments to reception or exercise of sacred orders. Others, analyzing the concept of *amentia* in relation to the Rotal Jurisprudence and in relation to the provision of Canon 1095 CIC/83, apply by analogy the invalidating effect of *amentia* and other psychic infirmities on the sacrament of marriage to the sacrament of orders [Lüdicke 1985, 423]. For them *amentia* as well as psychic infirmities make invalid the reception of the sacrament of orders.

Even though *amentia* may gravely impair the mental capacity of the person and even directly affect his use of reason, the question of direct application of the nullifying effect of *amentia* in marriage cases to the cases involving exercise and reception of orders is not precise, for two reasons. First, different from matrimony, reception and exercise of holy orders lack a contractual character hence, from the incapacity to fulfil obligations (*ad impossibilia nemo tenetur*) nullity of ordination cannot be analogously inferred. Hence, the jurisprudence of the Roman Rota on *amentia* and other psychological infirmities may not be applied generally and directly to question of *amentia* in matters of impediments and irregularities for the reception of sacred orders. Even though some aspects of the jurisprudence of the Rota can be applied to this question but a wholesome application of it to this question may not work. Second, irregularities and impediments do not determine the validity of the reception or exercise of the orders received, but the lawful reception or exercise of the orders received. They are not *leges inhabilitantes* (incapacitating laws). Therefore, *amentia* and other psychological infirmities affect not the validity of the orders received, as it happens with marriage, but the legitimacy of reception and exercise of sacred orders can be inferred only after it has been judged that the persons with these conditions cannot fulfil rightly the ministry.

³ For the meaning and categories of *amentia* in canon law, read Stankiewicz 1980, 52-53.

The Ordinary, therefore, must be aware that the law addresses the question of *amentia* not only on matters of the reception and exercise of orders, but also in matters of dismissal of members in temporary vows from the institute. Canon 689 § 3 CIC/83 prohibits the dismissal from the religious institute of a member who has become *amens* during the period of temporary profession. The canon says: “a religious who becomes insane during the period of temporary vows cannot be dismissed from the institute, even though unable to make a new profession.” A temporary professed member who becomes insane may not renew the vows because the renewal of religious vows is to place a juridical act, of which it is obligatory that one deliberates over it and voluntarily place it while in possession of the knowledge and free will. This element lacks in someone who is insane. Therefore, he may not be dismissed from the institute while in this state [Okello 2024, 121-22]. The institute has a duty to take care of this brother or sister who is unwell and of providing the necessary psychiatric help by means of experts.

In certain cases, the insane member after realizing that he cannot be a religious or continue staying in the institute due the condition of her or his mental health, may decide that he or she does not want to remain in the institute or that he does not want to remain as a religious. If he asks for dispensation, while still in that state of insanity, by virtue that he is considered not capable of placing certain juridical acts, a dispensation granted in this case would be of doubtful good to the person. In fact, as Torres holds, such a concession of the dispensation does not exonerate the institute from the obligation for taking care of the sick member, because in such a state he or she may not live a proper life as he ought to [Torres 1992, 237-38].

Some scholars are of the view that, if by case, this situation manifested itself before the person joined the institute or before being admitted to religious profession, and this can be proven, then the legal obligation of the institute over this candidate will cease [Chiappetta 1988, 790]. This position seems to introduce a new element which is not addressed in the law, and as such it may be a slippery path to take, because, if the person manifested the conditions of *amentia* before profession or before joining the institute and still went ahead to be admitted to the profession, the institute actually carries the burden. The reason for this is based on the provisions of Canon 642 CIC/83 which establish that before admission, experts are to be used to ascertain the health disposition of candidates before admission. In this case, for mental health, a psychologist would be used to ascertain this. If this was not done, then it is a loophole on

the side of the Superiors and those in charge of formation. Once admitted to profession, the obligation falls back to the institute.

The fundamental question in this case would be, what will be the juridical condition of such a member within the institute, since with insanity he cannot validly place vows?⁴ If this condition of *amentia* manifests itself to professed religious under simple vows, then he asks to be admitted to holy orders, the aid of experts is necessary in order to ascertain the stability of the mental status of the candidate, as well as his ability to fulfil properly the sacred ministry. If after the judgement of the experts he has truly healed and now capable of performing ministry, the major Superior who is an Ordinary has the power to dispense him from this irregularity if it exists. If this occurs while one is already in sacred orders, then the major Superior who is an Ordinary may permit him to exercise orders if he has completely healed from the sickness after an evaluation of experts. Otherwise, the Superior who is an Ordinary may dispense him to exercise orders if he is not so certain about his complete healing from the condition.

3. Psychological infirmities

During the process of revision of the Code, the 1975 *Schema* and the 1980 *Schema* addressing this question, spoke of *psychicus defectus* but not *infirmitas psychica*.⁵ Later in the final phases of editing the revised Code, *defectus* was interchanged with *infirmitas* with no explanation granted for the change.⁶ For consistency, the Code uses the term *infirmitas*⁷ to denote physical or psychological illness, weakness, or disorder. It uses instead the term *defectus*⁸ to denote a defect or lack of critical or essential elements required for the validity of the act. Therefore, the *infirmitas* which the Code recognizes as giving rise to the impediments and irregularity in Canons 1044 and 1041 is the psychological infirmity.

⁴ AAS 17 (1925), p. 107.

⁵ The 1975 *Schema*, Canons 224, 2° and 227, 2°; the 1980 *Schema*, Canons 994 § 1, 1° and 997 § 2.

⁶ The subsequent change is seen in the 1982 *Schema novissimum* Canons 1041, 1° and 1044 § 2, 2°. The principle subsequent change in this context was the substitution of the phrase *aliusve psychicae infirmitatis* in the place of *aliusve psychicus defectus* in the 1982 *Schema* and in the promulgated text.

⁷ CIC/83, Canons 281 § 1; 665 § 1; 689 § 2; 919 § 3; 1004, § 1-2; 1041, 1°; 1741 § 2.

⁸ CIC/83, Canons 1095 § 2; 1107; 1159 § 1-3; 1160; 1163 § 1; 1480 § 2; 1680; 1686; 1687 § 1.

Therefore, at the basis of this irregularity is psychological infirmity itself, but not mere judgement by the superior of its existence or non-existence. He who receives orders due to mistaken favorable judgement of the ordinary is affected by the impediment, and he who has mistakenly received an adverse judgement of the ordinary, does not incur the impediment [Gonzalez del Valle 2004, 986]. This *infirmity* giving rise to the impediment for the exercise of orders already received or irregularity for the reception of orders does not necessarily have to deprive one of the use of reason, as it does in the case of *amentia*. Instead, it includes a wide variety of psychological illnesses or psychic disorders which affect the efficacy of the person in fulfilling the ministry. Second, it is not the psychological disorder itself which gives rise to irregularity or impediment, but its impact on the person's ability to fulfil properly the sacred ministry [Beal 1996, 440-41].

In the new Code, besides Canon 1041, there are two other contexts in which *infirmity psychica* is addressed. First, in Canon 689 § 2 in relation to admissions to the renewal of vows and placing of perpetual vows; then Canon 1741, 2° on the possibility of removing the parish priest from a parish due to permanent psychological or physical infirmity. Based on this therefore, looking at the use of the term *psychica infirmity*, it does not confine itself only to those mental disorders or personality disorders that deprive a person of sufficient use of reason, as some authors have asserted [Woestman 1996, 626-28; Gilbert 1985, 729; Gonzalez del Valle 2004, 986]. Instead, the impediment depends less on the severity of the psychological infirmity as such, than on its debilitating effects on the person's ability to fulfil properly the ministries proper to the ordained ministers.

An irregularity resulting from the psychological infirmity must be distinguished from psychic qualities demanded by Canon 1029 for admission of candidates to holy orders. Such qualities are object of discretionary evaluation of the ordinary to determine the worthiness of the candidate. During formation peculiar psychic and human qualities are discovered, nurtured, and formed for a proper end. Therefore, the intervention of the psychological expert is more of healing assistance to the psychic health of the candidate, and not only for identifying mental disorders in a person.⁹ Hence, if there is a mani-

⁹ Congregation for Catholic Education, Directory on the use of psychology in the admission and formation of candidates for the priesthood *Ogni vocazione cristiana* (29.06.2008), "Communicationes" 40 (2008), p. 307-321, Articles 2 and 5.

fest psychological infirmity during the scrutiny of the candidate, the Ordinary retains the discretionary power to evaluate the psychic health and condition of the candidate. However, if he is not certain of his situation, he may not proceed to forward the candidate for ordination (Canons 1051, 1°; 1052).

For the religious, psychological infirmity can also be a legitimate cause for not being admitted for renewal of vows or to perpetual vows. According to Canon 689 § 2, even if the psychological infirmity is acquired after the one has made temporary profession, it may constitute a just reason for excluding him from renewal of vows or making perpetual profession if this condition renders him unsuitable to lead a life proper to the institute. For this to happen, the Ordinary must seek the counsel of experts to assist them in determining whether the infirmity renders the religious unsuitable for living the life of that institute (*redit ineptum ad vitam in instituto duccendam*).¹⁰ However, this may not happen if the infirmity was contracted as a result of negligence on the side of the institute or because of works performed in the institute [Okello 2024, 118-20]. In such case, the temporary professed member may not be dismissed on this ground. Some scholars are of the opinion that the institute is obliged to admit the candidate to religious profession, whether renewal of vows or perpetual vows, and be treated as sick members of the community. In case the Superiors arbitrarily refuse to admit someone to profession due to diseases and psychological infirmity or if he unjustly expels or forces him to go home, such an act can be subjected to a hierarchical recourse [Torres 1992, 235].

CIC/83 has modified the traditional approach, praxis, and legislation on this matter of psychological infirmity for members of the institute with temporary vows. For years, the praxis and legislations of the Holy See held that whoever contracted physical or psychological infirmity within the institute after profession, be it temporary or perpetual, could not be dismissed from the institute on this ground, neither could those in temporary vows be excluded from renewing their vows or making perpetual profession on this ground. We can see this in the declaration of the Congregation for Bishops

¹⁰ It must be understood clearly according to the provisions of the Code, that the evaluation and the judgement here concerns the suitability of the candidate to lead the life of the institute, but not religious life in general. Because one may be found unsuitable to lead a life according to the charism of one institute, but then still be suitable for religious life in another institute.

and Regulars to the General Superior (General Master) of the Capuchins on 10 March 1650, ordering them to recall back and admit to religious profession, a temporary professed member who had been dismissed on the ground of infirmity.¹¹ Also, in the declaration of the Congregation for the Regulars to the Dominicans on 12 June 1858, that no religious with simple vows who becomes infirm, be it physically or psychologically, can be dismissed from the institute on this ground.¹²

CIC/17, in Canon 637, ruled out the possibility of barring someone from renewing his religious vows or placing the perpetual vows because of infirmity, unless it is proven that this infirmity was intentionally withheld or simulated prior to profession. At the same time, the infirmity culpably withheld or dissimulated prior to profession could be used as a ground for dismissal of a religious from the institute (Canon 647 § 2, 2°). The Decree *Dum canonicarum legum* of 8 December 1970, modified the provisions of the Canon 637 CIC/17, by establishing that competent Superiors, with the consent of the council, may exclude from renewal of vows or perpetual profession, those who, according to the report of the medical doctors and other experts, due to infirmity may not lead a life proper to the institute without causing harm to the religious himself or to the institute, even if the infirmity was incurred after profession. However, the dicastery insisted that in doing so, the Superiors must proceed according to the principles of Charity and equity.¹³ CIC/83, building from this excluded from dismissal only the cases of infirmity incurred as a result negligence of the institute or because of works performed in the name of the institute. Despite all this, the central focus of Canon 689 § 2 is the unsuitability of the candidate to live a life proper to the institute, but not necessarily religious life as such.

In case, a member who has incurred such an infirmity heals completely and one is allowed to renew the temporary vows or make perpetual profession, then later asks to be admitted to sacred orders, decision of the Superior is so determinant. If this person has healed completely and the medical

¹¹ Sacra Congregatio Episcoporum et Regularium, Responsa ministro generale dell'ordine dei Frati Cappuccini Dimissione per infermità (10.03.1650), in: *Enchiridion della Vita consacrata*, no. 480, p. 274-75.

¹² Sacra Congregatio Regularium, Dichiarazione per l'Ordine dei Dominicani, n. V, in: *Enchiridion della vita consacrata*, nos. 669, 390.

¹³ Sacred Congregation for Religious and Secular Institutes, *Decretum Dum canonicarum* (08.12.1970), AAS 63 (1971), no. 5.

experts have ascertained that actually he is healed and can properly fulfil the ministry, scholars do not agree on whether there is any irregularity incurred in this case or not. For some scholars, even if he has healed, since the common law establishes this as an irregularity, then he will have incurred the irregularity and must be dispensed from it. For others, irregularity is incurred only when the condition is present at the moment of ordination, therefore, no need for dispensation for no irregularity has been incurred. The intervention of the legislator is required at this moment through authentic interpretation. However, left as it is, it is still not certain whether one incurs this irregularity only if the condition subsists during the moment of ordination or if it is incurred even if one suffered from it before and got healed before the time of ordination.

4. Inability to fulfil properly the ministry

By the sacrament of holy orders, one is constituted a sacred minister in the Church, consecrated and deputed perpetually for the sacred ministry. One is ordained for sacred ministry and therefore ought to be well prepared for this ministry. The very interpretation of the words *ministerium*, *inhabilis* and *rite* as used in Canon 1041, 1° is necessary because of the conflicting doctrinal interpretations of these terms as used in this context.

This canon makes a general mention of *ministerium*, without specifying whether this *ministerium* is restricted only to performing ministries related to the celebration of sacraments alone (*munus sanctificandi*) or whether it refers to all the three ministries of teaching, sanctifying and governance. The doctrine gives three different interpretations. One part of the doctrine, championed by Woestman, interprets *ministerium* as referring only to those acts that are strictly connected to the *munus sanctificandi* [Woestman 1996, 622]. They argue that the two other *munera* are not exclusive to the ordained ministers, they can be fulfilled as well by the laity. Therefore, if psychic infirmity or *amentia* makes one unable to perform any or all acts of pastoral ministry that can be performed by the laity it does not constitute an impediment. However, it constitutes an impediment if it affects only the celebration of some sacraments especially the Eucharist, confirmation, penance, and sacred orders because they are exclusively outside the ministry of the laity.

This position is not satisfactory because it leaves a *lacuna* concerning the application of this condition to deacons. If we adopt this interpretation,

it is impossible to understand how the deacons feature into this context of *ministerium*, given that most services performed by deacons can be performed by the laity. For instance, teaching, distribution of communion among others can be performed as well by the laity. How then does this irregularity or impediment to apply deacons? Given this, then this position does not address the whole question as it is presented in the law, because it excludes deacons from this irregularity and impediment.

The second part of the doctrine, championed by scholars like Beal and Pavannello, interprets *ministerium* as encompassing all the *tria munera Christi*, that is, *munus regendi*, *munus sanctificandi* and *munus docendi* [Beal 1996, 438-39; Pavanello 1999, 286-88]. A third section of the doctrine, championed by Lagges, interprets *ministerium* to mean any official ministry within the particular church [Lagges 1996, 62]. This last interpretation, though wide, is not precise, because the official ministry may include the singing ministry as well, of which not everyone has the talent of singing. This definitely cannot be used as a criterion, so we leave it out of discussion.

According to Vatican II Council and the official magisterium of the Roman Pontiffs, sacred ministry carried out by the ordained ministers is a threefold ministry, that is, *munus sanctificandi*, *munus regendi et munus docendi*.¹⁴ The jurisprudence of the Apostolic Signatura, confirms this in the definitive sentence *coram* Davino, of 4 May 1996,¹⁵ by underlining that the meaning of *ministerium* must be deduced from the contents of Canons 1008 and 256 § 1 CIC/83. In both canons with sacred orders Christians are constituted sacred ministers, consecrated, and deputed, each according to his grade, to fulfil the functions of teaching, sanctifying, and governing. Therefore, based on the magisterium and jurisprudence of the Apostolic Signatura, it is proper to underline that since the functions attached to sacred ministry include not only the celebration of the sacraments, but also requires the fulfilling of the functions of teaching, and governing to be carried out satisfactorily, then an inability to fulfil the ministry correctly can

¹⁴ See Sacrosanctum Concilium Oecumenicum Vaticanum II, Constitutio dogmatica de Ecclesia Lumen gentium (21.11.1964), AAS 57 (1965), p. 5-71, nos. 21, 25-27; Sacrosanctum Concilium Oecumenicum Vaticanum II, Decretum de presbyterorum ministerio et vita Presbyterorum ordinis (07.12.1965), AAS 58 (1966), p. 991-1024 [hereinafter: PO], nos. 4-6; Benedict XVI, General audiences of 14 April 2010; 5 May 2010; and 26 May 2010, in <http://w2.vatican.va/>

¹⁵ See Supremum Tribunal Signaturae Apostolicae, Sententia definitiva *coram* Davino (04.05.1996), Prot. N. 23737/92 CA, no. 3.

arise from a psychic illness or *amentia* whether it concerns the function of teaching, or function of sanctifying or a function of governing. The understanding of *ministerium* surrounded only by the cultic role of priesthood is narrow and does not reflect the understanding of Vatican II teachings on sacred ministry as encompassing the *tria munera Christi* (PO 1-2). Therefore, Ordinaries must evaluate the person in terms not only of performing the sacred liturgical function, but in relation to all the three ministries which are appropriate for sacred ministers. This is both for the justice and good of the sacred ministry itself, the dignity of the priestly ministry as well as for the spiritual well-being of the people to be served by the sacred minister.

The adverb *rite* used in this canon also receives various interpretations from the doctrine. The first section of the doctrine spearheaded by scholars like Woestman, under the influence of Canon 984, 2° CIC/17 and by the understanding of *ministerium* in Canon 1041, 1° CIC/83 as referring only to the celebration of Eucharist, sacred ceremonies, and sacred rites, holds that the term *rite* implies *secure* (safely) and *decenter* (decently or with dignity) [see Woestman 1996, 624-25].

The other section of the doctrine holds that the term “*rite*” as used in the Code has at least 5 meanings. First, it is used in six cases in connection with the liturgical laws to mean “correctness”. Second, in twenty-three cases it is used to mean “in accord with the requirements of law”, especially with due observance of procedural laws, and virtually synonymous with the phrase *ad normam iuris*. Third, in five occasions it is used in relation to reception of sacraments to imply “right” disposition (*rite dispositi*). Fourth, in ten occasions, it is used in connection with *instructio educeo* to connote that the instruction is to be appropriate to the goal of the process. Fifth, in other remaining contexts, it is used in relation to the fulfilling of obligations, hence referring to “properly” [Beal 1996, 450-54]. Therefore, the term *rite* as used in Canon 1041 employs all these five meanings, hence its precise interpretation and use depends on the context on which it is used. However, “properly”, or “correctly” is the most appropriate.

According to the jurisprudence of the Apostolic Signatura, the term *rite* employed in Canon 1041, 1° means “correctly” or “according to the law”. Its use is not restricted to the *munus sanctificandi* alone but extends as well to *munera docendi et regendi*. “In this context, in turn, the term “rite” means the same as “according to the norms” (*iuxta normas*), of which norms do not include only the rituals to be taken into account but also all those

norms which govern the exercise of the three functions. And so, in our Code, the term “rite” is used fifty times, and it is almost always used in the context which does not concern the celebration of the sacraments. Indeed, there are canons which pertain to the obligations of the order of diaconate to be carried out *rite* (Canon 236), the entire Catholic doctrine to be proclaimed *rite* and safeguarded in the exercise of the ministry (Canon 252 § 1), the obligations proper to the presbyterial state to be fulfilled *rite* (Canon 384), duties to be fulfilled *rite* in the curia or the tribunal (Canon 473 § 2 and 1454), the function of catechist to be fulfilled *rite* (Canon 780), etc.”¹⁶

To constitute an impediment, the *amentia* or a psychic infirmity must render a person unable (*inhabilis*) to rightly fulfilling the ministry. Some authors comparing Canon 1095, 3° with Canon 1041, 1° equate *inhabilis*, *inhabilitans*, and *inhabilitas* to an incapacity (*incapacitas*) to do something. For them the term *inhabilis* refers to the human qualities whose absence renders invalid and inefficacious all the acts placed without them.

This interpretation does not reflect the mind of the legislator at all. The Code distinguishes incapacity (*incapacitas*) from inability (*inhabilitas*). *Incapacitas* is a serious deficiency in person which makes him totally unable to place a certain juridical act (total lack of capacity). For instance, one who is not in sacred orders is incapable of celebrating the eucharist. *Inhabilitas* is a legal disqualification of a person who has the capacity to carry out an act from performing that very act. There are occasions when the Code uses *inhabilis* to refer to moral fitness as it does in Canon 171 § 1, 3°-4°. In other occasions *inhabilitas* arises not from inherent *incapacitas* but from a judgement of competent authority according to the norm of law, but with ample margin for discretion about the fitness of a person to perform validly certain functions within the ecclesial community. Therefore, *inhabilitas* is to be defined in relation to the responsibilities attached to that specific ministry (sacred ministry) [Beal 1996, 442-48] but not to the reception of the sacrament. We cannot make a direct comparison and application of provisions of Canon 1095, 3° on incapacity to emit a matrimonial consent to the case of irregularities, because this inability does not constitute the validity but lawfulness.

Having ascertained the existence of *amentia* or psychic infirmity, after consultation with experts, the Superior is to evaluate the condition

¹⁶ Ibid.

of a candidate or minister and judge whether the impending condition can compromise his ability to fulfill the sacred ministry rightly.

Conclusion

The provisions on irregularities and impediments fix a well meditated limit within which the Ordinaries and responsible major Superiors can exercise their discretionary faculty in discerning the suitability of those to be promoted to sacred orders or the exercise of the orders already received. The irregularity in Canon 1041, 1° is incurred *ex defectu* hence it is necessary that the defects described there exist, and that the Ordinary judges and declares that these defects can prevent the candidate from performing the ministry rightly. Like other impediments and irregularities, this irregularity and impediment is established by the Church to conserve and safeguard the sanctity and reverence due to the sacrament of holy orders.

Therefore, Ordinaries exercise some caution in determining the existence of the irregularity or impediment. They may consult experts before reaching a definitive judgement of the existence of the irregularity or impediment. But most of all they must use the faculty of discretion in determining whether to grant dispensation or not. To enrich their prudence in judging these cases, they should inform themselves of the recent developments in the legislation, doctrine, and jurisprudence on the matter. It is important that they beware of the legalistic and restrictive interpretations by some scholars, and also the too broad interpretations, which may compromise the proper application of the law and attainment of *salus animarum*.

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