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TOMASZ GAŁKOWSKI CP

Cardinal Stefan Wyszyński University in Warsaw

t.galkowski@uksw.edu.pl

<https://orcid.org/0000-0001-9166-9516>

REVISION OF THE CODE OF CANON LAW ON THE BASIS OF PREAMBLES IN THE NORMATIVE DOCUMENTS OF POPE FRANCIS

Contents: Introduction; 1. Revision of the canons in John Paul II's Code of Canon Law; 2. Meaning of the preamble; 3. Elements of *ratio legis* in the preambles; Conclusion

Introduction

The year 2023 marks forty years since Pope John Paul II promulgated the Code of Canon Law. A quarter of this period has fallen during the pontificate of Pope Francis (since 13 March 2013). On the one hand, it may come as a surprise that a pope with a distinctly pastoral approach to holding the Petrine office and leading the Church has made the most changes to the Code of Canon Law. On the other hand, the life of the community of the faithful, the source of which is the dynamic implantation in Christ brings consequences and influences the normative solutions of community life. The further we move back in time from the first legal regulations, the more we are forced to follow the situations provoked by the faith professed and witnessed with new regulations.

Following and learning about the amendments to the Code of Canon Law (it is the only one that is considered around Francis'

legislative activity), it is not surprising to see statements regarding the negative evaluation of the legislative process itself, the forms of promulgation to which we are accustomed due to the legal provisions in force (can. 8 §1) and the consequences. Criticism of Francis' abundant legislative activity concerns formal aspects, but also the lack of transparency in legislative procedures as well as the substantive aspects of the normative solutions themselves. The analysis of Francis' legislative activity by Geraldina Boni was widely echoed (Boni 2021). Her publication aroused enthusiasm among well-known canonists on the one hand, and on the other hand amazement at the approach to the evaluation of papal activity provoking a discussion, for example, on the pages of the Italian journal *Il Regno* between Paolo Cavana and Salvatore Berlingò, which I encourage to read (Berlingò 2021, Cavana 2021b).

The object of my considerations is not to analyze Francis' normative solutions, nor the course of the legislative procedure, as this has already been met by not only the above-mentioned authors (Bier 2017, Gravino 2021). I propose another way of looking at the Pope's legislative activity. Giorgio Zannoni (2021) did the same, which was met with a positive assessment by Rocco Buttiglione, who wrote the Preface to the edition of his scientific publication. He pointed out that the merit of G. Zannoni is to read the documents of the Church's Magisterium not from the perspective of individual documents forming individual stages of the development of the teaching sometimes juxtaposing them, but to read them from the perspective of the fullness and depth of the teaching on the principle of the whole remaining in tension.

Francis' teaching and legislative activity skillfully combines two functions that coexist inseparably in the person of Peter: the teacher of the faith and the legislator, or rather, the legislator, who is the Pope as the supreme teacher of the faith. R. Buttiglione writes that in Christ, the law desires to become a form of human life, which is accomplished in the relationship between the Father and the disciple, in which following Him involves a constant learning and understanding Him, and an included in this process effort to clarify the rightness

of the path taken. Law for Francis, emphasizes R. Buttiglione (2021, 19), participates in the educational process of the person following Christ, in which the demands of justice are combined with the demands of mercy. Hence, in the first place, in assessing Francis' legislative activity his commitment to clarify and highlight the life-giving relationship of the believer with Christ himself should be taken into account.

Two different views of Francis' legislative activity, the first from the perspective of the law itself and the second from the perspective of the papal teaching as a whole, offer differing assessments. The first has been recognized and defined as a certain form of antipathy by the pope toward the "doctors of law", their attitude toward the papal teaching and the changes to code laws made in its perspective. However, I do not think that from this we should draw conclusions about the lack of good feeling between Francis and canon law (Zannoni 2021, 21). Rather, this lack can be seen between him and the "doctors of law" as well as between Francis and those who adopt the attitude described by the Pope as neopelagian and resulting in an obsession with the law.

Pope Francis (LF, EG) from the beginning of his pontificate points to attitudes characteristic of neopelagianism and neognosticism spreading in the Church and arousing many critical and hostile reactions, especially in the forum of statements and Internet portals (Krzych 2018). Examples of attitudes described by Francis as neopelagianism can be found starting from his first documents. A feature of those displaying this attitude is that they "trust only in their own powers and feel superior to others" (EG 94), they "insist on taking another path, that of justification by their own efforts, the worship of the human will and their own abilities" (GE 57). At the same time, the Pope points out the consequences of such an attitude, which manifest themselves in: "an obsession with the law, an absorption with social and political advantages, a punctilious concern for the Church's liturgy, doctrine and prestige, a vanity about the ability to manage practical matters, and an excessive concern with programs of self-help and personal fulfillment" (GE 57).

One can try to look at papal legislation in yet another way, leaving aside disputes over formal and substantive references. In fact, one can look at both the papal attitude to Church law as well as the Church itself and the pedagogical role of the law, as R. Buttiglione wrote, by delving into the contents of the preambles contained in the various papal documents that precede the new code canons he promulgated.

1. Revision of the canons in John Paul II's Code of Canon Law

In the above statement I intentionally used the name of the code law indicating the authority of John Paul II ordering its promulgation (CIC/83). The number of changes made by Francis raises the question of whether this is still the Code of John Paul II or perhaps already Francis (Gałkowski 2022). Francis has not promulgated the revised text of the Code¹. Therefore, the phrase *auctoritate Francisci promulgatus* cannot be used. However, if one were to quantify the number of changes made in percentage terms, it might turn out to be impressive. The new canons were promulgated, albeit in a rather peculiar and perhaps even personal way, by Francis. So if this is not the Code of Francis in name, at least one can probably already begin to consider Francis as a co-author with John Paul II.

Francis' legislative activity, for the 10 years of his pontificate, is quantitatively impressive compared to his predecessors. John Paul II made code changes only once. Benedict XVI did the same. Francis made changes to all code books (DLT 2025). He promulgated one Book VI (*De sanctionibus poenalibus in Ecclesia*) in its entirety (PGD). Not all the canons were changed. However, this Book can be called a new text, since only 19% of the normative solutions (17 canons)

¹ However, there are new editions of the entire Code of Canon Law in translation into national languages with the changes introduced by Francis. This is the case with Poland. The Polish Bishops' Conference adopted an updated translation into Polish of the 1983 Code of Canon Law on 14 March 2022. The normative text contained therein refers to the state of the law as of 18 May 2022. Therefore, it does not include the changes introduced after that time in the Rescript ex audientia of 18 May 2022, the Apostolic Letter *Expedit ut iura* of 2 April 2023, the Apostolic Letter *Le Prelature personali* of 8 August 2023.

remained unchanged from the previous version of this Book. Nine canons (10%) have changed their place in the previous systematics. The remaining 71% of the Book (63 canons) were changed (Arrieta 2021). This is the first such large-scale reform of the existing code provisions. Previous ones concerned individual canons. The revision of Book VI is an example that *ius sequitur vitam*, as Francis clearly points out. The changes to the code regulations made in this Book deal with the constitutional norms of the Church expressing her communal and unitarian character, for the development of which the law delimits a certain space allowing for the expression of what the divine-human community of the Church is. On the other hand, the law, while setting boundaries for the development of the life-giving building blocks of the Church, namely faith, love, graces and charisms, also guards its unity in plurality. It guards unity against disintegration, dismemberment, the temptations of individualism, and sinful confusion while pointing out paths of return through appropriate reparations to situations inappropriate to its unity.

The second document that regulates the whole matter is *Mitis Iudex Dominus Iesus* (15 August 2015). In these two documents there is a comprehensive reform. In *Mitis Iudex Dominus Iesus*, however, it is the legal institution of the marriage annulment process. The reform of Book VI concerned the entire branch of law. In the case of the trial reform, it was anticipatory in nature, directing new rules of procedure of a nonetheless disciplinary nature for the future. The reform of Book VI is a reaction to legal situations verifying themselves in the Church indicating that the law follows life. The difference between the two new normative regulations is significant. This is because in the case of Book VI, the legal solutions go back to the Church's constitutional norms, and in the case of the marriage process to the disciplinary norms.

In order to complete the argument about Francis' legislative activity regarding only the Code of Canon Law, it is necessary to cite the other documents in chronological order: *De concordia inter Codices* (31 May 2016), *Magnum principium* (3 September 2017), *Communis vita* (19 March 2019), *Authenticum charismatis* (1 November 2020),

Spiritus Domini (10 January 2021), *Competentias quasdam decernere* (11 February 2022), *Expedit ut iura* (2 April 2023), *Rescriptum ex auctoritate* (18 May 2022), *Le Prelature personali* (8 August 2023).

It can be seen from the above summary that Francis usually uses the form of an apostolic letter when making changes to the Code of Canon Law. Only in one case did he use the higher rank of papal enunciation, which is an apostolic constitution (PGD). At the opposite end is a papal statement addressed to a person during an audience given to him. The form of the documents through which Francis promulgates the new code provisions has its own gravity, although they all concern changes made to a single normative act, the Code of Canon Law.

The apostolic constitution is the most solemn form of legal document issued by the pope in his own name. It is issued only in relation to very weighty matters. The name of this act was taken from Roman law, in which constitutions were the most important legal acts issued by the emperor. Through this type of document, the pope determines organizational and dogmatic issues. The presentation of dogmatic issues in a constitution, not necessarily in the form of the promulgation of new dogmas, but by recalling what is most important in the doctrine of the Church, makes them take the name of dogmatic constitutions. This was the case, for example, with the Dogmatic Constitution on the Church *Lumen Gentium* of the Second Vatican Council. Similarly, disciplinary issues of the greatest importance are promulgated in the form of apostolic constitutions. This was the case with the promulgation of the Code of Canon Law through the Apostolic Constitution *Sacrae disciplinae leges* (January 25, 1983) and *Pascite gregem Dei*. The two documents promulgated through apostolic constitutions can be looked at in the perspective of disciplinary solutions, but this would not distinguish them from the promulgation of other disciplinary matters done through apostolic letters. Indeed, both the constitutions and the letters deal with disciplinary regulations covering the universal Church and contained in the same document, the Code of Canon Law. The bearing (value) of the apostolic constitution document increases when one sees the connection

between the doctrinal and disciplinary elements, which John Paul II made clear in the apostolic constitution *Sacrae disciplinae leges*, stating that this new Code could be understood as a great effort to translate the same doctrine, that is, the conciliar ecclesiology, into canonical language. Indeed, such is the specificity of canon law in its dependence on the mysterious dimension of the Church. Ecclesiology and law form a dimension of legal ecclesiology and ecclesiastical teaching, in which dogmatic and disciplinary form serve to convey the faith. For this reason, the apostolic constitution *Pascite gregem Dei* directs the search for content in it that goes beyond mere disciplinary formulations by pointing to their dogmatic foundations reaching back to the specifics of the life of the divine-human community.

By contrast, an apostolic letter is considered less significant in terms of validity among papal documents than a constitution, encyclical or exhortation. Although the promulgation of new code provisions is carried out by means of apostolic letters, this form of documents also serves to announce important matters reaching back to Catholic doctrine, however, not with regard to definitive teaching. An example is, for example, John Paul II's apostolic letter *Ordinatio sacerdotalis* (22 May 1994), in which the pope defined the Church's position on the admission of women to priestly ordination by stating: "I declare that the church has no authority whatsoever to confer priestly ordination on women and that this judgment is to be definitively held by all the church's faithful" (OS 4). The apostolic letters by means of which Francis revises the code provisions have the character of *motu proprio*. This name, well-established in tradition since the first *motu proprio* document of Innocent VIII (1484), indicates that it was written at the initiative of the Pope. In reference to documents of a legislative nature, it means that the laws established by such a document are independent of external circumstances (not compelled by them). *Motu proprios* are legislative in nature and are directed to the Church at large. They are generally brief and handle specific issues relevant to the Church in a specific time in history. In recent years they have been one of the principal sources of new laws outside of the Code. Apostolic letters *motu proprio* are the most common source of canonical

legislation after the Code itself. It deals with matters that are significant but would not merit a constitution².

Francis made only one, but the most extensive revision of the code provisions, by means of an apostolic constitution. The others were promulgated in the form of *motu proprio* apostolic letters. Can anything more be read from this fact? I believe so. In my opinion, this is indicated by the preambles included in the amendments.

2. Meaning of the preamble

Francis' documents that contain code amendments are not just a collection of formulated new code provisions. In each document, the normative content expressed by means of the editorial units appearing in the code and the narrative content anticipating them are clearly marked. Although it does not have its own distinctive term in any of the documents, it is usually captured as a preface, preamble or *arenga*. It is a solemn introduction to a normative act that explains the motives for its issuance and specifies the purposes it should serve or the functions it is to perform. It is placed between the title of the document and the substantive provisions (Gromski 2016, 60).

The art of canon law has not developed a uniform form of drafting normative documents, but the jurisprudence and canonical tradition developed by the *stylus* or *praxis* of the higher legislator cannot be ignored (can. 19). This tradition is conducive to the formation of legislative technique, although with Pope Francis it is experiencing the changes highlighted by his critics mentioned above.

In looking at Francis' *modus operandi*, it is worth noting the question of understanding legislative technique itself. In its broadest sense, legislative technique means indications for formulating and systematizing legislation, as well as indications relating to the methodology

² An analysis of papal enunciations in the form of various documents was presented by Francis G. Morrisey. 1995. *Papal and Curial Pronouncements: Their Canonical Significance in Light of the „Code of Canon Law”*. Ottawa: Saint Paul University, Faculty of Canon Law.

of preparing drafts of normative acts and legislative procedure³. In a narrower sense, legislative technique consists of 1) indications on what form to give to the legislator's decisions on the establishment of norms with a certain content, and 2) indications on how to integrate new provisions of legal regulations into the existing legal system. In the narrowest sense, the legislative technique is a set of indications relating exclusively to the internal systematics of the normative act (Wronkowska 1990, 1-3). From the last determination of legislative technique, we can exclude consideration of the preamble in the Church's normative texts. There are no indications that unambiguously capture the necessity of including a preamble in the Church's normative texts. Similarly, the preamble cannot be included among the principles of legislative technique in the second meaning, since these principles-directives relate directly to the normative text, and in the case of the preamble, the doctrine does not agree on its normative character (Kroczyk 2018, 238-239). However, I would refer the legitimacy of the inclusion of the preamble to the first meaning of legislative technique because of its usefulness in justifying the undertaking of activities leading to the formulation of normative texts. In it, the text finds its justification, and in the perception it ceases to be a collection of only interrelated provisions or independent normative solutions. For this reason, the inclusion of a preamble is significant both for the legislator and the interpreter of the normative text, for those applying the law, but also for the addressee himself.

The sense of including the preamble in the normative text has its supporters as well as opponents, who point out arguments supporting such practice, as well as opposing arguments relating to the substantive elements contained in it: the presentation of the source and history of existing and introduced normative solutions, the explanation of the motives for compliance with the law, the expression of the legislator's intentions or the indication of the principles of interpretation referring to the purpose of the given normative solutions and *mens*

³ With regard to the practice understood in this way, Geraldina Boni made her critical remarks (Boni 2021).

legislatoris (Kroczek and Skonieczny 2013, 880-884). The inclusion of a preamble in the normative documents of the Church has become a constant practice, especially after the Second Vatican Council⁴. This practice of the construction of normative acts has been preserved by Francis and therefore it is worth looking at it in a broader perspective going beyond the contentious issues that exist in the doctrine.

There is no doubt that an essential element of the preamble is the reference to the *ratio legis* understood as a justification of the purpose that guided the legislator. Such a rationale constitutes the social and historical legitimacy of the normative act in question (Sosnowski 2016, 212). However, limiting the content formulation of *ratio legis* to the category of purpose is not quite correct. This is because it constitutes one element of a broader meaning. It includes not only an explanation of the purpose of the legislator, but first of all the presentation of the reasons for the existence of the act itself (Borowicz 2009, 50). It is a matter of pointing out the causal cause of its existence, and not just the intentional cause. This is because such an approach can push away the temptation to view normative acts in terms of arbitrary solutions or invoking only the authority of the legislature. Recognizing the broader and deeper meaning of *ratio legis* has significance especially for ecclesiastical legislation. For the rationale for the existence of the act itself consists no longer of rationale arising from the need to regulate situations requiring legal solutions, but of factors such as: 1) authorization of the legislator to issue an act; 2) social and cultural basis; 3) explanation of the application of the act in the future. This means that in the situation of the Church, the *ratio legis*: 1) should reach out to the legislator in his activity combining the teacher of the faith and the legislator, so as to avoid seeing in his legislative activity only a volitional act; 2) indicate the ecclesiastical (theological) – cultural basis of the changes; 3) point prophetically to the image of the life of the faithful contributing to the building of the community of the Church through compliance with the law.

⁴ Let me give an example: Paul VI. 1967. Apostolic Constitution *Indulgentiarum doctrina*.

From a broader understanding of the meaning of *ratio legis*, two conclusions can be drawn that may prove helpful in reading the content that Francis, as a teacher of the faith and a legislator not only in one person, but in one moment of lawmaking, included in the preambles of the enacted normative acts. The first is about the ecclesial values that Francis followed, which allows one to read the reasons for enacting the act. In addition, it is possible to place this act against the background of historical, ecclesiological, cultural events (after all, Francis [2019b] speaks of changes of the epoch, not just epochal changes), any changes taking place within the ecclesial community. In the perspective of Francis' assessment of the reality of the faith, in which neopelagian and neognostic elements are present, the preamble may indicate the need to abandon practices deemed inappropriate as a result of historical analysis, proposing new or renewing values and rules proven in the past (Sosnowski 2016, 220).

The second conclusion concerns the pedagogical role of the law, as pointed out by R. Buttiglione. In this perspective, the educational role of the preamble itself also increases. This aspect of law was already dealt with by Plato, pointing out the role of the preamble to laws. In it, not only the purpose of their issuance should be indicated. An important role of such a preamble is to indicate the relationship between the legislator and the addressees of the law. Plato was concerned that an effective means of securing compliance with the law was the identity of the will of the ruler with that of his subjects. Only such a procedure could ensure obedience and respect towards the law. In order for a law to be effective, its addressees must be certain that the introduction of new laws is necessary. They can only be persuaded to do so by a concise and comprehensible introduction that explains the purpose guiding the lawmaker. Plato recognized the necessity of placing introductions at the beginning of normative acts. However, he did not claim that they were necessary in every situation. He left it up to the legislator to decide on this issue, depending on whether the resulting legal act was of a more or less momentous nature (Stefaniuk 2009, 26-7).

Because of the close connection between law and ecclesial and ethical values, observance of the law does not appear as an end in itself. Nor is it merely an ecclesiastical order. For this reason, the clarification of the law and rules of conduct is done within the framework of the transmission of faith. This is because the duties and rights expressed in legal language exist in the context of indications of Christian life. The process of promulgating a law embedded in the message of faith should be accompanied by explaining it, commenting on it, but above all justifying it, showing its place and role in Christian life, revealing its purposefulness for the individual believer and the community. Hence, the legislator's intentions and motives should be transparent. And more attention should be paid to this transparency and prophetic role of the Church's law than to the requirements of legislative technique, which assumes that *ratio legis non cadit sub lege*. Legislative technique alone does not facilitate the link between canon law and Christian faith and practice. Consequently, it can lead to the law in the Church not fulfilling its role as a factor of participation and activation of the faithful in the community of the Church. Legislation relies on the ability to express appropriate rules of behavior. However, their meaning is contained in axiological clarity. The theological rationale behind the law should therefore be found at the time of its creation (lawmaking process), promulgation (preamble) but also its subsequent dissemination (Sobański 2001, 126-128).

3. Elements of *ratio legis* in the preambles

Broader than the merely expedient meaning of *ratio legis* allows us to see in the preambles the causal causes of the normative acts issued. Indeed, in their light, the proper optics of seeing the role of law in the Church in its educational function are drawn. The insights derived from reading the preambles are not the result of analyzing each of them separately. The conclusions will be presented according to the method of reading the documents of the Church's Magisterium noting the contextual relationship of individual formulations to the totality of Francis' teaching, which can be read from the existing preambles according to the understanding of *ratio legis* indicated

above according to three criteria: 1) Francis as a teacher of the faith and legislator (authorization of the legislator to issue an act); 2) the theological (I omit the cultural, social one⁵) basis for the changes made to the normative regulations; 3) the prophetic vision of canon law in its educational function.

The first element of a broad understanding of *ratio legis* relates to the person of the legislator himself and his grasp of legislative activity. In this context appears the figure of Francis, who, knowing and understanding the situation of the ecclesiastical community, places himself in the role of a responsible Shepherd.

a) Looking at the changes Francis is making to the Code of Canon Law, one cannot help but feel that the volitional aspect that usually dominates the evaluation of the law, pointing to the law as an act of the legislator's will by Francis, is being dismissed. Although the pope points out the shortcomings and deficiencies existing in the legislation, he emphasizes first and foremost the ecclesiological rationale behind the changes he is making. In the preambles of new legislative documents, the indication of these rationales anticipates the solutions themselves. The pope's amendments take as their starting point not the text of the legislation itself, but the current situation of the Church in the perspective of the unity of the community as a clear testimony of the faith. This aspect of the pope's concern is clearly present in *De concordia inter Codices*, where Francis writes that the reconciliation of laws between Catholics belonging to the Latin Church and the Eastern Churches is aimed "to promote effective cooperation between all the Catholic communities present in a given territory" due to the increased situation of the mobility of the faithful.

b) Pope Francis also rejects an overly juridical approach to the law itself and its evaluation in terms of legal justice. He widens the circle of evaluative elements, pointing to the relationship between law and truth, which guides decision-making inspired by the faith and conduct of believers in the first place. He points to Peter and his successors, who have been entrusted with "the power of the keys to carry

⁵ I wrote about theological, social and social reasons in: Gałkowski 2022, 7-22.

out the work of truth and justice in the Church” as he wrote in *Mitis Iudex Dominus Iesus*. Francis emphasizes the importance of the office of Peter, which he holds by making decisions by the will of Christ. He links his legislative activity to the task received from Jesus of confirming his brothers in the truth, which is accomplished in both dogmatic and disciplinary forms.

c) Francis’ legislative activity is part of his pastoral tasks. Shepherd of the community of the faithful is the word that expresses the presence in one person of a teacher of the faith and a legislator. At the beginning of *Pascite gregem Dei*, Francis cites the words of 1 Peter 5:2-3, pointing out that the bishops, like the foundation on which the Church is built, have the duty to keep this building whole, and its stability is evidenced by all the elements that form it (advice, encouragement, example, authority and sacred power). Addressing the shepherds of the Church, he reminds us that they have been chosen and obligated to guard and preserve it in unity, which is accomplished by their example of preserving the rules of conduct characteristic of the entire people of God. Francis rejects the perceived character of domination in the view of authority in favor of the role of guide and witness of the pastoral office, which also includes the task of creating rules of conduct that allow one to follow the shepherd. The duty of exercising authority is carried out in the only possible form, which is pastoral ministry. Francis points out that disciplinary rules are meant to reflect the faith, which is the bond of unity. In the statements made in *Pascite gregem Dei*, one can read even more about the law itself in the perspective of ministry. For the Pope writes that the rules express the “maternal mercy of the Church”. This is an expression of the belief that disciplinary rules should be read by pastors and the faithful in an educational perspective along with the formation of an attitude of charity.

d) An important element of Francis’ legislative activity is to emphasize the shepherd’s presence in the community, accompanying it, being inside it, knowing and discerning all that takes place in it. He expresses this when he writes in *Authenticum charismatis* “discernment about the ecclesial nature and reliability of charism is an ecclesial

responsibility of the Pastors”. Francis’ legislative activity is a reaction to grassroots behavior emerging in the community, it is a departure from the community towards regulation, it is an expression, as Plato said, of the ruler’s identification with the expectations of the community in order to preserve its integrity. This is expressed by Francis, writing in *Authenticum charismatis* about the responsibility of Pastors with regard to emerging forms of consecrated life in the Church: “It is right to respond to the gifts the Spirit awakens in the particular Church, welcoming them generously with thanksgiving”.

e) Francis constantly stresses the necessity for shepherds to be and act in the community. He is aware that in this way the consequences of imperative decisions will translate into the life of the community, which follows the shepherds. This is also how he presents the new laws he legislates. These are laws not so much for the community, but in the community, the observance of which contributes to its credibility and leads to unity. This is evident in the case of the new criminal laws, where he emphasizes that the duty to observe penal discipline rests with the entire community: “The observance of penal law is binding on the whole People of God”. The Pope points out that the essence of the criminal law is not to legislate against individual believers and stigmatize them for bad behavior, but to protect the People of God. At the same time, he points out the role of the collective conscience as a dimension of unity with regard to the temptations of various forms of individual or group particularism. Any harm done to a member of the community is at the same time a harm done to the entire community. The community of the Church is not built on social ties but is a living organism of the body of Christ.

The above-quoted formulations in the preambles of Francis’ normative documents indicate the role of the law, which the Pope sees not so much in itself, but in its life, its effectiveness. For the law enters into force after its promulgation but can lose it when it remains only one form of sovereign acts. Papal legislation is part of Francis’ dynamic of the shepherd’s presence in the community. It is an expression of the search for common ways to follow Christ. The law fulfills its educative role.

Another element of the broader definition of the ratio legis, which goes beyond seeing in it only the purpose of legislative activity, relates to the theological basis of the changes made to normative regulations.

a) Pope Francis' Church is a living community of faith. In *Competentias quasdam decernere*, he writes that the Church forms an "ecclesiastical communion", which he describes as a thoroughly dynamic community. In this perspective, he sees "ecclesial culture and juridical mentality proper to each Code", and in his legislative activity he resolves to meet the needs of local communities. This is one of the few formulations when the pope links ecclesial culture and code mentality, which also shows that the two dimensions of community life, namely doctrine and discipline in the pope's view, shape ecclesial culture. He sees that the coexistence of these two dimensions contributes "to respect the principles of reasonableness, effectiveness and efficiency". In view of the existing ties between ecclesiastical culture and the legal regulation of its expression, Francis chooses to grant some powers to the executive powers of local churches. The decentralization that Francis writes about not only "corresponds to the dynamic of ecclesial communion" but also "enhances proximity". Once again, the Pope gives expression to his conviction that law in the Church is not an end in itself, but should bear witness to the dynamism of the life of the community. Law gains importance when it is directly rooted in the life of the community of the faithful. Its servant role in relation to the community remains unquestionable.

b) At the foundation of the Church as a living community of faith is Christ present and active in it through his Spirit as "the perennial source of the Church's life and mission" (*Spiritus Domini*), who "distributes to the members of the People of God the gifts that enable each one, in a different way, to contribute to the edification of the Church and to the proclamation of the Gospel". In the papal optics of participation and activation of the life of the faithful in the community, therefore, the source of legislative changes in the code provisions should be sought. The source of activity, then, is not the regulations indicating necessary behavior, but the dynamism of faith, which finds expression in the regulations insofar as it can be seen in them.

Normative solutions cannot replace faith, grace and charisms, nor can they arouse the desired behavior. They do, however, create due space for the development of the life of faith and the gifts received for the building of a community in and through which salvation is realized. Francis draws attention to this salvific character of canon law in the preambles of legislative documents, an example of which can be found in *Mitis Iudex Dominus Iesus*, where Francis states: “All these things were done following the supreme law of the salvation of souls”.

c) Another element indicating the ecclesial rooting of Francis’ changes to the provisions in the Code of Canon Law is found “on the common condition of being baptized and the royal priesthood received in the Sacrament of Baptism” (SD). Francis’ new stipulations meet the doctrinal statements. The pope’s legislation is thus not an act of free decision, or a process of discernment contested by some faithful and scholars, which constantly accompanies papal teaching in the perspective of the right of gradation but is the result of a deep conviction of the validity of the law to guarantee and make present the truth of the ecclesial community. This context also includes Francis’ statements about the need to ensure the realization of the rights of the faithful in the Church. The Pope expressed this in *Expedit ut iura* by recalling the sixth principle behind the 1917 revision of the Code and which “still remains valid today, granting the safeguarding and protection of subjective rights a privileged place in the legal order in the Church”.

d) In the broad spectrum of ratio legis guiding Francis, one cannot also overlook what relates to existing forms of consecrated life in the Church. In this regard, the Pope intervened three times with new normative solutions (ACh, CV, EUI and Franciscus 2022). Most characteristic and common to the three documents is Francis’ emphasis on the true charism of consecrated life as a value for the life of the whole Church: “gift to the Church, is not an isolated or marginal reality, but deeply part of her. It is at the very heart of the Church, a decisive element of her mission” (ACh). In an effort to highlight this element of the communal gift, Francis makes changes to those responsible for recognizing it (Apostolic See) and making it real (CV, EUI).

Francis' constant pointing out of the deep ecclesiological rationale of the ecclesial community as a dynamic organism of faith aroused by the Holy Spirit makes it possible to understand the meaning of the amendments to the code provisions he has carried out. What comes to the fore is the demonstration of the interpenetration of the common good and the individual good. An example of this sensibility can be found, for example, in *Magnum principium*, where we can read: "On the one hand it was necessary to unite the good of the faithful of a given time and culture and their right to a conscious and active participation in liturgical celebrations with the substantial unity of the Roman Rite". This uniting of the good of the community stems from the communal character of Christian existence, in which the faithful exist in the community and the community exists in the faithful. St. Francis continually emphasizes this specific character of ecclesial community and gives expression to it in newly enacted legislation.

The third element of the broader understanding of the *ratio legis* of Francis' changes to the Code of Canon Law concerns the prophetic vision of canon law in its educational function. The law of the Church is an instrument for realizing the social dimensions of the Christian faith, shaping the social attitudes that are its consequence. It performs an educative function by arousing behavior that expresses the unity of the community. In this way, the community becomes a sign of the unity of creation and the redemption in Christ of the entire human race. Canon law is part of the prophetic vision of the world and the prophetic presence in the world of Christian religious experience. The prerequisite for this participation is that it maintains a distance from human conventions and authority and points to its ultimate source, in which it has its origin. From the theological basis of the law stems its educative function in relation to the faithful and its prophetic function in relation to the world. This perspective is evident in the legislative changes made by Francis.

a) The educative function of canon law was emphasized by Francis in *Pascite gregem Dei*. The reform of Book VI is related to "new needs of the People of God, for which reason it is at times necessary

to modify and adapt them to changed circumstances”. In the preamble to the apostolic constitution, the pope emphasized the limitations and shortcomings of existing legislation perceived since his predecessor, which negatively affected ecclesiastical discipline. At the same time, he gives the reasons for this state of affairs by stating: “great damage was done by the failure to appreciate the close relationship existing in the Church between the exercise of charity and recourse – where circumstances and justice so require – to disciplinary sanctions”. The result of this failure is “risks leading to tolerating immoral conduct, for which mere exhortations or suggestions are insufficient remedies”. The Pope looks to the future of the community based on past historical experience. Historical processes shaped under the influence of the aforementioned causes influenced the formation of behavior in the Christian community that caused “scandal and confusion among the faithful”. A short paragraph of the preamble, but of great importance to the document as a whole, contains content of practical significance for the lives of the faithful. No less significant is the papal focus on the proper addressees of the proposals presented. Francis draws attention to the negligence that led to the current situation existing on the part of pastors. These statements are part of Francis’ pedagogy of the Shepherd’s role in the community of the Church. For his place is within the community he knows and with which he walks together. Only in this way is he able to hear and perceive what exists within it and respond accordingly in a timely manner. The means of a pastoral response is the proper application of the law. However, laws alone without being rooted in the community can easily remain an empty letter, as the practice present in the Church proves. One gets the impression that the law has remained a means of selective response. It remained somewhere on the periphery of the community thus losing its function of integrating the communal dimension of faith.

b) Similar insights of an ecclesiological nature are present in *Authenticum charismatis*. The Pope begins this document by quoting the statement from *Evangelii Gaudium* (130) that “A sure sign of the authenticity of a charism is its ecclesial character, its ability

to be integrated harmoniously into the life of God's holy and faithful people for the good of all". The reality of Christian community is created in a dynamic way when charisms contribute to the building of community in such a way that the whole Church is present in it. The conciliar principle of *communio* guides the changes made by Francis. It goes beyond the local community, which is threatened by the temptation of particularism that can lead toward division into small groups existing side by side without the elements of coexistence that make one Church real. Thus, in the preamble to this apostolic letter, Francis links the element of evaluating the truthfulness of the charism with the life of the concrete community, pointing out that disuse and lack of prospects for existence leads, as a consequence, to divisions. Francis' reaction to the existing practice of recognizing charisms and approving forms of consecrated life has a thoroughly ecclesial character. For it is not a matter of reserving to himself legitimate conclusive decisions by appealing to the authority he possesses, but decisions that will result in the right behavior of the faithful induced by the gifts of the Holy Spirit received.

c) Another element I want to draw my attention to is Francis' conviction of the value of law and ecclesiastical institutions for the proper functioning of the community. He showed this in *Pascite Gregem Dei* by emphasizing that pastors carry out their tasks using the tools indicated by Francis always with a perception of their salvific purpose combined with the goal of correcting the behavior of community members. Thus, he explicitly links proper behavior, which is not an end in itself, but its importance derives from a necessary reference to salvation. The salvific perspective should guide all for whom the law is made. Salvation as the metacanonial goal of canon law is realized in its anticipation by contributing to the growth of the community, which is both a gift and an obligation of every believer. In *Mitis Iudex Dominus Iesus*, Francis states with strength and conviction about the role of ecclesiastical institutions: "institutions, constantly subject to improvement, work, each according to its respective duty and mission, toward the goal of transmitting divine grace and constantly

promoting the good of the Christian faithful as the Church's essential end".

d) The prophetic function of the law was noted by Francis in *Pascite Gregem Dei*, where the Pope writes: "canonical sanctions also have a reparative and salvific end ... they represent a positive means for the realization of the Kingdom and for rebuilding justice in the community of the faithful, who are called to personal and common sanctification". Canon law is addressed to the community of the faithful. While remaining a sign and instrument of salvation for the world, it also has something to offer the world with its law. As a community that realizes in itself the requirements of justice, it thereby addresses the world with a Christian understanding of justice, in which justice is not merely the consequence of obeying the law, but the result of fidelity to the offered and accepted vocation to life in the ecclesial community. This much broader dimension of justice becomes an instrument of evangelization, through which the requirements of justice merging with mercy actually become its consequence. Justice in the Christian sense has its basis in the form of the community's existence and in its action induced also by the laws.

Conclusion

Francis' legislative activity can be viewed from various angles and evaluated in many dimensions. Sometimes, however, it is worth giving voice to the Pope himself, and in this perspective evaluate the law as one of the forms of his exercise of the Petrine office. However, the law should not be the starting point of our evaluations, as it is not a value or an end in itself. This attitude is emphasized by Francis, noting that the law is to follow the life of the community inspired by man's direct contact with God. Through baptism, a person becomes a person implanted in Christ in the first place and with this fact becomes a person in the Church. However, the existing opinions on Francis' legislative technique that are correct from the point of view of legal science and the practice of the Church may lose the perspective of the connection between canon law and Christian faith and practice. The laws

of the Church should fulfill the role of a factor of participation and activation of the faithful in the community of the Church.

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Abstract: The subject of the analyses undertaken is the legislative activity of Pope Francis. A lot of attention has already been devoted to it in various studies analyzing and explaining particular normative solutions, as well as formulating critical comments relating to legislative technique. Another proposal aimed at understanding Francis' intentions is to look at his legislative activity through the prism of the preambles of individual legislative documents. They contain the *ratio legis* of the changes being made, which is framed in terms that are broader than merely limited to indicating the purpose of the new legal formulations. The broader *ratio legis* indicates: 1. the authorization of the legislator to issue the act; 2. the socio-cultural basis; 3. an explanation of the application of the act in the future.

Keywords: Francis, Code of Canon Law, amendment, preamble, *ratio legis*

NOWELIZACJA KODEKSU PRAWA KANONICZNEGO NA PODSTAWIE PREAMBUŁ W DOKUMENTACH NORMATYWNYCH PAPIEŻA FRANCISZKA

Abstrakt: Przedmiotem podjętych analiz jest działalność legislacyjna papieża Franciszka. Poświęcono jej już wiele uwagi w różnych opracowaniach analizujących i tłumaczących poszczególne rozwiązania normatywne oraz formułując krytyczne uwagi odnoszące się do techniki legislacyjnej. Inną propozycją zmierzająca do zrozumienia intencji Franciszka jest spojrzenie na jego działalność ustawodawczą poprzez pryzmat preambuł poszczególnych dokumentów legislacyjnych. W nich zawarta jest *ratio legis* dokonywanych zmian, która została ujęta w zakresie szerszym niż tylko ograniczonym do wskazania celu nowych sformułowań prawnych. Szerszy zakres *ratio legis* wskazuje na: 1. upoważnienie prawodawcy do wydania aktu; 2. podstawę społeczno-kulturową; 3. objaśnienie zastosowania aktu w przyszłości.

Słowa kluczowe: Franciszek, Kodeks Prawa Kanonicznego, nowelizacja, preambuła, *ratio legis*