



## The legal canonical justification for the penalty of suspension on the lay christian faithful<sup>1</sup>

*A justificação canônica para impor a pena de suspensão aos fiéis leigos*

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**Resumo:** A introdução da possibilidade de punir os fiéis leigos com suspensão no Livro VI alterado do Código de Direito Canônico causou surpresa e curiosidade na Igreja. Durante a conferência de imprensa que anunciou a reforma, os representantes do Pontifício Conselho para os Textos Legislativos dedicaram apenas algumas frases a este tema. Por isso, muitas questões surgem sobre como a mudança será aplicada na prática. A consciência da necessidade de introduzir a pena de suspensão para os leigos amadureceu lentamente e encontrou seu cumprimento na última emenda ao código. Anteriormente, o direito dos leigos de desempenhar certos cargos e funções na Igreja havia sido reconhecido e aprofundado, mas não havia foco suficiente em sua responsabilidade sob o direito penal canônico. Parece razoável examinar a base doutrinária de tal decisão. O autor responde à pergunta sobre se tal mudança deve ser tratada como uma novidade que nunca havia aparecido como uma proposta antes e se tem a sua justificação canônica. A pesquisa leva à conclusão de que a suspensão para os leigos é uma novidade no direito canônico, mas tem as suas raízes no ensinamento do Concílio Vaticano II, que redefiniu o lugar e as funções dos leigos na Igreja. As mudanças no direito canônico tornaram-se uma consequência de mudanças doutrinárias.

**Palavras-chave:** suspensão. fiéis leigos. Livro VI do Código de Direito Canônico. Concílio Vaticano II.

**Abstract:** The introduction of the possibility of punishing the lay faithful with suspension in the amended Book VI of the Code of Canon Law caused surprise and curiosity in the Church. During the press conference announcing the change, the representatives of the Pontifical Council for Legislative Texts devoted only a few sentences to this topic. Therefore, many questions arise as to how the introduced change will be applied in practice. It seems reasonable to examine the doctrinal basis for such a decision. The author answers the question of whether such a change should be treated as a novelty that has not appeared before, even as a proposal, and whether it has its canonical justification. The research leads to the conclusion that suspension for the laity is a novelty in canon law, but it has its origins in the teaching of the Second Vatican Council, which redefined the place and functions of the laity in the Church. Changes in canon law have also become a consequence of doctrinal changes. The awareness of the need to introduce the penalty of suspension for the laity matured slowly and found its fulfillment in the last amendment of the code. Previously, the right of the laity to perform certain offices and functions in the Church had been noticed and deepened, but there was not enough focus on their responsibility, based on canonical penal law.

**Keywords:** suspension. lay faithful. Book VI of the Code of Canon Law. Second Vatican Council.

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## Introdução

Under the Apostolic Constitution *Pascite gregem Dei* of May 23, 2021, Pope Francis amended Book VI of the Code of Canon Law, which entered into force on December 8 of the same year.<sup>3</sup> This happened because, in the opinion of many hierarchs and canonists, the previous penal discipline did not meet expectations. Among the significant changes was the possibility of applying the penalty of suspension to all the faithful, and not only to the clergy. In the past, canonists have argued unanimously that suspension is a censure intended solely to punish clergy, and even that it is “a kind of excommunication applied to clergy as such.”<sup>4</sup> The understanding of suspension as a penalty for clergy had its justification in the position of the Holy See, which defined this censure as “a ban on the performance of activities resulting from the ordination or office held by a clergyman.”<sup>5</sup>

If, for centuries of the Church's existence, suspension was a penalty reserved for the clergy, the universal legislator decided to make a momentous change that would have serious consequences in the science of canon law, as well as in the praxis of the Church. The aim of the article is to answer the question of whether such a novel change has been proposed before and whether it has its legal justification. A *de lege ferenda* postulate related to the wording of the prescription on the imposition of penalties will also be submitted, and an attempt will be made to assess the change made as a result of the amendment.

## Suspension for the Laity—A Novelty in Canonical Discourse?

Attempts to describe suspension had already been made in the sources of the old canon law.<sup>6</sup> Based on centuries-old doctrinal tradition, this penalty was associated only with the clergy and the

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<sup>3</sup> FRANCIS. Apostolic Constitution *Pascite gregem Dei*. 23.05.2021. In: *Communicationes*. Romae. v.53, 2021, p. 13-16.

<sup>4</sup> OPIELIŃSKI, Jan Nepomucen. *O cenzurach Kościelnych*. Poznań; Wydawnictwo Poznańskie, 1894, p. 265. The English translation is ours.

<sup>5</sup> SACRED CONGREGATION FOR THE PROPAGATION OF THE FAITH. Instr. 20 oct. 1884. In: GASPARRI, Pietro (Ed.). *Codices Iuris Canonici Fontes Vol. VII*. Romae: Typis Polyglottis Vaticanis, 1937, p. 509, n. 4907. The English translation is ours.

<sup>6</sup> SUÁREZ, Franciscus. *Disputationes de censuris in communi, excommunicatione, suspensione et interdicto itemque de irregularitate*. Venetiis: Apud Petrum Dusingellum, 1608, disp. 25, sect. 1.



most prominent scholars of canon law of the post-Tridentine era, such as A. Reiffenstuel<sup>7</sup>, L. Ferraris<sup>8</sup>, F. Suárez<sup>9</sup>, F. Schmalzgrueber<sup>10</sup>, F. Wernz<sup>11</sup>, J. Hollweck<sup>12</sup>, M. Lega<sup>13</sup>, who were in favor of it. The reform of the Council of Trent was regarded as one of the leading goals for the disciplining of the clergy. It was this state that bore responsibility for a fuller and more intensive pastoral care, which was associated with the exercise of clergy offices in the Church in an almost exclusive way.<sup>14</sup> The evangelical principle “to whom much is given, much will be required” (Luke 12:48) justified the issuance of decrees containing norms of the penal process, norms concerning the exercise of the episcopal office, the life and customs of the clergy, and the conferral of benefices and ecclesiastical offices.<sup>15</sup> All this was to serve a pastoral ministry of such intensity as the medieval Church had never known before. The clergy, also through their offices, were to carry out pastoral care in various areas of ecclesial life, starting from pastoral care in the confessional, to new forms of catechesis and religious education of the laity.<sup>16</sup> Clergy performing administrative acts based on offices served the pastoral renewal of the Church. According to the 1917 Code of Canon Law<sup>17</sup>, if a clergyman betrayed this mission in the manner described in the law, he could be punished with the penalty of suspension as censure aimed at improving it (can. 2278 § 1). However, the legislator did not claim that the nature of censure is due to suspension by its nature. In can. 2255 § 2, he permitted the imposition of suspension as a vindictive penalty.

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<sup>7</sup> REIFFENSTUEL, Anaklet. *Jus canonicum universum: complectens Tractatum de regulis juris. Vol. V.* Parisiis: apud Ludovicum Vivès, 1868, tit. 39, n. 159.

<sup>8</sup> FERRARIS, Lucii. *Prompta bibliotheca canonica, iuridica, moralis, theologica, nec non Ascetica. Vol. V.* Parisiis: excudebatur et venit apud J. P. Migne editorem, 1866, art. 1, n. 1.

<sup>9</sup> SUÁREZ, 1608, disp. 25, sect. 1.

<sup>10</sup> SCHMALZGRUEBER, Franz. *Jus ecclesiasticum universum Vol. V.* Romae: Ex Typographia Rev. Cam. Apostolicae. 1844, tit. 39, n. 263.

<sup>11</sup> WERNZ, Franz Xaver. *Ius decretalium ad usum praelectionum in scholis textus canonici sive iuris decretalium. Vol. 6: Ius poenale ecclesiae catholicae.* Prati: Ex Officina libraria Giachetti, filii et soc., 1913, p. 307, n. 201.

<sup>12</sup> HOLLWECK, Joseph. *Die kirchliche Strafgesetze.* Mainz: Kirchheim, 1899, § 59.

<sup>13</sup> LEGA, Michele. *Praelectiones in textum iuris canonici. De delictis et poenis.* Romae: Ex Typographia Pontificia in Instituto Pii IX 1910, p. 251, n. 183.

<sup>14</sup> BUSSO, Ariel David. La distribución de los clérigos en la Iglesia. Planteo de la cuestión y normativa vigente en la Iglesia latina. In: *Annuario Argentino de Derecho Canónico.* Buenos Aires. v.26, 2009-2010, p. 94-95.

<sup>15</sup> MARTÍNEZ ROJAS, Francisco Juan. Trento: encrucijada de reformas. In: *Studia Philologica Valentina.* v.10, n.7, 2007, p. 223-224.

<sup>16</sup> DEL RICCIO, Roberto. Evangelizzazione: verità dimenticata del Concilio di Trento. In: *Rassegna di teologia.* v.46, n.1, 2005, p. 45-54; MARTÍNEZ ROJAS, 2007, p. 229-230.

<sup>17</sup> *Codex Iuris Canonici Pii X Pontificis Maximi iussu digestus Benedicti Papae XV auctoritate Promulgatus.* 27.05.1917. In: *Acta Apostolicae Sedis.* Roma. v.9, 1917, pars II, p. 1-593 [hereinafter: CIC/17].



The teaching of the Second Vatican Council must be regarded as a doctrinal confirmation of the slow but consistent path to the empowerment of the laity in the institutional Church. For centuries, they were able to conduct activities under the patronage of hierarchs and clergy, which did not change immediately with the end of the Council.<sup>18</sup> It can be argued that we are still on this path of empowerment of the laity, as evidenced by the decisions taken by Pope Francis, willingly entrusting ecclesiastical offices to the lay Christian faithful.<sup>19</sup> It is a practice that is positively received not only by the laity, but, as the Holy Father himself stated, “he to whom authority has been entrusted bears a greater responsibility, but each of us is co-responsible for good and for evil.”<sup>20</sup>

The theme of “co-responsibility for evil” cannot be overlooked, even in the case of lay Christian faithful holding ecclesiastical offices, which had already been noticed during the work on the reform of the Code of Canon Law. An argument in favor of describing the process of empowering the lay Christian faithful as “slow” is the distribution of votes among the consultors discussing the *De sanctionibus in Ecclesia* scheme.<sup>21</sup> The work of giving opinions on the votes of the consultative organs was presided over by Cardinal Rosalio José Castillo Lara, Secretary of the Pontifical Commission for the Revision of the Code of Canon Law. Among the demands addressed to the group led by the secretary of the commission was a request to clearly determine whether the penalty of suspension applies only to clergy. Only two consultors pointed out that, in a situation where few offices in the Church are held by the laity, the penalty of suspension should also be extended to the laity. The other consultors believed the penalty should apply only to clergy. Therefore, the words of can. 18: “suspensio vetat” were changed to: “suspensio, quae clericos

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<sup>18</sup> OSBORNE, Kenan. B. *Ministry: Lay Ministry in the Roman Catholic Church, its History and Theology*. New York: Paulist Press, 1993, p. 20.

<sup>19</sup> The preamble to the Constitution reforming the Roman Curia recalls that every Christian is a missionary disciple. The basic general rule is that everyone, including the lay faithful, may be called to exercise managerial functions in the Roman Curia. FRANCIS. Apostolic Constitution *Praedicate Evangelium*. 19.03.2022. In: *Communicationes*. Romae. v.54, 2022, p. 9 [hereinafter: PE].

<sup>20</sup> FRANCIS. Una città più bella se più accogliente e ricca d’umanità. In: *L’Osservatore Romano. Edizione quotidiana*. v.46, n.1, 2014, p. 7.

<sup>21</sup> PONTIFICAL COMMISSION FOR THE REVISION OF THE CODE OF CANON LAW. *De sanctionibus in Ecclesia*. In: *Communicationes*. Romae. v.8, 1976, p. 166-183.

tantum afficere potest, vetat.”<sup>22</sup> With these words begins can. 1333 § 1 of the 1983 Code of Canon Law<sup>23</sup> before the amendment of Book VI.

Suspension for the laity is therefore a novelty in ecclesiastical legislation, but it has its origins in the teaching of the Second Vatican Council, redefining the place and functions of the laity in the Church. Changes in canon law have also become a consequence of doctrinal changes. The awareness of the need to introduce suspension for the laity matured slowly and found its fulfillment in the decision of Pope Francis to amend Book VI of the CIC/83.

## Doctrinal and Canonical Foundations of Suspension for the Laity

The Second Vatican Council, in characterizing the nature of the ecclesial community, uses the model of the People of God. This concept, taken from sacred scripture, has been used to indicate those elements in the Church that were overlooked or viewed vaguely in the pre-conciliar period. In the Constitution *Lumen Gentium*,<sup>24</sup> the chapter on the People of God is placed before the chapter on the ecclesiastical hierarchy. It is true that there is a fundamental equality among all the members of the Church in the dignity of the children of God and in participation in fundamental values, regardless of the secondary differentiation resulting from the hierarchical tasks (*munera*) and specific charisms assigned to them. In the Conciliar Doctrine on the Church, the truth was put forward about the participation of all the members of the People of God in the common priesthood, regardless of the diversity that results from the participation of only some in the hierarchical priesthood.<sup>25</sup>

During the first decades of the introduction of the conciliar reforms, the focus was on participation in the common priesthood in terms of the rights conferred by it. An expression of this is, for example, the right to perform certain ecclesiastical offices and functions (can. 228 § 1),

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<sup>22</sup> PONTIFICAL COMMISSION FOR THE REVISION OF THE CODE OF CANON LAW. Coetus studiorum de iure poenali. In: *Communicationes*. Romae. v.9, 1977, p. 147, 152-153.

<sup>23</sup> *Codex Iuris Canonici auctoritate Ioannis Pauli PP. Promulgatus*. 25.01.1983. In: *Acta Apostolicae Sedis*. Roma. v.75, 1983, pars II, p. 1-317 [hereinafter: CIC/83]. New Book VI of the Code of Canon Law: *Liber VI*. In: *Communicationes*. Romae. v.53, 2021, p. 17-40.

<sup>24</sup> SECOND VATICAN COUNCIL. Dogmatic Constitution on the Church *Lumen Gentium*. 21.11.1964. In: *Acta Apostolicae Sedis*. Roma. v.57, 1965, p. 32-33 [hereinafter: LG].

<sup>25</sup> MCMANUS, Frederick R. Laity in the Church Law: New Code, New Focus. In: *The Jurist*. Washington DC. v.47, 1987, p. 11-31; LÖSER, Werner. Lumen Gentium: Die Kirche - Gottes Volk. In: *Hirschberg*. Köln. v.65, n.1, 2012, p. 10-18.



which is tantamount to being allowed to participate in jurisdictional authority. Such participation was not foreseen in CIC/17, reserving all the power of jurisdiction to the clergy (can. 118). Thus, during the period of validity of the previous code, there was no reason for suspension for the laity. The admission of the laity to participate in the power of jurisdiction was influenced by the decision of the Second Vatican Council: “Every layman, in virtue of the very gifts bestowed upon him, is at the same time a witness and a living instrument of the mission of the Church itself ‘according to the measure of Christ's bestowal’. Besides this apostolate which certainly pertains to all Christians, the laity can also be called in various ways to a more direct form of cooperation in the apostolate of the Hierarchy. This was the way certain men and women assisted Paul the Apostle in the Gospel, laboring much in the Lord. Further, they have the capacity to assume from the Hierarchy certain ecclesiastical functions, which are to be performed for a spiritual purpose” (LG 33). In addition, the Council adds: “upon all the laity, therefore, rests the noble duty of working to extend the divine plan of salvation to all men of each epoch and in every land” (also LG 33).

In the context of the introduction of the penalty of suspension for the laity, it should be pointed out that while in the past the right of the laity to perform certain offices and functions in the Church has been noticed and deepened, there has not been enough focus on the fact that the need to do something by virtue of the moral and legal precepts resulting from the exercise of an office in the Church should be associated with criminal liability under canon law. It follows from the prescriptions of can. 129 § 2 that the nature of the jurisdictional power exercised by the laity results from the participation in the jurisdictional power exercised by the clergy.<sup>26</sup> On the other hand, can. 274 § 1 points out that the lay Christian faithful exercise the power granted to them not autonomously, but to help those who exercise it by virtue of their ordination.<sup>27</sup> However, there is no logical justification for lay people who share in the jurisdictional power of clergy not to be subject to the system of the same penal sanctions as clergy.

The fulfillment of this postulate seems to be to accede to the proposal of two consultors speaking on the issue of suspension for the laity more than forty years ago. Can. 1333 § 1, which

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<sup>26</sup> TOLEDANO, Jesús. Estudio del canon 129: los laicos y la potestad de gobierno. *In: Verdad y vida*. Vitoria. v.60, n.233, 2002, p. 47-64.

<sup>27</sup> ERDŐ, Péter. Il senso della capacità dei laici agli uffici nella Chiesa. *In: Fidelium iura*. Pamplona. n.2, 1992, p. 170; VIANA, Antonio. El problema de la participación de los laicos en la potestad de régimen. Dos vías de solución. *In: Ius Canonicum*. Pamplona, v.54, n.108, 2014, p. 616.



before the amendment read: “*suspensio, quae clericos tantum afficere potest, vetat,*” was deprived, as a result of the amendment, of the words: “*quae clericos tantum afficere potest.*” This gives the opportunity to suspend lay Christian faithful who perform ecclesiastical offices or functions.

The imposition of the suspension for clergy and laity is contained in Chapter I of Title IV of Book VI, entitled *Censures*. The legislator therefore considers it a medicinal penalty (*poena medicinalis*) because its specific purpose is to improve the offender. An important condition for imposing or incurring it is the offender's conscious resistance (*contumacia*) to the law or precept. The offender is considered resistant (*contumax*) if he knows about the impending punishment and yet does not want to give up transgressing the law or precept. The superior is convinced of the resistance by means of a canonical correction (can. 1347). Suspension as censure achieves its goal when the offender renounces resistance; therefore, remission from censure cannot be refused if the offender has abandoned the resistance and asks for this remission.<sup>28</sup>

## Postulate de lege ferenda and Questions Arising

The amended can. 1333 allows for the possibility of imposing a penalty of suspension on clergy and laity, which, to correct them, prohibits “the receipt of benefits, stipends, pensions, or other such things, carries with it the obligation of restitution of whatever has been unlawfully received, even though this was in good faith.” At the same time, can. 1350 § 1 commands ecclesiastical superiors to always have in mind (*semper cavendum est*) the worthy support of the punished but extends this protection only to the punished clergyman (*in poenis clerico irrogandis*). Attention is drawn to the peculiar inequality in the treatment of these two states, contrary to the empowerment of the laity as a task for the Church set by the Second Vatican Council and consistently carried out by Pope Francis. The right to remuneration belongs to the status of a clergyman (can. 281). Canonical sanction does not cancel the right of a cleric but only modifies it. Therefore, the legislator, bearing in mind the existential meaning of this right, states that no penalty, apart from dismissal from the clerical state,<sup>29</sup> may abolish or suspend this right.

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<sup>28</sup> NYKIEL, Krzysztof. Significado y finalidad de las censuras e irregularidades en el derecho canónico. In: *Pravo Kanoniczne*. Warsaw, v.60, n.1, 2017, p. 118-119.

<sup>29</sup> “In the best manner possible, however, the ordinary is to take care to provide for a person dismissed from the clerical state who is truly in need because of the penalty” (1350 § 2).



Lay Christian faithful who work permanently or temporarily for the Church should also be rewarded according to their position, so that they can meet the needs of their families. An additional moral urge to reward the laity who work for the Church in a just way is the fact that they start families and have children. They are also entitled to health insurance and social security (can. 231 § 2).<sup>30</sup> The legislator lists the offices that the laity, properly prepared, can exercise in the diocese. They are as follows: curial and judicial notaries (can. 483, 1437), curial chancellor and vice-chancellor (can. 482), finance officer (can. 494), judge (can. 1421 § 2), assessor (can. 1424), auditor (can. 1428), promoter of justice and defender of the bond (can. 1435), and advocate (can. 1483). A separate issue is the possibility for the laity to perform various functions in the Roman Curia.

The imposition of a suspension penalty prohibiting the collection of remuneration should be associated with securing the worthy support of the punished person, regardless of whether it is a clergyman or a layman. This principle must be derived not only from the status of the clergy and laity in canon law but from the inherent dignity and equal and inalienable rights of all members of the human community, and from the principle of greater empowerment of the laity in the Church.<sup>31</sup> The Universal Declaration of Human Rights<sup>32</sup> states that “everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection” (Article 23). It should be recalled that the suspension imposed on a layperson in accordance with can. 1333 § 4 prohibits the exercise of the rights specified in the prescription, which results from the suspension<sup>33</sup> of the performance of official duties. However, worthy support in such a situation should not be the same as the full remuneration one received for work.

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<sup>30</sup> Can. 230 § 1 recognizes the right of the laity to receive and perform permanently the so-called ministries. In the cited canon, the legislator adds that those who accept ministries do not have any right to support or remuneration on the part of the Church.

<sup>31</sup> Already in the Bible we find provisions that uphold personal rights, which do not list the categories of people who deserve protection, but it can be assumed that it is about protecting the poor. These are the texts of Lev 19:35-37 and Deut 25:13-16. These texts prescribe that no fraud be committed in the use of weights and measures; it was precisely from such deceptions that the poorest suffered. The appeals contained in Leviticus and Deuteronomy are motivated by the authority of God, the liberator from slavery in Egypt, the protector of the poor and the unfortunate (Dt 10:18), for whom the deceptions committed against the poor are disgust, but there is also the promise of a long life. In the wisdom books of the Old Testament, appeals for social justice are usually motivated by an appeal to God.

<sup>32</sup> UNITED NATIONS. DEPARTMENT OF PUBLIC INFORMATION. *Universal Declaration of Human Rights*. Katoomba: Spinebill Press, 2019.

<sup>33</sup> The very name of suspense comes from the Latin word *suspendo* - *I suspend, I leave in uncertainty*.





Remission of a censure cannot be refused if the punished person has abandoned the resistance and asks for this remission.<sup>34</sup> If he has not been deprived of his office as a result of the expiatory penalty indicated in can. 1336 § 4, 1º, he may continue to perform it after the suspension has been removed. Accordingly, *de lege ferenda*, the word “cleric” should be deleted in can. 1350 § 1, as was done in can. 1333 § 1, leaving the words “*in poenis irrogandis semper cavendum est.*”

The appearance in the code of a novelty, consisting of the application of suspension to the laity, may raise a question referring to doctrine and historical legislation. Does suspension for the laity necessarily mean censure? The earliest sources of canon law considered suspension to be censure, but the already cited can. 2255 § 2 CIC/17 stated that while excommunication is always censure, interdict and suspension can be either censures or vindictive penalties. In case of doubt, there was a presumption that they were censures. Suspension was a debt collection penalty if it was applied permanently (*in perpetuum*), for a definite period (*ad tempus definitum*), or at the discretion of the superior (*ad beneplacitum superioris*).<sup>35</sup>

Although the code in force resolves the treatment of suspension for both states as censure, it is worth introducing into the scientific debate the question of the possibility of using suspension for the laity as an expiatory penalty, all the more so because we are dealing with a new solution, and in the past, the legislator allowed suspension as an expiatory penalty for clergy despite the centuries-old tradition treating it as a medicinal penalty. An argument in favor of such a solution may be the lack of a similar scope of penalty *ad tempus definitum* among the expiatory penalties of the code,<sup>36</sup> and suspension for a definite period for expiatory purposes would not necessarily mean depriving office of the layman prepared to perform it through education and experience, which is of great importance both in the tribunals of the Church and in the ecclesiastical administration, especially in mission areas. The counterargument to which I am inclined is the fact that suspension is classified as a medicinal penalty, both in the old sources of canon law and in the post-conciliar doctrine.

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<sup>34</sup> SÁNCHEZ-GIRÓN RENEDO, José Luis. El nuevo derecho penal de la Iglesia. *In: Estudios Eclesiásticos*. Madrid, v.96, n.379, 2021, p. 652.

<sup>35</sup> MYRCHA, Marian. *Suspensa*. *In: Prawo Kanoniczne*. Warsaw, v.10, n.1-2, 1967, p. 93.

<sup>36</sup> Can. 1336 § 4, 1º provides for “deprivation of all or some offices, duties, ministries or functions, or only of certain functions attaching to offices or duties”. Deprivation is a means of losing office and is punitive (cf. can. 184 § 1).



## Assessment of the Change

There is no doubt that the possibility of applying suspension to the lay Christian faithful was quite a surprise. In the recent history of the Church, the Second Vatican Council was a breakthrough in teaching about the laity, but—as J. Majewski states—“it stopped halfway.” The author believes that the “pressure of past centuries,” when the laity were assigned the role of “slightly worse citizens of the Church than clergy,” was still too great and is still felt.<sup>37</sup> An essential element of the pre-conciliar theology of the laity was the negative definition of the layman.<sup>38</sup> The CIC/1917 defined a lay person as a non-clergyman (can. 948). Already before the Council, there were voices that such a negative definition of the laity not only misses the depth of the mystery of the Church but is also the result of the clericalization of its vision. The Council Fathers put a lot of effort and time into working out a positive definition of a layperson, but in the end, they stuck to the negative definition, although softened.<sup>39</sup> In the Constitution *Lumen Gentium*, we read: “The term laity is here understood to mean all the faithful except those in holy orders and those in the state of religious life specially approved by the Church” (n. 31).

The CIC/1983 devoted many prescriptions to the lay faithful. The legislator not only defines their obligations and rights (can. 224-235) but also regulates their activity in ecclesial structures and in all areas of the Church's life. This is a step towards overcoming the negative definition of the layman, but not enough. Overcoming a negative vision cannot consist only in the—otherwise desirable and right—affirmation of the laity but also in the requirement of criminal responsibility identical with the responsibility of the clergy. How can we positively define a lay faithful person if the legislator considers his responsibility to be less than that of a clergyman? Is this not a vision that harms the victims of crime? If both estates have been recognized as capable of holding office in the Church without going into detail about the derivation of this faculty from different sources, both clergy and laity should be held accountable in accordance with the principle of equality before the law. Penal law should be understood as a paradigmatic instrument for the administration of

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<sup>37</sup> MAJEWSKI, Józef. Świecki czy po prostu chrześcijanin? Kłopoty z teologią laikatu. In: *Wież*. Warsaw, n.2, 2003, p. 26-27.

<sup>38</sup> VIANA, 2014, p. 604.

<sup>39</sup> GHIRLANDA, Gianfranco. De variis ordinibus et condicionibus iuridicis in Ecclesia. In: *Periodica de re morali canonica liturgica*. Roma, v.71, n.3, 1982, p. 393-395.



justice, which in the European tradition is inextricably linked to the principle of equality.<sup>40</sup> It is true that this principle allows for a rational differentiation of consequences for offenders in a similar situation based on the premises provided for in the law, but making such a condition of belonging to the clerical or lay state is contrary to the paradigm of overcoming clericalization currently in force in the Church. This also has its consequences in the amendment of Book VI.

As noted earlier, ecclesiastical offices serve the broadly understood pastoral ministry. It must be said that entrusting ecclesiastical offices to the laity also has a profound pastoral justification. The preamble to the Constitution reforming the Roman Curia recalls that every Christian is a missionary disciple. The basic general rule is that all—and therefore also the lay faithful—may be called to exercise managerial functions in the Roman Curia by virtue of the vicarious authority of the Successor of Peter: “Each Christian, by virtue of baptism, is a missionary disciple ‘to the extent that he or she has encountered the love of God in Christ Jesus.’ This must necessarily be considered in the reform of the Curia, which should consequently make provision for the involvement of lay women and men, also in roles of government and responsibility” (PE, Preamble).

The participation of the laity in the functions of government is expressed in the increasingly widespread assumption of ecclesiastical offices not only in the Roman Curia but also in the diocesan Curia. On the other hand, participation in liability functions must be associated with assignment to the system of penal sanctions. In accordance with the above, the introduction of the possibility of imposing suspension on the laity should be assessed positively, as the implementation of the assumptions of the Second Vatican Council in the field of a positive definition of the laity based on canonical regulations.

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<sup>40</sup> The most synthetic approach to justice takes equality into account, through Aristotle's postulate, that things that are similar should be treated similarly, and those that are not similar should be treated differently. WHITMAN, James. Equality in Criminal Law: The Two Divergent Western Roads. *In: The Journal of Legal Analysis*, v.1, n.1, 2009, p. 119; WACKS, Raymond. *Law. A Very Short Introduction*. Oxford: University Press, 2015, p. 7.



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14

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