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THE CATHOLIC CHURCH AND A PERSON'S RIGHT TO PRIVACY AND PROTECTION OF HIS GOOD REPUTATION

Abstract: In the Roman Catholic Church, a person's right to privacy and to the protection of a good reputation are regulated in can. 220 CIC (cf. c. 23 CCEO). Unfortunately, the scope of the rights protected under this canon has not been given a uniform definition either in the legislation or in the doctrine, which means that the Christian faithful often encounter problems in the enjoyment of their rights.

In view of this, I embarked on an attempt to define the scope of the right to privacy and protection of one's good reputation, both from the vantage point of substantive law as well as from the perspective of persons vindicating this right. The second aim of the research conducted for this publication was to determine whether the nature of these rights is absolute, or whether they may be subject to restriction, and if so, on what grounds.

Keywords: human rights; good reputation; privacy

INTRODUCTION

As Catholics have become more and more aware of human rights, which are also due to every person in the community of the Catholic Church, their potential for the unlimited enjoyment of the right to privacy¹ and protection of their good reputation has become a matter of growing importance. The

¹ In the original version of the provision the legislator used the Latin word *intimitas* meaning the right to privacy. By "legislator" I mean either the drafters of the canon or the legislator who promulgated the official text. Since the English translations of the Code and commentaries on it translate *intimitas* as "privacy," that is the word I shall generally use to render the Latin term. However, in my opinion, the English word "privacy" does not cover the full meaning of the Latin term *intimitas*, as I will explain below.

Church is an institution which has devoted a huge amount of attention to human rights, therefore the right to privacy and protection of the individual's good reputation is an issue which Church legislation and those responsible for its implementation cannot overlook and must acknowledge.

In the legislation of the Roman Catholic Church, the protection of these human rights is covered by can. 220 CIC,² which reads *Nemini licet bonam famam, qua quis gaudet, illegitime laedere, nec ius cuiusque personae ad propriam intimitatem tuendam violare* (No one is permitted to harm illegitimately the good reputation which a person possesses nor to injure the right of any person to protect his or her own privacy).³ Unfortunately, the scope of the rights protected under this canon has not been given a uniform definition either in the legislation or in the doctrine, which means that the Christian faithful often encounter problems in the enjoyment of their rights. On the one hand, persons entitled to enjoy the given right may not fully understand the canon they are invoking, while on the other hand those who are legally bound to observe the canon do not have the full knowledge of what they may do and what they are prohibited from doing.

In view of this, I have embarked on an attempt to define the scope of the right to privacy and protection of one's good reputation, both from the vantage point of substantive law as well as of persons (Catholics) enjoying this right.⁴ I also had a secondary aim in the research I conducted prior to writing this paper: to determine whether the nature of these human rights is absolute or whether there are any limits to them, and if so, what are the principles on which such limits are founded.

Since the definition of every right follows a specific legislative development process of its own, with a specific normative formulation, and in view

² CIC – abbr. of *Codex Iuris Canonici auctoritate Ioannis Pauli PP. II promulgatus*, 25 Ianuarii 1983, AAS 75 (1983), Pars II, pp. 1-317; English translation: *Code of Canon Law. Latin-English Edition. New English Translation*, Washington 1999 [CIC]. The Church has several legal instruments available for the protection of the rights protected under can. 220 CIC. However, a full review of them would exceed the scope of this study, I will not consider all of them. For more on the subject, see A. PERLASCA, *Elementi peculiari ad aspetti irrinunciabili della normativa canonica nella tutela della buona fama e della riservatezza*, “Quaderni di diritto ecclesiale” (2020), no. 33, p. 167-188.

³ Cf. c. 23 CCEO [abbr. of *Codex Canonum Ecclesiarum Orientalium auctoritate Ioannis Pauli PP. II promulgatus*, 18 Octobris 1990, AAS 82 (1990), p. 1033-1353].

⁴ Strictly speaking, all Christians have this right – it is a human right recognized by the Church. I will return to this later.

of the principle laid down in can. 17 CIC for the interpretation of legal texts, I will examine each of these rights separately.⁵

1. THE RIGHT TO PROTECTION OF ONE'S GOOD REPUTATION

1.1. ORIGIN AND SOURCE OF THE NORM

At the very outset of their work for the reform of the Code of Canon Law, the members of the Pontifical Commission for the Revision of the Code of Canon Law recognized the need to include provisions ensuring the right of the Christian faithful to protect their good reputation. At a meeting held on October 16-21, 1967, the coetus drafting the *de Laicis* schema proposed a new formulation of the norm of can. 2 § 2, which at the time said, "The Christian Faithful have the right to the honor due to them and to enjoy a good reputation; neither may they be unlawfully deprived of their good reputation."⁶ (*Fidelium ius est, ut in congruo habeantur honore et bona existimatione afficiantur neque bona fama indebite priventur.*)⁷ In the course of the discussion, the canon was revised to read *Fidelibus ius est ut bona fama qua gaudent ab omnibus in honorem habeantur; quapropter nemini licet illegitime eandem laedere.*⁸

The documents compiled by the coetus tell us that the sources of the version of can. 2 § 2 in the 1967 schema of *de Laicis* were the following:⁹ no. 9-10 of John XXIII's encyclical *Pacem in Terris*,¹⁰ no. 12 of the Vatican 2 Decree *Unitatis Redintegratio*,¹¹ and no. 26 of the Pastoral Constitution

⁵ J. KRUKOWSKI, *Prawo wiernych do dobrej opinii i do własnej intymności: komentarz do kan. 220 KPK z 1983 r.*, "Prawo Kanoniczne" 39 (1996), no. 3-4, p. 229.

⁶ English translation by Teresa Bałuk-Ulewiczowa from the original Latin as quoted, cross-checked with the Polish translation in J. KRUKOWSKI, *Prawo wiernych*, pp. 229-230.

⁷ "Communicationes" (1985), no. 17, p. 210.

⁸ *Ibid.*, p. 211.

⁹ *Ibid.*, p. 211.

¹⁰ IOANNES XXIII, *Litterae encyclicae Pacem in terris*, 11 April 1963, No. 9-10, AAS 55 (1963), p. 260. English translation: www.vatican.va/content/john-xxiii/en/encyclicals/documents/hf_j-xxiii_enc_11041963_pacem.html [Accessed: December 10, 2022]. In nn. 86 and 92 of this document, the Pope mentions the individual's right to have his/her good reputation respected and his/her right to this respect in the context of the applicable national laws.

¹¹ SACROSANCTUM CONCILIUM OECUMENICUM VATICANUM II, *Decretum de Oecumenismo Unitatis redintegratio*, 21 November 1964, No. 12, AAS 57 (1965), p. 100. English translation: www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_decree_19641121_unitatis-redintegratio_en.html [Accessed: December 10, 2022].

Gaudium et Spes.¹² These references show that the rights within the scope of the provision of can. 2 § 2 are rooted in the dignity of the human person.

In the next phase of the work by the coetus of consultants in the process of the revision of the Code of Canon Law, can. 2 § 2 of the *de Laicis* schema was incorporated as can. 23 in the *Lex Ecclesiae Fundamental* schema.¹³ The word *fideli*um was replaced by *Christifidelibus* (*Christifidelibus ius est bona fama qua gaudent ab omnibus in honorem habeantur; quapropter nemini licet illegitime eandem laedere*).¹⁴

Discussions on this provision continued, and as a result the norm was simplified and entered in the *Lex Ecclesiae Fundamental* as can. 20, with the same wording as the current can. 220 CIC (*Nemini licet bonam famam, qua quis gaudet, illegitime laedere*).¹⁵ When the plan to publish *Lex Ecclesiae Fundamental* was finally abandoned in 1982, can. 20 was ultimately inserted in Book II of the 1983 CIC, the only change being that after the presentation of the *Codex Iuris Canonici Schema Novissimum*, it was supplemented with the addition of a prohibition on the unlawful violation of the right to the protection of privacy.¹⁶

1.2. SCOPE OF THE PROVISION PURSUANT TO CANONICAL DOCTRINE AND THE CHURCH'S DISCIPLINE

On examining the documents produced by the Commission for the Revision of the Code of Canon Law, we may put forward a hypothesis that the scope of the right to protect one's good reputation covers spiritual goods such as honor, respect, reputation, esteem, and good opinion, as well as the related goods a person enjoys in his/her community in connection with his/her conduct.¹⁷ A person may enjoy public esteem regardless of his or her

¹² SACROSANCTUM CONCILIUM OECUMENICUM VATICANUM II, *Constitutio pastoralis de Ecclesia Gaudium et spes*, 7 December 1965, No. 26, AAS 58 (1966), p. 1046. English translation: www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_const_19651207_gaudium-et-spes_en.html [Accessed: December 10, 2022].

¹³ J. KRUKOWSKI, *Prawo wiernych*, p. 230.

¹⁴ PONTIFICIA COMMISSIO CODICI IURIS CANONICI RECOGNOSCENDO, *Schema Legis Ecclesiae Fundamental* cum Relatione, Città del Vaticano, 1969, p. 16.

¹⁵ "Communicationes" 12 (1980), p. 41.

¹⁶ PONTIFICIA COMMISSIO CODICI IURIS CANONICI RECOGNOSCENDO, *Codex Iuris Canonici Schema Novissimum Iuxta Placita Patrum Commissionis Emendatum Atque Summo Pontifici Praesentatum*, Città del Vaticano 1982, c. 220, p. 36.

¹⁷ J. KRUKOWSKI, *Prawo wiernych*, p. 231; D. CENALMOR, *The Obligations and Rights of All Christ's Faithful*, [in] *Exegetical Commentary on the Code of Canon Law*, Vol. 2/1, eds. Á. Marzoa,

immoral or unlawful behavior, which happens if the community is unaware of his/her unacceptable conduct.¹⁸ A person's right to the protection of his/her good reputation is associated with the right to know the name of his/her accuser and the allegation itself.¹⁹ All of these rights are grounded in human dignity, since "everyone enjoys a natural right to the honor of his name and reputation and to respect." (CCC,²⁰ no. 2479) The protection of a person's good reputation helps him/her lead a truly human life. Respect is due to the dignity of every human person, not only to those who have been baptized, hence the scope of the individual's right to the protection of his/her good reputation extends to cover all human persons individually.²¹

According to Piotr Skonieczny, the Church does not use the category of human rights enshrined in secular legislation, and so in Church law it is not the concept of human rights drawn from the secular theory of law that provides the grounds for the protection of a person's good reputation, although it may have inspired the Church's legislation. He argues his claim may be confirmed by the fact that in the Church's legislation these rights are called *iura Christifidelium* – rights belonging to all the Christian faithful, not to an individual human, and does not consider it proper to apply or construct a subjective right, no matter whether private or public, or a theory of institutional protection for the protection of good reputation. We may say that in canon law a person's good reputation is afforded protection on the grounds of the Christian's fundamental right, which means his right to comprehensive protection on account of his dignity which requires protection, and for the salvation of souls (see can. 1752 CIC).²²

Returning now to the line of argument interrupted by the digression, I shall observe that the right to a good reputation assumes a special value

J. Miras, R. Rodriguez-Ocaña, English language eds. E. Caparros and P. Lagges, Montreal–Chicago: Midwest Theological Forum Wilson & Lafleur 2004, p. 126.

¹⁸ L. CHIAPPETTA, *Il Codice di diritto canonico. Commento giuridico-pastorale*, 2nd ed., Vol. 1, Bologna 2011, p. 289; D. CENALMOR, *Obligations and Rights*, p. 128.

¹⁹ D. CENALMOR, *Obligations and Rights*, p. 128; J. M. RITTY, *Balancing Rights of Accused Cleric and Good of the Community*, [in] *Roman Replies and CLSA Advisory Opinions*, 2005, eds. F. Stephen Pedone, J. I. Donlon, Washington: Canon Law Society of America 2005, p. 50.

²⁰ CCC – abbr. for *Catechism of the Catholic Church*, Chicago: Loyola University Press 1994.

²¹ CCC, no. 1935.

²² P. SKONIECZNY, *Koncepcja teoretycznoprawna ochrony dobrego imienia w kan. 220 Kodeksu Prawa Kanonicznego Jana Pawła II*, "Annales Canonici" (2008), no. 4, p. 274, 284-285.

with respect to the life of the People of God.²³ In the opinion of Thomas Aquinas, “of all temporal things a man’s good name seems the most precious, since for lack of it he is hindered from doing many things well.”²⁴ It is precisely because the human individual lives in a community that his/her good reputation is accorded such a high value. Any restrictions applied to the individual’s potential for doing things well due to the loss of his/her good name are the reason why the Church has a particular interest in defending the precept of natural law with regard to a person’s good reputation.²⁵

According to the ordinary teaching of the Catholic Church in the CCC, a person’s right to a good reputation may be violated by deed as well as by word. It may be encroached by rash judgment, which assumes another’s moral fault as true without sufficient foundation; detraction, when someone discloses another person’s faults and failings to others who did not know of them, without an objectively valid reason; and calumny, when someone makes remarks contrary to the truth, harming another person’s reputation and thereby giving occasion for false judgments concerning that person.²⁶ The canonical doctrine also considers insults, the spreading of rumors, defamation, and denunciation as other forms of conduct infringing on a person’s right to the protection of his/her good reputation. Those who act in this way offend against a person’s right to protection of his/her good reputation because they transmit information to others about that person’s bad conduct or vices without just cause.²⁷

Assessments of whether a person’s good reputation has been infringed upon should be made on broader grounds than merely on the basis of the injured person’s subjective opinion. Such assessments ought to be founded on the opinion of persons who are honest and respected in their community.²⁸

²³ P. MAJER, *Ochrona prywatności w kanonicznym porządku prawnym*, [in] *Ochrona danych osobowych i prawo do prywatności w Kościele*, ed. P. Majer, Kraków: Wydawnictwo Naukowe Papieskiej Akademii Teologicznej 2002, p. 92; D. CENALMOR, *Obligations and Rights*, p. 126-127.

²⁴ Thomas AQUINAS, *The Summa Theologica*, Part II-II, q. 73, a. 2, c. 3, translated by the Fathers of the English Dominican Province, New York: [s.n.] 2007, p. 1498.

²⁵ D. CENALMOR, *Obligations and Rights*, p. 127.

²⁶ CCC, no. 2477-2479.

²⁷ J. KRUKOWSKI, *Prawo wiernych*, p. 232; L. CHIAPPETTA, *Il Codice di diritto canonico*, p. 289.

²⁸ This may be concluded from a study of the legal provisions regulating the matter of infamy of fact and enshrined in the Pio-Benedictine Code (c. 2293 § 3, and c. 2295 CIC/17). [CIC/17 – abr. *Codex Iuris Canonici Pii X Pontificis Maximi iussu digestus. Benedicti Papae XV auctoritate promulgatus*, 27 May 1917, AAS 9 (1917), pars. II, pp. 1–594 [CIC/17]; English translation: *The 1917 or Pio-Benedictine Code of Canon Law in English Translation with Extensive Scholarly Apparatus*, cur. E.N. Peters, San Francisco 2001].

A person whose good reputation has been unlawfully called into question and undermined may file a complaint both in a secular and in an ecclesiastical court (can. 221 § 1 CIC). Under can. 1400 CIC, proceedings and claims in defense of the rights of individuals may be brought to a Church court, therefore cases for the restitution of a person's good reputation, which can. 220 CIC guarantees, may lawfully be the subject of litigation before a Church court. Such cases may be heard either in a contentious trial or, if the plaintiff's aim is to obtain a verdict penalizing the defendant, they may take the form of penal proceedings (can. 1390 § 2 CIC). The choice which option (whether a judicial sentence or an administrative decree) is to be used rests with the ordinary of the diocese where notice has been brought of the infringement upon the plaintiff's right to a good reputation.²⁹

2. THE RIGHT TO PRIVACY

2.1. ORIGIN AND SOURCE OF THE PROVISION

Commentators on can. 220 CIC do not agree on the origin of the provision regulating the right to personal privacy. Some see its source in the work of the Commission for the Revision of the Code of Canon Law to draft a provision on the inviolability of correspondence. In 1977, the draft of can. 33 of the Schema of Book 2 *de Populo Dei* was worded as follows: *Christifideles officium et ius habent servandi secretum commercii epistolaris aliusve personalis indolis*.³⁰ However, in 1979 it was withdrawn from publication in the 1980 Schema of the Code.³¹

Another group of commentators, who seem to hold the majority view, maintain that the sources of this provision go back to the work for the drafting of can. 642 CIC currently in force. A similarly worded provision was enshrined in can. 46 of the Schema of Canons *de Institutis Vitae Con-*

²⁹ P. M. DUGAN, *Recourse against Defamation of Character*, [in] *Roman Replies and CLSA Advisory Opinions* 2002, eds. F. S. PEDONE, J. I. DONLON, Washington: Canon Law Society of America 2002, p. 81-82; D. BRENNAN, *Defamation of Character of a Priest*, [in] *Roman Replies and CLSA Advisory Opinions* 1996, eds. K. W. Vann, J. I. Donlon, Washington: Canon Law Society of America 1996, p. 63-65.

³⁰ PONTIFICIA COMMISSIO CODICI IURIS CANONICI RECOGNOSCENDO, *Schema Canonum Libri II de Populo Dei*, Città del Vaticano 1977, p. 30.

³¹ D. CENALMOR, *Obligations and Rights*, p. 130.

secratae per Professionem Consiliorum Evangelicorum (1977).³² Pursuant to this canon, moderators (superiors) were to act in the spirit of responsibility to their institute and to the Church, and receive candidates of an appropriate age, in an appropriate state of health, and with the appropriate abilities and maturity. Moreover, the provision authorized moderators to assess the candidate's state of health, character, and maturity, consulting expert advisors if the need arose. In the opinion of consultors, since the canon concerned extremely delicate matters and this formulation of the provision could offer a potential for abuse by a moderator assessing the candidate's qualifications, they decided to supplement the canon with the following closing reservation: *peritis, salvo iure inviolabili personae ad propriam intimitatem tuendam*.³³

In 1981, Cardinal Silvio Oddi, Prefect of the Congregation for the Clergy, sent a letter to the secretariat of the Commission for the Revision of the Code of Canon Law, requesting the inclusion of the obligation to observe the candidate's right to privacy in the set of provisions for the determination of his suitability for ordination.³⁴ Cardinal Oddi remarked that there was a need for a separate provision to protect the fundamental right of every Christian to have his/her psychological and moral privacy respected. At first, the members of the Commission were rather hesitant and had doubts regarding the postulates put forward by Cardinal Oddi; they were afraid that the new provision might affect the Church's traditional ascetic practices. However, in the final revision of the draft of the Code, a decision was taken to supplement the canon on the right of the faithful to the protection of their good reputation with the addition of their right to privacy. At this point, can. 220 CIC assumed its current wording.³⁵

2.2. SCOPE OF THE PROVISION PURSUANT TO CANONICAL DOCTRINE AND THE CHURCH'S DISCIPLINE

Natural law provides the grounds both for the individual's right to a good reputation as well as for the right to privacy, and hence the right to privacy

³² PONTIFICIA COMMISSIO CODICI IURIS CANONICI RECOGNOSCENDO, *Schema Canonum Libri II*, p. 30: *Moderatores, memores propriae responsabilitatis erga Institutum et Ecclesiam, vigilantia cura eos tantum admittant qui, praeter aetatem requisitam, valetudinem, aptam indolem et sufficientes maturitatis qualitates praebeant necessarias ad vitam Instituti propriam ineundam; quae valetudo, indoles et maturitas comprobentur adhibitis etiam, si opus fuerit, peritis.*

³³ "Communicationes" (1980), no. 12, p. 186-187.

³⁴ J. KRUKOWSKI, *Prawo wiernych*, p. 234.

³⁵ P. MAJER, *Ochrona prywatności*, p. 88.

belongs to all human beings, not just Christians.³⁶ The fact that both of these rights have been entered in the set of provisions in Title I of Book 2, *Obligations and Rights of All the Christian Faithful* in no way diminishes the rights of persons who have not been baptized, inherent in the natural dignity of the human person. In this part of the Code, the Church's legislative authority considers the canonical status of the baptized in the community of the Church and points out that unlike human rights, the foundations of which are in the very nature of the human being, "the fundamental rights of the faithful trace their origin to conformation in Christ through baptism."³⁷

The individual's right to the protection of his/her privacy is a subject that was addressed already by Pius XII in connection with the progress made in the psychological sciences. He observed that privacy pertains to the individual's inner world which he or she does not disclose and keeps hidden from others. The individual's inner domain entails his or her intimate psyche, particularly his or her tendencies and dispositions. In the opinion of Pius XII, a person's privacy may be accessed by others provided that its holder consents to such access, on the principle of *volenti non fit iniuria* (no harm is done to a consenting party). But, as the Pope stressed, the consent may not be unfairly extorted or impaired by the lack of freedom due to ignorance, error, or deception.³⁸ Otherwise, such access to a person's privacy will be an immoral encroachment.³⁹ Here it will be worthwhile to observe that in accordance with the Church's teaching enshrined in the CCC, a person's consent to let others enter into his or her private world does not legitimate those acts which are in themselves contrary to the dignity of the person and to the moral law. The Church teaches that acts entailing access to a person's privacy

³⁶ A. SOLFERINO, *I diritti fondamentali del fedele: il diritto alla buona fama e all'intimità*, [in] *Diritto "per valori" e ordinamento costituzionale della Chiesa*, a cura di R. Bertolino, S. Gherro, G. Lo Castro, Torino: Giappichelli 1996, p. 372-382; A. PERLASCA, *La tutela giuridica del diritto all'intimità negli esami psicologici dei candidati al Seminario e agli Ordini sacri*, "Quaderni di diritto ecclesiale" (2005), no. 18, p. 417-441.

³⁷ D. CENALMOR, *Obligations and Rights*, p. 127.

³⁸ In 1961, the Congregation of the Holy Office refused its consent to require all candidates to the priesthood or solemn vows to submit to an obligatory psychological examination or therapy – SACRA CONGREGATIO SANCTI OFFICII, monitum *Cum compertum*, no. 4, 15 August 1961, AAS 53 (1961), p. 571; A. PERLASCA, *La tutela giuridica del diritto*, pp. 425, 431.

³⁹ PIUS XII, *Allocutio: Iis qui interfuerunt Conventui XIII Societatis internationalis «de Psychologie appliquée»*, *Romae habito*, n. II. 2, 10 April 1958, AAS 50 (1958), pp. 276-277. English translation in "The Catholic Mind" 56 (1958), no. 7-8, pp. 353-368.

According to the Secretary of State, it is illicit for anyone to trespass on the interior privacy of a person without the individual's explicit, informed, and absolutely free consent – SECRETARY OF STATE, *Letter to Pontifical Representatives*, August 6, 1976, prot. no. 311157.

are inadmissible if they expose that person's life or physical and psychological integrity to disproportionate or avoidable risks (CCC, no. 2295).

In his explanation of the principles which should be followed in psychological examinations, Perlasca observes that the fact that a person may not be aware of his right to privacy when he is asked or expected to consent to its infringement may be the outcome of deceptive practices used against him. One of the situations in which this may occur is when the person is offered an examination by a specific psychologist, but in fact the examination is conducted by someone else. Another circumstance occasioning the examined person's lack of awareness may be his ignorance. According to Perlasca, the psychologist should explain the nature and aim of the examination to the interested person. In addition, the person who is to be examined should be warned that emotions, inclinations and disinclinations, or any other matters which he never suspected himself of may come to light during the examination.⁴⁰

Now I shall return to my previous deliberations. There is no consensus among legal experts on the scope of protection accorded by the individual's right to privacy. Neither canonists nor lawyers specializing in secular law agree on the extent of this right. Some equate "the right to privacy" (*privatum*) with "the right to *intimité*" and resort to descriptive definitions to determine its scope.⁴¹ Some authors hold that "*intimité*" (derived from the Latin noun *intimitas*, cf. Italian *intimità*) is entailed in "privacy" (*privatum*). For instance, according to Chiappetta, *intimità* is "the sphere of the individual's private life which others may not enter."⁴²

According to Paul L. Golden,

The right to privacy can be described as the freedom of a person to determine when, how, and to what extent he or she wishes to safeguard or to communicate information within his or her own sphere of intimacy. Privacy protects

⁴⁰ A. PERLASCA, *La tutela giuridica del diritto*, p. 430-431.

⁴¹ Pius XII made his observations on the right to privacy in French, using the French word *intimité* (derived from the Latin noun *intimitas* cf. Italian *intimità*). In general, English texts on the subject use the word "privacy" for the concept, which is also the word I have decided to use for the concept in this article. P. MAJER, *Ochrona prywatności*, p. 92; D. CENALMOR, *Obligations and Rights*, p. 130; P. V. PINTO, *De Christifidelibus*, [in] *Commento al Codice di Diritto Canonico*, ed. P. V. Pinto, Città del Vaticano: Libreria Editrice Vaticana 2001, p. 127; P. L. GOLDEN, *Background Checks and Non-Church Personnel Using Church Facilities*, [in] *Roman Replies and CLSA Advisory Opinions 2004*, eds. F. S. Pedone, J. I. Donlon, Washington D.C.: Canon Law Society of America 2004, pp. 94-95.

⁴² L. CHIAPPETTA, *Il Codice di diritto canonico*, p. 289.

disclosures about a person's life, past and present, a person's physical health and medical history, disclosures about relationships, family members, and other such information.⁴³

In Zavalloni's opinion, the objective scope of the right to "privacy" (*vita privata*) is broader than the scope of the right to *intimità* (*intimitas*). According to him, "privacy" (*vita privata*) concerns all the aspects of an individual's personality, such as the way he behaves, moves, and expresses himself, his physical defects which are concealed or undisclosed in public and which for various reasons he keeps out of sight even though they belong to the external world. Hence, he argues that the protection of a person's *intimitas* (*la tutela dell'intimità*) should be extended to cover his "private life" (*vita privata*) in the broad sense of the term. For him "privacy" applies not merely to the individual's inner life (*con l'interiorità*), but also to his "private life" (*vita privata*). A person's "privacy" may be encroached upon also by the use of techniques which need not reach down to the deepest parts of his psyche.⁴⁴ Perlasca argues against this opinion and claims that a person's "private life" (*vita privata*) is not a broader, but a different sphere from his "intimate life" (*vita interiore*) and maintains that whereas *l'intimità* (*intimitas*) applies to an individual's inner world (for instance, his feelings, ideas, emotions), of which he may not be fully, or even not at all aware, his "private life" comprises the external aspect of his personality. He is aware of matters pertaining to his "private life" (*vita privata*) but for various reasons wishes to keep them fully or partly secret. In view of this, Perlasca observes that the fact that psychology is capable of probing the innermost, unknown depths of the human psyche of which a person may be unaware, it is more of a problem with respect to a person's "intimate life" (*vita intima*) rather than his "private life" (*vita privata*), which could be encroached upon by other means, e.g. bugging devices. Hence, according to Perlasca, the protection of an individual's right to *intimitas* (*la tutela giuridica dell'intimità*) is grounded in natural law, whereas the protection of his private life (*la tutela della*

⁴³ P. L. GOLDEN, *Privacy of Psychological Reports*, [in] *Roman Replies and CLSA Advisory Opinions 2007*, eds. Ronny E. Jenkins, Joseph J. Koury, Rose Mcdermott et al., Washington: Canon Law Society of America 2007, p. 58.

⁴⁴ R. ZAVALLONI, *Studi psico-pedagogici sulla vocazione*, Brescia 1961, p. 591.

Having made a clear distinction between "intimate" matters and "private" life, Perlasca asserts that the community of the Church has a right to protection against persons whose suitability for the ministry is questionable, providing that *l'indagine venga fatta in bonum personae, il cui vero bene va ricercato anche contro la volontà dell'interessato*.

vita privata) belongs to positive law. Therefore, he argues, certain medical examinations, such as for instance the HIV test, belong to the intimate sphere (*strefa dell'intimità*) and are subject to legal protection under can. 220 CIC. According to him, the scope of protection of a person's *intimitas* (*la tutela dell'intimità*) prescribed by can. 220 CIC applies only to his inner sphere, not to his "private life" (*vita privata*).⁴⁵ A person's "private life" may be afforded protection on the grounds of his right to the protection of his good reputation against unlawful infringement, which is also prescribed under can. 220 CIC.

In our examination of the provision of can. 220 CIC, we cannot fail to observe that the Latin word *intimitas* is not synonymous with *privatum*. The noun *intimitas* (and its subsequent meanings) in can. 220 CIC comes from the adjective *intimus*; *intimus* is the superlative of *internus*. *Intimus* is a polysemous word, and its meanings include 1) furthest from the outside, most remote, inmost, the inmost part of; 2) the inmost part of (the mind, or the breast, etc., as seat of feelings), (of sensations, emotions) deepest (cf. the phrase *ex intimis* – from the depths of one's soul/heart); 3) remotest from public knowledge, most secret or private; 4) most abstruse, recondite, or profound; 5) (of friends) most intimate, closest.⁴⁶ On the other hand, the meanings of the word *privatus* are as follows:⁴⁷ 1) (of property, etc.) restricted for the use of a particular person or persons, private; belonging as private property to oneself; one's own; belonging as private property (to); private property, one's own house or land; one's own interest in; 2) not holding public office (civil or military), private, unofficial; 3) of or relating to a private person in his private capacity, private; of or suitable for a person having the status of an ordinary citizen; 4) individual to a person or thing, peculiar, special.⁴⁸

In the English version of the Code of Canon Law, *intimitas* in can. 220 CIC is rendered as *privacy*. Today *privacy* has the following meanings: 1) the state of being able to be alone, and not seen or heard by other people, 2) the state of being free from public attention,⁴⁹ 3) someone's right to keep

⁴⁵ A. PERLASCA, *La tutela giuridica del diritto*, p. 434-435.

⁴⁶ *Oxford Latin Dictionary*, A. N. B. BROWN (ed.), Oxford: At The Clarendon Press 1968, p. 952.

⁴⁷ To facilitate the comparison of the meaning of the two terms, I have compared the two adjectives, *intimus* and *privatus*, not the nouns.

⁴⁸ *Oxford Latin Dictionary*, p. 1461

⁴⁹ *Longman Dictionary of Contemporary English*, Fifth impression, Director Della Summers, Essex 2003, p. 1302.

their personal matters and relationships secret.⁵⁰ *The Etymology Dictionary* says that the meaning of *privacy* evolved in the following way: 1) “a private or personal matter, a secret” (from the 1590s on); 2) c. 1600 as “seclusion, the state of being in retirement from company or the knowledge and observation of others,” 3) from 1814 as “the state of freedom from intrusion or interference.” Earlier there was a term *privatie* meaning “a secret, a mystery” (late 14c.); and as “a secret, secret deed; solitude, privacy” (c. 1400), from Old French *privauté*.

Therefore, from the point of view of semantics and terminology, the wording of can. 220 CIC does not seem to allow us to treat “the right to *intimitas*”⁵¹ as the equivalent of “the right to privacy.”⁵² Although the two terms are similar, there is only a partial overlap in their semantics.

The conclusion to be drawn from the linguistic interpretation of can. 220 CIC is confirmed in the origin and *ratio legis* of this provision. In the opinion of most of its commentators, the *ratio legis* of the provision's second part was derived from the need to guarantee members of the Catholic Church the right to the inviolability of the psychological and moral sphere of their life within the community of the faithful. The origins of can. 220 CIC should be traced back to the work on the provision for the regulation of the way superiors of religious institutes are to assess the character, maturity and state of health of candidates wishing to enter an institute of consecrated life, not

⁵⁰ *Cambridge Dictionary*, dictionary.cambridge.org.

⁵¹ In the French version of the Code, *intimitas* in can. 220 CIC is rendered as *intimité*; the Spanish edition has *intimidad*; the Italian has *intimità*, and the Portuguese has *intimidade*. See the diverse translations of the CIC, www.vatican.va/archive/cdc/index.htm. It should be noted that the current meanings of the English noun *intimacy* are as follows: 1) a state of having a close personal relationship with someone, 2) intimacies (*plural*) things you say or do to someone you have a close personal relationship with, 3) a situation in which you feel you are in private with someone, 4) (*formal*) sex, 5) (*usually plural*) things that are said or done only by people who have a close relationship with each other – *Longman Dictionary of Contemporary English*, s. 853; *Cambridge Dictionary*, dictionary.cambridge.org. The *Online Etymology Dictionary* describes the evolution of the meaning of the noun *intimacy* as follows: 1) Sense of “sexual intercourse” attested from 1670s but modern use is from newspaper euphemistic use (1882), 2) c. 1200, “closeness of personal association, intimacy,” from Old French *familiarité* and directly from Latin *familiaritatem* (nominative *familiaritas*) “intimacy, friendship, close acquaintance,” from *familiaris* “friendly, intimate.” Meaning “undue intimacy” is from late 14c. That of “state of being habitually acquainted” is from c. 1600. (*Online Etymology Dictionary*, www.etymonline.com).

⁵² I am not questioning the right of the faithful to privacy. The Church has mentioned this right on many occasions, e.g. in *GS 26*, observing that it is grounded in the dignity of man. However, I do not think we can equate the right to privacy with the right to *intimitas* as it occurs in the text of can. 220 CIC.

to the work for the provision to regulate the Church's law on the privacy of correspondence.

To determine the scope of the provision on privacy, it will certainly be helpful to consider its systemic interpretation. An examination of can. 642 CIC in connection with can. 220 CIC and the 1997 Circular Letter issued by the Congregation for Divine Worship and the Discipline of the Sacraments on investigating the suitability of candidates for Holy Orders shows that an attempt to determine a person's maturity, mental and physical state of health, and character may involve an infringement of his private life.⁵³ The provisions regulating the administration of the Sacrament of Penance, canons 240 § 1, 246 § 4, 630, 979, 983-985, 991, and 1548 § 2, 1°, show that the secrets of an individual's conscience are subject to the right to privacy. Here we should observe that the special significance of a person's conscience was stressed by the Second Vatican Council in no. 16 of *Gaudium et Spes*, its Pastoral Constitution on the Church in the Modern World, which says that "Conscience is the most secret core and sanctuary of a man. There he is alone with God, Whose voice echoes in his depths." In a private letter dated June 9, 1998, the Congregation for the Clergy referred to the instruction issued by the Secretariat of State on August 6, 1976, and declared that the evaluation of "the intimate psychological and moral status of any member of the Christian faithful cannot be carried on except with the consent of the one to undergo such evaluation." Thereby, it asserted that the moral and psychological condition of a person's inner life belongs to his intimate sphere.⁵⁴

If we are to invoke the systemic interpretation of the provision in can. 220 CIC, we should also consider the Church's teaching which says that the human sexual sphere is included in the concept of "the intimate sphere" (CCC, no. 2521 and 2523). The need for a guarantee for the individual's right to privacy was also a point addressed by John Paul II in his Apostolic Exhortation *Familiaris Consortio*, in which he censured "the intolerable

⁵³ CONGREGATION FOR DIVINE WORSHIP AND THE DISCIPLINE OF THE SACRAMENTS, *Circular Letter on Investigating the Suitability of Candidates for Holy Orders*, 10 November 1997, *Prot. N. 589/97*, [in] *Canon Law Digest. Officially Published Documents Affecting the Code of Canon Law 1996-2000*, Vol. 14, ed. P. J. COGAN, Washington D.C. 2012, pp. 962-971.

⁵⁴ CONGREGATION FOR THE CLERGY, *Letter to an American Bishop*, 1998, "Studia Canonica" (2000), no. 34, p. 459-460; SECRETARY OF STATE, *Letter to Pontifical Representatives*, August 6, 1976, prot. no. 311157. (This letter, written in the late 1960s and early 1970s, the time when the United Nations Economic and Social Council was reviewing questionable psychological methodologies and related treatments, has not been published – quoted after W. H. WOESTMAN, *Psychic Qualities Required for Ordination and Psychological Testing*, [in] *Roman Replies and CLSA Advisory Opinions 2002*, eds. F. S. Pedone, J. I. Donlon, Washington: 2002, p. 80.

usurpations of society and the State” interfering with the right of individuals to “the intimacy of conjugal and family life.”⁵⁵

If we take all these observations into consideration, we may also ponder the descriptive definition of the right to intimacy devised by Andrzej Kopff and apply it in canon law. According to Kopff, privacy (*intimitas*) entails “the range of facts concerning an individual and his/her experiences which in principle he/she does not divulge even to the persons who are closest to him/her, and which, if disclosed, make him/her feel ashamed, embarrassed and distressed.” He maintained that, along with the right to privacy, the right to *intimitas* is part of the individual’s right to the protection of his/her private life.⁵⁶

3. THE NATURE OF THE RIGHTS IN CAN. 220 CIC

Can. 223 CIC says that in the Church, the exercise of a person’s rights may be subject to certain moderations (*moderationēs*).

(§ 1) In exercising their rights, the Christian faithful, both as individuals and gathered together in associations, must take into account the common good of the Church, the rights of others, and their own duties toward others.⁵⁷ (§ 2) In view of the common good, ecclesiastical authority can direct the exercise of rights which are proper to the Christian faithful.⁵⁸

Although this canon applies only to the Christian faithful, yet the rules it enshrines are applicable also with respect to persons who do not belong to the Catholic Church,⁵⁹ because the provisions of can. 223 invoke natural law. This is confirmed in the Declaration on Religious Freedom *Dignitatis Humanae*, n.7,⁶⁰ which is the source of can. 223 CIC,⁶¹ and states that the

⁵⁵ IOANNES PAULUS II, Adhortatio apostolica de Familia Christianae muneribus in mundo huius temporis *Familiaris consortio*, no. 46, 22 February 1981, AAS 74 (1982), p. 138; English translation: www.vatican.va/content/john-paul-ii/en/apost_exhortations/documents/hf_jp-ii_exh_19811122_familiaris-consortio.html (Accessed December 10, 2022).

⁵⁶ I. DOBOSZ, *Prawo i etyka w zawodzie dziennikarza*, Warszawa: Wolters Kluwer 2008, Chapter 1.2. LEX. I am quoting Kopff’s definitions after Dobosz.

⁵⁷ Duties need not be correlated with the rights of others; they may be moral duties.

⁵⁸ Cf. c. 26 CCEO.

⁵⁹ L. CHIAPPETTA, *Il Codice di diritto canonico*, p. 292.

⁶⁰ SACROSANCTUM CONCILIUM OECUMENICUM VATICANUM II, *Declaratio de libertate religiosa Dignitatis humanae*, no. 7, 21 November 1964, AAS 58 (1966), p. 934-935; English translation

ecclesiastical authority of the Catholic Church may impose moderations on the exercise of the rights, i.e. it may direct the exercise of the rights of its faithful

for the effective safeguard of the rights of all citizens and for the peaceful settlement of conflicts of rights, also out of the need for an adequate care of genuine public peace, which comes about when men live together in good order and in true justice, and finally out of the need for a proper guardianship of public morality.⁶²

These goods constitute “the basic component of the common welfare.” As can be inferred from can. 1752 CIC, the common welfare of the Church is intrinsically connected with the mission which she has received from Christ, that is the salvation of souls.⁶³ Here I shall invoke Ritty, who observes that

Too often, the ‘common good’ considered is the fear of a media reaction against a correct decision. There is no strict interpretation of the rights to be restricted, nor is there a consideration that the common good might include the rights of the individual and the restoration of the individual to the community.⁶⁴

Unlike national and international legislation, the law of the Catholic Church expressed in can. 223 does not lay down that any restrictions on the exercise of the rights of its faithful must be imposed exclusively by legislative means. Taking into consideration the statement issued on December 8, 2010 by the Pontifical Council for Legislative Texts, we may say that in the community of the Church, such restrictions may also be introduced through the exercise of the Church’s executive power, providing permission is granted for such an opportunity in accordance with can. 30 CIC.⁶⁵ Any

www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_decl_19651207_dignitatis-humanae_en.html (Accessed December 10, 2022).

⁶¹ L. CHIAPPETTA, *Il Codice di diritto canonico*, p. 292; D. CENALMOR, *Obligations and Rights*, p. 148.

⁶² *Dignitatis Humanae*, no. 7.

⁶³ R. J. KASLYN, *The Christian Faithful*, [in] *New Commentary on the Code of Canon Law*, eds. J. P. Beal, J. A. Coriden, T. J. Green, New York: Paulist Press 2000, p. 285.

⁶⁴ J. M. RITTY, *Balancing Rights of Accused Cleric*, p. 52.

⁶⁵ D. CENALMOR, *The Obligations and Rights*, p. 150; PONTIFICAL COUNCIL FOR LEGISLATIVE TEXTS, *Chiarimenti circa l'applicazione del can. 223 § 2 CIC*, 08.12.2010, “Communications” (2010), no. 44, pp. 280-281.

restrictive measures introduced by the Church's legislative and judicial authority must be "subject to strict interpretation" (cf. 18 and 36 § 1 CIC).⁶⁶

Cenalmor observes that there is a boundary which must never be crossed whenever any moderations are to be applied in the exercise of the rights of the faithful in the community of the Church, and that boundary is determined by the nature of the specific right and the law of God.⁶⁷ A person's due rights may be restricted only if the restriction is necessary and directly or indirectly warranted by the Church's mission (c. 1752 CIC).⁶⁸ Occasionally, situations may arise in which the protection of the Church's common good may lead to a full and absolute curtailment of a person's exercise of a right due to him or her.⁶⁹ The Church authorities performing this duty must at all times be mindful of the law of God and other provisions pertaining to the objective moral order.⁷⁰

The statement issued on December 8, 2020 by the Pontifical Council for Legislative Texts (now known as the Dicastery for Legislative Texts) is extremely helpful for the understanding of the scope of the norm in can. 223§2 CIC. Formally, it was not an authentically interpretative document; however, it contains the Dicastery's explanation of how the norm in this provision is to be applied. Under can. 223 CIC, the Church authority responsible for the care of the common good has the power to moderate the rights of individuals by means of general, not individual decisions. The purpose of moderating the rights of individuals is to serve the common good. According to the Pontifical Council, the norm of can. 223§2 CIC may not be invoked to limit (*limitare*) rights in individual cases, since canon law prescribes other procedures for such situations. In its issue of general regulations, a Church authority must take into account all manner of internal and external restric-

⁶⁶ J. M. RITTY, *Balancing Rights of Accused Cleric*, p. 49.

⁶⁷ D. CENALMOR, *Obligaciones y derechos de los fieles*, [in] *Comentario Exegético al Código de Derecho Canónico*, Vol. 2/1, eds. Á. Marzoa, J. Miras, R. Rodríguez-Ocaña, Pamplona: Ediciones Universidad de Navarra 2002, p. 160: "Al regular el ejercicio de los derechos propios de los fieles, la Jerarquía habrá de considerar desde luego la naturaleza de cada derecho. De ahí que a la hora de limitar la realización de los derechos contenidos en este título, haya de ser particularmente cuidadosa para no infravalorar la importancia y el significado del estatuto común de los fieles, que como habremos podido apreciar se fundamenta en larga medida en el Derecho divino (*vide* comentarios a los cc. 209-222), y está llamado a extender su eficacia a los más diversos campos y relaciones."

⁶⁸ *Dignitatis Humanae*, no. 7.

⁶⁹ H. J. F. REINHARDT, *Commentary on Canon 223*, [in] *Münsterischer Kommentar zum Codex Iuris Canonici*, Vol. 2, ed. K. Lüdicke, Essen 2021, c. 223/1. Unfortunately, Reinhardt does not cite any situations in which a full prohibition could be put on someone's exercise of a right.

⁷⁰ *Dignitatis Humanae*, no. 7.

tions, above all the law of God (the fundamental rights of the faithful or human rights must not be ignored), restrictions resulting from powers held by superior authorities, and restrictions due to the issuing authority's own legislative powers. In a 2010 statement, the Holy See observed that can. 223 CIC must not be interpreted as the repeal of all restrictions whatsoever resulting from the circumstances and procedures prescribed by the legislative authority. In can. 223§2 CIC, the legislator's intention was to reconcile the rights and obligations of the faithful enshrined in can. 208-222 CIC with the need to maintain the common good.⁷¹

I shall now return to the discussion of the rights referred to in can. 220 CIC. There is general agreement among authors commenting on the right to a good reputation that its nature is not absolute. It may be restricted in accordance with the general principles I have described above.⁷²

In Provost's opinion, an individual's right is unlawfully restricted if a priest is compelled by his diocesan bishop or any other Church authority to issue a statement relinquishing his right to defend his good reputation. The protection of one's good reputation is not only a right but also an obligation which cannot be renounced. A priest's defense of his good reputation is more than just his private business; it is also an important matter for the Church, and hence part of the common good. We should therefore consider the particular law which requires him to repudiate his right to defend his good reputation nonbinding.⁷³ Woestman cites another example of an unlawful infringement upon the right to protect one's good reputation. In his opinion, the public disclosure of the personal particulars of a priest accused of sexual abuse before the charges against him have been proved is a violation of canon and natural law.⁷⁴ The unlawful postponement or prolongation of proceedings is yet another instance of the violation of the defendant's right to protect his good reputation.⁷⁵

⁷¹ PONTIFICAL COUNCIL FOR LEGISLATIVE TEXTS, *Chiarimenti circa l'applicazione del can. 223 § 2 CIC*, p. 280-281.

⁷² R. J. KASLYN, *The Christian Faithful*, p. 277; L. CHIAPPETTA, *Il Codice di diritto canonico*, p. 289.

⁷³ J. H. PROVOST, *Vindication and Defense of Good Reputation*, [in] *Roman Replies and CLSA Advisory Opinions* 1998, eds. Kevin W. Vann, J. I. Donlon, Washington: Canon Law Society of America 1998, pp. 48-49.

⁷⁴ W. H. WOESTMAN, *Secrecy Concerning Delicts*, [in] *Roman Replies and CLSA Advisory Opinions* 2003, eds. F. Stephen Pedone, James I. Donlon, Washington: Canon Law Society of America 2003, pp. 49-50.

⁷⁵ J. M. RITTY, *Balancing Rights of Accused Cleric*, p. 51.

As regards the exercise of the right to privacy, there is no concurrence in the canonistic doctrine whether its nature is relative or absolute. An examination of the statements made by Pope Pius XII may lead to a conclusion that an ecclesiastical authority may interfere in an individual's right to privacy if and only if the individual consents to the restriction. This opinion has been endorsed by some lawyers who are not canonists, for instance Kopff, who claims that the nature of the entire substantive scope of an individual's right to privacy is absolute. However, the majority of canonists and secular lawyers do not concur with this opinion.⁷⁶ There are also authors who hold an intermediate position on the matter, one of whom is Cenalmor, who is of the opinion that a person must consent to any interference by others in the right to defend the forum of his or her conscience. This would mean that only some parts within the substantive scope of the right to privacy are absolute in character.⁷⁷

The opinion that in the Catholic Church the nature of the right to privacy, either in its full or partial scope, is absolute seems to face obstacles. We should note that in can. 220 CIC the Church's legislative authority states that "no one is permitted to harm *illegitimately* the good reputation which a person possesses nor to injure the right of any person to protect his or her own privacy" (my emphasis, T.J.). In other words, these rights may be restricted if and only if the law of God or the law of the Church permits such a restriction on the grounds defined in can. 223 CIC.⁷⁸ The only situation in which the legislator has issued a direct and absolute prohibition on interference in an individual's right to privacy is formulated in can. 983 § 1 CIC, which speaks of the "sacramental seal" on (i.e. secrecy of) matters a penitent divulges in the Sacrament of Penance.⁷⁹

⁷⁶ A. SAKOWICZ, *Prywatność jako samoistne dobro prawne (per se)*, LEX.

⁷⁷ D. CENALMOR, *Obligaciones y derechos de los fideles*, p. 142: "Pero sin olvidar que el derecho a defender el fuero de la conciencia es absolutamente inviolable: ninguno puede obligar a otro a dejarse analizar la intimidad personal; debe tener primero el permiso explícito, informado y absolutamente libre."

⁷⁸ D. CENALMOR, *Obligations and Rights*, p. 128; H. J. F. REINHARDT, *Commentary on Canon 220*, c. 220/2.

⁷⁹ Confessors and spiritual directors are not in breach of secrecy, nor are they violating the rights of penitents if they seek the private advice of an expert or more experienced person. However, they should do so in a way which precludes the identification of the person concerned. They may not pass on any records concerning the consultation or the case to third parties. – W. H. WOESTMAN, *Screening Persons Requesting Entrance Into a Formation Program for the Priesthood and Consecrated Life*, [in] *Roman Replies and CLSA Advisory Opinions 2004*, eds. F. Stephen Pedone, James I. Donlon, Washington: Canon Law Society of America 2004, p. 108

Unlike the situation with the individual's right to a good reputation, in cases where there is a need to obtain personal information which is subject to protection under the right to privacy, the doctrine of the Church and of canon law prescribes that such information may only be obtained provided the individual concerned consents to the restriction of his/her right to privacy, in compliance with the provisions of the law. In other words, a lawfully applied restriction of the right to privacy gives the person concerned the opportunity to obtain information on the matters covered by the right.⁸⁰ For the sake of the common good and the rights and duties of others, the holder of the right to privacy should be allowed to answer the questions put to him/her in conditions of full freedom (c. 223 § 1 CIC).⁸¹ Consent to the lawful restriction of the right to privacy is not required once the information has been obtained by means of ordinary observation, in other words, without recourse to extraordinary measures such as, for instance, a psychological examination (c. 1069 CIC).⁸²

Whenever there is any question of a restriction of the rights enjoyed by the faithful, we should always bear in mind that any measures which violate human dignity are inadmissible. No restrictions may be applied to human dignity, not even with the consent of the person whose human dignity is about to be infringed upon. The right to the protection of human dignity is absolutely inviolable and inalienable. A person may not abjure his/her human dignity (CCC 2295).⁸³

There are many studies and papers which have been published in canonistics on the right to protect one's privacy in the context of psychological examinations. To enhance my remarks, I shall now present the conclusions which may be drawn from them. Gregory Ingels is right to observe that a person's privacy is encroached upon whenever he is subjected to invasive tests, even if he consents to them. The person subjected to such tests has no control over the information he discloses, for instance, under hypnosis, or

⁸⁰ D. CENALMOR, *Obligations and Rights*, p. 131.

⁸¹ A person's refusal to consent to the encroachment on his intimate sphere or to disclose private information does not necessarily mean that the Church authority involved is obliged to behave as if the examination reached a favorable outcome. – A. J. ESPELAGE, *Background Checks of Diocesan/Eparchial Personnel*, [in] *Roman Replies and CLSA Advisory Opinions 2005*, eds. F. Stephen Pedone, J. I. Donlon, Washington, 2005, p. 47.

⁸² D. J. Andrés, *The Admission of Candidates and the Formation of Members* [in] *Exegetical Commentary on the Code of Canon Law*, Vol. 2/2, eds. Á. Marzoa, J. Miras, R. Rodríguez-Ocaña, English language eds. E. Caparros and P. Lagges, Montreal–Chicago: Midwest Theological Forum Wilson & Lafleur 2004, p. 1697.

⁸³ D. CENALMOR, *Obligations and Rights*, p. 151.

with the use of a lie detector or drugs. In Ingels' opinion, the use of these techniques is inadmissible and morally questionable. Data collected in this manner may not be used in the external forum.⁸⁴ Even if the tested person issues his consent, the results of such tests cannot be licitly used in ecclesiastical governance, whether administrative or judicial. According to Woestman, results obtained illicitly should be destroyed.⁸⁵ In his opinion, no information whatsoever obtained in the internal forum (including the non-sacramental forum) may be used in the external forum.⁸⁶

J.P. Beal makes an interesting observation on the right to preserve one's privacy. In his opinion, even if a person is lawfully compelled to undergo a psychological consultation, he still has the right to select the consultant. All that the persons or institutions authorized to order someone to submit to a psychological test may do is to veto the subject's choice of a specialist if they believe that specialist does not hold the right qualifications to assess a given disorder. In Beal's opinion, it is inadmissible to arbitrarily limit the subject's choice of a specialized facility to one or three among many otherwise qualified facilities.⁸⁷

Perlasca writes that Church authorities may not invoke canon law and the common good to compel candidates for ordination to submit to a psychological examination. A candidate's reluctance to undergo a psychological test should not be interpreted simply as a case of insubordination; it may be due to his fears that inappropriate testing methods will be used, or because he has not been sufficiently informed about the aim and methods to be applied, or even because he cannot afford the fees for the examination. If no test results are obtained, the Church authorities concerned must use the evidence available to make the decision. They may not give the fact that a candidate has not agreed to undergo a psychological examination as the grounds for refusing to admit him to ordination; instead, they may give the fact that they still have doubts about the candidate's suitability as the reason for the refusal. Perlasca also observes that if the decision-makers on behalf of the

⁸⁴ G. INGELS, *Protecting the Right to Privacy When Examining Issues Affecting the Life and Ministry of Clerics and Religious*, (revised version of a paper given at the 34th Annual Convention of the Canadian Canon Law Society, Vancouver, October 20, 1999), "Studia Canonica" (2000), no. 34, pp. 439-466.

⁸⁵ W. H. WOESTMAN, *Psychic Qualities*, p. 80.

⁸⁶ W. H. WOESTMAN, *Screening Persons Requesting Entrance*, pp. 107-108.

⁸⁷ J. P. BEAL, *Compelling a Cleric to Seek a Psychological Evaluation Under Canonical Obedience*, [in] *Roman Replies and CLSA Advisory Opinions 1996*, eds. K. W. Vann, J. I. Donlon, Washington: Canon Law Society of America 1996, p. 67.

Church are themselves qualified psychologists, they certainly do not have the right to make secret use of their professional knowledge and experience in the field, which would be a violation of the candidate's right to protect his privacy. Neither do they have the right to send the data collected in the tests to another psychologist for a second opinion without the candidate's consent, because that would constitute another infringement. Perlasca suggests that if the examinee consents to having his results referred to other specialists, he too should be given a copy of that data. He may also authorize his chosen psychologist to establish direct contact with the decision-makers appointed by the Church. In this case, the expert should present the data collected, in compliance with the professional standards without disclosing the details of the information the tested subject confided to him. If the psychologist realizes that some of the data obtained in the course of the examination are due to expire, he should give the period of their validity and the date after which they should be destroyed.⁸⁸

Naughton holds that ecclesiastical authorities may pass on a person's psychological and court records collected under the provisions of canon law to other Church bodies for purposes other than those for which they were originally collected, but only on consent from the person concerned. On the basis of this opinion, it seems that in such a case the two Church authorities involved should not enter into cooperation with each other for the assessment of the data (even with the subject's consent) if such cooperation exceeds the scope of powers of one of these authorities.⁸⁹ Golden refers to the statement made by the Congregation for the Clergy to observe that medical records which have been obtained to assist the person concerned and are legally made available to another authority should not be used on the judicial forum against that person's interests and rights. He asserts that unless the authority in legal possession of the results of an individual's psychological tests obtains the interested person's consent to make those records available to a third party, all it may do is to pass on an oral summary of the conclusion

⁸⁸ A. PERLASCA, *La tutela giuridica del diritto*, pp. 429, 435-439.

⁸⁹ L. NAUGHTON, *Vetitum and Entrance into Religious and/or Holy Orders*, [in] *Roman Replies and CLSA Advisory Opinions* 1995, eds. K. W. Vann, J. I. Donlon, Washington: Canon Law Society of America 1995, p. 43; CONGREGATION FOR INSTITUTES OF CONSECRATED LIFE AND SOCIETIES OF APOSTOLIC LIFE, *Private letter*, March 7, 2006, quoted after PAUL L. GOLDEN, *Privacy of Psychological Reports*, p. 59.

and subsequent doctors' recommendations to a third party which needs to know them to make a decision on the matter.⁹⁰

CONCLUSION

In the Roman Catholic Church, the individual's right to privacy and good reputation is grounded in human dignity and guaranteed legal protection under can. 220 CIC (cf. c. 23 CCEO). Although the norm enshrined in this canon applies to the Church's faithful, nonetheless its substantive scope is applicable to all people. This statement is confirmed in CCC no. 1935, which says: "The equality of men rests essentially on their dignity as persons and the rights that flow from it".

The substantive scope of the right to have one's good reputation protected covers the subject's honor, respect, reputation, esteem, good opinion, as well as the related goods the individual enjoys in his/her community in connection with his/her conduct. However, the determination of the scope of the right to privacy is not simple, as the doctrine of canon law shows. On the basis of my research, I maintain that the substantive scope of this right covers facts pertaining to the individual and his/her experiences which basically he or she would never divulge, not even to the persons closest to him or her and which, if revealed, would inevitably induce a feeling of shame, embarrassment, and distress. The right to privacy guarantees the inviolability of the psychological, moral, and sexual sphere of the individual's life. The right to privacy (*privatum*) cannot be treated as the equivalent of the right to intimacy (*intimitas*).

Authors examining the right to a person's good reputation agree that the nature of this right is not absolute. It may be restricted in compliance with the general principles described in can. 223 CIC. But as regards the exercise of the right to privacy (*intimitas*), there is no concurrence among canonists whether its nature is relative or absolute. My own research shows that according to the doctrine of canon law and of the Church, an ecclesiastical authority may encroach on an individual's right to privacy if and only if the individual concerned consents to the encroachment, and provided the principles enshrined in can. 223 CIC are taken into consideration. The only situation where the Church's legislative authority has laid down a direct and absolute prohibition on the infringement of an individual's right to privacy

⁹⁰ P. L. GOLDEN, *Privacy of Psychological Reports*, p. 59. Woestman discusses the possibility of forwarding conclusions drawn from a person's psychological examination to a third party, see "Screening Persons Requesting Entrance," p. 108.

concerns any attempt to break the sacramental seal of confession, i.e. to infringe a penitent's sphere of privacy protected by the secrecy pertaining to matters he/she divulges during the sacrament of confession (c. 983 § 1 CIC).

In view of the norm enshrined in can. 223, we should take note that any moderations to an individual's exercise of the right to privacy or good reputation may only be imposed by a Church authority within the bounds of the law, for the sake of the common good and in connection with the exercise of legislative, executive, or juridical power. The basic components of "the common good" for the sake of which a Church authority may restrict the exercise of the rights of the faithful are the rights of all citizens, good order in the life of society, public peace in an atmosphere of true justice, and the proper guardianship of public morality. As can. 1752 CIC asserts, the common good of the Church is always bound to the mission entrusted to her by Christ, that is the salvation of souls. The nature of the specific right and the law of God delimit the boundary which must never be crossed whenever any moderations are to be introduced to the rights enjoyed by the faithful in the community of the Church.

Translated by Teresa Bałuk-Ulewiczowa

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PRAWO DO WŁASNEJ INTYMNOŚCI I OCHRONA DOBREGO IMIENIA
W KOŚCIELE KATOLICKIM

STRESZCZENIE

Ochrona prawa do własnej intymności i dobrego imienia w ustawodawstwie Kościoła rzymskokatolickiego została uregulowana w kan. 220 KPK (por. kan. 23 KKKW). Niestety, ani ustawodawca, ani doktryna nie określili jednolicie ich zakresu. Taki stan rzeczy powoduje, że realizacja praw przysługujących wiernym napotyka trudności.

Biorąc pod uwagę te problemy, autor podjął się określenia zakresu przedmiotowego oraz podmiotowego prawa do ochrony dobrego imienia i własnej intymności. Drugorzędnym celem badań, poprzedzających powstanie niniejszej publikacji, było ustalenie, czy prawa te mają charakter absolutny, czy też mogą podlegać ograniczeniom, a jeśli są ograniczone, to na jakich zasadach.

Słowa kluczowe: prawa człowieka; dobre imię; intymność.