



Ginter Dzierżon,
Dyspensa w kanonicznym porządku prawnym
Studium prawnohistoryczne
[Dispensation in the Canonical Legal Order
A Legal and Historical Study]. Warszawa:
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The content of the reviewed book presents the institution of the dispensation throughout the history of Christianity, with particular reference to the contemporary regulations included in canons 85–93 of Chapter V of Book I “General Norms” of the 1983 Code of Canon Law. This is the first publication in the Polish language that treats about dispensation in a historical manner, despite the fact that, as the author puts it, all the faithful have enjoyed its benefit for years. The book is divided into three chapters, which constitute its parts. The first chapter, entitled “The Formation of Doctrine and Discipline from the Beginning of Christianity to the Promulgation of the 1917 Code of Canon Law” (pp. 11–30), on the one hand, covers the historically widest time span—nineteen centuries of Christianity, and, on the other hand, is the most modest in terms of content. Chapter Two: “Discipline and Doctrine in the Period from the Promulgation of the 1917 Code of Canon Law to the Promulgation of the 1983 Code of Canon Law” (pp. 31–58) discusses content relating to the solutions introduced from the time of the promulgation of the 1917 Code to the promulgation of the 1983 Code, thus covering more than 60 years of the 20th century, including the period before and after the Second Vatican Council. The third chapter, “Dispensation under the 1983 Code of Canon Law” (pp. 59–156), is content-wise the most extensive section and covers only 37 years of the new law (1983–2020). In his Introduction, Rev. Ginter Dzierżon formulates the purpose of the work, indicating that it is dispensation that serves to mitigate the provision of the applicable

norm, while noting that in interpreting the law it is important to seek its *ratio legis*. The formation of the institution of dispensations began at the beginning of Christianity, hence the book has a legal-historical character. The author's intention was to present not only the development of the doctrine and discipline throughout history, but also to answer the questions to what extent the dispensation and the doctrine, formed at different historical stages, influenced the provisions of modern regulations, and whether the regulations in force today are in line with modern reality, as well as what should be changed in them to facilitate the realization of the redemptive mission of the faithful.

In the first chapter, the author pointed out that until the ninth century, no text was known in which the definition of dispensation would be mentioned, since by that time it had not yet been developed. The Church Fathers used such terms as *oikonomia* (Basil of Caesarea), *indulgentia*, *relaxatio a summo iure* (Jerome of Stridon), or *dispensatio*, *misericordia*, *humanitas*, *liberatio*, *venia relaxata* (Pope Siricius). Noteworthy is the formulation of St. Jerome of Stridon: *mitigatio seu relaxatio quamcumque legis* indicating a dual understanding of dispensation, in the meaning of a relaxation of the law pertaining to the good of the Church, allowing actions next to the generally accepted rules, and in relation to a particular act or multiple acts. According to Eduardo Labandeira, quoted by the author of the book, the dispensation was used in three situations: as an exception to the existing law, as a mitigation of the law, and to resolve conflicting norms that occur. In the *Decretum Gratiani*, dispensation has the character of an exception to the existing law, for reasons of mercy, for example, *relaxatio rigoris disciplinae ex misericordia* (Dictum, c. 5, C. 1, q. 7). The doctrine of dispensation was not yet sufficiently worked out and there was no distinction between privilege and dispensation. It was only Rufinus of Aquileia who, in the definition he prepared in the 12th century in the "Summa decretorum," stated that: *Est itaque dispensatio, iusta causa facientis, ab eo cuius interest, canonsci rigoris causalis derogatio*, and pointed out its essential elements: derogation of law, necessity of just cause and special case. There was still no indication of a competent authority to make the decision, although the power of dispensation belonged to bishops with regard to universal legislation, provided that the popes did not reserve certain specified matter to themselves. Medieval Study of Canon Law also defined the limits of dispensation, which was the Church's positive law. During the Council of Trent, dispensation was not the main subject of discussion. Its concept was debated only in the context of solving other problems, such as the obligation of bishops to reside in their sees, or marriage impediments. After the Council of Trent, a new definition was not developed, but the practice was to refer to the concept adopted in the classical period (Thomas Sanchez, Francisco Suárez), and the dispensation was understood as a relaxation of the law due to the occurrence of a specific reason.

The second chapter of the book is dedicated to the discipline and doctrine of dispensation, covering the regulations contained in the first codification of 1917 and in the inter-codification period of the 20th century. Initially, in the work on the code, the consultors' interest was in the problem of legal normalization, as a result of which title VI of *Codex Iuris Canonici* was named *De dispensationibus*, which included seven canons (80–86). The author of the book analyzes six canons in this section due to the fact that the content of can. 86 of the CIC concerning the cessation of dispensation overlaps with the text of the existing can. 93 of the CIC and, as Rev. Dzierżon points out, will be discussed in the third part of the work (pp. 151–154). The Church legislator in can. 80 of the CIC contains a definition according to which “a dispensation is a relaxation of the law in a special case, made by the author of a legal act, his successor, or a superior or whoever is equipped by them with the power to dispense.” The content of can. 81 specifies the authority competent to grant a dispensation, distinguishing between ordinary and extraordinary situations, and in can. 82 indicates the authority of bishops and local ordinaries with regard to dispensation from particular law, while in can. 83 the authority of pastors is presented. Then, in can. 84 the reason for dispensation was regulated, which was to be, according to the legislator, just and reasonable. The object of the legislator's concern in can. 85 was the matter of interpretation, emphasizing that both the act of dispensation and the authority to dispense are subject to strict interpretation and relate to the individual case. The norms of *Codex Iuris Canonici* were still based on the principle of centralism, since in principle bishops could not dispense from laws issued by the pope, except in certain special situations. After the Second Vatican Council, the first changes regarding the decentralization of authority in the Church appeared. In the conciliar decree on the pastoral tasks of bishops, *Christus Dominus*, a reform was made in no. 8, giving bishops in the dioceses entrusted to them complete ordinary, proprietary, and direct authority, while retaining in all things the authority that the Bishop of Rome has by virtue of his office to reserve matters to themselves or another authority. Pope Paul VI issued two documents in the form of *motu proprio* *Pastorale munus* (1963) and *Episcoporum muneribus* (1966) expanding the powers of bishops. Gradually, there was a move away from the concessionary system in favor of expanding the powers of the bishops, reserving to the Holy See only matters of greater importance. In 1969, the codification work on the new code began, and the concepts of the idea of dispensation and the possibility of dispensation in cases of doubt as to the existence of a cause and its sufficiency were reconsidered.

The third chapter of the book revolves around the current regulations in the 1983 Code of Canon Law. The matter of dispensations is placed in Book One, title IV “Singular Administrative Acts,” in chapter V “Dispensations,” covering canons 85–93. The regulations begin with the definition in canon 85, according to which: “A dispensation, or the relaxation of a merely ecclesiastical law in

a particular case, can be granted by those who possess executive power within the limits of their competence, as well as by those who have the power to dispense explicitly or implicitly either by the law itself or by legitimate delegation.” The author stresses that the new formulation is based on the principles adopted in the reform of the Code, including subsidiarity, decentralization, and takes into account the protection of the rights of the faithful. In doing so, it is characterized by personalism, since Church law should be understood in terms of service to the faithful. Rev. Dzierżon considers the concept of dispensation more broadly, also in relation to figures similar to it, including privilege, epikeia, permission, dissimulation, tolerance, and also points out the differences between abrogation and derogation of the law. He also presents special dispensations, including from a marriage concluded but not fulfilled, from a wedding, and points out the privileges of faith that occur. He provides a detailed analysis of the question of the author of the dispensation as well as the limitations on dispensations. He also presents the powers of the ordinary of the given place, the parish-priest and the other clergy, as well as the reasons for granting the dispensation to the addressees of the dispensation who are: subordinates, travelers, and the author of the dispensation himself. The chapter concludes with interpretive principles and the cessation of dispensation. The concluding materials include an extensive list of source and bibliographic materials. It is noteworthy that the division and systematization of sources and literature takes into account the historical scopes adopted in the book, that is, the sources of the classical canonical era, the universal councils, and the sources published after the CIC of 1917. Similarly, the literature is divided into publications after the CIC of 1917 and after the 1983 promulgation of the Code of Canon Law. What draws attention is the long list of foreign-language texts. Unfortunately, there are not many publications by Polish authors. One may wonder about the proportions of the book’s individual chapters, whether a more balanced division could have been adopted, especially of the third part. Nevertheless, Rev. Ginter Dzierżon has presented an interesting monograph in Polish on the dispensation from the legal and historical perspective.

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