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The Scope of the Legislative Power of the Conference of Bishops

Zakres władzy ustawodawczej konferencji biskupów

ABSTRACT

According to Can. 455 of the Code of Canon Law, a conference of bishops may issue general decrees only in cases where universal law has prescribed it or a special mandate of the Apostolic See has established it. In cases in which neither universal law nor a special mandate of the Apostolic See has granted the power to issue general decrees, the competence of each diocesan bishop remains intact, nor is a conference or its president able to act in the name of all the bishops unless each and every bishop has given consent. The purpose of the article is to analyse the legislative competence of the conference of bishops, which is provided for by the universal legislator. Therefore, the subject and the procedure of general decrees, which are laws, issued by the conference of bishops were analyzed first of all. The scope of the research is international because the Code of Canon Law applies to the Catholic Church, which is not bound by a specific territory.

Keywords: conference of bishops; general decree; Apostolic See; Code of Canon Law

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INTRODUCTION

In accordance with the postulates of the Second Vatican Council,[1] the legislator has clarified in the Code of Canon Law:[2] "A conference of bishops, a permanent institution, is a group of bishops of some nation or certain territory who jointly exercise certain pastoral functions for the Christian faithful of their territory in order to promote the greater good which the Church offers to humanity, especially through forms and programs of the apostolate fittingly adapted to the circumstances of time and place, according to the norm of law" (Can. 447).

The conference of bishops is a form of implementing affective collegiality (Lat. *affectus collegialis*)[3] and its task is to assist the bishops at various levels (AS 28), including by being given the competence by the supreme authority of the Church to "issue binding norms on certain matters, and to adopt particular decisions" (AS 31) in the form of general decrees, binding on pastors and other clergies, as well as lay faithful.

The purpose of this article is to analyse the legislative competence of the conference of bishops, which is provided for by the universal legislator in Can. 455 CIC/83 and clarified in the 1998 *motu proprio* on the theological and juridical nature of the conference of bishops *Apostolos suos* and the 2004 Directory for the Pastoral Ministry of Bishops *Apostolorum Successores*. In accordance with § 1 of Can. 455 CIC/83, "a conference of bishops can only issue general decrees in cases where universal law has prescribed it or a special mandate of the Apostolic See has established it either motu proprio or at the request of the conference itself"; in turn, § 4 of this canon reads: "in cases in which neither universal law nor a special

[1] Sacrosanctum Concilium Oecumenicum Vaticanum II, Decretum de pastorali episcoporum munere in Ecclesia *Christus Dominus* (28.10.1965), "Acta Apostolicae Sedis" 1966, vol. 58, pp. 673–696 [hereinafter: CD], no. 37: "In these days especially bishops frequently are unable to fulfil their office effectively and fruitfully unless they develop a common effort involving constant growth in harmony and closeness of ties with other bishops. The conference of bishops already established in many nations-have furnished outstanding proofs of a more fruitful apostolate. Therefore, this sacred synod considers it to be supremely fitting that everywhere bishops belonging to the same nation or region form an association which would meet at fixed times. Thus, when the insights of prudence and experience have been shared and views exchanged, there will emerge a holy union of energies in the service of the common good of the churches".

[2] *Codex Iuris Canonici auctoritate Ioannis Pauli PP. II promulgatus* (25.1.1983), "Acta Apostolicae Sedis" 1983, vol. 75, pars II, pp. 1–317 [hereinafter: CIC/83].

[3] Congregazione per i Vescovi, Direttorio per il ministero pastorale dei vescovi *Apostolorum Successores* (22.2.2004), Libreria Editrice Vaticana, Città del Vaticano 2004 [hereinafter: AS], no. 28; Ioannes Paulus PP. II, Litterae apostolicae motu proprio datae de theologica et iuridica natura Conferentiarum Episcoporum *Apostolos suos* (21.5.1998), "Acta Apostolicae Sedis" 1998, vol. 90, pp. 641–658 [hereinafter: As], no. 14. "The bishop is never alone because, through 'affective collegiality' (*collegialitas affectiva*), he is constantly united with his brethren in the episcopate and with the one chosen by the Lord to be the Successor of Peter" (AS 12).

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mandate of the Apostolic See has granted the power mentioned in § 1 to a conference of bishops, the competence of each diocesan bishop remains intact, nor is a conference or its president able to act in the name of all the bishops unless each and every bishop has given consent". Therefore, the power of the conference of bishops to issue general decrees in matters where this is provided for by universal law or a mandate of the Apostolic See is characterised first, followed by an analysis of the situation where the conference of bishops does not have this competence under universal law or a mandate of the Apostolic See.

ISSUING GENERAL DECREES ON MATTERS WHERE THIS IS PROVIDED FOR BY UNIVERSAL LAW OR BY A MANDATE OF THE APOSTOLIC SEE ISSUED BY IT ON ITS OWN INITIATIVE OR AT THE REQUEST OF THE CONFERENCE OF BISHOPS

The bishops within the conference of bishops collectively exercise ministry to the faithful of a specific territory, "for that exercise to be legitimate and binding on the individual Bishops, there is needed the intervention of the supreme authority of the Church which, through universal law or particular mandates, entrusts determined questions to the deliberation of the conference of bishops" (As 20). It should be noted that, with regard to the competence to issue general decrees, *Apostolos suos* refers to the exercise of legislative power (Lat. *potestas legislativa*) by the bishops gathered at the conference of bishops (As 20). This term, in turn, corresponds to the expression found in *Apostolorum Successores*, in which the Congregation for Bishops points to the "normative power" (Ital. *potestà normativa*) of the conference of bishops (AS 31). The nature of this power was clarified by Pope John Paul II: "Bishops, whether individually or united in Conference, cannot autonomously limit their own sacred power in favour of the conference of bishops, and even less can they do so in favour of one of its parts, whether the permanent council or a commission or the president" (As 20).

In order to characterise the competence of the conference of bishops to issue general decrees on matters where this is provided for by universal law or by a specific mandate of the Apostolic See issued by it on its own initiative or at the request of the Conference itself, the following questions need to be answered in the following section: What matters may be the subject of general decrees issued by the conference of bishops? What is the procedure for issuing general decrees by the conference of bishops? Which body of the conference of bishops has been given the authority to issue general decrees?

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1. Scope

Pursuant to § 1 of Can. 455 CIC/83, the conference of bishops may issue general decrees in three categories of matters: 1) if so provided by universal law; 2) if it has received a special mandate from the Apostolic See issued on its initiative; 3) if it has received a special mandate from the Apostolic See issued at the request of the Conference itself. The general decrees referred to in Can. 455 § 1 CIC/83 – according to the authentic interpretation – also have the character of general executory decrees (cf. Cann. 31–33 CIC/83).[4] Therefore, the competence of the conference of bishops to issue general executory decrees is subject to the same limitations as its legislative competence.[5]

1.1. Universal law

The governing power (jurisdiction) exercised by diocesan bishops in the particular Churches entrusted to them may be limited "for the good of the Church or the faithful".[6] They have ordinary, proper and immediate authority, "except for cases which the law or a decree of the Supreme Pontiff reserves to the supreme authority or to another ecclesiastical authority" (Can. 381 § 1 CIC/83; cf. CD 8), e.g. to the conference of bishops. "The power to issue binding norms" (AS 31) with which the supreme legislator of the Church has endowed the conference of bishops is an ordinary authority (by law joined to an ecclesiastical office; cf. Can. 131 § 1 CIC/83) and – with regard to matters indicated in the universal law – its own (exercised in its own name and not in the name of the Apostolic See).[7]

It is therefore not incompatible with the authority of the bishop, which he possesses by Divine law, to entrust to the conference of bishops the competence to issue general decrees on matters indicated in the universal law.[8] Thus, the following canons of the CIC/83, in which the universal legislator refers to the regulation of

[4] "D. Utrum sub locutione »decreta generalia« de qua in can. 455 § 1, veniant etiam decreta generalia exsecutoria de quibus in cann. 31–33. R. Affirmative". See Pontificia Commissio Codici Iuris Canonici Authentice Interpretando, *I. De decretis generalibus exsecutoriis* (5.7.1985), AAS 1985, vol. 77, p. 771.

[5] J.G. Johnson, *Conferences of Bishops [cc. 447–459]*, [in:] *New Commentary on the Code of Canon Law*, eds. J.P. Beal, J.A. Coriden, T.J. Green, New York–Mahwah 2000, p. 598.

[6] Sacrosanctum Concilium Oecumenicum Vaticanum II, Constitutio dogmatica de Ecclesia *Lumen gentium* (21.11.1964), "Acta Apostolicae Sedis" 1965, vol. 57, pp. 5–75, no. 27.

[7] J.G. Johnson, *op. cit.*, p. 598; J. Krukowski, *Konferencje biskupów*, [in:] *Komentarz do Kodeksu Prawa Kanonicznego*, vol. II/1: *Księga II. Lud Boży. Część I. Wierni chrześcijanie. Część II. Ustrój hierarchiczny Kościoła*, ed. J. Krukowski, Poznań 2005, p. 327.

[8] For example, see Konferencja Episkopatu Polski, *Dekret ogólny o przeprowadzaniu rozmów kanoniczno-duszpasterskich z narzeczonymi przed zawarciem małżeństwa kanonicznego* (8.10.2019), "Akta Konferencji Episkopatu Polski" 2019, vol. 31, pp. 28–49.

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certain matters by the conference of bishops, should be pointed out: 230 § 1; 236; 242 § 1; 276 § 2, 3º; 284; 496; 502 § 3; 522; 535 § 1; 538 § 3; 755 § 2; 766; 772 § 2; 788 § 3; 804 § 1; 831 § 2; 838 § 3; 841 in conjunction with 838 § 3; 844 § 5; 851,1º; 854; 877 § 3; 891; 895; 961 § 2; 964 § 2; 1031 § 3; 1062 § 1; 1067; 1083 § 2; 1120; 1121 § 1; 1126; 1127 § 2; 1236 § 1; 1246 § 2; 1253; 1262; 1265 § 2; 1272; 1277; 1292 § 1; 1297; 1421 § 2; 1425 § 4; 1714; 1733 § 2.

It should be noted that of the above catalogue of matters, some have been entrusted to obligatory regulation by the conference of bishops (e.g. Can. 535 § 1, Can. 854) and others to optional regulation (e.g. Can. 1733 § 2).

1.2. Special mandate of the Apostolic See

The conference of bishops can also exercise normative power if it receives a special mandate from the Apostolic See (Lat. *peculiare Apostolicae Sedis mandatum*) to issue a general decree on a specific matter. In such a situation, the authority of the conference of bishops, although ordinary, is not its own or substituted, but delegated[9] (cf. Can. 135 § 2 CIC/83), since a mandate from the Apostolic See is required for its exercise, which can be granted on the initiative of the Apostolic See or at the request of the Conference itself.[10]

2. Procedure

Issuing general decrees by the conference of bishops on matters where this is provided for by universal law or by a special mandate of the Apostolic See follows the procedure indicated in § 2 of Can. 455 CIC/83, according to which "the decrees mentioned in § 1, in order to be enacted validly in a plenary meeting, must be passed by at least a two-thirds vote of the prelates who belong to the conference and possess a deliberative vote. They do not obtain binding force unless they have been legitimately promulgated after having been reviewed by the Apostolic See".

In view of the above, the following elements required by the legislator for a general decree to be valid (*ad validitatem*) should be distinguished: (a) issued by

[9] J.G. Johnson, *op. cit.*, p. 598. "Legislative power must be exercised in the manner prescribed by law; that which a legislator below the supreme authority possesses in the Church cannot be validly delegated unless the law explicitly provides otherwise. A lower legislator cannot validly issue a law contrary to higher law" (Can. 135 § 2 CIC/83).

[10] For example, see Konferencja Episkopatu Polski, *Dekret ogólny w sprawie ochrony osób fizycznych w związku z przetwarzaniem danych osobowych w Kościele katolickim* (13.3.2018), "Akta Konferencji Episkopatu Polski" 2018, vol. 30, pp. 31–45. See also P. Kroczek, P. Skonieczny, *Ochrona danych osobowych w Kościele katolickim. Komentarz do Dekretu ogólnego Konferencji Episkopatu Polski w sprawie ochrony osób fizycznych w związku z przetwarzaniem danych osobowych w Kościele katolickim z 2018 roku*, vol. 1: *Część 1. Kwestie wstępne. Część 2. Preambuła*, Kraków 2022, p. 47.

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a plenary meeting of the conference of bishops, (b) by a majority of at least two-thirds of the bishops belonging to the Conference and possessing a deliberative vote, in addition, it acquires binding force (c) after its review (*recognitio*) by the Apostolic See and then (d) promulgation (*promulgatio*) in accordance with the law.

2.1. The plenary meeting as a body competent to issue a general decree

The competent body of the conference of bishops to issue a general decree is the plenary meeting (Can. 455 § 2 CIC/83), as confirmed by *Apostolorum Successores*, which states that the normative authority of the conference of bishops is exercised in a plenary meeting, "which makes it possible to engage in collegial dialogue and to exchange ideas", while no other body of the Conference can claim this competence (AS 31).

2.2. The required number of votes to issue a general decree

In order for a general decree to be validly issued, the universal legislator requires that a majority of at least two-thirds of the bishops belonging to the Conference with a deliberative vote be achieved (Can. 455 § 2 CIC/83). On the other hand, Can. 454 stipulates that the diocesan bishops and those equal to them by law,[11] as well as the coadjutor bishops, have a deliberative vote in the plenary meeting when the statutes of the conference so provide.

In view of the above-mentioned code regulations, in order to identify those members of the conference of bishops who have the right to cast the deliberative vote at the plenary meeting, it is necessary to refer not only to universal law (Can. 455 CIC/83) but also to the statutes of the Conference concerned.[12]

[11] Territorial prelate, territorial abbot, apostolic vicar, apostolic prefect, apostolic administrator of an apostolic administration erected in a stable manner (Can. 381 § 2 and Can. 368 CIC/83); military bishop (Ioannes Paulus PP. II, Constitutio apostolica qua nova canonica ordinatio pro spirituali militum curae datur *Spirituali militum curae* (21.4.1986), "Acta Apostolicae Sedis" 1986, vol. 78, pp. 481–486, no. II § 1); apostolic administrator of the Personal Apostolic Administration of Saint John Mary Vianney (Congregatio pro Episcopis, Decretum de Administratione Apostolica personali "Sancti Ioannis Mariae Vianney" condenda *Animarum bonum* (18.1.2002), "Acta Apostolicae Sedis" 2002, vol. 94, pp. 305–308, no. 4); ordinary of the Personal Ordinariate for Anglicans (Benedictus PP. XVI, Constitutio apostolica qua Personales Ordinariatus pro Anglicanis conduntur qui plenam communionem cum Catholica Ecclesia ineunt *Anglicanorum coetibus* (4.11.2009), "Acta Apostolicae Sedis" 2009, vol. 101, pp. 985–990, no. IV); diocesan administrator (Can. 427 § 1 CIC/83).

[12] According to the Statute of the Polish Episcopal Conference, the deciding vote belongs to: the Primate of Poland, archbishops and diocesan bishops and those who are equal to them in law, a military bishop, bishops of the Byzantine-Ukrainian rite, coadjutor bishops, auxiliary bishops and titular bishops performing special tasks within the Polish Episcopal Conference assigned to them by the Holy See or the conference. See Konferencja Episkopatu Polski, *Statut Konferencji Episkopatu*

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2.3. *Recognitio* by the Apostolic See

The *recognitio* granted by the Apostolic See is intended as a guarantee that the particular legislation proposed by the conference of bishops is not contrary to universal legislation.[13] Therefore, at the end of the plenary meeting of the Conference, the president of the Conference sends the general decree to the Apostolic See for revision (Can. 455 § 2 and Can. 456 CIC/83). In practice – in accordance with the Apostolic Constitution *Praedicate Evangelium* on the Roman Curia and its service to the Church in the world[14] – the drafted general decrees are sent to the Dicastery for Bishops,[15] which "examines them in consultation with the other Dicasteries involved, and grants the required *recognitio* to the decrees" (Article 110). Legally, the general decree is examined by the Dicastery for Legislative Texts (Article 180) and only then is *recognitio* granted.

2.4. *Promulgatio* and entry into force of the general decree

In order for general decrees to have binding force, their promulgation is required (Can. 455 § 2 CIC/83). This applies to both general legislative decrees (Can. 29 in conjunction with Cann. 7 and 8 CIC/83) and general executory decrees (Can. 31 § 2 in conjunction with Cann. 7 and 8 CIC/83). The manner in which the decrees are promulgated, as well as their time of entry into force, is determined by the conference of bishops (Can. 455 § 3 CIC/83). The conference of bishops may thus provide for *vacatio legis* in the statutes or in the decree itself. If it does not do so, Can. 8 § 2 CIC/83 will apply and the general decree will take effect one month after the date of promulgation.

Polski (7.10.2009), "Akta Konferencji Episkopatu Polski" 2009, vol. 15, no. 1, p. 14–19, Articles 18, 16 and 3.

[13] J.G. Johnson, *op. cit.*, p. 599. See Can. 446 CIC/83: "When a particular council has ended, the president is to take care that all the acts of the council are sent to the Apostolic See. Decrees issued by a council are not to be promulgated until the Apostolic See has reviewed them (…)", and Can. 466 CIC/83: "The only legislator in a diocesan synod is the diocesan bishop; the other members of the synod possess only a consultative vote. Only he signs the synodal declarations and decrees, which can be published by his authority alone".

[14] Franciscus PP., Constitutio apostolicae de Curia Romana eiusque servitio pro Ecclesia in mundo *Praedicate Evangelium* (19.3.2022), "Acta Apostolicae Sedis" 2022, vol. 114, pp. 375–455.

[15] In the areas of first evangelization, the Dicastery for Evangelization has similar competences (Article 61).

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ISSUING GENERAL DECREES IN THE ABSENCE OF A FOUNDATION IN UNIVERSAL LAW OR A MANDATE OF THE APOSTOLIC SEE

The situation in which the conference of bishops does not have the authority to issue general decrees according to universal law or the mandate of the Apostolic See is regulated by the legislator in § 4 of Can. 455: "In cases in which neither universal law nor a special mandate of the Apostolic See has granted the power mentioned in § 1 to a conference of bishops, the competence of each diocesan bishop remains intact, nor is a conference or its president able to act in the name of all the bishops unless each and every bishop has given consent".[16]

According to J.G. Johnson, the above regulation is intended to dispel fears that the conference of bishops could claim the authority to govern that each bishop has in the particular Church entrusted to him (Can. 381 § 1 and Can. 391 § 1 CIC/83).[17] Apart from the cases indicated in Can. 455 § 1 CIC/83, the authority of the diocesan bishop remains intact. This is also underlined by the general rule that "with regard to collegial acts, unless the law or statutes provide otherwise (…) what touches all as individuals, however, must be approved by all" (Can. 119, 3º).

Therefore, the unanimity of all diocesan bishops and those equal to them in law is required for a general decree to be issued validly by the conference of bishops on the basis of Can. 455 § 4 CIC/83. If even one of those entitled to vote is against, the decree cannot be issued.[18]

CONCLUSIONS

The following conclusions must be drawn from the analysis of the legislative power of the conference of bishops:

1. By Divine law in the particular Church, the legislative competence is vested in: the Bishop of Rome (Cann. 330, 331 and 333 CIC/83), the College of Bishops (Cann. 330 and 336 CIC/83) and the diocesan bishop (Cann. 381 and 391 CIC/83). On the other hand, one of the bodies entitled to enact normative acts under positive law is the conference of bishops (Can. 455 CIC/83).
2. The conference of bishops – in accordance with the CIC/83 – may enact general decrees in four categories of matters: if this is provided for by universal

[16] See also A. Romanko, *Dekrety ustawodawcze i wykonawcze konferencji biskupów*, "Teka Komisji Prawniczej PAN Oddział W Lublinie" 2019, vol. 12, no. 2, pp. 295–304.

[17] J.G. Johnson, *op. cit.*, p. 600.

[18] M. Sitarz, *Liberum veto*, [in:] *Leksykon prawa kanonicznego*, ed. M. Sitarz, Lublin 2019, coll. 1593.

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law (Can. 455 § 1); if it has received a special mandate from the Apostolic See issued on its own initiative (Can. 455 § 1); if it has received a special mandate from the Apostolic See issued at the request of the Conference itself (Can. 455 § 1); if – in the absence of a power granted by universal law or a mandate from the Holy See – such a decision is taken unanimously by all diocesan bishops and those equal to them in law (Can. 455 § 4).

3. With regard to general decrees issues by the conference of bishops, the provisions on general legislative decrees apply (Cann. 29–30 CIC/83). Furthermore – according to the authentic interpretation of the Pontifical Council for Legislative Texts – the provisions on general executory decrees also apply to the general decrees referred to in Can. 455 § 1 CIC/83 (Cann. 31–33 CIC/83).

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ABSTRAKT

Zgodnie z kan. 455 Kodeksu Prawa Kanonicznego konferencja biskupów może wydawać dekrety ogólne jedynie w tych sprawach, w których przewiduje to prawo powszechne albo określa szczególne zlecenie Stolicy Apostolskiej. W przypadkach, w których ani prawo powszechne, ani szczególne zlecenie Stolicy Apostolskiej nie udzieliło konferencji biskupów władzy stanowienia dekretów ogólnych, pozostaje nienaruszona kompetencja każdego biskupa diecezjalnego i w tej sytuacji ani konferencja, ani jej przewodniczący nie mogą działać w imieniu wszystkich biskupów, chyba że wszyscy i poszczególni biskupi wyrażają na to zgodę. Celem artykułu jest analiza kompetencji ustawodawczych konferencji biskupów, o których stanowi ustawodawca powszechny. Dlatego przeanalizowano przede wszystkim przedmiot i procedurę stanowienia dekretów generalnych rządzących się przepisami o ustawach wydawanych przez konferencję biskupów. Zakres badań ma zasięg międzynarodowy, ponieważ Kodeks Prawa Kanonicznego dotyczy Kościoła katolickiego, który nie jest związany konkretnym terytorium.

Słowa kluczowe: konferencja biskupów; dekret generalny; Stolica Apostolska; Kodeks Prawa Kanonicznego