



## **Presentation**

### **of Synodal Forum I**

**“Power and separation of powers in the Church**

**- Joint participation and involvement in the mission”**

**for the First Reading**

**at the Fourth Synodal Assembly (8-10 September 2022)**

**for the implementation text**

**“Fundamental rights of the faithful in the Church”**

**[Result of the ballot in the Forum: 24 Yes, 1 No, 3 abstentions]**

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In Her visible form, the Church is constituted as a legal community. Christians have equal dignity in this community: This dignity corresponds to human dignity and to universal human rights, arising in theological terms from the fact of humans having been made in the image of God, and from God’s universal salvific will, whilst at the same time being founded in membership of the Church by virtue of baptism.

Christians who, conscious of their fundamental rights, help to shape a freedom-based democratic society and stand up for universal liberties, find it hard to understand that the constitutional order of the Church should not be one that is based on such liberties. Nor can it be made clear to them why the “true equality” rooted in baptism (LG 32; c. 208 CIC) does not on principle also give rise to the same fundamental rights for all faithful in the Church. Christians therefore rightly ask why the standards corresponding to human dignity and to their baptismal dignity should not be the guiding principles for the legal order that is valid within the Church. Human dignity without human rights remains a mere postulate. This also applies to the Church, and in the Church.

So far, neither the standard arising from human rights, nor that emanating from the same baptismal dignity, is consistently guiding the legal order that is valid within the Church. Moreover, suitable institutions are needed to guarantee, protect and enforce rights in the Church, and these also have not yet been sufficiently realised.

The fundamental rights of the faithful in the Church and their institutional protection serve a dual purpose. They are intended to protect the faithful from any unjust and unlawful exercise of power, i.e. from arbitrary actions on the part of church authorities. In addition, they create a space of freedom so that the faithful can bring their gifts to bear. At the same time, the right and duty to participate in the mission of the Church within the common priesthood of all reflects God's promise to and demand on all Christians. The Church Herself is also subject to this mandate from God to open up opportunities for all faithful to develop their charisms and to be able to bring them to bear as a contribution to the realisation of the Church's mission.

The time has therefore come to evolve the Church's legal order on the basis of theology.

These purposes cannot be adequately achieved with the Church's current Code of 1983 (*Codex Iuris Canonici*, CIC). True, the Code recognises Christians' rights, and there is a list of obligations and rights for all faithful (cc. 208-223 CIC), and another specifically for the lay faithful (cc. 224-231 CIC). The rights include several human rights, such as the right to freedom of association and assembly, to the free choice of the state of life, to legal protection, and specific rights arising from the reception of baptism, such as the right to one's own form of spiritual life and to the exercise of the apostolate. This list testifies to the will of the universal Church legislature to shape the fundamental rights in the community of the Church in such a way that diversity, fraternity and communion can emerge in mutual esteem. At the same time, however, there are still considerable limitations and shortcomings in the Church's legal order.

As a consequence, this contributes to the fact that many charisms for the mission of the Church are not effective, or not effective enough. The authority of the Magisterium is strongly emphasised in this process. This can create the impression that the members of God's people are primarily committed to obedience in their response to the question of what the Gospel means in the present day, and how God's workings can be recognised in the signs of the times. This is reflected, amongst other things, in the fact that c. 212 § 3 CIC calls on the faithful to manifest their opinion, but ties this right to numerous preconditions.

Moreover, the sense of faith of the people of God is inadequately noted in many contexts within the Church because, in most matters, the CIC fails to acknowledge the right of the faithful to be heard *and* to have a say. Such restrictions limit the development of charisms, and thus place many faithful in a somewhat passive role as recipients of pastoral care, but they have no foundation in the Gospel, the proclamation of which is entrusted to the whole people of God. The Church currently restricts access to the priestly ministry to the male gender, and to a celibate state of life. As a result, as far as the priesthood is concerned, God's promise and call to all faithful to employ their charisms for the mission of the Church can only be positively answered by a relatively small group. The Synodal Assembly is "committed to ensuring that ministries and offices in the Church are made accessible to all who are baptised and confirmed, and occupied according to their charisms and vocations, their aptitude, qualification and performance."<sup>1</sup> It is furthermore committed "to casting qualified votes so that those among the faithful who are called and qualified, irrespective of their gender and state

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<sup>1</sup> Version of the foundational text adopted on its second reading entitled "Power and separation of powers in the Church - Joint participation and involvement in the mission", l. 845-847.

of life, are given access to all the Church's ministries and offices - including all ordained ministries."<sup>2</sup>

There are also shortcomings when it comes to protecting the rights of the faithful through appropriate institutions: The Code does provide that the faithful can defend their rights (c. 221 § 1 CIC). However, there is still no adequately developed legal protection in the Catholic Church today, given the lack of church courts *on the ground*. There is furthermore no clear determination of which matters are to be heard by the courts, and which are to be dealt with through administrative channels, and through which instances and to which essential rules both procedures are to adhere. Moreover, Church legislation and jurisdiction are not sufficiently open to the public. Finally, there is a quite fundamental lack of an instance for a superordinate judicial review that would be equivalent in function to constitutional jurisdiction, which would allow of a review of the explicit binding of the church legislatures to the law, and to the fundamental rights of the faithful in particular. In the case of universal Church legislature, this would require a corresponding voluntary undertaking on the part of the Pope.

The Church acknowledges the moral universality of human rights, and advocates for their universal observance. The Second Vatican Council's Declaration on Religious Freedom "*Dignitatis Humanae*" justifies in theological terms that human persons are endowed with reason and free will. The obligation incumbent on human persons to seek the truth and adhere to the truth, once it is known, requires psychological freedom as well as immunity from external coercion (DH Art. 2). The Church has underlined these principles of dignity, freedom and equality as forming the basis of universal human rights in many other Magisterial texts, and is committed to their worldwide validity. For this reason, too, ways must be sought to incorporate these principles more consistently into the Church's own social form - without prejudice to the character of the Church as a religious community that makes a claim to truth for its statements of faith. The Church can gain credibility if She aligns the shape of Her own structures with the principles for which She herself has repeatedly called. This also includes emphasising more distinctly the fundamental rights of all faithful as forming the basis for canon law.

The following need for action arises against the background of these considerations.

## **Resolution**

The Synodal Assembly is requested to resolve as follows:

A process is being initiated in the Catholic Church which is aimed at developing canon law in such a transparent manner that central, fundamental significance attaches to the aspect of the fundamental rights of all faithful - in a suitable analogy to the fundamental rights in public law. To this end, a Basic Law of the Church, a *Lex Ecclesiae Fundamentalis*, is to be drafted and promulgated. The Catholic Church in Germany undertakes to strive towards this goal within the scope of its possibilities. The German Bishops' Conference and the synodal bodies will continue to keep this issue in mind, and will discuss and report on progress and options on this path. To this end, the following considerations will be taken up, discussed, and elaborated on where appropriate:

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<sup>2</sup> Ebd., I 848-851.

1. Freedom and individual equality are to be reflected in canon law and in the application of canon law as follows:
  - a. by more clearly emphasising that all faithful are called without distinction to contribute to the proclamatory mission of the Church with their own respective charisms;
  - b. by acknowledging the duty for individuals to take responsibility for their lifestyles and socio-political commitments within the horizon of the Christian message;
  - c. in the right to freely express one's own opinion and to use it in the struggle to reach a common understanding of the Christian message within the Church;
  - d. in the freedom of theological research. Freedom of research must not be placed into perspective;
  - e. in tying access to all offices of the Church not to gender or state in life, but solely to the personal integrity and talents, skills and qualifications of the persons seeking the respective office, as well as to vocation and willingness to place themselves in the service of following Christ.
2. In the spirit of the model of a synodal Church, all faithful as the people of God have a right to partake of the mission of the Church. This includes the interpretation of the faith for the present, so that the faithful's sense of faith can develop effectively. Mandatory procedures are needed in order to guarantee this entitlement.
3. Special legal dignity attaches to the fundamental rights of the faithful. They must also bind the Church's authority in the legislative, executive and judiciary at universal Church and diocesan levels. This requires an independent, superordinate judiciary in the Church which examines all laws in terms of respect for the fundamental rights of the faithful.
4. All faithful are entitled to due process when their rights are violated. This necessitates a framework regulation for complaint management and for a guarantee of legal recourse which defines binding criteria on how the complaint codes of the dioceses are to be adapted and standardised. The aim of the framework regulation is to provide all faithful with a transparent, easily accessible mechanism for complaining to independent complaint and arbitration offices in the dioceses.
5. It is also necessary to establish administrative jurisdiction at the level of the local churches.

The German bishops will bring the issue of fundamental rights into the synodal process that Pope Francis has called into being. Beyond this process, they will also lobby the universal Church legislature to draft and promulgate a *Lex Ecclesiae Fundamentalis* which guarantees the fundamental rights of the faithful. They will establish an administrative jurisdiction for the Catholic Church in Germany, and commission the development of a framework regulation for complaint management and a guarantee of legal recourse, as well as putting it up for discussion and placing it into effect.