

The Typical Forms of the Association of the Faithful

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1. Introduction

The present legislation on the associations of the faithful¹ is notably different from the former one, not only because there is an explicit recognition of the right to associate, but also the division of the associations is completely different. The first Code of Canon Law divided the associations into Third Orders, Confraternities and Pious Unions². The 1983 Code of Canon Law divides them into public and private, while almost no trace of the former typology is left³.

In this study I will analyse the two main forms of the association of the faithful in the Code of Canon Law. For a better understanding of the impact of the innovations wrought by the new

¹ Canons 298-327 of CIC. After the promulgation of the Code of Canon Law the following books on associations of the faithful were published: LL. MARTÍNEZ SISTACH, *Las asociaciones de fieles*, Barcelona 2000, 4th edition; J. AMOS, *Associations of the Christian Faithful in the 1983 Code of Canon Law: a canonical Analysis and Evaluation*, Washington 1986; W. SCHULZ, *Der neue Codex und die kirchliche Vereine*, Paderborn 1986; W. AYMANS, *Kirchliche Vereinigungen*, Paderborn 1988; and L. NAVARRO, *Diritto di associazione e associazioni di fedeli*, Milano 1991. Some congresses were also dedicated to this topic: *Das konsoziative Element in der Kirche. Akten des VI. internationalen Kongresses für kanonisches Recht, München, 14.-19. September 1987*, St. Ottilien 1989; *Asociaciones canónicas de fieles. Simposio celebrado en Salamanca*, Salamanca 1987, and *Le associazioni nella Chiesa*, Città del Vaticano 1999.

² See title XIX, *De fidelium associationibus in specie*, Book II of 1917 CIC.

³ Only can. 303 CIC, which deals with the Third Orders, is connected to the 1917 Code division of associations.

Code, before treating the public and private associations, I shall present briefly the characteristics of the 1917 legislation on the associations of the faithful.

2. Typology of the Associations in the CIC of 1917

As I have just pointed out, the principal division of the associations of the faithful was in Third Orders, Confraternities and Pious Unions. A specific finality was attributed to each type of association: Christian perfection, growth of public cult, and works of piety or charity, respectively. Consequently, according to the goal that an association proposed for itself, it had to be configured as Third Order, Pious Union or Confraternity⁴.

Such division was an object of many discussions during the elaboration of the first Code, because in the canonical doctrine and in the replies of the Roman Congregations there was no clear understanding of the terminology and therefore of the different types of associations⁵. The 1917 CIC attempted to give a response to such confusion by determining the limits of every concept⁶.

Regarding the concept of Third Order there were no gross problems during the drafting process. In relation with that of confraternity there was a certain evolution in the way of presenting its characteristic elements: public worship, the constitution as an organic body, and the ends of piety or charity. In certain stages of the codification some of these elements were stressed, while others were left in the shadow. In the first steps, the emphasis was given to *public worship*, in as much as the confraternities somehow were

⁴ Cf. cann. 685, 702, 707.

⁵ The following terms were used, without clearly delimiting the concept, to identify the associations: *pia sodalitia*, *confraternitates*, *collegia*, *congregationes*, *aggregationes*, *uniones*, *pia opera*, *tertii ordinis*, *piae uniones*. For further confusion it was distinguished between *confraternitas stricte sumpta*, *late sumpta*, *latissime sumpta*, etc. Cf. W. SCHULZ, "Le norme canoniche sul diritto di associazione e la loro riforma alla luce dell'insegnamento del Concilio Vaticano secondo," in *Apollinaris*, 50 (1977), p. 151-152.

⁶ An important step to reach this aim was given by the *Resolutio Romana*, 18 January 1907, of S. Congregation for Bishops and Regulars, in P. GASPARRI, *Codex Iuris Canonici. Fontes*, vol. IV, Romae 1926, n. 2054, p. 1111-1115, *passim*, p. 1112-1113.

contributing to it. Later on it was *also* given an emphasis to the presence of other ends (of piety and charity) and to have a specific structure: to be an organic body⁷. Finally, the definition of pious union was introduced only in the last phases of the codification, and this served to distinguish such associations from sodalities.

Apart from this tripartite division of the associations according to their ends, in the 1917 Code of Canon Law there was another important classification: according to the relationship with the authority the associations were divided into *erected*, *approved* and *recommended* associations by the Hierarchy⁸. The 1917 CIC centered its attention on the first two types, indicating above all that these are the only associations recognized by the Church⁹, and that those which are erected possess a moral personality¹⁰. Less attention was however given to the recommended associations: from the canon in which they were mentioned it can be deduced only their existence, but not what kind of association could receive this recommendation¹¹.

⁷ There is an evolution in the way of expressing the relationship between confraternity and divine worship. In the first drafts it is said: "habendi peculiarem partem in publico Ecclesiae cultu" (*Schema Codicis Iuris Canonici* 1912, Romae 1912, can. 557 § 1, in *Archivio Segreto Vaticano* [ASV], Fondo CIC, box, n. 23); or «partem in publico Ecclesiae cultu habere» (*Schema Codicis Iuris Canonici* 1914, Romae 1914, can. 707, in ASV, Fondo CIC, box, n. 24). From 1916 till the promulgation of the Code these terms are used: «in augmentum publici cultus» (*Schema Codicis Iuris Canonici* 1916, Romae 1916, can. 707 § 1, in ASV, Fondo CIC, box, n. 24) and finally, «in incrementum quoque publici cultus» (can. 707 § 2 CIC). Even if this participation in the divine worship could be in some cases not the main end of the association, it was at the base of the norm that required that all confraternities should have their see in a church or chapel (cf. can. 712 CIC), and also of the fact that women could not be members of all confraternities, but only of some of them (during the drafting process there was a norm forbidding women to participate in the public worship given by the confraternities. Cf. *Schema Codicis Iuris Canonici* 1914, cit., can. 709 § 2. A trace of this was left in can. 709 § 2 CIC 1917.

⁸ Cf. can. 684, 686 § 1. The associations could be also divided into those condemned by the Church and those which were not. Cf. can. 684.

⁹ Cf. can. 686 § 1.

¹⁰ Cf. can. 687. Approved associations were not moral persons, but had the capacity of obtaining spiritual graces. Cf. can. 708.

¹¹ Can. 684: «Fideles laude digni sunt, si sua dent nomina associationibus ab Ecclesia erectis vel saltem commendatis; (...)».

From the most recent studies on this subject in the codification of 1917¹² it emerges a better understanding of these *recommended* associations and a more complete picture of the associations of the faithful. In the first steps of the drafting of the first *Codex iuris canonici* a choice was already done (and the promulgated text of the Code is faithful to that decision): the future Code would have primarily regulated the associations which are constituted or approved by the authority¹³.

This decision was placed in the following frame: the project of the Code, under the section dedicated to the associations in general, included among the opening canons, one proclaiming the right of the faithful to associate and the duty of vigilance of the ecclesiastical authority over the associations¹⁴. Immediately after this canon, the associations were then divided into public and private forms: the

¹² Cf. W. SCHULZ, *Das Vereinsrecht des Codex Iuris Canonici von 1917 und seine Anwendung bis zum Zweiten Vatikanischen Konzil*, in *Das konsoziative Element in der Kirche*, cit., p. 373-395; S. SAGASTIBELZA, *El derecho de asociación del fiel durante el proceso de elaboración del Código de Derecho canónico de 1917*, Roma 1992 (pro manuscripto); and J. CHAPA, *Las asociaciones in specie en el Código de 1917*, Roma 1995 (pro manuscripto).

¹³ Can. 533 § 3, *Schema CIC 1912*: «Canones qui sequuntur, ad publicas tantum associationes referuntur, nisi aliud caveatur». For the early versions of this text before the first official draft of the Code, see *Progetto di schema della Commissione Speciale dei Consultori*, Liber II, Pars III, in ASV, Fondo CIC, box n. 29; *Progetto di schema della Commissione Generale dei Consultori*, in ASV, Fondo CIC, box 29; *Progetto di Schema della Commissione speciale dei Cardinali*, Liber II, Pars III, in ASV, Fondo CIC, box n. 29; *Schema Liber II Codicis Iuris Canonici 1909*, in ASV, Fondo CIC, box 22). In the 1914 and 1916 Schemata the same intention is expressed, with slight changes: can. 685 § 3: «Nisi aliud expresse caveatur, canones qui sequuntur ad associationes ab Ecclesia erectas referuntur, distinctas a religionibus vel societatibus de quibus in can. 487-681».

¹⁴ Can. 7 § 1: «Fideles in Ecclesia iure gaudent sese associandi in finem religiosum vel charitativum.

§ 2. Locorum tamen Ordinariis ius et officium est advigilandi ne in huiusmodi associationibus abusus irrepant». *Terzo Progetto della commissione speciale di consultori*, February 1908, in ASV, Fondo CIC, box 29.

¹⁵ Can. 533 § 1: «Fidelium associationes sunt publicae, si ab Ecclesia publico decreto fuerint legitime erectae; secus privatae». *Schema CIC 1912*. In the first stages of the drafting of the 1917 Code there was no distinction between erection and approval. In footnote of a project it can be read: «In questo schema erezione e approvazione si prendono promiscuamente, come nelle relative costituzioni pontificie». *Progetto di schema della Commissione Generale dei Consultori*.

first, were erected or approved by the authority; the remainder, were private¹⁵. In order to complete the picture of the associations another canon was added in which the faithful who joined the public and the private associations recommended by the authority, were praised¹⁶.

In this frame the *recommended* associations were presented as a specific group among those unions of persons created by the faithful to achieve the ends of piety or charity by virtue of their right of association. Among these associations the ecclesiastical authority could decide to recommend some of them. The lack of any other reference to them in the project of the code was in harmony with the choice not to regulate private associations under that law. But the understanding of these recommended associations became worse with the loss of a precise point of reference (the distinction between public and private associations). The *recommended* associations were left in an unclear juridical position, because they were not recognized *in the Church*¹⁷.

After presenting all the data, it is possible to have a better comprehension of the elements that characterize the associations regulated by the 1917 Code: the role of the ecclesiastical authority is more determining in the life of the association than the role of its members. The association is born, in fact, out of an act of the authority (with erection or with approbation it becomes recognized by the Church¹⁸); the same authority exercises particularly intense control and vigilance over the association, its norms (the statutes must not only be examined or approved, but in some cases could be modified and corrected by it), its actions, and also its goods¹⁹. Typical

¹⁶ Can. 533 § 2: "Fideles laude digni sunt, si sua dent *nomina publicis in Ecclesia associationibus*, vel privatis quae ab ipsa fuerint commendatae". *Schema CIC 1912*. In can. 684 § 2 of Schema CIC 1914, already suppressed the division of associations into public and private, it can be found the same words of the promulgated can. 684 CIC 1917: «Fideles laude digni sunt, si sua dent nomina associationibus ab Ecclesiae erectis vel saltem commendatis».

¹⁷ Cf. can. 686.

¹⁸ According to the ecclesiological doctrine of those years, the sociality in the Church was placed in the hierarchy and not in the faithful. Therefore only the acts of the authority had the capacity to constitute an association. Cf. A. DEL PORTILLO, *Ius associationis et associationes fidelium iuxta Concilii Vaticani II doctrinam*, in *Ius canonicum*, 8 (1968), p. 5-6.

¹⁹ Cf. can. 689-690, 691 § 1, 698 and 715.

associative elements such as the will of the founders and the members either in the creation, permanence and extinction of the body, or in the formation of the juridical bond that unites the members among them and each individual member with the associative body, or the decisional capacity of the members altogether, were hidden on a secondary level²⁰.

The associations were conceived in the old Code as entities created, controlled and partially governed by the Hierarchy. The faithful could adhere to them (this was the almost exclusive manifestation of the exercise of the right of association).

The associations were means used by the Hierarchy to foster the public worship of the Church, in order to improve the Christian life of the faithful, not only through the imitation of the spirit of a religious institute, but also through the exercise of works of piety or charity. Such entities were placed at the disposition of the faithful; they were a gift to them, a road for their spiritual progress²¹.

The associative model that emerged from the canonical legislation of 1917 was ideal for those associations wanting or needing to be strictly united to the authority, but it proved inadequate for those associations that intended to have a broad autonomy.

This insufficiency became evident at once: some associations of the faithful existing before the promulgation of the CIC, and others that were created right after, did not find room in the legal

²⁰ The power of the ecclesiastical authority was so great that it included the power to dissolve, through expulsion, the bond of a member with the association. Moreover, the extinction of the association always depended on acts of the ecclesiastical authority. Cf. can. 696 § 3 and 699.

²¹ In this perspective, as a sign of concern for the spiritual good of the faithful member of an association, some norms were especially relevant: on the one hand, those regulating the conditions for gaining indulgences and for receiving spiritual benefits assigned to the association, and on the other, the norms on the aggregation of associations (institute for sharing the indulgences and spiritual graces of the primary pious union of the arch-confraternity) Cf. cann. 692, 709, 712 § 3, 720-725. The norms on the precedence among the associations, and those on the use of insignia and vestments, reveal that the orderly presence of these associations in the processions and in liturgical ceremonies was as such considered a good for the worship, and therefore the confraternities contributed to its splendor. Cf. cann. 701, 706, 713, 714.

frame work and therefore found themselves in a precarious juridical situation. The *Resolutio Corrientensis* of the S. Congregation of the Council of November 13, 1920 contributed to fill some of the lacunae²². A classification of associations which, though being used by canonists and present in the preCode legislation and praxis, had remained almost hidden in 1917 Code, reappeared in this *Resolutio*: the distinction between *ecclesiastical associations* (erected or approved by the ecclesiastical authority) and *lay associations*²³. These ones, according to the said resolution, were legitimate; they were born out of the initiative of the faithful, and they governed themselves. The ecclesiastical authority exercised over them the function of vigilance and supervision, in the same ambit in which it is competent with regards to the individual faithful²⁴.

The recognition of the lay associations by the Congregation of the Council was, however, still insufficient to provide them a clear juridical position in the canonical order: in the same resolution it is affirmed, in reference to lay associations, that «*associatio non habet esse ab Ecclesia, nec ab Ecclesia agnoscitur quoad iuris effectus*»²⁵.

²² Cf. S.C. OF THE COUNCIL, *Resolutio Corrienten.*, 13 November 1920, in AAS 13 (1921) p. 135-144.

²³ Regarding this division of associations, cf. S. AICHNER, *Compendium iuris ecclesiastici*, Brixinae 1884, p. 500, footnote 1; A. TACHY, *Traité des Confréries*, Amiens 1896, p. 13-15; I.C. FERRARI, *Summa institutionum canonicarum*, vol. I, Genua 1877, p. 252; B. DUBALLET, *Cours complet de Droit canonique et de jurisprudence canonico-civile, Traité des Choses Ecclésiastiques*, Paris-Poitiers 1902, n. 567; B. OJETTI, *Confraternitas*, in *Synopsis rerum moralium et iuris pontifici*, vol. I, Romae 1909, n. 1495.

²⁴ «Cum tamen omnes fideles, sive seorsim accepti sive in societatem coadunati, sint subiecti Praelatis ecclesiasticis, et activitas alicuius societatis etiam laicalis, ex fidelibus conflatae, subsit generali vigilantiae Episcoporum, id de Conferentiis quoque Vincentianis tenendum est». S.C. OF THE COUNCIL, *Resolutio Corrienten*, cit., p. 144.

²⁵ S.C. OF THE COUNCIL, *Resolutio Corrienten.*, cit., p. 139. Cf. *Communicationes*, 2 (1970), p. 97-98 and *Communicationes*, 6 (1974), p. 51. Cf. among the authors A. DEL PORTILLO, *Ius associationis*, cit., p. 7 and 19; and W. SCHULZ, *Le norme canoniche*, cit., p. 159-160, where he states that in Germany some lay associations active in social fields, stayed out of the Code system. Cf. IDEM, *Problemi di applicazione del diritto canonico in materia di associazioni*, in *Ius in vita et in missione Ecclesiae. Acta symposii internationalis iuris canonici*, Città del Vaticano 1994, p. 867.

3. Typology of the Associations in the 1983 Code

The proclamation of the right of the lay faithful to establish, to govern associations and to become members of them²⁶, had necessarily deeply modified the legislation. An area where some radical changes were performed is that of the typology of associative entities²⁷. More broad space was needed so as not to suffocate the vitality and the diversity of the associative forms. So, since the beginning of the work of the revision of the former Code, it was decided to abandon the closed typology (*ratione finis*), and to distinguish the associations according to the *type of relationship* with the ecclesiastical authority. On the basis of such criterion the associations were subdivided into two main groups: private and public, corresponding to each type a different juridical regime.

In order to have a clearer exposition, I will treat separately these two types of associations. As the particular canons are sufficiently known by all²⁸, it will be sufficient to synthesize the most salient traits.

A. Private Associations

According to the new Code, these associations are bodies constituted by the faithful through a private agreement among them to pursue, through joint action, an end of ecclesial nature²⁹. They enjoy a specific autonomy of government: the association makes the

²⁶ Cf. VATICAN II, Decr. *Apostolicam actuositatem*, n. 19. On the right of association and the associations of the faithful in the Second Vatican Council, see A. DÍAZ DÍAZ, *Derecho fundamental de asociación en la Iglesia*, cit., p. 80-190.

²⁷ The differences between the two Latin Codes go beyond the presence of some completely new canons. Even in the canons that look very similar to those of the CIC 1917, there are differences because they have to be interpreted in the light of new principles. According to the publication of the CIC with its sources, the following canons do not have a direct relationship to the former legislation: can. 299, 311, 315, 317 § 4, 321, 323 § 2, 324 § 1, 328 and 329. Cf. P. COUNCIL FOR THE INTERPRETATION OF LEGISLATIVE TEXTS, *Codex Iuris Canonici. Fontium annotatione et indice analytico-alphabetico auctus*, Città del Vaticano 1989, p. 85-92.

²⁸ Cf. can. 298-327. For a specific study of these norms, see L. NAVARRO, *Diritto di associazione e associazioni di fedeli*, cit., p. 43-202.

²⁹ Cf. cann. 298, 299 § 1.

statutes, nominates the moderators, can choose a spiritual assistant, and administers its own goods³⁰. All private associations must have their statutes approved or at least examined by the competent ecclesiastical authority; some will receive the praise, the recommendation of the ecclesiastical authority or even the title of "catholic"³¹. To some of them will be granted a private juridical personality³². All these associations are subject to the supervision and governance of the competent ecclesiastical authority³³.

In the light of the norms of the Code on private associations, these bodies constitute the *typical way* in which it can be exercised the right of association of the faithful³⁴. In fact, in the first place, the typical contents of this right (to institute and direct associations and become members of them) are present in such associations. In the second place, in them a broad leeway is given for the exercise of the autonomy of the faithful, an aspect intimately connected to the principle of freedom that is at the foundation of this right of the faithful³⁵ because the faithful create a body in the Church through an act of their will (the founding juridical agreement) and they themselves determine the end, the means and the activities.

From these basic aspects of the private associations it must be observed that a *technical model* of the private association was forged in the legislation of the Church³⁶. Besides the common

³⁰ Cf. cann. 321, 323, 324, 325.

³¹ Cf. cann. 299 § 2 and § 3, 300.

³² Cf. can. 322.

³³ Cf. cann. 305, 323.

³⁴ Cf. can. 215.

³⁵ Can. 215 emphasizes the freedom of the faithful in both establishing and governing the associations.

³⁶ Therefore some associations private in nature do not fit into this technical form but they are legitimate if the aim is harmony to the nature of the Church, and there is nothing in the association that can hinder the communion of the Church. It is normal that in the first stages of their life, the associations do not possess all the elements needed for becoming a "private association". For instance there are no Statutes, because they have not yet been prepared and at the very beginning they do not need them. It is obvious that these associations are really in the Church and serving her mission, even though there was no formal recognition.

elements of any private association in the Church (the *stable and voluntary union* of several persons in order to achieve an ecclesial end belonging to the autonomy of the faithful, *in full respect of the bonds of the ecclesiastical communion*), the Code requires each association to have their own *statutes*³⁷, which must be at least examined by the authority; and foresees that some associations can receive a *private juridical personality*.

These elements, i.e., the statutes and the private juridical personality, determine a reinforcement of the proper stability of the associative union. In certain cases, the association becomes a juridical person and therefore enjoys the tendential perpetuity of every juridical person and will not be affected by the changes of the personal substratum³⁸.

When a private association is simply recognized by the authority³⁹, the statutes guarantee that the social body maintains for ever its identity: the members will change, the associative bonds among them and the whole body may be renewed through the years, but the characteristic elements of the association will remain basically immutable because they are fixed in the Statutes. The act of approval of the statutes by the founders attributes to the statutes,

³⁷ Cf. can. 304.

³⁸ Cf. can. 120.

³⁹ Can. 299 § 3 demands that no private association of Christ's faithful is recognized in the Church unless its statutes have been reviewed by the competent authority. The reviewing of the statutes cannot be understood as a formality through which the authority in the Church studies the statutes in order to declare that there is nothing wrong in them. The recognition of an association constitutes a declaration of the ecclesiastical authority stating that the association is really in the Church, that everything in it is in agreement with the nature of the Church. Therefore, the normal procedure of recognition of the association includes these elements: a) presentation of the Statutes, b) a brief history of the association and documentation regarding its spirit, c) information on the activities, on its patrimony, places where the association is active, total number of members, d) reports from ecclesiastical authorities where the association is present. After examining these materials, if there is nothing against the faith, the morals and the ecclesiastical discipline, then the authority must grant the decree recognizing the association as a private association in the Church. Any private association who is in possession of the criteria of ecclesiality has the right to be recognized by the competent authority. On these aspects, see L. NAVARRO, *Commentary on can. 299*, in *Comentario exegético al Código de Derecho canónico*, Pamplona 1996, vol. II, p. 428-432.

within certain limits, an independence from the members of the association. In fact the will of one of them is not able to modify the Statutes; the members can only do it in the specific manner established by the Statutes.

The requirement that each association have statutes, and the possibility of some associations having a private juridical personality, cannot be considered as something arbitrary, but it is rooted in the need that the Law – whose end is to regulate according to justice the relationships between different subjects and the social order in the Church – determines *some specific ways of the exercise* of a fundamental right. If Canon Law wants to recognize a union of the faithful, this union cannot consist in something vague, generic, in continuous evolution of its ends, activities and members, but it must have some precise, clear and long-lasting guidelines that guarantee the certainty of juridical relationships. The statutes – norms that reflect the principal elements of a stable organization – and the private juridical personality, are technical means which facilitate the identification of the subject of the juridical relations⁴⁰.

Before concluding these remarks on the private associations, it is worthwhile to emphasise that the associations which do not receive juridical personality represent an emblematic example of a subject of law without personality. Though, according to what is established by can. 310, these associations are not subjects of rights and duties⁴¹, the Code considers them as unitary or joint bodies, attributing to them some rights: the private association has, as such, the right to have a name, it can and must have statutes (cf. can. 304); it is a subject of privileges, indulgences and other graces (cf. can. 306); it can produce some specific internal norms, it can have assemblies, appoint moderators, officials and ministers (cf. can. 309);

⁴⁰ In this way, Canon Law gives, on the one hand, a juridical protection to the association and to its members, and, on the other, protects the juridical relationships of third parties with the association. The configuration of the associative body does not change easily and the members will know through these norms their position in the association and their rights and duties.

⁴¹ Can. 310: "A private association which has not been constituted a juridical person cannot, as such, be the subject of duties and rights. However, Christ's faithful who are joined together in it can jointly contract obligations. As joint owners and possessors they can acquire and possess rights and goods. They can exercise these rights and obligations through a delegate or a proxy".

it can obtain the praise or the recommendation of the ecclesiastical authority (cf. can. 298 § 2); the members have some right with regard to the association (right to intervene in the elaboration of decisions; right not to be expelled unjustly and all the rights established in the statutes and regulations of the association); and as an association it is subject to the supervision and governance of the ecclesiastical authority (cf. can. 305). Relying on these norms, some authors have considered that these associations are subjects of law⁴². Coherent with the recognition of the right of association and with those aspects in which the association is treated as unitary/single subject, the lack of juridical personality does not imply the nonexistence of the subject of right⁴³. On the contrary, to affirm the opposite would be to negate the same reality⁴⁴. The private association is not simply the sum of the members that compose it, the rights and duties of the body are not the sum of the rights and duties of the members. There is something more: the association is a stable union of persons with a precise end to achieve. This substantial juridical reality is

⁴² Condorelli describes them as follows: «enti privi bensì della personalità giuridica, che non viene ad essi conferita, e tuttavia qualificabili alla luce della concreta normativa che li governa come soggetti di diritto in quanto da essa trattati come centri unitari di imputazione di determinati rapporti giuridici non collegabili né ad un soggetto umano né ad una persona giuridica». M. CONDORELLI, *Considerazioni problematiche sul concetto e sulla classificazione delle persone giuridiche nello "Schema De Populo Dei"*, in *Il diritto ecclesiastico*, 91 (1980), I, p. 451. On these subjects of law, cf. V. PRIETO, *Iniciativa privada y subjetividad jurídica*, Pamplona 1999, p. 109-142. On the same topic, but before the 1983 CIC, see M. CONDORELLI, *Destinazione di patrimoni e soggettività giuridica nel diritto canonico. Contributo allo studio degli enti non personificati*, Milano 1964; M. TEDESCHI, *Preliminari a uno studio dell'associazionismo spontaneo nella Chiesa*, Milano 1974, p. 50 ss; and R. BACCARI, *Il diritto di associazione nella Chiesa*, in *I laici nel diritto della Chiesa*, Città del Vaticano 1987, p. 68.

⁴³ Commenting can. 49 § 2 of the *Schema canonum libri II "De Populo Dei"* – what is now can. 310 CIC –, Condorelli wrote that it could be "agevolmente interpretato nel senso della mancanza certo della personalità giuridica ma non necessariamente della soggettività nell'associazione non eretta; tanto più che il testo fa subito riferimento a diritti e doveri imputabili *coniunctim* ai consociati ed esercitabili esclusivamente *per mandatarium seu procuratorem*, ad una situazione cioè che sembra presentarsi piuttosto diversa da quella semplice comunione o della generica contitolarità di diritti e doveri". M. CONDORELLI, *Considerazioni problematiche*, cit., p. 452. On these associations see A.M. PUNZI NICOLÒ, *Libertà e autonomia negli enti della Chiesa*, Torino 1999, p. 136-140.

⁴⁴ Cf. M. CONDORELLI, *Considerazioni problematiche*, cit., p. 453.

manifested in its life: the association presents itself as a stable union to the ecclesiastical community; its legitimate activity is carried out as an action of the union, aimed to be perceived as such by all; the goods that the association possess are not really of each individual faithful (who could otherwise dispose of them freely), but of the whole body, and because of this they are destined for the achievement of the associative ends and their administration is regulated by the statutes.

Regarding the capacity of these associations to participate in trials, it seems more in agreement to the substantial reality to consider that it is the association and not the members jointly or individually, the one who acts through its legitimate representatives⁴⁵.

If the right of association is really operative in the Church the following conclusion must be reached: these associations, even if they are without juridical personality, are real subjects of law⁴⁶.

B. Public Associations

According to the CIC, the public associations of the faithful are entities with these characteristics: a) they are erected by the ecclesiastical authority, b) they are governed with the statutes approved by the authority, c) they possess public juridical personality, d) they are open to the incorporation of the members, e) they are created for the achievement of an end which, being in harmony with the nature of the Church, may be reserved to the hierarchy.

Although a certain autonomy is given to every public association, they are placed under the *higher direction* of the ecclesiastical

⁴⁵ On this capacity regarding subjects of law which have not received juridical personality, see L. NAVARRO, *La tutela giudiziaria dei soggetti senza personalità giuridica canonica*, in *Ius Ecclesiae*, 9 (1997), p. 265-287.

⁴⁶ This description of what are the associations lacking of juridical personality in the Church is very precise in all the elements: «La presenza di più fedeli che si uniscono per una azione comune in vista di uno scopo ecclesiale, con un preciso atto di volontà, con un impegno caratterizzato da continuità e stabilità nel tempo, e riconoscendosi in una realtà che, anche senza diventare una vera e propria persona giuridica, si costituisce in soggetto autonomo e distinto dalla soggettività dei singoli componenti, con propri organismi e proprie regole». C. REDAELLI, *Il vescovo di fronte alle associazioni*, in *Quaderni di diritto ecclesiale*, 8 (1995) 3, p. 356.

authority. The main contents of this higher direction are: the ecclesiastical authority intervenes in the nomination and removal of the moderators (can. 317 § 1 and 318 § 2); the ecclesiastical authority directly nominates the chaplain (can. 317 § 2); the administration of temporal goods is subject to the norms regarding ecclesiastical goods⁴⁷ (a yearly account is to be given. Cf. can. 319 § 1); in certain cases the hierarchy can appoint a commissioner who will govern the association on behalf of the ecclesiastical authority (can. 318 § 1); and lastly it can dispose the suppression of the association (can. 320).

From this synthetic description, it is evident that the public associations have a tighter bond with the ecclesiastical authority than the private associations. If in an association there is not such a presence of the authority in its birth, its life and even in its extinction, it can be concluded that it is not a public association. It is this broad and intense intervention of the authority which constitutes the difference of juridical regime between the public and the private associations.

Why there is a difference of regime? What is the function of these public associations? From the act that gives birth to the public associations and from the ends that can be pursued by them it emerges with greater clarity the *nature* of these entities, their role in the Church, their position in the legal system and finally their differences with the private associations.

In the *establishment* of a public association there is always an act of the ecclesiastical authority: the *erectio*. This determines not only the existence of the association, but also the nature and the juridical regime, up to the point of limiting in some aspects the right of association of the faithful: Christ's faithful cannot freely create the public associations.

This fact determines that the public associations have characteristics being very different from those of the private associations. In the public associations, as Lo Castro affirms, the entity is born by an establishing act of the public authority but in the associative forms, in the sense that in the origin of the public associations an

⁴⁷ As these associations are public juridical persons in the Church their goods are *ecclesiastical goods* (cf. can. 1257) and as such are regulated by Book V of the CIC.

act of institutional nature can be found, which however in its development acquires associative forms⁴⁸.

But why is this institutional element so incisively present in these associations? The answer is to be found in the *function* performed by these associations. Even if the public associations are at the service of the mission and end of the Church, as any other association of the faithful⁴⁹, this function has some specific characteristics that are reflected in the two types of public association foreseen by can. 301.

The associations of can. 301 § 1

The associations of can. 301 § 1, i.e., those that pursue ends reserved *natura sua* to the ecclesiastical authority, represent a *specific case of collaboration* of the faithful, in this case in associative forms, to the functions of the hierarchy⁵⁰. The creation of the body allows the faithful to cooperate in the achievement of some ends that are beyond the specific ambit of their autonomy. That is why it is necessary to entrust this end to the association by a concrete act called mission⁵¹. These public associations perform a particular function of service in the task of the hierarchy, because it consents the authority to fulfill a part of its mission through these

⁴⁸ «L'ente nasce per atto fondante della pubblica autorità ma nelle forme associative (é il caso delle associazioni pubbliche di cui ai can. 312-320), nel senso che nel momento genetico si riscontra un atto di natura istituzionale, il quale però si sviluppa dando all'ente forme associative ed inserendolo nella linea organizzatoria-comunitaria dell'ordinamento». G. LO CASTRO, *Le prelature personali. Profili giuridici*, Milano 1999², p. 173-174.

⁴⁹ Cf. VATICAN II, Decr. *Apostolicam actuositatem*, n. 19

⁵⁰ Can. 301 § 1: «It is for the competent ecclesiastical authority alone to establish associations of Christ's faithful which intend to impart Christian teaching in the name of the Church, or to promote public worship, or which are directed to other ends whose pursuit is of its nature reserved to the same ecclesiastical authority». Cf. see, VATICAN II, Decr. *Apostolicam actuositatem*, n. 24 and Const. *Lumen gentium*, n. 33.

⁵¹ Cf. can. 313. A faithful can pursue these aims because he receives them through the act of the authority. Therefore the Christian faithful does not have a right to attain these aims, but the capacity to receive the mission to seek these ends. Cf., J. HERVADA, *Pensamientos de un canonista en la hora presente*, Pamplona 1989, p. 179.

associations. The public associations are, therefore, an instrument, created by the authority, to perform a specific function. The close relationship between the authority and the end justifies the rapport of dependence from the ecclesiastical authority that characterizes all public associations⁵².

The right of association of the faithful becomes operative with regards to the reserved ends only after the act of the authority by which the association is established and the mission is given to the association⁵³.

The associations of can. 301 § 2

The associations foreseen in can. 301 § 2, i.e., those that intend to achieve an end not reserved to the ecclesiastical authority⁵⁴, have a different function. Their reason of existence finds its basis in their erection by the hierarchy to make up for an insufficient private initiative. In these cases, the authority does not put at the disposition of the faithful some ends reserved to the authority – as in the case foreseen by can. 301 § 1 – because the ends proposed are private in nature. Thus these associations are not created to cooperate to some ends that properly belong to the hierarchy. These associations are established by the authority to make up for a lack of private initiative.

Among the functions being proper to the Bishops is to supervise, promote, foster, give directives, and exhort, so that the faithful may fulfill the mission due to them in the People of God⁵⁵. If for

⁵² Cf. J.T. MARTIN DE AGAR, *Gerarchia e associazioni*, in *Das konsoziative Element in der Kirche*, cit., p. 308.

⁵³ These public associations «no deben su existencia al poder constituyente de los consociados – ya que los fieles no pueden unirse por sí solos y por su propia cuenta en relación a fines de la organización eclesiástica, cuyas actividades están bajo la autoridad de la Jerarquía–, sino al acto de erección de la Jerarquía». J. HERVADA, *Pensamientos*, cit., p. 179

⁵⁴ Can. 301 § 2: «The competent ecclesiastical authority, if it judges it expedient, can also establish associations of Christ's faithful to pursue, directly or indirectly, other spiritual ends whose attainment is not adequately provided for by private initiatives».

⁵⁵ Cf. VATICAN II, Decr. *Apostolicam actuositatem*, n. 24 and Decr. *Christus Dominus*, n. 17.

whatever reason the faithful are not able to work sufficiently in the sphere of their competence, to assume the proper responsibilities to their mission, the ecclesiastical authority, taking into account the specific needs of the Christian community that are not satisfied, can create an association to pursue the more urgent ends or the more interesting ones.

In this way, the public associations of can. 301 § 2, on the one hand, lend a service to the ecclesial community (as any other private association that has the same ends), and, on the other hand, since the ends are established by the authority (in the private associations instead the ends are always freely chosen by the faithful), they constitute instruments through which the authority sees to the satisfaction of some scarcity in the Christian community.

Thus, there is no wonder that these associations are particularly subject to the government of the authority. This dependence is explained not because of the type of end, but because when the authority creates an association exercising its suppletory functions, she becomes, in a certain sense, more involved in the work and activities of the association (all public associations, in fact, act *nomine Ecclesiae*) and assumes a particular responsibility to guarantee the ecclesial identity of the new entity. The authority binds itself to the association, exercising on it major functions which are different from those she has with regards to the private associations.

Consequently, a common characteristic of all public associations is that they serve the People of God and that they are some instruments of the ecclesiastical authority in order to either collaborate to the activity being proper to the hierarchy, or to satisfy some needs to which a private initiative could and should have provided, but, for diverse reasons, has in fact neglected.

The public associations therefore can be defined as associations with a relevant institutional character. □