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Sensus fidei fidelium Legal and Ecumenical Reflection

Abstract: Two documents of the International Theological Commission from 2011 and 2014 constitute a source of inspiration for undertaking important research in the areas of ecclesiology, ecumenical theology and canon law. What is located in the latter area is — as it is attempted to meticulously present in this study — a contemporarily relevant issue whether *sensus fidei fidelium* is the meaning of the Church law. Indeed, with the awareness that the legal structure of the Church cannot take into account the universal service of redemption, according to the unquestionable paradigm: the Church law is the law of freedom. We can hope that the results of research “programmed” in such a way, open to the “exchange of gifts” in the ecumenical dialogue, will positively influence the intensification of the pastoral efforts of the entire People of God, guided by the Holy Spirit along the ways of faith revival — in an indefatigable evangelization and construction of Church *communio*. Indeed, time will tell whether the ten-year-long research conducted by the council of theologians on the issue of *sensus fidei fidelium* in the life of the Church — having many points in common with the vital issue of Church synodality — fulfilled their task sufficiently enough.

Keywords: *sensus fidei*, the signs of the times, ecclesiology of *communio*, the law of the Church, synodality, ecumenism

1. The context of the “signs of the times”

In 2014 the International Theological Commission announced its new document, entitled *Sensus fidei in the life of the Church*,¹ the result

¹ INTERNATIONAL THEOLOGICAL COMMISSION: *Sensus fidei in the life of the Church* (2014) — http://www.vatican.va/roman_curia/congregations/cfaith/cti_documents/rc_cti_20140610_sensus-fidei_en.html [accessed: 9.01.2018].

of research conducted in the years 2009—2014. We should add that the announcement (or even programming) of this research was the presentation of the significance of the subject matter issues in the earlier document, crowning the work of the mentioned experts' body in the years 2004—2011. Indeed, already in 2011 the International Theological Commission document, where a significant space was dedicated to “the signs of the times”² (an issue strongly discussed during the Second Vatican Council³), a prominent position of *locus theologicus* is held by *sensus fidei fidelium*.⁴ It is difficult not to notice that the famous formulas in which the Vaticanum II fathers used to define our title concept *sensus fidei*: “the whole peoples' supernatural discernment in matters of faith”⁵ and “penetrating understanding of the spiritual realities”⁶ — constitute the context of the significant theological speech in Chapter 2 of the document, bearing a very peculiar title: “Abiding in the Communion of the Church”. In the point entitled “Attention to the *sensus fidelium*” (*nota bene* adroitly located between the following concepts: “Fidelity to Apostolic Tradition” and “Responsible adherence to the ecclesiastical magisterium”) experts explain the quintessence of the conciliar thought: “The subject of faith is the People of God as a whole, which in the power of the Spirit affirms the Word of God. That is why the council declares that the entire people of God participates in the prophetic ministry of Jesus, and that, anointed by the Holy Spirit (cf. 1 John 2:20, 27), it ‘cannot err in matters of belief’ (*Lumen gentium*, n. 12).”⁷

In the development of this thought the authors of the document once again refer to the objective doctrine of the Council — fundamental magisterium (as it was clearly emphasized⁸) for the Catholic theology: “The pastors who guide the People of God, serving its faith, are themselves first of all members of the communion of believers. Therefore *Lumen Gentium* speaks first about the People of God and the *sensus fidei*

² INTERNATIONAL THEOLOGICAL COMMISSION: *Theology today: perspectives, principles and criteria* (2011), nn. 51—58 — http://www.vatican.va/roman_curia/congregations/cfaith/cti_documents/rc_cti_doc_20111129_teologia-oggi_en.html [accessed: 9.01.2018].

³ VATICAN COUNCIL II: *Pastoral Constitution on the Church “Gaudium et spes”* [7.12.1965] [hereinafter: GS], n. 4,1.

⁴ “For theologians *sensus fidelium* is of great importance. It is not only an object of attention and respect, it is also a base and a *locus* for their work.” INTERNATIONAL THEOLOGICAL COMMISSION, *Theology today...*, n. 35.

⁵ VATICAN COUNCIL II: *Dogmatic Constitution on the Church “Lumen gentium”* [21.11.1964] [further: LG], n. 12,1.

⁶ VATICAN COUNCIL II: *Dogmatic Constitution on Divine Revelation “Dei Verbum”* [18.11.1965], n. 8,3.

⁷ INTERNATIONAL THEOLOGICAL COMMISSION: *Theology today...*, n. 33.

⁸ *Ibidem*.

that they have (cf. *Lumen Gentium*, Chapter 2), and then of the bishops (cf. *Lumen Gentium*, Chapter 3) who, through their apostolic succession in the episcopate and the reception of their own specific *charisma veritatis certum* ('sure charism of truth' — cf. *Dei Verbum*, n. 8), constitute, as a college in hierarchical communion with their head, the bishop of Rome and successor of St Peter in the Apostolic See (cf. *Lumen gentium*, nn. 21, 24—25), the Church's magisterium. Likewise, *Dei Verbum* teaches that the Word of God has been 'entrusted to the Church', and refers to the 'entire holy people' adhering to it, before then specifying that the pope and the bishops have the task of authentically interpreting the Word of God (*Dei Verbum*, n. 10)."⁹

This fragment of the International Theological Commission document of 2011 somehow announces the detailed contemplation of the quoted content in the subsequent document of the Commission, this time from 2014 — especially in its two last chapters (Chapter 3: "The *sensus fidei fidelium* in the life of the Church" and Chapter 4: "How to discern authentic manifestations of the *sensus fidei*"). What should be highlighted already in the introduction is that the contextual ecclesiological accents that accompany this new exposition are worth noticing beyond all measures — let us add, convergent with the post-conciliar theologians¹⁰ and canonists¹¹ research work agreements — with a primary (!) emphasis of the pneumatological aspects of the Church (alongside the Christological), invariably in connection with the idea of common priesthood of all followers.¹² And that because of, on the one hand — presenting the role of the Holy Spirit granting unusual and usual charismatic gifts (alongside the hierarchical gifts), on the other hand — presentation of the dynamics of the testimony of faith by the priestly people, permanently "open" to the influence of the Spirit and "signs of

⁹ Ibidem.

¹⁰ See e.g. J. SANCHO BIELSA: *Infalibilidad del pueblo de Dios: Sensus fidei e Infalibilidad organica de la Iglesia en la Constitución Lumen Gentium del Concilio Vaticano II*. Pamplona 1979.

¹¹ See e.g. R. BERTOLINO: "Sensus fidei et coutume dans le droit l'Eglise." *Freiburger Zeitschrift für Philosophie und Theologie* 33 (1986), pp. 227—243.

¹² Cf. INTERNATIONAL THEOLOGICAL COMMISSION: *Sensus fidei...*, nn. 75, 110. Rinaldo Bertolino's remark on the mutual connection of the idea of *sensus fidei* with common priesthood of all followers remains characteristic: "Senza una corretta comprensione del sacerdozio comune dei fedeli non è invero possibile immaginare la partecipazione del cristiano all'ufficio profetico del Cristo e, conseguentemente, fondare una plausibile dottrina del »sensus fidei« dell'intero popolo di Dio." — R. BERTOLINO: *Il nuovo diritto ecclesiale tra coscienza dell'uomo e istituzione. Saggi di diritto costituzionale canonico*. Torino 1989, p. 64.

times” (in this meaning: *sensus fidei fidelium* constitutes a vital resource for the new evangelization¹³).¹⁴

Such is the image that emerges from the passages concerning the *praxis* of life by faith in the Catholic Church — like the one that presents a close connection¹⁵ between *sensus fidei fidelium* and popular piety: “popular piety [...] is the first and most fundamental form of faith’s ‘inculturation’.” Such piety is ‘an ecclesial reality prompted and guided by the Holy Spirit’, by whom the People of God are indeed anointed as a ‘holy priesthood’. It is natural for the priesthood of the people to find expression in a multitude of ways.”¹⁶

In the same theological perspective, in which the discovering of the “signs of times” is invariably inscribed, namely “the discernment of [...] new ways, opened up and illumined by the Holy Spirit,”¹⁷ a thought is being developed by the authors of the document (2014), which infers that “all of the baptized have a *sensus fidei*, and the *sensus fidei* constitutes the most important resource for the new evangelization.”¹⁸ An ecclesiological profile, defined in such a way, is characteristic of the remarks made by the International Theological Commission concerning the “ecumenical aspects of *sensus fidei*.”¹⁹ We can read in the document entitled: “*Sensus fidei* in the life of the Church” that: “The notions, *sensus fidei*, *sensus fidelium*, and *consensus fidelium*, have all been treated, or at least mentioned, in various international dialogues between the Catholic Church and other churches and ecclesial communities. Broadly speaking, there has been agreement in these dialogues that the whole body of the faithful, lay as well as ordained, bears responsibility for maintaining the Church’s apostolic faith and witness, and that each of the baptized, by reason of a divine anointing (1 John 2:20, 27), has the capacity to discern the truth in the matters of faith. There is also general agreement that certain members of the Church exercise a special responsibility of teaching and oversight, but always in collaboration with the rest of the faithful.”²⁰

¹³ INTERNATIONAL THEOLOGICAL COMMISSION: *Sensus fidei...*, n. 2; cf. FRANCIS: *Apostolic Exhortation “Evangelii Gaudium”* [24.11.2013] [hereinafter: EG], nn. 119—120. “The Holy Spirit also enriches the entire evangelizing Church with different charismas. These gifts are meant to renew and build up the Church”. EG, n. 130. “As such a wisdom, principle and instinct, popular religiosity is clearly very closely related to the *sensus fidei*, and needs to be considered carefully [...]”

¹⁴ See e.g. R. BERTOLINO: “Sensus fidei et coutume dans le droit l’Eglise.” *Freiburger Zeitschrift für Philosophie und Theologie* 33 (1986), pp. 227—243.

¹⁵ INTERNATIONAL THEOLOGICAL COMMISSION: *Sensus fidei...*, n. 108.

¹⁶ *Ibidem*, n. 110; cf. EG, nn. 122—126.

¹⁷ INTERNATIONAL THEOLOGICAL COMMISSION: *Sensus fidei...*, n. 127.

¹⁸ *Ibidem*

¹⁹ *Ibidem*, nn. 85—86.

²⁰ *Ibidem*, n. 85. As the authors of the document emphasize, this statement reached consensus during the work of the common committees conducted in the bilateral for-

Indeed, even if the theologians-experts in the analysed document did not decide to deepen the ecclesiological basis of the idea presented in such a way, we can assume that this role is comprehensively fulfilled by the reference (in the footnote)²¹ to the Declaration of Ravenna, prepared in 2007 by the Joint International Commission for the Theological Dialogue between the Roman Catholic Church and the Orthodox Church (alongside the reference to other testimonies concerning the bilateral arrangements between churches). In turn, here — which is explicitly proved by the very title of the declaration (“...Ecclesial Communion, Conciliarity and Authority”)²² — the message is more than clear: the priestly community of God is guided by the Holy Spirit through the common path towards the great communion (“mystery of salvific *koinonia* with the Blessed Trinity”²³). As a result, in the manifold structure of *communio Ecclesiarum*, two — closely connected — spiritual elements are ontically rooted: “synodality” (or “conciliarity”) and “authority”. Both the first and second element are immanently inscribed in the gift of the Holy Spirit — be it through the charisma triggering in the community of God the conciliar joint responsibility for the good of the entire Church community,²⁴

mula, which found expression in particular records of arrangements, e.g. the 2007 Declaration of Ravenna issued by the Joint International Commission for the Theological Dialogue between the Roman Catholic Church and the Orthodox Church: “The whole community and each person in it bears the ‘conscience of the Church’ (*ekklesiastike synoidesis*), as Greek theology calls it, the *sensus fidelium* in Latin terminology. By virtue of Baptism and Confirmation (Chrismation) each member of the Church exercises a form of authority in the Body of Christ. In this sense, all the faithful (and not just the bishops) are responsible for the faith professed at their Baptism. It is our common teaching that the people of God, having received ‘the anointing which comes from the Holy One’ (1 John 2, 20 and 27), in communion with their pastors, cannot err in matters of faith (cfr. John 16, 13).” JOINT INTERNATIONAL COMMISSION FOR THE THEOLOGICAL DIALOGUE BETWEEN THE ROMAN CATHOLIC CHURCH AND THE ORTHODOX CHURCH: *Ecclesiological and Canonical Consequences of the Sacramental Nature of the Church Ecclesial Communion, Conciliarity and Authority*, Ravenna, 13 October 2007, n. 7 — http://www.vatican.va/roman_curia/pontifical_councils/chrstuni/ch_orthodox_docs/rc_pc_chrstuni_doc_20071013_documento-ravenna_en.html [accessed: 9.01.2018].

²¹ INTERNATIONAL THEOLOGICAL COMMISSION: *Sensus fidei...*, n. 85, note 106.

²² JOINT INTERNATIONAL COMMISSION FOR THE THEOLOGICAL DIALOGUE BETWEEN THE ROMAN CATHOLIC CHURCH AND THE ORTHODOX CHURCH: *Ecclesiological and Canonical Consequences...*, n. 2.

²³ *Ibidem*, n. 6.

²⁴ “The Eucharist manifests the Trinitarian *koinônia* actualized in the faithful as an organic unity of several members each of whom has a charisma, a service or a proper ministry, necessary in their variety and diversity for the edification of all in the one ecclesial Body of Christ (cfr. 1 Cor 12, 4—30). All are called, engaged and held accountable — each in a different though no less real manner — in the common accomplishment of the actions which, through the Holy Spirit, make present in the Church the ministry of Christ, ‘the way, the truth and the life’ (John 14, 6).” *Ibidem*.

or through the gift of authority in the Church, which always remains service (*diaconia*) in the community of faith; whereas both the charismatic gifts and the hierarchic gifts converge in the service of the bishop²⁵ realizing in Spirit the fullness of Christ's service: prophet, priest and king (*tria munera Christi*).²⁶

Within this doctrinal context we should analyze the message of the 1993 *Ecumenical Directory*, located in the last, 5th chapter of the document of the Pontifical Council for Promoting Christian Unity entitled. "Ecumenical Cooperation Dialogue and Common Witness" — the message still very topical (!), since not only referring to the concept of the "signs of times,"²⁷ accepted in the conciliar Decree on ecumenism, but connecting this social and theological phenomenon with the once again awakened by the Spirit of Truth *sensus fidei fidelium*: "When the results of a dialogue are considered by proper authorities to be ready for submission for evaluation, the members of the People of God, according to their role or charisma, must be involved in this critical process. The faithful, as a matter of fact, are called to exercise: the supernatural appreciation of the faith (*sensus fidei*) of the whole people, when from the Bishops to the last of the faithful they manifest a universal consent in matters of faith and morals. By this appreciation of the faith, aroused and sustained by the Spirit of truth, the People of God, guided by the sacred teaching authority (*magisterium*), and obeying it, receive not the mere word of men, but truly the Word of God, the faith once for all delivered to the saints. The people unfailingly adhere to this faith, penetrate it more deeply with right judgment, and apply it more fully in daily life."²⁸

²⁵ "All charisms and ministries in the Church converge in unity under the ministry of the bishop, who serves the communion of the local Church. All are called to be renewed by the Holy Spirit in the sacraments and to respond in constant repentance (*metanoia*), so that their communion in truth and charity is ensured." Ibidem, n. 21.

²⁶ Ibidem, n. 19.

²⁷ VATICAN COUNCIL II: *Decree on Ecumenism "Unitatis redintegratio"* [21.11.1964] [further: UR], n. 4; cf. JOHN PAUL II: *Encyclical letter "Ut unum sint"* [25.05.1995] [hereinafter: UUS], n. 8.

²⁸ PONTIFICIUM CONSILIUM AD CHRISTIANORUM UNITATEM FOVENDAM: *Directory for the Application of Principles and Norms on Ecumenism* [25.03.1993] [hereinafter: Directory 1993], n. 179. In turn, in John Paul II's encyclical *Ut unum sint* we read: "While dialogue continues on new subjects or develops at deeper levels, a new task lies before us: that of receiving the results already achieved. These cannot remain the statements of bilateral commissions but must become a common heritage. For this to come about and for the bonds of communion to be thus strengthened, a serious examination needs to be made, which, by different ways and means and at various levels of responsibility, must involve the whole People of God. We are in fact dealing with issues which frequently are matters of faith, and these require universal consent, extending from the Bishops to the lay faithful, all of whom have received the anointing of the Holy Spirit. It is the same Spirit

2. *Sensus fidei* — dynamic principle of creating and developing law

It is difficult not to appreciate the professional effort of theologians (here presented merely in a brief outline), which undoubtedly goes out to meet the contemporary urgent evangelizational needs — according to the paradigm based on Pope Francis' teaching: *sensus fidei fidelium* constitutes a vital resource for the new evangelization²⁹ or the revival (charismatic) and constructing the Church *communio*³⁰; however, will it fulfill its objective sufficiently enough?

In order to clearly realize the meaning of the research conducted by the International Theological Commission (the most recent ones, but also the previous ones, spanning altogether one decade of the new millennium), we need to compare the results of these works with the previous opinions of reputable experts in this subject matter, theologians of Vaticanum II: Yves Congar — from time to time quoted in the document from 2014,³¹ and Wolfgang Beinert. In their speeches, delivered in the previous century, both of them^{32 33}

who assists the Magisterium and awakens the *sensus fidei*. Consequently, for the outcome of dialogue to be received, there is needed a broad and precise critical process which analyzes the results and rigorously tests their consistency with the Tradition of faith received from the Apostles and lived out in the community of believers gathered around the Bishop, their legitimate Pastor." UUS, no. 80.

²⁹ EG, nn. 119—120.

³⁰ EG, no. 130.

³¹ The Commission justly attributes the influence on the development of the Catholic doctrine concerning the *sensus fidei* to this outstanding theologian: "Yves M.-J. Congar (1904—1995) contributed significantly to the development of the doctrine of the *sensus fidei fidelis* and the *sensus fidei fidelium*. In *Jalons pour une Théologie du Laïcat* (orig. 1953), he explored this doctrine in terms of the participation of the laity in the Church's prophetic function. Congar was acquainted with Newman's work and adopted the same scheme (i.e. the threefold office of the Church, and the *sensus fidelium* as an expression of the prophetic office) without, however, tracing it directly to Newman. He described the *sensus fidelium* as a gift of the Holy Spirit 'given to the hierarchy and the whole body of the faithful together', and he distinguished the objective reality of faith (which constitutes the tradition) from the subjective aspect, the grace of faith. Where earlier authors had underlined the distinction between the *Ecclesia docens* and the *Ecclesia discens*, Congar was concerned to show their organic unity. 'The Church loving and believing, that is, the body of the faithful, is infallible in the living possession of the faith, not in a particular act or judgment', he wrote. The teaching of the hierarchy is at the service of communion." INTERNATIONAL THEOLOGICAL COMMISSION: *Sensus fidei...*, no. 43.

³² Y. CONGAR: "La 'reception' comme réalite ecclésiologique." *Revue des sciences philosophiques et théologiques* 56 (1972), pp. 369—403.

³³ W. BEINERT: *Die Rezeption und ihre Bedeutung für Leben und Lehre der Kirche*. In: *Glaube als Zustimmung. Zur Interpretation kirchlicher Rezeptionsvorgänge*. Ed. IDEM. Freiburg 1991, pp. 15—49.

pointed towards a lack of consistency in the process of reception of *Lumen gentium*, coherent with the implications of the renewed ecclesiology (*communio* ecclesiology), first and foremost in a failure to adapt the idea of *sensus fidelium*; expressing at the same time opinion about an extraordinary timeliness of this postulate.

Next to the voice of theologians (what is worth mentioning also Protestant³⁴), the drawback of the lack of transplanting the teaching of the no. 12 of *Lumen gentium* (with the key concept of *sensus fidei*) onto the legal plane was strongly emphasized by such canonists as Ilona Riedel-Spangenberg,³⁵ Norbert Lüdecke,³⁶ or the author of the monograph entitled *Sensus fidei fidelium...* Christoph Ohly.³⁷ However, the most resounding was the standpoint of Sabine Demel, who in the very title of her study from 2004³⁸ — where the author took up the topic yet again³⁹ —

³⁴ See e.g. M. PLATHOW: *Unabgeholtenes: Seelsorge und Recht im Pontifikat Johannes Paul II.* In: *Glaubigkeit und Recht und Freiheit. Ökumenische Perspektiven des katholischen Kirchenrechts.* Ed. W. BOCK. Göttingen 2006, pp. 93—95.

³⁵ I. RIEDEL-SPANGENBERGER: *Der Verkündigungsdienst (munus docendi) der Kirche und der Glaubenssinn des Volkes Gottes (sensus fidelium).* In: *Wege der Evangelisierung. Heinz Feilzer zum 65. Geburtstag.* Ed. A. HEINZ, W. LENTZEN-DEIS, E. SCHNECK. Trier 1993, pp. 203—204.

³⁶ N. LÜDECKE: *Die Grundnormen des katholischen Lehrrechts in den päpstlichen Gesetzbüchern und neuen Äußerungen in päpstlicher Autorität* [Forschungen zur Kirchenrechtswissenschaft. Eds. H. MÜLLER, R. WEIGAND. Vol. 28]. Würzburg 1997, pp. 160—161, 299—302. The canonist places his critical remarks concerning the content of can. 750 CIC within the context of the question about the legal relevance of *sensus fidei*. He believes that in the course of the reform the crucial content of the canon in preparation — worked out in can. 56 of 1969 *Schema "Legis Ecclesiae Fundamental"* — was lost, in the shape that would be in harmony with the teaching of LG 12: "[Der can. 750 — A.P.] ist das Überbleibsel eines ursprünglich vorgesehenen Canons über den Anteil des Gottesvolkes am prophetischen Amt Christi, über die Unfehlbarkeit der Gesamtheit der Gläubigen im Glauben und über den Glaubenssinn, den das Gottesvolk unter der Führung des heiligen Lehramts ausübt. Die Streichung dieses Canons im Laufe der Reform belegt, dass der Gesetzgeber im Lehrrecht als dem Bereich, in dem grundsätzlichen Aussagen zum *sensus fidei* anzusiedeln wären, diese für positiv-rechtliche Ordnung der Kirche nicht rezipiert hat. Dieser Verzicht ist konsequent, denn er wahrt eindeutig die im Titel des dritten Buchs signalisierte Perspektive aus der Sicht des hierarchischen Lehramts." N. LÜDECKE: *Die Grundnormen des katholischen Lehrrechts...*, pp. 300—301.

³⁷ CH. OHLY: *Sensus fidei fidelium. Zur Einordnung des Glaubenssinnes aller Gläubigen in die Communio-Struktur der Kirche im geschichtlichen Spiegel dogmatisch-kanonistischer Erkenntnisse und der Aussagen des II. Vaticanum.* St. Ottilien 2000; cf. IDEM: "Der Glaubenssinn der Gläubigen. Ekklesiologische Anmerkungen zum Verständnis eines oft mißverstandenen Phänomens im Beziehungsverhältnis von Dogmatik und Kanonistik." *Archiv für katholisches Kirchenrecht* 168 (1999), pp. 51—82.

³⁸ S. DEMEL: "Dringender Handlungsbedarf. Der Glaubenssinn des Gottesvolkes und seine rechtliche Umsetzung." *Herder Korrespondenz* 58 (2004), pp. 618—623.

³⁹ S. DEMEL: *Mitmachen — Mitreden — Mitbestimmen. Grundlagen, Möglichkeiten und Grenzen in der katholischen Kirche.* Regensburg 2001, pp. 19—28.

announced an “urgent need to act” (“Dringender Handlungsbedarf”) in the subject of introducing the idea of *sensus fidei* of the People of God into the canon law.

Mainly two factors decide about the power of reasoning of the stance of the German study of canon law. The first one is an immediate reference to the “signs of times.”⁴⁰ The second one, primarily, deftly connects the conciliar ideas of *sensus fidei fidelium* and the true equality of all members of the People of God, and secondly, affirms the ecclesiological paradigm of the conciliar exercising of *potestas sacra* (within *tria munera Christi*),⁴¹ according to which the common priesthood of all followers is ontic and functionally first-order in relation to ministerial priesthood of ordained people⁴² — elevates even higher the constructiveness of the opening thesis of the mentioned study. An unquestionable value of this study are — comprehensively depicted (also using Christoph Ohly’s suggestion) clear conclusions *de lege ferenda* towards a normative strengthening in the subject scope of the conciliar responsibility of secular followers — so conducting a real transformation, onto the language of law, the conciliar teaching about the supernatural sense of faith of the entire People of God⁴³ — through appropriate amendments in Can. 747, Can. 212 § 1, Can. 208—223.⁴⁴

⁴⁰ S. DEMEL: “Dringender Handlungsbedarf...,” pp. 618—619.

⁴¹ See P. KRÄMER: *Dienst und Vollmacht in der Kirche. Eine rechtstheologische Untersuchung zur Sacra Potestas-Lehre des II. Vatikanischen Konzils* [Trierer Theologisches Studien, vol. 28]. Trier 1973; E. CORECCO: *Sinodalità e partecipazione nell’esercizio della “potestas sacra”*. In: *Esercizio del potere e prassi della consultazione*. Atti dell’VIII Colloquio internazionale romanistico-canonistico (10-12 maggio 1990). Eds. A. CIANI, G. DIURNI. Città del Vaticano 1991, pp. 69—89; L. GEROSA: *Vollmacht und Gemeinschaft in der Kirche*. In: *Krönung oder Entwertung des Konzils? Das Verfassungsrecht der katholischen Kirche im Spiegel der Ekklesiologie des Zweiten Vatikanischen Konzils*. Eds. S. DEMEL, L. MÜLLER. Trier 2007, pp. 39—55.

⁴² “Die Frage, die gestellt werden muss, lautet: [...] Ist die Hierarchie Grundlage der Gemeinschaft, so dass Gemeinschaft aus der Verbundenheit mit der Hierarchie und damit aus einem Rechtsverhältnis besteht? Oder ist die Gemeinschaft Grundlage der Hierarchie, so dass Hierarchie in der der Gemeinschaft eine Funktion erfüllt: sie steht in ihrem Dienst. Diese Alternative ist kein akademisches Problem. Im einen Fall steht die Hierarchie über allem, im anderen bildet sie einen Teil des Ganzen. *Lumen gentium* ist in Aufbau und Aussage eindeutig. Die Hierarchie ist Teil des Volkes Gottes und leistet in ihm ihren Dienst. E. KLINGER: Die dogmatische Konstitution über die Kirche *Lumen gentium*.” In: *Vierzig Jahre II. Vatikanum. Zur Wirkungsgeschichte der Konzilstexte*. Eds. F.X. BISCHOF, S. LEIMGRUBER. Würzburg 2004, p. 89; cf. E. CORECCO, *Sinodalità e partecipazione*, p. 85; S. DEMEL, L. MÜLLER: *Einführung*. In: *Krönung oder Entwertung des Konzils?...*, p. 15.

⁴³ LG, no. 12,1.

⁴⁴ S. DEMEL: “Dringender Handlungsbedarf...,” pp. 621—622.

However, the significance of the primary ecclesiological assumptions made by the canonist can hardly be overlooked. As we will live to see, the emphasized “new accents”⁴⁵ concerning the common priesthood and the *sensus fidei fidelium* in the teaching of Vaticanum II — with an essential reach out for the model of the People of God and the structural principle of *communio* in revealing the mystery of the Church — open a wider horizon for the presentation of the basis of the creation, interpretation, application and observance of law. This follows the rule — obvious for the ecclesiastically-oriented canonist — that at any of the mentioned stages of Church’s legal practice *modus iuridicus* cannot become separated from its theological basis. Sabine Demel suggests a way of resolving the tension in the Church and its law between the community (here: protection of the faith community, especially the authenticity of the redemptive means: word and sacrament) and an individual (here: protection of the realization of subjective rights)⁴⁶ — through strengthening the synodal dimension of the Church: pneumatological and charismatic (*pneumatologisch-charismatische Dimension*), on a par with the still dominating in ontic and structural depictions *Ecclesiae et ius Ecclesiae* Christological and hierarchical dimension (*christologisch-amtliche Dimension*). Both dimensions, fundamental in the same way — indeed, ecclesologically inseparable — plead an equal theological-pastoral and canonical application.⁴⁷

Within this point the observations of the German canonist remain convergent with Remigiusz Sobański’s⁴⁸ standpoint, conceptualized in his speech during the Roman Symposium in 1993, on the 10th anniversary of promulgation of CIC, entitled *Charisma et norma canonica* — an important lecture, illuminating the relation between charismas and Church legislation. The author, affirming the above delineated synodal perspective, concludes: “It is of paramount importance that the Church law and its legal practice harmonize with the mission, entrusted to it by Christ and bearing fruit owing to the Holy Spirit. Here we touch upon the most fundamental concepts of contemporary study of canon law boiling down to the fact that the appropriate gifts of the Holy Spirit were given to both the

⁴⁵ S. DEMEL: *Mitmachen — Mitreden — Mitbestimmen...*, p. 19.

⁴⁶ Cf. R. SOBAŃSKI: “*Omnis institutio ecclesiasticarum legum ad salutem referenda sit animarum*. Uwagi o zbawieniu dusz jako celu prawa kościelnego.” *Ateneum Kapłańskie* 134 (2000), pp. 212—213.

⁴⁷ S. DEMEL: “Dringender Handlungsbedarf...,” p. 619.

⁴⁸ “The canonical contemplation cannot be separated from the ecclesiological basis, which includes not only the christological, but also the pneumatological aspects of the Church.” R. SOBAŃSKI: *Charisma et norma canonica*. In: *Ius in vita et in missione Ecclesiae. Acta symposii internationalis Iuris Canonici occurrente X anniversario promulgationis Codicis Iuris Canonici diebus 19—24 aprilis 1993 in Civitate Vaticana celebrati*. Città del Vaticano 1994, p. 89.

shepherds announcing and constituting law, as well as the addressees of their acts. The scope of the issues connected with it spreads from the very concept of Church act through the importance of the acceptance of law in the Church, to the implementation of a canonical norm in a particular case. If the canonical contemplation of these concepts is not to miss the genuine reality of the Church they cannot go without taking into consideration its pneumatological aspects.”⁴⁹

It is worth reminding today the twenty-five-years old, yet still very topical, ideas of the mentioned prominent Polish canonist, who deliberately connects the synodal paradigm: optimal realization of Church’s goal and its *ius* (in the complex depiction of the issues of creating, interpreting, applying and observing the Church law) with stress on the creative role of charismas and the sense of faith of the People of God (*sensus fidelium*).⁵⁰ Such a methodological approach is manifested by the author when he concentrates his attention on three key subjects: profound exposure to customary law, Church “movements” and associations (namely: clear emanation of bottom-up legislative processes) and on the structures of shared responsibility (with a heavily underscored postulate of activation of secular followers in the synodal processes: representation and consultancy). What is more, the exemplary (!) steps of the further reasoning referred to in the titles of the subsequent points: “The Positive Divine Law should be considered within the context of the granted grace” [*Ius divinum positivum in contextu gratiae elargitae conspiciendum*],⁵¹ “The articulation of the Divine Law is conducted under the influence of the Holy Spirit” [*Ius divinum sub ductu Spiritus articulatur*],⁵² “The Church Law is shaped under the influence of the Holy Spirit in contact with the legal culture” [*Ius Ecclesiae efformatur ‘Spiritu Sancto suggerente’ in nexu cum cultura iuridica mundi*]⁵³ — lead to a topical proclamation: given the gifts of the Holy Spirit every member of the People of God — a Christian, whose inalienable attributes are human dignity and freedom in Christ — is a subject (not an object!) of the Church Law. Since the Holy Spirit,

⁴⁹ Ibidem, p. 82.

⁵⁰ Ibidem, pp. 76—80.

⁵¹ Ibidem, p. 80. “St. Thomas does not hesitate to call the new law, so the Law of Christ, the grace of the Holy Spirit given to the followers. To highlight the positive Law of God the following expressions are crucial: ‘the law of grace’ (John 1:17), ‘the law of faith’ (Romans 3:27), ‘the law of the Spirit who gives life’ (Roman 8:2), perfect law, the law of freedom (James 1:25). They express the fact that the imperativeness of the positive Law of God is justified by the redemptive will of Christ and vocation contained in the given grace.” Ibidem.

⁵² Ibidem, p. 81.

⁵³ Ibidem, p. 82.

by the means of charismas, consecrates and leads all People of God⁵⁴ and the followers have the sense of faith (*sensus fidei fidelium*) together and in community with their shepherd,⁵⁵ then it cannot remain without influence on the contemporary perception of the Church and *ius Ecclesiae*.⁵⁶

In the same way that in 1994 Libero Gerosa, another prominent experts in this field, asked — we may think: rhetorically — whether the canon law is a synodal law,⁵⁷ also today — equally justifiably — we can pose a question whether *sensus fidei fidelium* is the meaning of the Church law. Especially when we notice in the “sense of the faith” a dynamic principle of creating and developing law.⁵⁸ In such a broadened perspective it is obvious that “the Church law is rooted stronger in the order of faith, not only because of the source (legislator and at the same time teacher of faith), but primarily because of the constitutive meaning of religious practice and ethical behaviour as a testimony of faith to which the Church is called.”⁵⁹

⁵⁴ LG, no. 12,2.

⁵⁵ LG, no. 12,1.

⁵⁶ “The Church seen through the eyes of a legal scholar is no different from the one that we say we belong to in *Credo* and nothing that is included in *credo Ecclesiae* is indifferent for the Church law. It comprises both hierarchic and charismatic aspects. ‘There exists among all the Christian faithful a true equality regarding dignity and action’ (can. 208), they are given the gifts of the Holy Spirit that constitute the basis of their position in the Church and is the source of their rights. In the same way that the awareness of subjectivity of followers was not shaped in isolation from the social and cultural context, the legal culture of the World in which the Church functions inspires the role of Church law in the protection of this subjectivity. Moreover, in the same way human freedom became the topic of secular law, the freedom of a Christian, strengthened in the dignity of a person and gifts of the Holy Spirit, became the topic of the Church law.” R. SOBAŃSKI: *Charisma et norma canonica...*, p. 83.

⁵⁷ L. GEROSA: *Rechtstheologische Grundlagen der Synodalität in der Kirche. Einleitende Erwägungen*. In: *Iuri Canonici Promovendo. Festschrift für Heribert Schmitz*. Eds. W. AYMANS, K.-TH. GERINGER. Regensburg 1994, pp. 54—55; L. GEROSA: *Gesetzesauslegung im Kirchenrecht. Anregungen und Zukunftsperspektiven für die katholische Kanonistik*. Münster 1999, p. 202.

⁵⁸ “Im kirchlichen Rechtssystem ist die Gesetzgebung als Weg zur Schaffung kirchlicher Rechtsnormen nicht ein einseitiger, sondern dialogischer und gemeinschaftlicher Vorgang, weil er das Volk Gottes als Ganzes einbegreift. Und das gilt auch in technischer Hinsicht. Zum einen ist nämlich mit der Promulgation eines kanonischen Gesetzes der Gesetzgebungsvorgang der Kirche noch nicht abgeschlossen, weil — wenn auch nicht im konstitutiven, aber doch in einem juristisch irgendwie bedeutsamen Sinn — die positive Antwort der betroffenen kirchlichen Gemeinschaft, die *receptio legis* hinzukommen muss. Zum anderen beginnt ein Gesetzgebungsvorgang, der in die Promulgation mündet, mit der Festlegung der Inhalte des kanonischen Gesetzes, die, auch wenn sie sich außerhalb der synodalen Strukturen vollzieht, nie vom *sensus fidei* des ganzen Gottesvolkes völlig absehen darf.” L. GEROSA, *Gesetzesauslegung im Kirchenrecht...*, p. 123.

⁵⁹ R. SOBAŃSKI: *Charisma et norma canonica...*, p. 90.

3. “Ecumenical aspects of the *sensus fidei*” — a canonist’s approach

In the document of International Theological Commission from 2014, in the above mentioned segment “Ecumenical aspects of the *sensus fidei*” — “in the context of the ecumenical dialogue to which the Catholic Church is irrevocably committed”⁶⁰ — two questions, reaching the very foundation of this dialogue, were formulated. The first one: “Should only those doctrines which gain the common consent of all Christians be regarded as expressing the *sensus fidelium* and therefore as true and binding?”⁶¹ The answer comes without undue delay: “This proposal goes against the Catholic Church’s faith and practice. By means of dialogue, Catholic theologians and those of other traditions seek to secure agreement on Church-dividing questions, but the Catholic participants cannot suspend their commitment to the Catholic Church’s own established doctrines.”

The second question is to some extent the continuation of the first one: “Should separated Christians be understood as participating in and contributing to the *sensus fidelium* in some manner?” Theologians-experts have no doubts: “The answer here is undoubtedly in the affirmative. The Catholic Church acknowledges that ‘many elements of sanctification and truth’ (*Lumen gentium*, n. 8) are to be found outside its own visible bounds, that ‘certain features of the Christian mystery have at times been more effectively emphasized’ in other communities (*Ut unum sint*, n. 14), and that ecumenical dialogue helps it to deepen and clarify its own understanding of the Gospel.”⁶²

As we can see, the impulse for the formulation of the significant theological and dogmatical statement by the Catholic theologians is the truth about ecumenical dialogue, which according to the 1993 ED is situated in the very heart of cooperation⁶³ of Christian Churches and church com-

⁶⁰ INTERNATIONAL THEOLOGICAL COMMISSION: *Sensus fidei*..., no. 86.

⁶¹ *Ibidem*, no. 86.

⁶² *Ibidem*. “How many important things unite us! If we really believe in the abundantly free working of the Holy Spirit, we can learn so much from one another! It is not just about being better informed about others, but rather about reaping what the Spirit has sown in them, which is also meant to be a gift for us. To give but one example, in the dialogue with our Orthodox brothers and sisters, we Catholics have the opportunity to learn more about the meaning of Episcopal collegiality and their experience of synodality. Through an exchange of gifts, the Spirit can lead us ever more fully into truth and goodness.” EG, no. 246.

⁶³ Directory 1993, no. 172.

munities, aimed at — as St. John Paul II taught in the *Ut unum sint* encyclical — overcoming divisions, reconciliation, getting closer to the unity in truth,⁶⁴ but also the “exchange of gifts.”⁶⁵ In the *Evangelii gaudium* encyclical, referring to the context of charismas, Pope Francis goes on with this thought: “How many important things unite us! If we really believe in the abundantly free working of the Holy Spirit, we can learn so much from one another!”⁶⁶ And earlier on the pope notices: “The credibility of the Christian message would be much greater if Christians could overcome their divisions and the Church could realize ‘the fullness of catholicity proper to her [the Church] in those of her children who, though joined to her by baptism, are yet separated from full communion with her’ (*Unitatis redintegratio*, n. 4.).”⁶⁷

That is how we achieve — already on the legal and canonical plane — the possibility of verifying on the elementary (we can say: ontic) level the previously formulated hypotheses suggesting that the canon law is a synodal law and *sensus fidei fidelium* is the meaning of this law; let us add — adopting the supposition that the legal structure of the Church cannot take into account the universal (!) service of redemption, according to the unquestionable paradigm: “the law of the Church is the law of freedom.”⁶⁸

Yet another argument is supplied by a highly esteemed expert Helmut Pree, who in a well known study entitled *Kirchenrecht in der Ökumene*, in reference to the constitutive event of baptism,⁶⁹ methodically justifies that ecumenism is not only a moral but also a legal obligation. An obligation to answer Christ’s commandment: “all of them may be one”⁷⁰ — divided ecclesial communities, as well as the followers that belong to them, simply owe it to one another! What we mean here is the responsibility of the entire Christ’s Church, all Christians — intensive multi-plane striving for, by the means of a real dialogue, unity in truth — for uniting in *communio*. In a word, the unity of the Church constitutes — in relations between the partners of ecumenical dialogue

⁶⁴ UUS, no. 29.

⁶⁵ UUS, no. 28.

⁶⁶ EG, no. 246.

⁶⁷ EG, no. 244.

⁶⁸ See A. PASTWA: “The Law of the Church — the Law of Freedom.” *Ecumeny and Law* 4 (2016), pp. 110—119.

⁶⁹ Cf. *Codex Iuris Canonici* (Code of Canon Law, promulgated: 25.01.1983) [hereinafter: CIC], can. 96, can. 204 § 1, can. 205, can. 849; *Codex Canonum Ecclesiarum Orientalium* (Code of Canons of the Eastern Churches, promulgated: 18.10.1990) [hereinafter: CCEO], can. 7 § 1, can. 8, can. 675 § 1.

⁷⁰ John 17:11.

(institutional, personal)⁷¹ — *res iusta, ex iustitia* so a mutual legal obligation.⁷²

A serious approach to unity in Christ as the quintessence of the event of the first sacrament,⁷³ and at the same time applying to the general legal principles regarding ecumenism,⁷⁴ determines a deeper glance at the content of the elementary obligation of all the baptized, formulated in Can. 209 CIC.⁷⁵ As far as the canon directly refers to the relation of a follower-Catholic with the Catholic Church, the ecumenical perspective suggests a significantly wider application horizon of this law, spanning the entire Church of Jesus Christ.⁷⁶ Indeed constructing — according to the paradigm: the gift of the Holy Spirit and the obligation of the baptized — every ecclesial community, also incomplete, constitutes the construction of Christ's Church.⁷⁷ Therefore, we can boldly say that in this perspective the mentioned obligation assumes the proportions of a universal Christian duty (*ökumenische Grundpflicht*).⁷⁸

The thought of the prominent professor from Munich to some extent culminates when he, referring *implicite* to *sensus fidei fidelium*, gives expression of his belief that results directly from the event of baptism, the elementary obligation of the baptized and their churches, looking

⁷¹ The Code of Canon Law stipulates that the significant responsibility of “supporting the ecumenical movement and managing it among Catholics,” is first and foremost the competence of the College of Bishops and the Holy See (CIC, can. 755 § 1). Not less important within this context is the competence — preserving the hierarchical order — of Episcopal conferences and bishops, who working according to regulations published by the highest Church authority, are entitled to issue practical norms of ecumenical activity (CIC, can. 755 § 2; cfr. CCEO, can. 904 § 1).

⁷² H. PREE: *Kirchenrecht in der Ökumene*. In: *Dienst an Glaube und Recht. Festschrift für Georg May zum 80. Geburtstag*. Eds. A. EGLER, W. REES. Berlin 2006, p. 530.

⁷³ “Baptism [...] establishes a sacramental bond of unity.” UR, no. 22.

⁷⁴ Here we should completely agree with Helmut Pree's opinion, who concludes: “Folgende rechtliche Prinzipien lassen sich schon nach einer ersten Bestandsaufnahme ökumenischer Dokumente festhalten: (-) Verbot des Proselytismus vgl. DH 4; cc. 31, 905, 1465 CCEO; (-) vorbehaltlose Respektierung der Gewissensfreiheit des Dialogpartners: DH passim; AG 13; cc. 586 und 905 CCEO; c. 748 § 2 CIC; (-) das Dialogprinzip (c. 905 CCEO); gegenseitige Anerkennung der fundamentalen Gleichheit der Gesprächspartner als rechtliche Gleichheit [...]; (-) *gegenseitige Anerkennung der iusta autonomia der beteiligten Dialogpartner*.” H. PREE: *Kirchenrecht in der Ökumene...*, pp. 529—530.

⁷⁵ CIC, can. 209 § 1: “The Christian faithful, even in their own manner of acting, are always obliged to maintain communion with the Church”; cf. CCEO, can. 12 § 1.

⁷⁶ H. PREE: *Kirchenrecht in der Ökumene...*, p. 531.

⁷⁷ Cf. R. SOBAŃSKI: *Ökumenismus und Verwirklichung der Grundrechte der Getauften*. In: *Les Droits Fondamentaux du Chrétien dans l'Eglise et dans la Société*. Actes du IV^e e Congrès International de Droit Canonique, Fribourg 6—11.X.1980. Eds. CORECCO EUGENIO, HERZOG NIKLAS, SCOLA ANGELO. Fribourg—Freiburg—Milano 1981, p. 730.

⁷⁸ H. PREE: *Kirchenrecht in der Ökumene...*, p. 531.

together (*gemeinsam*) for the truth.⁷⁹ It seems just to refer here to the words of Can. 748 § 1: “All persons are bound to seek the truth in those things which regard God and his Church [...]” According to the canonist, the content of this universal (ecumenical) legal obligation of the baptized and their communities is possible to be formalized in the following way: together look for the truth in the way of a real dialogue,⁸⁰ with the implementation of various forms of exchange and communication — with a frequently useful usage of the means of Church legislation.⁸¹

It is difficult not to notice within this context the inspirational words of Pope Francis, who goes on with the previously quoted thought in *Evangelii gaudium*: “[Learning from one another] is not just about being better informed about others, but rather about reaping what the Spirit has sown in them, which is also meant to be a gift for us. To give but one example, in the dialogue with our Orthodox brothers and sisters, we Catholics have the opportunity to learn more about the meaning of Episcopal collegiality and their experience of synodality. Through an exchange of gifts, the Spirit can lead us ever more fully into truth and goodness.”⁸²

Not forgetting the rule that *sensus fidei fidelium* constitutes (potentially) the meaning of the law of a given ecclesial community neither the truth about the universal intersystem implication of the event of baptism (“sacramental bond of unity”⁸³), it is worth appreciating the profundity of the quoted magisterium. Above all it is visible to what extent the papal statement meets the needs of the canonists’ postulates emphasizing the contemporary significance of the pneumatological and charismatic dimension of the Church with the leading idea of synodality — in its key aspects: representation and consultancy. Regarding the first aspect, what seems really constructive is the remark delivered by Libero Gerosa. He reminds us that the members of various Church councils, although chosen, are not representatives of a parliamentary character, but followers (witnesses), who were chosen to testify about their faith and support — “according to the knowledge, competence, and prestige which they possess”⁸⁴ — the Christian faithful, who are referring to the holy orders and *missio canonica* wields power in the same Church community.⁸⁵

⁷⁹ CIC, can. 748 § 1: “All persons are bound to seek the truth in those things which regard God and his Church and by virtue of divine law are bound by the obligation and possess the right of embracing and observing the truth which they have come to know.”

⁸⁰ Cf. DE, nn. 172—182, UUS, nn. 28—32.

⁸¹ H. PREE: *Kirchenrecht in der Ökumene...*, p. 529.

⁸² EG, no. 246.

⁸³ UR, no. 22.

⁸⁴ CIC, can. 212 § 3; CCEO, can. 15 § 3.

⁸⁵ L. GEROSA: *Gesetzesauslegung im Kirchenrecht...*, p. 181.

When it comes to the second aspect, canonists⁸⁶ emphasize the possibility and necessity of further developing the consultancy forms in the Church. This, among others, with an indication towards the crucial content modifications, which the legislator (John Paul II) decided to introduce in the norm of Can. 934 CCEO,⁸⁷ in relation to the analogous norms — from seven years ago — Can. 127 CIC.⁸⁸ It is clearly visible that the conducted change means: generally speaking — strengthening of the obligation incumbent on the authority to accept consent and advice, and precisely speaking — strengthening of the obligation to supply the followers

⁸⁶ See E. GÜTHOFF: *Consensus und consilium in c. 127 CIC/1983 und c. 934 CCEO*. Würzburg 1994; S. BERLINGÒ: *Consensus, Consilium (cc. 127 C.I.C/934 C.C.E.O.) e l'esercizio della potestà ecclesiastica. Ius Canonicum* 75 (1998), pp. 87—118; L. GEROSA: *Gesetzesauslegung im Kirchenrecht...*, pp. 149—151.

⁸⁷ CCEO, can. 934: “§ 1. When the law determines that in order to place a juridical act a superior requires the consent or counsel of a group of persons, the group must be convoked according to the norm of can. 948, unless particular law provides otherwise for cases stated in that law when counsel only is to be sought; however, for such a juridical act to be valid it is required that the consent of an absolute majority of those present be obtained or that the counsel of all who are present be sought, taking into account 2, n. 3. § 2. When the law determines that a superior in order to place certain acts requires the consent or the counsel of certain persons as individuals: if consent is required, the action of the superior is invalid if the superior does not seek the consent of those persons or acts contrary to the opinion of the persons or person (n. 1); if counsel is required, the action of the superior is invalid if the superior does not consult to those persons (n. 2); although in no way obliged to accede to their recommendation, even if it be unanimous, nevertheless the superior should not act contrary to it, especially when there is a consensus, unless there be a reason which, in the superior’s judgment, is overriding (n. 3). § 3. The authority which requires consent or counsel has the duty to provide those whose consent or counsel is required with the necessary information and to see that in every way they have freedom to speak their mind. § 4. All whose consent or counsel is required are obliged to offer their opinion sincerely observing secrecy, and this obligation can be insisted upon by the authority.”

⁸⁸ CIC, can. 127: “§ 1. When it is established by law that in order to place acts a superior needs the consent or counsel of some college or group of persons, the college or group must be convoked according to the norm of can. 166 unless, when it concerns seeking counsel only, particular or proper law provides otherwise. For such acts to be valid, however, it is required that the consent of an absolute majority of those present is obtained or that the counsel of all is sought. § 2. When it is established by law that in order to place acts a superior needs the consent or counsel of certain persons as individuals: if consent is required, the act of a superior who does not seek the consent of those persons or who acts contrary to the opinion of all or any of them is invalid (n. 1); if counsel is required, the act of a superior who does not hear those persons is invalid; although not obliged to accept their opinion even if unanimous, a superior is nonetheless not to act contrary to that opinion, especially if unanimous, without a reason which is overriding in the superior’s judgment (n. 2). § 3. All whose consent or counsel is required are obliged to offer their opinion sincerely and, if the gravity of the affair requires it, to observe secrecy diligently; moreover, the superior can insist upon this obligation.”

who provide consulting with essential information and protection of the right to voice opinion regarding a topic.

The given emblematic example strengthens us in conviction that *sensus fidei fidelium* constitutes the system *locus theologicus* while constituting law in a Church community. It concerns the issue of optimization of the conditions of realization of the fundamental rights of Christian faithful (taking into account the common good of the Church⁸⁹), worth affirmation and promotion in the same way as the bottom-up processes of customary-law creation.⁹⁰ Indeed, what we are facing here is strengthening consultancy as a typical instrument of *ius Ecclesiae* — invaluable vehicle of realization of the synodality principle in the Church. So if all the followers who constitute a community with their shepherd have the sense of faith (*sensus fidei*), then the expression of obedience to the Holy Spirit⁹¹ will be making sure by the legislator-shepherd (leading the entire community) in the own law of the given community that the optimal conditions of consultancy and other acts of synodal shared responsibility are secured.

Conclusions

Two documents of the International Theological Commission from 2011 and 2014 will constitute — as it was attempted to present — an important source of inspiration for undertaking further objective research in the areas of ecclesiology, ecumenical theology and canon law. The latter area will be the field of a particularly detailed contemplation of the question whether *sensus fidei fidelium* is the meaning of the Church law. Indeed, with the awareness that the legal structure of the Church cannot take into account the universal service of redemption, according to the unquestionable paradigm: the Church law is the law of freedom.

We can hope that the results of this research, open to the “exchange of gifts” in the ecumenical dialogue, will positively influence the intensification of the pastoral efforts of the entire People of God, guided by the Holy Spirit along the ways of faith revival — in an indefatigable evangelization and construction of Church *communio*. In such a way the fundamental point of reference for the supposition, formulated in the first

⁸⁹ CIC, can. 223 § 1; CCEO, 26 § 1.

⁹⁰ Cf. R. BERTOLINO: *Il nuovo diritto ecclesiale...*, pp. 56—57.

⁹¹ Cf. LG, 12,1—2.

part of the study is shaped. The supposition suggests that time will tell whether the ten-year-long research conducted by the council of theologians on the issue of *sensus fidei fidelium* in the life of the Church — having many points in common with the vital issue of Church synodality — fulfilled their task sufficiently enough.

In the conclusion it is worth referring to a well known statement delivered by Cardinal Kurt Koch. This authority in the area of Catholic dogmatic theology, the chair of the Pontifical Council for Promoting Christian Unity since 2010 (closely investigating the “synodal component of the Church legislation” remaining in a “close connection with the personal principle of Church pastoral responsibility”) concludes that what is currently embedded in synodality as an institutional expression of *communio Ecclesiae Ecclesiarum* is a great potential to a further development of Church law and canonical institutions. “Indeed, it is exactly in a consistent revival of the synodal principle in a specific Church environment and in its legalizing that the answer to the sudden pressing needs of a moment lies, an answer which is capable of introducing a correction of the contemporary calling — very often too general, so incapable of conducting distinction — for a wider democratization in the Church, since, first of all, the theological synodality renders much more than the secular democracy, and secondly principles standardizing Church life should have a theological and not international nature.”⁹²

We can surmise that similar subject matter arguments are concealed behind the enthusiastic statements of the Chair of the Pontifical Council, after recent announcing in Chieti by the Joint International Commission for the Theological Dialogue between the Roman Catholic Church and the Orthodox Church of the mutual document entitled: “Synodality and Primacy during the First Millennium: towards a Common Understanding in Service to the Unity of the Church”⁹³; a document in which one really meaningful statement comes up into the foreground: “Synodality is a fundamental quality of the Church as a whole.”⁹⁴

⁹² K. KOCH: *Nachwort*. In: L. GEROSA: *Gesetzesauslegung im Kirchenrecht...*, p. 207.

⁹³ JOINT INTERNATIONAL COMMISSION FOR THE THEOLOGICAL DIALOGUE BETWEEN THE ROMAN CATHOLIC CHURCH AND THE ORTHODOX CHURCH: *Synodality and Primacy during the First Millennium: towards a Common Understanding in Service to the Unity of the Church*, Chieti, 21 September 2016 — http://www.vatican.va/roman_curia/pontifical_councils/chrstuni/ch_orthodox_docs/rc_pc_chrstuni_doc_20160921_synodality-primacy_en.html [accessed: 9.01.2018]; K. KOCH: *Wichtiger Schritt im Dialog mit Orthodoxie* — <https://www.onetz.de/regensburg/politik/kardinal-kurt-koch-wichtiger-schritt-im-dialog-mit-orthodoxie-d1698920.html> [accessed: 9.01.2018].

⁹⁴ JOINT INTERNATIONAL COMMISSION FOR THE THEOLOGICAL DIALOGUE BETWEEN THE ROMAN CATHOLIC CHURCH AND THE ORTHODOX CHURCH: *Synodality and Primacy...*, n. 3.

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ANDRZEJ PASTWA

Sensus fidei fidelium. Réflexion juridique et œcuménique

Résumé

Deux documents de la Commission théologique internationale de 2011 et 2014 constituent une source d’inspiration importante pour entreprendre des travaux de recherches importants dans les domaines de l’ecclésiologie, de la théologie œcuménique

et du droit canonique. Dans ce dernier domaine est située — comme on a essayé de prouver dans le présent article — une question actuellement relevante, à savoir si *sensus fidei fidelium* est le sens du droit canonique. Bien évidemment, mais avec la conscience que la structure juridique de l'Église ne peut pas ne pas prendre en considération le service universel du salut, conformément au paradigme incontestable: le droit de l'Église est le droit de la liberté. On peut espérer que les résultats des études ainsi « programmées », enclines à accepter les « échanges de dons » dans le dialogue œcuménique, influenceront positivement l'intensification des efforts pastoraux du Peuple de Dieu tout entier, conduit par le Saint-Esprit à travers les voies du renouvellement de la foi — dans une évangélisation infatigable et la formation de *communio* ecclésiastique. Le temps montrera si les études, durant depuis une décennie, de la commission des théologiens sur la problématique *sensus fidei fidelium* dans la vie de l'Église — ayant beaucoup de points communs avec la problématique de la synodalité ecclésiastique — ont réalisé leur tâche à un degré satisfaisant.

Mots-clés: *sensus fidei*, signes du temps, ecclésiologie *communio*, droit de l'Église, synodalité, œcuménisme

ANDRZEJ PASTWA

Il *Sensus fidei fidelium*. Riflessione giuridica ed ecumenica

Sommario

Due documenti della Commissione Teologica Internazionale del 2011 e del 2014 costituiscono una fonte di ispirazione importante per intraprendere rilevanti attività di ricerca nei campi dell'ecclésiologia, della teologia ecumenica e del diritto canonico. In quest'ultimo campo è collocata — come si è cercato di dimostrare nel presente studio — la questione rilevante nei tempi contemporanei: il *sensus fidei fidelium* è il senso del diritto ecclésiastico? Certamente, con la consapevolezza che la struttura giuridica della Chiesa non può non tener conto dell'opera universale di redenzione, secondo il paradigma indiscusso che recita che la legge della Chiesa è la legge della libertà. Si può sperare che i risultati delle ricerche così “programmate”, aperte allo “scambio di doni” nel dialogo ecumenico, influiscano in modo positivo sull'intensificazione degli impegni pastorali dell'intero Popolo di Dio, guidato dallo Spirito Santo lungo le vie del rinnovamento della fede — nell'infaticabile evangelizzazione e nell'edificazione della *communio* ecclésiastica. Il tempo dimostrerà se gli studi della commissione di teologi, in corso da un decennio, sulla problematica del *sensus fidei fidelium* nella vita della Chiesa — che ha molti punti comuni con la problematica altrettanto nodale della sinodalità ecclésiastica — avranno espletato in misura soddisfacente il loro compito.

Parole chiave: *sensus fidei*, segni dei tempi, ecclésiologia, *communio*, diritto della Chiesa, sinodalità, ecumenismo