

Marcin Kołodziej

Liturgia semper reformanda

Adaptations and accommodations in the liturgy
in light of canon 838 of the *Code of Canon Law*



Eastern and Central European Voices

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List of abbreviations

AAS	“Acta Apostolice Sedis”, https://www.vatican.va/archive/aas/index_ge.htm [accessed: 25.09.2024]
AG	Second Vatican Council, Decree on the Missionary Activity of the Church <i>Ad gentes divinitus</i>
art.	article/articles
can.	canon/canons (of the <i>Code of Canon Law</i>)
ca	circa, about
CCL	<i>Code of Canon Law</i> of 1983
CCL/17	<i>Code of Canon Law</i> of 1917
col.	column
CP	Consilium for Constitution on Liturgy, <i>Instruction Comme le prévoit sur la traduction des textes liturgiques pour la celebration avec le peuple / Comme le Prévoit. On the translation of liturgical texts for celebrations with a Congregation</i> (25.01.1969)
CT	“Collectanea Theologica”, Lwów 1931–1939; Warszawa 1949/1950–
d.	died (with dates)
ds.	do spraw [for matters]
GIRM	<i>General Instruction of the Roman Missal</i>
GS	Second Vatican Council, Pastoral Constitution <i>Gaudium et spes</i>
IGMR	<i>Institutio Generalis Missalis Romani</i>
kan.	kanon [canon]
KEP	Konferencja Episkopatu Polski [The Polish Episcopal Conference]
KKPK I	<i>Komentarz do Kodeksu prawa kanonicznego. Księga I. Normy ogólne</i> , vol. 1, ed. J. Krukowski, Poznań 2003
KKPK II	<i>Komentarz do Kodeksu prawa kanonicznego. Księga II. Lud Boży</i> , vol. 2/1, ed. J. Krukowski, Poznań 2005
KKPK IV	<i>Komentarz do Kodeksu prawa kanonicznego. Księga IV. Uświęcające zadanie Kościoła</i> , vol. 3/2, ed. J. Krukowski, Poznań 2011
KPKK	<i>Kodeks prawa kanonicznego. Komentarz</i> , ed. P. Majer, Kraków 2011
LA	Congregation for Divine Worship and the Discipline of the Sacraments, <i>Instructio quinta Liturgiam authenticam de usu linguarum popularium in libris liturgiae romanae edendis / Fifth instruction Liturgiam authenticam on the use of vernacular languages in the publication of the books of the Roman Liturgy</i> (28.03.2001)
LG	Second Vatican Council, Dogmatic Constitution <i>Lumen gentium</i>
LitS	“Liturgia Sacra”, Opole 1995–
LL	B. Nadolski, <i>Leksykon liturgii</i> , Poznań 2006

MP	Francis, <i>Apostolic letter motu proprio Magnum principium by which can. 838 of the Code of Canon Law is modified</i> (3.09.2017)
OB	<i>Obrzędy bierzmowania dostosowane do zwyczajów diecezji polskich [Rites of Confirmation Adapted to the Customs of the Polish Dioceses]</i> , Katowice 2019
OBP	<i>Ordo baptismi parvulorum</i> , Libreria Editrice Vaticana 1986
OCD	<i>Obrzędy chrztu dzieci dostosowane do zwyczajów diecezji polskich [Rites of Baptism of Children Adapted to the Customs of the Polish Dioceses]</i> , Katowice 2014
OCWD	<i>Obrzędy chrześcijańskiego wtajemniczenia dorosłych dostosowane do zwyczajów diecezji polskich [Rites of Christian Initiation of Adults Adapted to the Customs of the Polish Dioceses]</i> , Katowice 1988
OKD	<i>Obrzędy konsekracji dziewic [Rites of Consecration of Virgins]</i> , Katowice 2001
OPKiO	<i>Obrzędy poświęcenia kościoła i ołtarza [Rites of Consecration of the Church and Altar]</i> , Katowice 2006
OPok	<i>Obrzędy pokuty dostosowane do zwyczajów diecezji polskich [Rite of Penance Adapted to the Customs of the Polish Dioceses]</i> , Katowice 2002
OPZ	<i>Obrzędy profesji zakonnej [Rite of Religious Profession]</i> , Katowice 2015
OSBPiD	<i>Obrzędy święceń biskupa, prezbiterów i diakonów [The Rites of Ordination of Bishops, Priests and Deacons]</i> , Katowice 2019
OSM	<i>Obrzędy sakramentu małżeństwa dostosowane do zwyczajów diecezji polskich [The Rites of the Sacrament of Marriage Adapted to the Customs of the Polish Dioceses]</i> , Katowice 2005
OT	Second Vatican Council, Decree on Priestly Training <i>Optatam totius</i>
OULiA	<i>Obrzędy ustanowienia lektorów i akolitów oraz przyjęcia kandydatów do diakonatu i prezbiteratu [Rites of Institution of Lectors and Acolytes and the Admission of Candidates to the Diaconate and Priesthood]</i> , Katowice 2014
PE	Francis, Apostolic constitution <i>Praedicate Evangelium</i> (19.03.2022)
PK	“Prawo Kanoniczne”, Warszawa 1958–
PL	J.P. Migne, <i>Patrologiae cursus completus. Series Latina</i> , Paris–Montrouge 1844–1864
Prot. N.	numero di protocollo [the protocol number]
PS	<i>Prawo sakramentów. Wybór źródeł Kościoła łacińskiego</i> , ed. E. Szczot, D. Kwiatkowski, W. Lech, Lublin 2019
RBL	“Ruch Biblijny i Liturgiczny”, Kraków 1948–
RdM	<i>Rito del matrimonio</i> , Roma 2008
RiL	“Rivista Liturgica”, Torino 1914/1915–
RS	Congregation for Divine Worship and the Discipline of the Sacraments, <i>Instructio Redemptionis sacramentum de quibusdam observandis et vitandis circa sanctissimam Eucharistiam [Instruction Redemptionis sacramentum</i>

on certain matters to be observed or to be avoided regarding the Most Holy Eucharist] (25.03.2004)

- SC Second Vatican Council, Liturgical Constitution *Sacrosanctum Concilium*
- VL Congregation for Divine Worship and the Discipline of the Sacraments, *Instructio quarta Varietates legitimae de liturgia romana et inculturatione* [*Varietates legitimae: Inculturation and the Roman Liturgy*] (25.01.1994)
- WPT “Wrocławski Przegląd Teologiczny”, Wrocław 1993–

Introduction

The liturgy constitutes a space for a special encounter between theology and law. Even if it seems to some that it should be limited only to a purely mystical dimension, because it is seen as a special kind of prayer, *in fact* its shape is precisely defined by the norms of canon law. Among the many tasks of the Church – as the legislator has pointed out – the *munus sanctificandi* is fulfilled above all in the celebration of the liturgy, as the realisation of the priestly office of Jesus Christ – “through perceptible signs the sanctification of man is expressed and in a manner appropriate to the individual signs is effected, and the mystical Body of Jesus Christ, that is, the Head and the members, performs the full public worship of God” (can. 834 § 1 CCL).

If we are talking about worship performed in the name of the Church, it must be performed by persons legitimately designated to do so and “through acts approved by the authority of the Church” (can. 834 § 2 CCL).¹

The framework of the current law relating to the liturgy and the celebration of the sacraments was defined at the Second Vatican Council, and the fruit of the reflection undertaken at that time became the Constitution on the Sacred Liturgy *Sacrosanctum Concilium*. The definition of the cultic actions outlined then – shaped *de facto* over the centuries – made it possible to see in every liturgical celebration the special action of Christ the Priest and His Body, i.e. the Church (SC 7). If the first author of worship is Jesus Christ, and its aim is the worship of God and sanctification of man, then the celebration of liturgy cannot be only an arbitrary action of the priest who performs it or of a particular group of believers, but “is a sacred action surpassing all others; no other action of the Church can equal its efficacy by the same title and to the same degree” (SC 7).²

Since the liturgy is an expression of the Church’s faith (*Catechism of the Catholic Church* 1124), it therefore had to become the focus of the law it defined. The norms enshrined in the conciliar constitution *Sacrosanctum Concilium* found their materialisation in the 1983 *Code of Canon Law*. According to the legislator, this body of law can be understood as a great conveyor, transferring the conciliar ecclesiological doctrine into canonical language. This code expresses the concern of all bishops for the Church. It is the fruit of collegial coop-

1 P. Consorti, *Diritto canonico, teologia e liturgia. Sulla riforma del Can. 838 in forza del Magnum principium per cui la preghiera liturgica deve essere capita dal popolo*, “Veritas et Jus” 15 (2017), p. 131–132.

2 B. Nadolski, *Wprowadzenie do liturgii*, Kraków 2004, p. 20; J. Nowak, *Prawo w służbie wydarzeń zbawczych. Zarys prawodawstwa liturgicznego*, Poznań 2004, p. 20.

eration and has come about as a result of the efforts of expert people and institutions. It also reflects the long heritage of the law, which is contained in the books of the Old and New Testaments. From them derives – as if from its source – the whole legal and legislative tradition of the Church.³

A critical appraisal of the 1983 *Code of Canon Law* must also take into account the objective observation that not every norm defined and contained therein accurately reflected the *sensus Ecclesiae* of the authors and participants of the Second Vatican Council. For this reason, in the past years there has been no lack of endeavours on the part of the supreme legislator to make the necessary corrections to certain code norms. This was also the case with can. 838 of the *Code of Canon Law*, the content of which was defined in a somewhat deformed way in relation to the principia previously adopted in the Constitution *Sacrosanctum Concilium*. This universal council wanted to restore liturgical prayer in the Church in such a way that, properly adapted to the mentality of the people, it could be truly understood by them. It was therefore indispensable to entrust the local conferences of bishops with the task of introducing the national language into the liturgy and of preparing and approving appropriate versions of the liturgical books. The process of cooperation between the Holy See and the conferences of bishops was not always without its difficulties, and successive changes to the rules did not in all cases prove appropriate. Therefore, as Pope Francis (2013–2025) expressed in his apostolic letter *motu proprio Magnum principium*, appropriate changes had to be made to make the cooperation between the two entities more efficient and fruitful in serving the faithful. Thus, by virtue of the aforementioned document of 3 September 2017, the wording of can. 838 of the *Code of Canon Law* was modified in order to

according to what is stated in the Constitution *Sacrosanctum Concilium*, in particular in art. 36 § 3–4, 40 and 63, and in the apostolic letter *motu proprio Sacram liturgiam*, art. IX, the competency of the Apostolic See surrounding the translation of liturgical books and the more radical adaptations established and approved by the conferences of bishops be made clearer, among which can also be numbered eventual new texts to be inserted into these books.⁴

The provisions contained in can. 838 of the *Code of Canon Law* address important issues relating to adaptations and accommodations of liturgical law. They

3 John Paul II, *Apostolic constitution Sacrae disciplinae leges promulgated on the occasion of the introduction of the new Code of Canon Law* (25.01.1983); T. Pawluk, *Prawo kanoniczne według Kodeksu Jana Pawła II. Zagadnienia wstępne i normy ogólne*, vol. 1, Olsztyn 1985, p. 122; M. Kołodziej, *Prawo liturgiczne Kościoła łacińskiego*, Wrocław 2019, p. 22.

4 MP; P. Consorti, *Diritto canonico, teologia e liturgia*, p. 135–136.

have always been a subject of careful and constant interest on the part of the Church, in order not only to preserve the essential unity of the Roman Rite (SC 38), but also to improve the common encounter of people with God, which should take place, of course, through prayer, but through adapted symbols and signs and an appropriate language of communication (SC 39–40).⁵ Such important issues for the life of the Church deserve an in-depth canonical reflection. Therefore, this publication will address the topic of adaptation and accommodation in the liturgy in the light of can. 838 of the *Code of Canon Law*.

The basic sources in exemplifying the thesis set forth in the theme of the study are the current documents of the Church with the *Code of Canon Law* at the forefront and those legal acts which have an impact on the shape of the liturgical norms analysed. These include, above all, papal documents and of the relevant dicasteries of the Roman Curia, along with liturgical books, which are not only a collection of texts but also of legal norms. Some documents and liturgical books of the Church, which are available in the Polish language version, were deliberately included in the bibliographical list also in Latin because it was necessary to use them in the course of the topic in order to – especially in the study relating to translations – show the weakness of the Polish translation in some issues. Of course, it would not have been possible to deal adequately with the topic without citing historical sources, which at the same time help to understand how the understanding of adaptation and accommodation was shaped in Church law. In addition to the sources, this dissertation takes into account the most recent Polish and foreign-language publications on canon law studies and those pertaining to other areas of theology. These include publications by such recognised foreign authors as Juan Ignacio Arrieta, Anscar Javier Chupungco, Bruno Esposito, Gianfranco Ghirlanda, Javier Hervada, John M. Huels, Agostino Montan, Javier Otaduy, Tomás Rincón-Pérez, Eloy Tejero, Pedro Juan Viladrich. On the other hand, among Polish artists, we can mention: Franciszek Bączkowicz, Ginter Dzierżon, Wojciech Góralski, Zbigniew Janczewski, Czesław Krakowiak, Józef Krukowski, Józef Krzywda, Piotr Majer, Jacek Nowak, Remigiusz Sobański, Henryk Stawniak.

In order to explore the topic presented in this paper, several methods of scientific research have been used, which are also characteristic of canon law studies. Thus, the rules of the critical-inductive method were taken into account. A consideration of particular concepts was undertaken in order to justify the necessity of addressing certain problems. Internal source criticism was then applied in order to correctly analyse the source texts used in terms of their useful-

5 G. Incitti, *Magnum principium: per una migliore mutua collaborazione tra Curia Romana e Conferenze episcopali*, "Notitiae" 53 (2017), no. 2, p. 113.

ness for illustrating the issue. The analytical method contributed to elaborate the problem of the work on the basis of the research carried out by other authors together with their achievements within the framework of the subject undertaken. Finally, the synthetic method allowed – after the necessary analysis – to express one's own position in the context of the presented issue and became an aid to the formulation of relevant conclusions. Advantage was also taken of the rules characteristic of the historical-legal method, which allowed for the inclusion of a proper hermeneutic and the application of a canonical interpretation of the issue under analysis.

In order to accomplish the objectives set in this study, adaptations and accommodations of liturgical law will be presented in four chapters.

In the first chapter, the presentation will consider introductory issues relating to the problematic aspects of liturgical law. In order to properly show how to understand the legal norms issued in the field of liturgy, it is necessary first to outline the definition of liturgical law in the first paragraph. To do so, it is necessary to present this law in historical terms, dividing it into the formation of the relevant rules in Christian antiquity, followed by an indication of the legal norms agreed upon in modern times. Then, by looking synthetically at the individual books in the 1983 *Code of Canon Law*, the liturgical norms that are to be identified as the actual law of the Church will be shown. This range of considerations will culminate in identifying the nature and purpose of liturgical law. Then, in the second paragraph, the presentation will consider the sources of liturgical law. These can be divided into the sources of the origin, or existence of the law (*fons existendi*), referred to as internal or material sources, and the sources of the cognition of the law (*fons cognoscendi*), in turn referred to as external or formal sources. The sources of the existence of liturgical law are: The Holy See, the diocesan bishop, and the conference of bishops. On the other hand, the following can be regarded as sources of knowledge of the law: liturgical books, documents of the Holy See and particular liturgical law. The source of canon law is also legal custom, which will be discussed in terms of liturgical regulations at the end of this chapter.

The second chapter will introduce the concepts of adaptation and accommodations in canon law. In the first paragraph, the relationship between adaptations and accommodations of liturgical law will be defined, which will initiate a discussion of the terminology specific to these two issues. Arriving at today's understanding of adaptation and accommodations was preceded by terms such as incarnation, indigenisation, contextualisation, and revision. These terms will serve as a proper introduction to show the historical and cultural dimensions of adaptation and accommodation. This will be followed by a discussion of the relevant articles from the Constitution *Sacrosanctum Concilium*, which is considered to be the *magna carta* of adaptation and accommodation of liturgical law.

The commentary on the conciliar constitution on the liturgy will include a statement of the general principles of adaptation (SC 37), followed by the first level of adaptation (SC 38–39) and finally the second level of adaptation (SC 40). The synthesis of this presentation will show the differences between the adaptations and accommodations in question. The second paragraph dealing with the impact of inculturation on liturgical law making will begin by presenting a definition of culture and its relationship to religion and law. This will be followed by a closer look at the essence of inculturation. In order to do so, it will first be necessary to present inculturation in ecclesiastical law, which alludes, firstly, to its encounter with Roman and Germanic law and, secondly, ultimately allows us to see canon law in the Church referred to as the sacrament of salvation. Within the framework of the presentation of this issue, inculturation will be juxtaposed with *ius divinum*, and finally shown in a practical aspect when discussing models of liturgical inculturation: the method of dynamic equivalence, creative adaptation, and organic progression.

In the third chapter, a presentation of the legal regulations on adaptation and accommodation will be made. First will be the principle of adapted liturgical prayer. In order to explain where such a term originated and what it consists of, the documents of the Church shaping the current understanding of adaptation and accommodation after the Second Vatican Council will be presented. For this purpose, the Constitution on the Sacred Liturgy *Sacrosanctum Concilium*, the apostolic letter *motu proprio Sacram liturgiam*, the instruction *Comme le prévoit*, the instruction *Varietates legitimae* and the instruction *Liturgiam authenticam* will need to be discussed. The second paragraph of the third chapter will become a commentary on can. 838 § 1–4 of the *Code of Canon Law*, presented in the light of the apostolic letter *motu proprio Magnum principium*. It will begin with a presentation on the question in which key Pope Francis' letter is to be properly interpreted. This will be followed by a presentation of the drafting process of the juridical norm under analysis, with an explanation of what content has been preserved in the norm and what content has been changed on the basis of *Magnum principium*. This presentation will contain a detailed discussion of can. 838 § 2–3 of the *Code of Canon Law*, with a definition of the legal status of *recognitio* and *confirmatio* as important concepts in canonical tradition and liturgical law.

The fourth chapter will focus on adaptations and accommodations inherent in canon law practice. It is impossible to present – due to the limitations caused by the proper methodology – all aspects of the concepts in question, therefore in the first paragraph only some adaptations and accommodations will be discussed, and only on the example of selected Polish liturgical books. For the purpose of exemplification, reference will be made to the rites of infant baptism, confirmation and marriage. The presentation will deal separately first with adap-

tations in the proper rites, and then with the accommodations allowed there. A presentation of exemplary irregularities in adaptation and accommodations, presented in the second paragraph, can be seen as a suitable complement to both the last chapter and the entire study. To this end, attention will first be drawn to the need to revise certain adaptations. And here it will concern above all: the correct translation *pro multis* in the national missals, the rite of penance while celebrating Mass at the same time and the signing of the formula of religious profession on the altar. And then a critical assessment will be presented against the use of accommodations that violate the norms of liturgical law, which include: celebrating the Eucharist outside the sacred place, abusing the administration of Holy Communion under both forms and blessing the faithful during the distribution of Holy Communion.

The present study certainly does not perfectly exhaust the issues outlined in the theme of the work, although it does discuss the scope of adaptation and accommodation of liturgical law based on the provisions expressed in can. 838 of the *Code of Canon Law*. The study as a whole – and especially the fourth chapter – does not escape the practical implications in terms of canon law. The conclusions arising from the analysis are intended to contribute to a deeper understanding of the nature of adaptation and accommodation of liturgical law. Any difficulties that have arisen in the elaboration of the issue, on the other hand, are due to the fact that the reality described here is dynamic and subject to continuous development.

1. Liturgical law – preliminary issues

The liturgy – as defined in *Sacrosanctum Concilium* – is

an exercise of the priestly office of Jesus Christ. In the liturgy the sanctification of the man is signified by signs perceptible to the senses, and is effected in a way which corresponds with each of these signs; in the liturgy the whole public worship is performed by the Mystical Body of Jesus Christ, that is, by the Head and His members (SC 7).

This peculiar definition, based largely on the contents of Pius XII's (1939–1958) encyclical *Mediator Dei* of 20 November 1947,¹ implies that the liturgy is the official and total public worship of the Church.² Since this is so, it is at the same time the essential content of the Tradition of the Church (*ius traditum*).³ The creator of the worship in question is Jesus Christ Himself, and the purpose of this worship is to worship God and to sanctify people.⁴ For this reason, the liturgy cannot be regarded merely as an arbitrary action of the priest who performs it with a particular group of the faithful, but must be treated as “a sacred action surpassing all others” (SC 7), through which the nature and faith of the whole Church is expressed.⁵

In view of the above, in describing the sacred liturgy one should not stop only at the spiritual or aesthetic aspect, but point to its essential legal dimension.⁶ St Luke in the Acts of the Apostles makes the valuable observation that they all stood and “devoted themselves with one accord to prayer, together with some women, and Mary the mother of Jesus, and his brothers” (Acts 1:14). This, as it were, forced the Church to be constantly concerned about the proper – that is, valid and dignified⁷ – celebration of the liturgy, which invariably, at every stage

1 Pius XII, *Litterae encyclicae Mediator Dei de sacra liturgia* (20.11.1947), AAS 39 (1947), p. 521–595.

2 Ibid., no. 20, p. 528; M. Pastuszko, *Wprowadzenie do kanoniczno-liturgicznego prawa o sakramentach świętych (kanony 834–839)*, PK 35 (1992), no. 3–4, p. 99.

3 Benedict XVI, *Address to participants in the Congress promoted by the Pontifical Athenaeum of Saint Anselm on the 50th anniversary of foundation* (6.05.2011).

4 J. Nowak, *Prawo w służbie wydarzeń zbawczych*, p. 20.

5 M. Kołodziej, *Prawo liturgiczne Kościoła łacińskiego*, p. 21–22.

6 R.K. Seasoltz, *Liturgy and Ecclesiastical Law: Some Canonical and Pastoral Challenges*, “Jurist” 70 (2010), p. 122–123; J.M. Pommaries, *Le droit en liturgie: un compagnon incommode ou une aide indispensable?*, “Notitiae” 32 (1996), no. 4, p. 216–217.

7 M. Pastuszko, *Wprowadzenie do kanoniczno-liturgicznego prawa o sakramentach świętych (kanony 834–839)*, p. 120.

of history, is to be the *signum unitatis* of this community. It was therefore necessary to specify in the Church's legislature the section previously referred to as the law of the sacraments (*ius sacramentale*),⁸ and now increasingly in the literature as liturgical law (*ius liturgicum*).⁹

1.1 Definition of liturgical law

Although *omnis definitio in iure periculosa est*, general elements that would serve to describe the issue at question can and should be given. Miroslav Konštanc Adam postulated: liturgical law should stand first among canonical norms because it protects the reality of the most sacred in the Church.¹⁰ Agostino Montan defined it as a set of rules governing the liturgy.¹¹ Stawniak, on the other hand, pointed out that the purpose of liturgical law is to authoritatively protect what is immutable in the liturgy, while at the same time ensuring that elements that do not correspond to its intrinsic nature do not creep into the variable parts of the liturgy.

Furthermore, the role of liturgical law is to renew the texts and rites so that they more clearly express and realise the sacred mysteries of which they are a sign, and so that the faithful can more easily understand them and participate in them in a full, active, and fruitful way.¹²

8 I. Grabowski, *Prawo kanoniczne*, Warszawa 1948, p. 305; M. Pastuszko, *Wprowadzenie do kanoniczno-liturgicznego prawa o sakramentach świętych (kanony 834–839)*, p. 85–86; L. Adamowicz, *Wprowadzenie do prawa o Sakramentach Świętych według Kodeksu prawa kanonicznego i Kodeksu kanonów Kościołów Wschodnich*, Lublin 1999, p. 22.

9 J.M. Pommares, *Le droit en liturgie*, p. 217–218; M. Rivella, *Il rapporto fra il Codice di diritto canonico e diritto liturgico*, "Quaderni di Diritto Ecclesiale" 8 (1995), no. 2, p. 194; C.J. Errazuriz, *L'intrinseca doverosità liturgica e giuridica del culto ecclesiale*, [in:] *Diritto e norma della liturgia*, ed. E. Baura, M. Del Pozzo, Milano 2016, p. 31–32; Ł. Korporowicz, *Prawo liturgiczne Kościoła łacińskiego a Kodeks prawa kanonicznego z 1983 roku. Wybrane zagadnienia*, "Studia Prawno-Ekonomiczne" 91 (2014), no. 1, p. 24.

10 M.K. Adam, *Aspekty kanoniczno-prawne nowej ewangelizacji*, Wrocław 2013, p. 13.

11 A. Montan, *Liturgia – Iniziazione cristiana – Eucaristia – Penitenza – Unzione degli infermi – Ordine (cann. 834–1054)*, [in:] *Il diritto nel mistero della Chiesa. La funzione di santificare della Chiesa. I beni temporali della Chiesa. Le sanzioni nella Chiesa. I processi – Chiesa e comunità politica (Libri IV, V, VI, VII del Codice)*, vol. 3, ed. Gruppo Italiano Docenti di Diritto Canonico, Roma 1992, p. 20.

12 H. Stawniak, *Służebna rola przepisów prawno-liturgicznych*, "Seminare" 19 (2003), p. 77–78.

The term ‘liturgical law’ – in the opinion of Montan – is still causing controversy.¹³ Indeed, there are authors who use the term with exaggerated rigour, considering this area of the canonical order as necessary to specify the laws and norms that discipline the liturgical life of the Church.¹⁴ However, there is no shortage of those who, in turn, regard the term as inappropriate, ambiguous and even anachronistic. They suggest that the term ‘liturgical law’ is the result of a positivist conception of the juridical order. It unnecessarily fetters the liturgy, in which the primacy of freedom and greater independence should prevail. Advocates of the latter conception assume that liturgical regulations in general are necessary, but should not be part of canon law because they do not constitute it in its literal sense.¹⁵ However, there is no shortage of authors who are able to reconcile both views and advocate a coherent system of liturgical norms and regulations¹⁶ that on the one hand helps to understand the need to protect what is most sacred in the Church and on the other hand takes into account the essence of Christian worship.¹⁷

1.1.1 Liturgical law in historical aspect

Since the *actio liturgica* is not a private act, but the official and public worship of the whole Church (SC 26), it is difficult not to agree with the postulate derived from the definition of liturgical law that the reality of the liturgy should be authoritatively protected.¹⁸ This is a necessity whose confirmation can be found in the long practice of the Church. The need for principles of liturgical law was awakened not only when liturgical discipline seemed to be in crisis in its history, but already in the functioning of the first ecclesial communities. Just as liturgy and law were from the beginning part of Revelation, so too, one may venture to say, liturgical law was consequently the nucleus of the later development of canon law.¹⁹

13 A. Montan, *Il “diritto liturgico”: significato e interpretazioni*, RiL 98 (2011), no. 5, p. 741.

14 R. Pascual Dotro, G. Garcia Helder, *Dizionario di liturgia*, Padova 2011, p. 55.

15 M. Del Pozzo, *Dal diritto liturgico alla dimensione giuridica delle cose sacre: una proposta di metodo, di contenuto e di comunicazione interdisciplinare*, “Ius Ecclesiae” 19 (2007), no. 3, p. 591–592, 605.

16 A. Cuva, *Diritto liturgico*, [in:] *Liturgia*, ed. D. Sartore, A.M. Triacca, C. Cibien, Cinisello Balsamo–Milano 2001, p. 574.

17 A. Montan, *Il “diritto liturgico”*, p. 741–742; M. Kołodziej, *Prawo liturgiczne Kościoła łacińskiego*, p. 28–29.

18 M. Sitarz, *Słownik prawa kanonicznego*, Warszawa 2004, p. 137.

19 Ł. Korporowicz, *Prawo liturgiczne Kościoła łacińskiego a Kodeks prawa kanonicznego z 1983 roku*, p. 24.

1.1.1.1 The period of Christian antiquity

The first elements of Christian liturgical law were already contained in Scripture. At the root of this law, of course, is the action of Jesus Christ himself, who – by introducing worship in spirit and truth in the New Testament (John 4:24) – specified the general indications relating to baptism or the Eucharist. In sending out his disciples, he commanded them to go and make disciples of all nations, “baptising them in the name of the Father and of the Son and of the Holy Spirit” (Matt 28:19). By contrast, in instituting the Eucharist, “he took the bread, said the blessing, broke it, and gave it to them, saying, ‘This is my body, which will be given for you; do this in memory of me’. And likewise the cup after they had eaten, saying, ‘This cup is the new covenant in my blood, which will be shed for you’” (Luke 22:19–20).²⁰

There are many passages in Scripture, as Bruno Esposito has pointed out, which testify to the apostles’ exercise of jurisdiction over Christian worship. Of course, at that time it was not yet possible to speak of liturgical law in today’s sense, but there is no doubt that the way in which the liturgy was celebrated under the leadership of the apostles constituted a point of reference for the regulations that were then being created in this matter.²¹ This is why the disciples of Jesus Christ, when forming the first Christian communities, reminded what the criteria for the authenticity of the Church were: to devote themselves “to the teaching of the apostles and to the communal life, to the breaking of the bread and to the prayers” (Acts 2:42). St Paul, too, in his letters, gave instructions to his addressees to accept his counsels, precepts and prohibitions, since he only communicated to them what he himself had received from the Lord (1 Cor 11:23). And the author of the Letter to the Hebrews pointed out from the outset that it was unworthy of Christians to leave religious assemblies, since these are a prelude to a second encounter with God (Heb 10:25).²²

In the creation of liturgical law – as Montan reminded us – custom had a special place. It will be discussed in more detail in the second paragraph of this chapter, devoted to the sources of law. However, already at this point it should be noted that a juridical custom derives its normative force from the community that introduces it, since, firstly, it is capable of accepting it and, secondly, it accepts it with the intention that it should ultimately become a law in force

20 A. Montan, *Liturgia – Iniziazione cristiana – Eucaristia – Penitenza – Unzione degli infermi – Ordine* (cann. 834–1054), p. 24.

21 B. Esposito, *Il rapporto del Codice di Diritto canonico latino con le leggi liturgiche. Commento esegetico-sistematico al Can. 2 del CIC/83*, “*Angelicum*” 82 (2005), p. 142.

22 J. Nowak, *Prawo w służbie wydarzeń zbawczych*, p. 29–30; M. Kołodziej, *Prawo liturgiczne Kościoła łacińskiego*, p. 44–45.

(can. 25 CCL).²³ The remark above is all the more important here because the early Christians did not commence the communal life from the creation of legal norms. These arose later. And most often they were a response to difficulties of a practical nature. Before there was a legal norm, there were customs, which were first handed down through oral tradition and eventually formulated in writing, contributing to the creation of legislative collections. One such body of law is the *Didache*, written between 70 and 150 AD. Among other things, it contains instructions on catechesis prior to baptism and the reception of new members into the community of the Church, on the use of so-called *living water* in baptism, on the observance of fasts on Wednesdays and Fridays, on the saying of the *Our Father* three times a day, and on the need to gather for Mass on Sundays. Since at that time there was no practice of dividing the books into liturgical and disciplinary ones, the *Didache* also contains comments on the structure of the Eucharist and passages which form the first Eucharistic prayers.²⁴

In addition to the *Didache*, St Justin's (100–165) *Apology* of 150 is also worthy of note. From it, one can derive the rules relating to neophytes and the principles ordering the manner in which Holy Communion is distributed during the liturgy and brought to those who are absent. The first centuries of Christianity were a period of improvisation in the liturgy. Texts and prayer formulas depended on the officiating priest. This is confirmed by St Justin's indications in the *Apologia*. The author, describing the rite of giving thanks to God for the gifts, pointed out that during the rite, the superior said as many prayers "as he could" (*ose dynamis auto*).²⁵ Permission to improvise in the liturgy was also granted in a document written around 220, entitled *Apostolic Tradition*, which, in addition to the text of the Eucharistic Prayer contained therein, indicated that it was not necessary to repeat the same words over and over again during the Mass, since the presider of the liturgy could improvise according to his skills.²⁶

With the recognition of Christianity as an accepted religion (313) and then as a state religion (381), there was a need for more legislation in the area of law relating to the sacraments. The reason for this was the ever-increasing number of

23 A. Montan, *Liturgia – Iniziazione cristiana – Eucaristia – Penitenza – Unzione degli infermi – Ordine (cann. 834–1054)*, p. 21–22.

24 J. Nowak, *Prawo w służbie wydarzeń zbawczych*, p. 30–31; Ł. Korporowicz, *Prawo liturgiczne Kościoła łacińskiego a Kodeks prawa kanonicznego z 1983 roku*, p. 26; M. Kołodziej, *Prawo liturgiczne Kościoła łacińskiego*, p. 45.

25 Justin Martyr, *Apologia I* 67,5, [in:] A. Hänggi, I. Pahl, *Prex eucharistica*, vol. 12, Fribourg 1968, p. 70; J. Nowak, *Prawo w służbie wydarzeń zbawczych*, p. 31.

26 Hippolytus, *Prex eucharistica in "Traditione apostolica"*, [in:] A. Hänggi, I. Pahl, *Prex eucharistica*, vol. 12, p. 80, J. Nowak, *Prawo w służbie wydarzeń zbawczych*, p. 31; M. Kołodziej, *Prawo liturgiczne Kościoła łacińskiego*, p. 45–46.

Christians, and the celebration of the liturgy no longer by bishops alone, but also by presbyters. This, in turn, gave rise to the need to shape appropriate rules relating to the proper and precise formulation of prayers. It was then that the process of separating liturgical norms from disciplinary norms began.²⁷

By the first half of the fourth century, Latin had supplanted Greek to such an extent that it had essentially become the everyday language in Rome. This was recognised by Pope Damasus I (366–384), so he decided to introduce Latin into the Roman liturgy. In introducing this language in place of the Greek that had hitherto been present, he was guided by the opinion of St Paul, who taught the understanding of words in prayer in this way:

but if I do not know the meaning of a language, I shall be a foreigner to one who speaks it, and one who speaks it a foreigner to me. [...] I will pray with the spirit, but I will also pray with the mind. I will sing praise with the spirit, but I will also sing praise with the mind. Otherwise, if you pronounce a blessing [with] the spirit, how shall one who holds the place of the uninstructed say the “Amen” to your thanksgiving, since he does not know what you are saying? For you may be giving thanks very well, but the other is not built up (1 Cor 14:11.15–17).

In addition to a liturgical language comprehensible to all the faithful, it was necessary to preserve the same faith, which in turn would correspond to a single tradition, and so the Pope made anamnesis efforts to ensure that a common discipline was also preserved in the Church.²⁸

After a period of improvisation in the liturgy, the practice of approving texts at episcopal synods became established.

It was intended to put an end to theological errors that occurred in the formulation of liturgical prayers. Thus, for example, the synod of Hippo (393) and the two synods of Carthage (397 and 419) were careful not to use the name of the Father and the name of the Son interchangeably in the liturgy. They also stressed the necessity of directing prayers to the Father, which in turn should be simultaneously agreed with analogous prayers said in the liturgy by other bishops. All prayers, the synods postulated, were to be expressions of faith and required the approval of the bishops present at the synod. In addition, the following issues had to be resolved as part of the synodal work: the observance of Eucharistic fast-

27 R. Civil, *La Liturgia e le sue leggi*, [in:] *Anamnesis*, vol. 1: *La liturgia, momento nella storia della salvezza*, Casale Monferrato 1983, p. 185; J. Nowak, *Prawo w służbie wydarzeń zbawczych*, p. 31; Ł. Korporowicz, *Prawo liturgiczne Kościoła łacińskiego a Kodeks prawa kanonicznego z 1983 roku*, p. 26; M. Kołodziej, *Prawo liturgiczne Kościoła łacińskiego*, p. 46.

28 R. Civil, *La Liturgia e le sue leggi*, p. 186; J. Nowak, *Prawo w służbie wydarzeń zbawczych*, p. 32; M. Kołodziej, *Prawo liturgiczne Kościoła łacińskiego*, p. 46–47.

ing by bishops and the faithful, the prohibition of greeting the faithful by lectors, the prohibition of the ordination of clergy and the consecration of virgins before the age of twenty-five, and the prohibition of giving Holy Communion to the dead. The synodal resolutions also noted the prohibition of confirmation and consecration of virgins by presbyters and the order to confer episcopal sacraments in the presence of at least three bishops who had previously obtained the consent of the relevant primate to participate in this action.²⁹

In order to understand the spirit of the era when the transition from improvisation to codification of liturgical rules took place, it is necessary to refer to Prospero of Aquitaine (390–465), who lived in the fifth century and is known for his maxim *lex orandi – lex credendi*. With these words, he tried to explain the relationship between dogma and liturgy as well as between practice and theory. His position was that the priestly rites and invocations handed down by the apostles were to be celebrated in the same way throughout the world in the Catholic Church, because *legem credendi lex statuat supplicandi*.³⁰ This phrase by Prospero of Aquitaine was first used in a letter of Pope Celestine I (422–432) to the bishops of Gaul. The *Sacramentarium Leonianum*, attributed to Pope Leo the Great (440–461), is also familiar with this liturgical norm. From it, it follows that the Church prays as she believes and that the liturgy itself is a constitutive element of her whole Tradition. Therefore, in order to preserve the unity of faith, it is necessary to observe the unity of liturgical forms.³¹

Attempts made by Pope Damasus I in the fourth century to unify the liturgical rules and the subsequent efforts of bishops gathering in provincial synods continued. The persistent negative practices of clergy who ignored the correct way of celebrating the liturgy also contributed to this. Therefore, based on his authority in the ninth century, the unification of the Roman liturgy was particularly sought by Emperor Charlemagne (748–814). He had the ambition to build a *civitas Dei* in Europe, where – based on the *Roman Sacramentary* – one and the same liturgy would be celebrated in every country, all according to the prin-

29 B. Esposito, *Il rapporto del Codice di Diritto canonico latino con le leggi liturgiche*, p. 143; J. Nowak, *Prawo w służbie wydarzeń zbawczych*, p. 32–33; Ł. Korporowicz, *Prawo liturgiczne Kościoła łacińskiego a Kodeks prawa kanonicznego z 1983 roku*, p. 28–29; M. Kołodziej, *Prawo liturgiczne Kościoła łacińskiego*, p. 47.

30 Prosperus Aquitanus, *De gratia Dei et libero voluntatis arbitrio* VIII, 275, PL 51, col. 209; P. De Clerck, *Zrozumieć liturgię*, Polish transl. S. Czerwik, Kielce 1997, p. 62; M. Kołodziej, *Zgromadzenie liturgiczne jako rzeczywistość teologiczno-kanoniczna w ministerialnym posługiwaniu Kościoła*, Wrocław 2012, p. 283; R. Civil, *La Liturgia e le sue leggi*, p. 186; J. Nowak, *Prawo w służbie wydarzeń zbawczych*, p. 35; M. Kołodziej, *Prawo liturgiczne Kościoła łacińskiego*, p. 47–48.

31 M. Kołodziej, *Zgromadzenie liturgiczne jako rzeczywistość teologiczno-kanoniczna*, p. 283; J. Nowak, *Prawo w służbie wydarzeń zbawczych*, p. 35–36; M. Kołodziej, *Prawo liturgiczne Kościoła łacińskiego*, p. 48.