

The competence of personal prelatures in causes of canonization

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1. The territorial approach to judicial competence and the criteria for determining the material competence of personal circumscriptions

On the occasion of the eleventh Congress of the *Consociatio Internationalis Studio Iuris Canonici Promovendo* (Budapest, September 2001) I examined the paradoxical situation that, while the power of jurisdiction of the person in charge of a personal circumscription must necessarily include inherent judicial power, there is nevertheless a decidedly "territorial" approach when it comes to the exercise of this juridical power and the legal titles of judicial competence in canon law.

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Over the course of history, territoriality came to be the only non-privileged criterion for determining communities

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and jurisdiction, especially in relation to the exercise of judicial power. This historical process was fully reflected in the canons of the CIC of 1917. With Vatican II, however, the determining criterion changed, and became that of the *cætus fidelium hierarchice instructus* [“hierarchically structured group of faithful”], the community of faithful made fruitful by the ministerial priesthood, at the head of which is a sacred Pastor holding episcopal power.² It was as a result of this that the eighth of the ten directive principles for the reform of the CIC of 1917, approved by the first Synod of Bishops,³ foresaw the establishment of personal ecclesiastical circumscriptions, which were required by, among other things, the pastoral demands arising out of what we would nowadays call “globalization”. As the Preface to the new Code states: “*rationes enim hodierni apostolatus unitates iurisdictionales personales commendare videntur*” [“the requirements of the modern apostolate seem, in effect, to call for the creation of personal jurisdictional units”].⁴ Nevertheless the CIC of 1983 has preserved the traditional “territorial” approach to judicial power, at least in linguistic terms. Such “terminological inertia” is understandable since it was not intended that the new ecclesiological implant should abolish territoriality as the normal way of determining spheres of jurisdiction. It is also clear that this linguistic continuity does not—and cannot—call into question the judicial power of personal circumscriptions, which is obviously an essential element of

2. Cf. J. HERVADA, “Significado actual del principio de la territorialidad”, *Fidelium iura* 2 [1992], pp. 224 and 230.
3. Cf. SYNOD OF BISHOPS 1967, *Principia quæ Codicis Iuris Canonici recognitionem dirigant*, October 7, 1967, *Communicationes* 1 [1969], pp. 77–85; the various studies on the eighth principle in J. CANOSA (ed.), *I Principi per la revisione del Codice di Diritto Canonico. La ricezione giuridica del Concilio Vaticano II* (Milan, 2000), pp. 547–666; V. GÓMEZ-IGLESIAS, “El octavo principio directivo para la reforma del “Codex Iuris Canonici”: el “iter” de su formulación”, *Fidelium iura* 11 [2001], pp. 13–39; and P. ERDÖ and P. SZABÓ (eds.), *Territorialità e personalità*, pp. 169–193.
4. CIC, *Præfatio*, in AAS 75 [1983], pars II, p. XXII. Cf. J.I. ARRIETA, “Le circoscrizioni personali”, *Fidelium iura* 4 [1994], pp. 207–243; ID., *Diritto dell’organizzazione ecclesiastica* (Milan, 1997), pp. 358–366; ID., *Governance Structures Within the Church* (Montréal, 2000), pp. 181–189.

the power of governance in general, and therefore of these personal circumscriptions in particular.⁵ Because of this, and bearing in mind the hierarchical nature of the various secular personal structures, it is necessary to adapt the territorial concepts of “domicile”, “quasi-domicile”, “local tribunal”, etc., to the personal criteria for membership of such circumscriptions and subjection to the jurisdiction of their Pastors.⁶

An example of such adaptation occurred when the Apostolic Signatura was obliged to determine the “local” or “peripheral”⁷ (terminology which demonstrates the need to use terms of a “territorial” nature for personal circumscriptions) appeal tribunal of the Prelature of Opus Dei, applying—obviously using the legal device of “equivalence”⁸—the criteria set out in CIC, can. 1438, 2° for first instance causes of metropolitan tribunals, to which tribunals of dioceses directly subject to the Holy See are treated as being equivalent, as is also stated in the parallel can. 1064 § 2 of the CCEO.⁹ The Ap. Const. *Ecclesia in Urbe*, dealing with

5. Cf. CIC, cann. 135 § 1, 331, 333 § 3, 391, 1417 § 1, 1419 § 1; CCEO, cann. 43, 45 § 3, 191 § 1, 985 § 1, 1059 § 1, 1066 § 1.

6. For a fuller analysis, cf. J. LLOBELL, “I tribunali delle circoscrizioni personali latine”, §§ 1 and 2.

7. That is, an appeal tribunal different from the Roman Rota, which is “universal”. The only first instance tribunal of a secular circumscription having the Roman Rota as its sole appeal tribunal is the first instance ecclesiastical Tribunal in the part of the diocese of Rome situated within the territory of the Vatican City State: *A Tribunali ecclesiastico appellatio fit ad unum Tribunal Rotæ Romanæ* (JOHN PAUL II, Motu pr. Quo civium iura, quo iuris canonici iudicialis ratio in Civitate Vaticana ad recentiores iuris canonici leges accommodatur, November 21, 1987, art. 7, AAS 79 [1987], pp. 1353–1355).

8. Cf. C.J. ERRÁZURIZ M., “Circa l’equiparazione quale uso dell’analogia in diritto canonico”, *Ius Ecclesiæ* 4 [1992], pp. 215–224; ID., “Ancora sull’equiparazione in diritto canonico: il caso delle prelature personali”, *Ius Ecclesiæ* 5 [1993], pp. 633–642.

9. “Viso ex analogia can. 1438, n. 2, Codicis Iuris Canonici [...] vi art. 124, n. 4, Const. Ap. ‘Pastor bonus’[...]” (APOSTOLIC SIGNATURA, Decree of approval of the Appeal Tribunal of the Vicariate of Rome as the second-level Tribunal of the Prelature of the Holy Cross and Opus Dei, January 15, 1996, *Romana. Bollettino della Prelatura della Santa Croce e Opus Dei* 12 [1996], pp. 22–23). Previously the Cardinal Vicar of the Diocese of Rome had given his approval (“consensus”, the Apostolic Signatura calls it) for the Appeal Tribunal of the Vicariate of Rome to be the

the current law of the Vicariate of Rome, accepts this kind of adaptation when it indicates that “the Appeal Tribunal [of the Vicariate of Rome] deals with causes that have been decided, at first grade, by: the Ordinary Tribunal of the Diocese of Rome; the First Instance Tribunal for causes of matrimonial nullity of the Region of Lazio; the Regional Tribunals of Campania and Sardinia for causes of matrimonial nullity; the Diocesan Tribunals of the Diocese of Lazio; the Tribunal of the Military Ordinariate for Italy; the Tribunal of the Personal Prelature of the Holy Cross and Opus Dei”.¹⁰ This norm applies the same organizational criteria to the first instance tribunals of several ecclesiastical circumscriptions that are heterogeneous among themselves: the diocese of Rome and the other dioceses of the Region of Lazio,¹¹ the episcopal conferences of Lazio and Sardinia and some of the dioceses of the episcopal conference of Campania,¹² the Italian Military Ordinariate and the Prelature of Opus Dei. This unity of organization (sharing the same “peripheral” appeal tribunal) demonstrates an obvious common denominator among all the circumscriptions mentioned: they are all hierarchical entities, some territorial (the various dioceses and regional episcopal conferences), others personal (the military ordinariate and the personal prelature).

peripheral second instance tribunal of the Tribunal of the Prelature (Rescript, November 16, 1995, quoted in the Decree of the Apostolic Signatura and by the Decree establishing the Tribunal of the Prelature of the Holy Cross and Opus Dei, January 24, 1996, nn. 4 and 9, footnotes 3 and 5, *Romana. Bollettino della Prelatura della Santa Croce e Opus Dei* 12 [1996], pp. 26–27).

10. JOHN PAUL II, Ap. Const. *Ecclesia in Urbe*, qua Vicariatus Urbis nova ratione ordinatur, January 1, 1998, art. 40 § 1, AAS 90 [1998], pp. 177–193. Cf. P. OLMOS, “Los tribunales eclesiásticos de Roma”, *Anuario Argentino de Derecho Canónico* 7 [2000], pp. 127–142.
11. Competent for all causes except those of nullity of marriage, which are the competence of the regional tribunals created by Pius XI in 1938 (cf. PIUS XI, Motu pr. *Qua cura*, December 8, 1938, AAS 30 [1938], pp. 410–413).
12. Those dioceses which have their first instance interdiocesan tribunal at Naples, since in the territory of Campania there are two other interdiocesan tribunals, based at Salerno and Benevento. This multiplicity of interdiocesan ecclesiastical tribunals within the same ecclesiastical region is unique among all the Italian regional episcopal conferences.

The material competence of the tribunals of personal prelatures, dealt with in CIC, cann. 294–297, may be further determined by the statutes issued by the Holy See at the time of establishing the circumscription.

2. The universal call to holiness and causes of canonization

Within the area of legislation we have been describing, it is clear that the military Ordinary and the Prelate of a personal prelate have competence for carrying out the instruction of causes of beatification and canonization of their own clerical and lay faithful,¹³ since the attainment of the fullness of Christian life (sanctity) is the ultimate aim of every ecclesiastical circumscription, as the Prefect of the Congregation for the Causes of the Saints, recalling the teaching of the Second Vatican Council, pointed out in his presentation of the Instr. *Sanctorum Mater*.¹⁴

In the law promulgated by Paul VI to bring causes of canonization into line with the ecclesiology of the Council, the Pope stated that the universal call to holiness is “the most characteristic element of the entire conciliar magisterium,

13. “Episcopis diocesanis vel Hierarchis ceterisque in iure æquiparatis, intra fines suæ iurisdictionis, sive ex officio, sive ad instantiam singulorum fidelium vel legitimorum cœtuum eorumque procuratorum, ius competit inquirendi circa vitam, virtutes vel martyrium ac famam sanctitatis vel martyrii, asserta miracula, necnon, si casus ferat, antiquum cultum Servi Dei, cuius canonizatio petitur” (JOHN PAUL II, Ap. Const. *Divinus perfectionis Magister*, on the new legislation for causes of saints, January 25, 1983, n. I, 1, AAS 75 [1983], pp. 349–355) (my underlining).

14. Cf. Cardinal José SARAIVA MARTINS, Press Conference for the presentation of the Congregation for the Causes of Saints’ Instruction *Sanctorum Mater* on the Procedure of Diocesan and Eparchial Enquiries for the Causes of Saints, February 18, 2008, in <www.vatican.va>. Cf. Dogm. Const. *Lumen gentium*, Ch. VII (“The Eschatological Nature of the Pilgrim Church and its Union with the Church in Heaven”, nn. 48–50); Decr. *Christus Dominus*, n. 15; G. GÄNSWEIN, “Questa è la volontà di Dio: la vostra santificazione. Considerazioni sul processo di beatificazione e canonizzazione”, *Ius Ecclesiæ* 16 [2004], pp. 413–431.

and is, so to speak, its ultimate end".¹⁵ It follows that specific competence for instructing such causes is held by each ecclesiastical circumscription, and this certainly includes the circumscription established by the Apostolic See in order precisely to "put into practice the teaching of the universal call to sanctity, and to promote at all levels of society the sanctification of ordinary work, and by means of ordinary work."¹⁶ The current *fundamental law* on causes of canonization (the Ap. Const. *Divinus perfectionis Magister*)¹⁷ confirms this in referring to the link between the conciliar teaching on the universal call to holiness and the pastoral aim of causes of canonization.¹⁸

15. PAUL VI, Motu pr. *Sanctitas clarior*, quo processus de Causis beatificationis et canonizationis aptius ordinantur, March 19, 1969, *præmium* § 3, AAS 61 [1969], p. 150.

16. Cf. JOHN PAUL II, Ap. Const. *Ut sit*, November 28, 1982, nn. II and III, AAS 75 [1983], pp. 423–425; *Codex iuris particularis Operis Dei*, n. 2. For the text of the statutes (*Codex iuris particularis Operis Dei*), cf., for example, A. DE FUENMAYOR, V. GÓMEZ-IGLESIAS and J.L. ILLANES, *The Canonical Path of Opus Dei. The History and Defense of a Charism* (Princeton/Chicago, 1994), pp. 610–645.

17. The current norms on causes of canonization (apart from CIC, can. 1403, CCEO, can. 1057, and the Ap. Const. *Pastor bonus*, arts. 71–74) are to be found in: JOHN PAUL II, Ap. Const. *Divinus perfectionis Magister*, January 25, 1983; SACRED CONGREGATION FOR THE CAUSES OF SAINTS, *Normæ servandæ in inquisitionibus ab episcopis faciendis: Cum in Constitutione Apostolica*, February 7, 1983, AAS 75 [1983], pp. 396–403 (promulgated by delegated legislative power in accordance with CIC, can. 30: cf. Ap. Const. *Divinus perfectionis Magister*, n. 2); SACRED CONGREGATION FOR THE CAUSES OF SAINTS, general Decr. *Circa servorum Dei causas*, quarum iudicium in præsens apud Sacram Congregationem pendet, February 7, 1983, AAS 75 [1983], pp. 403–404; CONGREGATION FOR THE CAUSES OF SAINTS, *Regolamento* (Vatican City, 2000), approved by the Secretary of State on February 15, 2001, in R. RODRIGO, *Manuale delle cause di beatificazione e canonizzazione*, 3rd ed. (Rome, 2004), pp. 460–490; ID., *Instruction Sanctorum Mater*, on the Procedure of Diocesan and Eparchial Inquiries on the Causes of Saints, May 17, 2007, AAS 99 [2007], pp. 465–510 (henceforward: ISM). Given that ISM is limited to "clarifying the provisions of the current law on causes of saints and determining the procedures to be followed" (J. SARAIVA MARTINS, Press Conference for the presentation of *Sanctorum Mater*, n. 1), and that it makes reference to the dispositions of *Divinus perfectionis Magister* and the *Normæ servandæ* upon which all the prescriptions of ISM are based, for the sake of convenience I will generally quote only ISM.

18. Cf. JOHN PAUL II, *Divinus perfectionis Magister*, *præmium* § 4.

Hence the cause of a sergeant in the Carabinieri (the Servant of God Salvo D'Acquisto)¹⁹ was instructed by the Military Ordinariate of Italy, and the cause of the first Prelate of Opus Dei, the Servant of God Alvaro del Portillo, is in the instructional phase before the Prelature of Opus Dei, simultaneously with another process before the Vicariate of Rome.²⁰ On the day the tribunal began its work, the current Prelate, Bishop Javier Echevarría, recalled the teaching of John Paul II and stressed the pastoral importance of causes of canonization.²¹

3. "Normative centralization" and "organic decentralization"

One of the principal teachings stemming from the ecclesiological reflections of the Second Vatican Council is that of authority as service,²² as a result of which new types of circumscription have been introduced with a view to rendering ecclesiastical organization more effective,²³ and consolidating the exercise of proper ordinary power on the part of bishops at the head of their *portiones populi Dei* by "restoring" spheres of episcopal power which over the centuries had come to be "centralized" by the Holy See.²⁴ In

19. Now presented to the Congregation for the Causes of Saints: cf. CONGREGATIO DE CAUSIS SANCTORUM, *Index ac status causarum* (Vatican City, 1999), p. 364.

20. See below, § 6, in particular footnote 58 concerning other causes in which the Prelate has appointed "delegated episcopal interrogatory examiners" and other "enquiry officials" (cf. ISM, arts. 47 § 2, 48, 54, 55, 114).

21. Cf. J. ECHEVARRÍA, Address at the opening of the Cause of Canonization of Bishop Alvaro del Portillo at the Tribunal of the Prelature, in the "Höffner Auditorium" of the Pontifical University of the Holy Cross, Rome, March 20, 2004, *Romana. Bulletin of the Prelature of the Holy Cross and Opus Dei*, English edition 38 [2004], pp. 48–52.

22. Cf., for example, Dogm. Const. *Lumen gentium*, n. 24; Decr. *Christus Dominus*, n. 16; JOHN PAUL II, post-synodal Ap. Ex. *Pastores gregis*, on the Bishop, Servant of the Gospel of Jesus Christ for the hope of the world, October 16, 2003, *passim*.

23. Cf. Decr. *Ad gentes*, de activitate missionali Ecclesiae, nn. 20 (footnote 105) and 27 (footnote 140); Decr. *Presbyterorum ordinis*, de Presbyterorum ministerio et vita, n. 10.

procedural matters and causes of canonization it was decided to maintain substantial legislative uniformity (“normative centralization”), while recognizing that the judicial power of bishops, insofar as they are judges of their own faithful, is not the result of any Papal concession, but arises by virtue of the office itself. This recognition has led to an “organic decentralization”.²⁵ However, in causes of canonization such decentralization affects only the instructional phase, since the decision on beatification and canonization itself is reserved to the Holy Father.²⁶

The approach of the CIC of 1917 to causes of canonization was one of “organic centralization”, in which the involvement of the diocesan bishop, even though classified as “*iure proprio*”, was in practice considered to be merely a Papal “concession” (cf. can. 1999). In contrast John Paul II, applying the conciliar norms, adopted the “organic decentralization” approach;²⁷ and for “*episcopis*

24. Cf. Dogm. Const. *Lumen gentium*, n. 27; Decr. *Christus Dominus*, n. 8; PAUL VI, Motu pr. *De Episcoporum muneribus*: Normæ Episcopis imperiuntur ad facultatem dispensandi spectantes, June 15, 1966, *præmium*, AAS 58 [1966], pp. 467–472.

25. Cf. *Principia quæ Codicis Iuris Canonici recognitionem dirigant*, October 7, 1967, nn. 5–7; PONTIFICIA COMMISSIO CODICI IURIS CANONICI ORIENTALIS RECOGNOSCENDO (1st Plenary Meeting of the Commission: March 18–23, 1974), *Directive principles for the revision of the Eastern Code of Canon Law*, Canons “*de processibus*”, n. 2, *Nuntia* 3 [1976], p. 9; J. LOBELL, “Centralizzazione normativa processuale e modifica dei titoli di competenza nelle cause di nullità matrimoniale”, *Ius Ecclesiæ* 3 [1991], pp. 431–477; “Il sistema giudiziario canonico di tutela dei diritti. Riflessioni sull’attuazione dei principi 6° e 7° approvati dal Sinodo del 1967”, in J. CANOSA (ed.), *I Principi per la revisione del Codice di Diritto Canonico*, pp. 501–546; JAVIER OTADUY, “La prevalencia y el respeto: principios de relación entre la norma universal y la particular”, in PONTIFICIUM CONSILIUM DE LEGUM TEXTIBUS INTERPRETANDIS, “*Ius in vita et in missione Ecclesiæ*”. *Acta Symposii Internationalis Iuris Canonici, in Civitate Vaticana celebrati diebus 19–24 aprilis 1993* (Vatican City, 1994), pp. 475–490. On the concept of “deconcentration” and others related to it—“concentration”, “centralization”, “decentralization”, etc.—cf. also J.I. ARRIETA, *Diritto dell’organizzazione ecclesiastica*, pp. 156–167; J. HERVADA, *Diritto costituzionale canonico* (Milan, 1989), pp. 226–228; E. LABANDEIRA, *Trattato di diritto amministrativo canonico* (Milan, 1994), pp. 129–159, 199–201.

26. Cf. JOHN PAUL II, *Divinus perfectionis Magister*, n. 15.

diæcesanis vel hierarchis ceterisque in iure æquiparatis, intra fines suæ iurisdictionis ["diocesan Bishops or Bishops of the Eastern Rite and others who have the same powers in law, within the limits of their jurisdiction"], he recognized the "proper" (not "delegated" by the Holy See) nature of their "*ius inquirendi circa vitam, virtutes vel martyrium*" ["right to inquire about the life, virtues or martyrdom"].²⁸ *Divinus perfectionis Magister* in fact followed the approach taken by the earlier *Motu pr. Sanctitas clarior*, which gave episcopal conferences the possibility of "establishing" special interdiocesan tribunals for causes of canonization (the only involvement of the Holy See being the granting of a *recognitio*).²⁹ Essentially these tribunals were established by and received judicial power from the bishops, not the Holy See, in accordance with the general principle later enacted in the CIC, can. 1423 (CCEO, can. 1068) for first instance interdiocesan tribunals.³⁰

It is also clear that where the norms on causes of canonization speak of "dioceses" or "diocesan bishops", it is necessary to include military ordinariates and personal prelatures and those who head them, on the principle of "equivalence" contained in the combined prescriptions of cann. 134 § 2, 368, 381 § 2 and 1419 § 1 of the CIC; this is also demanded by the very nature of things, since there needs to be suitable juridical recognition of the judicial power which the head of every personal circumscription necessarily holds in matters falling within his own jurisdiction.³¹ This remains true even though the norms applying the Apostolic Constitution, in defining the exercise of instructional judicial power, adopt the same

27. Cf. *Divinus perfectionis Magister*, *præmium* § 9.

28. *Ibid.*, n. I, 1. The "proper" nature of this right is confirmed by the fact that only a *nihil obstat* need be requested from the Congregation for the Causes of Saints, not a "commission" of competence (cf. ISM, arts. 45–46).

29. Cf. PAUL VI, *Sanctitas clarior*, nn. 9–15.

30. The current legislation does not allow interdiocesan tribunals for causes of canonization (cf. the norms given in footnote 17).

31. See above, footnote 8.

“territorial” terminology as is used by the CIC in determining titles of judicial competence.³² The adaptation of “territorial” norms to personal circumscriptions may sometimes cause difficulties, which will have to be resolved by having recourse to the analogical criteria for filling *lacunæ legis* (cf. CIC, can. 19; CCEO, can. 1501). Thus, for example, the consultation which is to be made to the episcopal conference³³ presents no problem in the case of a personal prelatore of national scope; but in the case of a personal prelatore of supranational scope the episcopal conference to be consulted would be the one in whose territory the death of the person whose cause is to be promoted occurred.

4. The “judicial” nature of the instructional phase: the concentration of the triple power of government in the head of the circumscription, and the separation of executive and judicial power in vicarious bodies

The purpose of causes of canonization is not exactly that of “claiming and defending” a right or resolving a controversy *stricto sensu* (CIC, cann. 221, 1400, 1491; CCEO, cann. 24, 1055, 1149). Nevertheless, from the Middle Ages up to the time of the complete reform carried out by Prospero Lambertini (Benedict XIV) in the mid-1700s, the typical concepts and norms used in the judicial process were applied to these causes, above all in the instructional phase, but also in the “decisive” phase before the Congregation for the Causes of Saints, especially in relation to moral certainty.³⁴ The CIC of 1917, following the traditional approach, dedicated the entire *Pars secunda* of the

32. Cf. ISM, art. 21.

33. Cf. ISM, art. 41 § 1 (§ 2 adapts this provision to the Eastern Churches).

34. Cf. J.L. GUTIÉRREZ, “La certezza morale nelle cause di canonizzazione, specialmente nella dichiarazione del martirio”, *Ius Ecclesiæ* 3 [1991], pp. 645–670; ID., “Le prove sussidiarie nelle cause di canonizzazione (Opinioni di Prospero Lambertini e innovazioni di Benedetto XIV)”, *Ius Ecclesiæ* 5 [1993], pp. 545–574;

book “*de processibus*” (cann. 1999–2141) to causes of canonization, and the current Codes follow in the same line, albeit referring to a special procedural law (cf. CIC, can. 1403; CCEO, can. 1057). As a result of certain legal interpretations after Vatican II that aimed, without any firm foundation, to “deproceduralize” such causes, the procedural approach, even though already self-evident,³⁵ was authoritatively confirmed.³⁶

As is well known, the three aspects of governmental power in the Church (“The power of governance is divided into legislative, executive and judicial power”: CIC, can. 135 § 1; CCEO, can. 985 § 1) are “concentrated” in the one person at the head either of the universal Church (the Roman Pontiff) or of a *portio populi Dei hierarchice instructa* [“hierarchically structured portion of the People of God”].³⁷ This concentration conflicts with the possible distribution by the proper Ordinary of the different aspects of his power to vicarious or delegated bodies. Organic deconcentration, on the other hand, involves the creation of several vicarious offices which are stably entrusted with competences relating to one of those three sectors of ecclesiastical power. Power that is deconcentrated in favor of vicarious bodies does not imply any diminution of competence on the part of the one who holds proper power.³⁸

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- see also H. MISZTAL, *Le cause di canonizzazione: storia e procedura* (Vatican City, 2005); A. ROCCA, *De canonization sanctorum commentarium* (Rome, 2004); R. RODRIGO, *Manuale per istruire i processi di canonizzazione*, 3rd ed. (Rome, 2004).
35. “The Sacred Congregation, which in handling the Causes proceeds *ad modum iudicii*, is composed of three offices, namely: the first judicial Office [...]” (PAUL VI, Ap. Const. *Sacra Rituum Congregatio*, by which the Sacred Congregation of Rites is to be divided into two congregations, one for Divine Worship and the other for the Causes of Saints, May 8, 1969, n. 6, *AAS* 61 [1969], pp. 297–305); cf. also ISM, art. 1 § 3 and art. 2.
36. Cf. J. SARAIVA MARTINS, Press Conference for the presentation of *Sanctorum Mater*, n. 3, c). Apart from the studies by J.L. GUTIÉRREZ (see above, footnote 34), ID., “La certezza morale e le prove *omnino plenæ*”, in J.L. GUTIÉRREZ, *Studi sulle cause di canonizzazione* (Milan, 2005), pp. 175–191.
37. Cf. CIC, cann. 331–333, 391 § 1, 1417 § 1, 1419 § 1; CCEO, cann. 43–45, 191 § 1, 1059 § 1, 1066 § 1; J. HERVADA, *Diritto costituzionale canonico*, pp. 306–313.
38. See above, footnote 25.

One of the essential requirements of the judicial process is the independence of the judge regarding the matter being judged and the parties to the dispute. In canon law this requirement is at variance with the fact that power is concentrated in the person of the proper ordinary. For this reason, and precisely with the aim of ensuring the independence of the canonical judge, as well as for reasons of prudence, judicial power in the Church is normally exercised through vicarious bodies—although the inherent judicial power held by the head is not thereby “expropriated” (cf. CIC, can. 1419 § 1; CCEO, can. 1066 § 1). In relation to vicarious bodies, canon law, from the time of the preparatory work for the 1917 codification and the contemporaneous Ap. Const. *Sapienti consilio* (June 29, 1908), has considered it opportune to *separate* judicial and administrative power.³⁹

The independence of vicarious judicial bodies is a particularly delicate issue in causes where the proper Ordinary is a party to the process. This occurs in penal processes, where the promoter of justice may commence an action only if so instructed by the “local Ordinary” (of a territorial or personal circumscription: CIC, can. 134 § 2; CCEO, can. 984 § 2); CIC, cann. 1721 § 1 and 1724 § 1; CCEO, cann. 1472 § 1 and 1475 § 1. A similar situation arises in causes of canonization when, in accordance with ISM art. 10 § 1, the diocesan or eparchial bishop is *ex officio* the petitioner, even though he acts through the postulator of the cause (ISM, art. 12). In these situations (penal process and causes of canonization where the diocesan bishop is the petitioner) it is especially important to respect the independence of the (vicarious or delegated) “judging” bodies, even though in causes of canonization the episcopal delegate,⁴⁰ like the diocesan bishop himself, does not have decisive but only instructional power. In both situations, the safeguarding of the independence of the vicarious or delegated bodies is entrusted to the “second instance”: the

39. Cf. CIC, cann. 1420 § 1, 1421; CCEO, cann. 1086 § 1, 1087.

40. Cf. ISM, Tit. II, Cap. I and artt. 47 § 2, 53–55, etc.

appeal tribunal in the penal process, and the Congregation for the Causes of Saints in causes of canonization. ISM states that “the successful outcome of the cause depends to a large extent on its being well instructed” (art. 47 § 1), and to this end it establishes a number of norms safeguarding the independence of the episcopal delegate.⁴¹

5. Relationships of communion in the search for truth: rogatorial letters and other forms of “judicial assistance”

“Judicial assistance” between tribunals in a variety of forms is universal practice in the different legal systems.⁴² In the Church it is further strengthened by the special bond of communion existing between the faithful and the sacred Pastors; by the universality of canon law—which in the area of processes is protected by the substantial uniformity of the entire *Corpus Iuris Canonici*;⁴³ and by the special search for truth, as a condition for the *salus animarum*, which gives rise to the *favor veritatis* in canonical processes.⁴⁴ The most frequent type of judicial assistance is the sending of “rogatorial letters”. “In cases requiring the examination of witnesses resident in another diocese or eparchy where these are unable to come to the diocese or eparchy in which the enquiry is being conducted, the Bishop *a quo* sends the Bishop *ad quem* a letter [...] to request the instruction of a Rogatorial Enquiry” (ISM, art. 114 § 1).⁴⁵

41. Cf. ISM, for example, arts. 19, 49, 50, 68 § 3, 76, 80 § 1, 94, 96, 2°, 99, 102.

42. Cf., on behalf of all, C. PUNZI, *Il processo civile. Sistema e problematiche* (Torino, 2008), Vol. 2, pp. 78–80.

43. On “normative centralization” see above, footnote 25.

44. Cf., for example, PIUS XII, Address to the Roman Rota, October 2, 1944, AAS 36 [1944], pp. 281–290; JOHN PAUL II, Address to the Roman Rota, January 28, 1994, AAS 86 [1994], pp. 947–952; BENEDICT XVI, Address to the Roman Rota, January 28, 2006, AAS 98 [2006], pp. 135–138.

45. The relevant provisions in the Code (cf. CIC, cann. 1418, 1469 § 2; CCEO, cann. 1071, 1128 § 2) are given more specific form by ISM which—apart from

ISM also states that “if it is opportune, the Bishop or his Delegate, the Promoter of Justice and the Notary of the cause, can go to the diocese or eparchy *ad quem* to hear the witnesses who reside there, with the prior written authorization of the Bishop *ad quem* in whose diocese or eparchy the witnesses reside” (art. 115 § 1).⁴⁶

In such situations judicial assistance facilitates the exercise of instructional judicial power. There are, however, other cases in which the conditions justifying such assistance mean that a tribunal becomes competent when it would otherwise not be, as art. 21 of ISM establishes.⁴⁷ Extension and commission of judicial competence are reserved by law exclusively to the Holy See—normally the Apostolic Signatura.⁴⁸ In causes of canonization, what is involved is a “commission”, not an “extension”, of competence, since material incompetence is of an “absolute” nature.⁴⁹ The granting of such commission is the responsibility of the Congregation for the Causes of Saints; this will be in response to a request from a bishop who lacks competence but who has obtained the consent of the competent bishop, and has a just reason for asking to be able to commence and instruct the cause of a member of the faithful who has not died in his own diocese (the reason might be, for example, that the Servant of God in question “lived the greater part of his life” in his circumscription). The

mentioning it in art. 26, a)—dedicates the whole of Title X to the “Procedure for the Rogatorial Enquiry” (arts. 114–116).

46. Although ISM does not explicitly say so, the provision in can. 1558 § 2 CIC (cf. CCEO, can. 1239 § 2) also applies: “Cardinals, Patriarchs, Bishops, and those who in their own civil law enjoy a similar favor, are to be heard at the place selected by themselves” (cf. CIC, can. 1403 § 2; CCEO, can. 1057; ISM, art. 1 § 3).

47. Cf. *Normæ servandæ*, n. 5, a).

48. Cf. Ap. Const. *Pastor bonus*, art. 124, 2^o and 3^o; and J. LLOBELL, “Commissione e proroga della competenza dei tribunali ecclesiastici nelle cause di nullità matrimoniale. Sulla natura dell’incompetenza in questi processi”, *Ius Ecclesiæ* 2 [1990], pp. 721–740.

49. Cf. PONTIFICAL COUNCIL FOR LEGISLATIVE TEXTS, Instr. *Dignitas connubii*, to be observed by diocesan and interdiocesan tribunals in handling causes of the nullity of marriage, January 25, 2005, art. 9 § 2.

bishop making the request does not become competent until such time as the Congregation grants the commission (cf. ISM, arts. 22–24).

Another way of rendering judicial assistance is by enabling people from one's own diocese who are expert in causes of canonization to take part in the different tasks of the "officials" of the process: episcopal delegate, promoter of justice, notary, expert (medical, historical or theological) (cf. ISM, arts. 53–60, 62–70).

6. The enquiry into the heroic virtues of the Servant of God Bishop Alvaro del Portillo

The first Prelate of Opus Dei, Bishop Alvaro del Portillo, did not exercise his right to promote causes of canonization of the faithful of the new prelate, for which he was competent in respect of those faithful who died after the establishment of the ecclesiastical circumscription. It should be noted that the competence of the Prelate—arising as the result of applying the titles of territorial competence to personal circumscriptions (see above, § 1)—is not exclusive, given that the faithful in question, whether laity or priests, died within the territory of a diocese. The pastoral aim of causes of canonization (see above, § 2) can thus be attained by initiating the necessary procedure before the bishop of the territorial circumscription to which those faithful belonged.⁵⁰ His successor, Bishop Javier Echevarría, decided that the first cause of canonization instructed by the Prelature would be precisely that of his predecessor and first successor of Saint Josemaría as head of Opus Dei.⁵¹

This cause had another special feature, apart from the fact that the petitioner and the person judging (instructing)

50. Cf. Ap. Const. *Ut sit*, n. III. On defining the people of personal prelatures, cf. G. COMOTTI, "Somiglianze e diversità tra le prelature personali ed altre circoscrizioni ecclesiastiche", in S. GHERRO (ed.), *Le prelature personali nella normativa e nella vita della Chiesa* (Padua, 2002), pp. 79–114.

51. Cf. J. ECHEVARRÍA, Address, March 20, 2004 (see above, footnote 21).

the cause were one and the same (a matter we dealt with earlier): in this case Bishop Javier Echevarría was also the main witness, having worked for over forty years alongside the Servant of God Alvaro del Portillo in Rome.

Such a situation is not a reason for refraining from making a deposition as witness before the delegated tribunal which he himself set up. It is not unheard of in canon law for a cause of canonization of a bishop to be initiated by the one who succeeds him as head of the diocese, as happened, for example, in the case of the Servant of God Stefan Wyszynski, Cardinal of Warsaw, or that of the Servant of God John Paul II himself. These examples highlight the fact that the process of canonization has its own special characteristics. Nevertheless, Bishop Javier Echevarría's juridical sensitivity⁵² led him to ask the Cardinal Vicar of Rome, Camillo Ruini, whether he would be prepared to set up another tribunal for the Diocese of Rome, the place of death of the Servant of God. To have a double tribunal is prohibited by the principle "*ne bis in idem*", which forms the basis for the principle of prevention: where two tribunals are competent, the one that first begins to deal with the cause acquires so-called "*perpetuatio iurisdictionis*", which renders the other tribunal, which up to that moment had been concurrently competent, absolutely incompetent (cf. CIC, cann. 1415, 1512, 2°; CCEO, cann. 1082, 1194, 2°). But what Bishop Echevarría was proposing was not the useless repetition of procedures and a doubling-up of the effort of collecting writings, having these examined by the theological censors, gathering documents from the various archives, and so on. These tasks would all be carried out as part of the enquiry before the tribunal of the Prelature; but that did not mean that the competence of the tribunal of the Diocese of Rome would be of a merely rogatorial nature. It would exercise its own competence, once the petitioner had, through the postulator, requested that the cause be opened; and it would proceed to examine the different witnesses (including the petitioner, Bishop

52. Among other roles, he holds those of judge of the Supreme Tribunal of the Apostolic Signatura and member of the Congregation of the Causes of Saints.

Echevarría) and carry out the other duties which the law requires of ordinary tribunals. "Cardinal Ruini accepted the proposal."⁵³

We need to bear in mind, in relation to this case, that the diocesan bishop is forbidden to dispense from procedural laws (cf. CIC, can. 87 § 1; CCEO, can. 1537); only the Holy See is able to do so, normally through the Apostolic Signatura (cf. Ap. Const. *Pastor bonus*, art. 124, 3^o).⁵⁴ In causes of canonization it is the Congregation for Causes of Saints that grants this dispensation (cf. ISM, arts. 22–24). For this reason, once the Cardinal Vicar of Rome and the Prelate of Opus Dei had agreed that it would be fitting to set up the two tribunals, they asked the Congregation for a dispensation allowing them to do so. "On December 21, 2003 the Congregation for the Causes of the Saints authorized that the instruction of the diocesan investigation be carried out *æqualiter*, that is, with the same level of competence, by the Vicariate of Rome's Tribunal and by that of the Prelature."⁵⁵

Once all the legal requirements had been complied with—including, for example, the positive opinion of the Episcopal Conference of Lazio (June 10, 2003; cf. ISM art. 4), the edicts of the Cardinal Vicar of Rome and the Prelate of Opus Dei informing their own faithful of the "postulator's request to initiate the cause" in that diocese,⁵⁶ and the request for and granting of the "*nihil obstat*" by the Holy See,⁵⁷ communicated

53. J. ECHEVARRÍA, Address, March 20, 2004, p. 50.

54. This also applies to the Eastern Churches: cf. SECRETARIAT OF STATE, Rescript granting the Apostolic Singatura the faculty to dispense from the procedural norms of the CCEO, November 22, 1995, Prot. N. 381.775, in J. LLOBELL, "Il tribunale competente per l'appello della sentenza di nullità del matrimonio giudicata *tamquam in prima instantia ex can. 1683*", *Ius Ecclesiae* 8 [1996], pp. 689–690, footnote 2. The faculty was confirmed by Benedict XVI.

55. J. ECHEVARRÍA, Address, March 20, 2004, p. 50.

56. Cf. ISM, art. 43 § 1. For the text of the edicts, cf. *Romana. Bulletin of the Prelature of the Holy Cross and Opus Dei*, English edition 35 [2002], pp. 295–296; *ibid.* 37 [2003], pp. 70–71; *Rivista Diocesana di Roma* 10 [2003], pp. 1125–1126.

57. "After receiving the reply of the Congregation for the Doctrine of the Faith and other Dicasteries consulted for the individual Causes, the Congregation

to the Prelate of Opus Dei by the Congregation for the Causes of Saints on January 21, 2004—the members of both tribunals, presided over by the Cardinal Vicar of Rome and the Prelate of Opus Dei respectively, swore the prescribed oath during the two “Opening Sessions of the Enquiry” (ISM, art. 51): on March 5, 2004 in the *Sala della Conciliazione* in the Lateran Palace, and on the 20th of the same month in the “Höffner Auditorium” of the Pontifical University of the Holy Cross.⁵⁸

This exercise of judicial competence by the Prelate of a personal prelate in causes of canonization of his own faithful is a further illustration of the principle that, when determining the scope of the judicial power of the person at the head of a personal circumscription, it is necessary to treat such hierarchical entities as being equivalent *in iure* to those of a territorial nature, since it is by reference to the latter that juridical institutions are generally configured in canon law.

examines in ordinary Congress whether there are sufficient elements to issue the *nihil obstat* on behalf of the Holy See”: CONGREGATION FOR THE CAUSES OF SAINTS, *Regolamento* (Vatican City, 2000, approved by the Secretariat of State on February 15, 2001), art. 51 § 2, in R. RODRIGO, *Manuale delle cause di beatificazione e canonizzazione*, 3rd ed. (Rome, 2004), pp. 460–490. Cf. ISM, arts. 45–46.

58. Cf. *Romana. Bulletin of the Prelature of the Holy Cross and Opus Dei*, English edition 38 [2004], pp. 48–52 and 80–81.

As of March 19, 2008, the Tribunal of the Prelature had interviewed 39 witnesses directly in its premises in Rome, and another 8 by going to Bologna and Madrid, in accordance with ISM, art. 115 § 1. Also in accordance with ISM, art. 114 and 166, it sent rogatorial letters to the bishops of the dioceses of Leiria-Fátima, Madrid, Montréal, Pamplona, Quito, Sydney, Warsaw and Washington for the examination of a further 56 witnesses. This Tribunal had therefore questioned a total of 103 witnesses. [Translator’s note: the closing ceremony of the Tribunal of the Vicariate of Rome took place on June 26 and that of the Tribunal of Prelature on August 7, 2008.]

In recent years, the Prelate of Opus Dei also set up two other tribunals in Rome, after receiving rogatorial letters from the Cardinal Archbishop of Madrid and the Apostolic Administrator of the Diocese of Chur. These rogatorial tribunals have interviewed various witnesses in the causes of canonization of two Servants of God: the Spanish priest José María Hernández de Carrion and the Swiss engineer Toni Zucifal.