

Tolerance, Law, Media and Education

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Tolerance – From a Canon Law Perspective

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1. Introductory Remarks

It is common knowledge, that the term “tolerance” developed mainly on the basis of the confrontations of different religious beliefs.¹ The meaning of “tolerance” and the cases of application were subject to change through the ages of the Catholic Church. Besides that, tolerance can be seen from different points of view and assumes different nuances depending on the context, subject or discipline in which it is used, e.g. as a moral attitude, a pedagogical principle, a political guide-line or a philosophical idea. The concept of tolerance must be seen and interpreted in relation to individuals as well as to communities – as an attitude and/or a behavior of and towards individuals and groups or communities.

Even if we focus on the question of the juridical relevance of this concept, we have to take into account that the notion “tolerance” notably differs depending on whether we speak of it as an element of Canon Law – which is essentially based on and bound by its religious fundamentals – or as an element within the legal order of a democratic constitutional State that respects the fundamental rights of the human person and therefore has to be religiously neutral.

Prior to exploring the status and importance of tolerance in Canon Law and its possible consequences, it seems to be unavoidable to represent the key feature of tolerance. This endeavor to present a definition of “tolerance”, at least concisely, will be carried out from a juridical point of view: Is “tolerance” by its very nature a legal norm/rule or at least a principle of law? (2) The next chapter (3) is dedicated to the roots of the idea of “tolerance”, especially in view of Canon Law. The subsequent pages deal with “tolerantia” as a legal term in present Canon Law (4). The final remarks present a resume, but also try to point out, what tolerance in Canon Law stands for, and to demonstrate the possible consequences both within the Church and by applying the attitude of tolerance as a maxim *ad*

1 Cfr. Schreiner 1990: 445–605; Höffe 2008: 315–317; Brieskorn 2010: 509; Hilpert 2001: 95–101.

extra, i.e. as an unavoidable basis for interconfessional, interreligious and intercultural dialogue (5).

The given limits of this article do not allow a closer and deeper analysis and exploration of the arguments put forward. Therefore these reflections only draw up a concise compilation of the questions involved and would rather stimulate a further discussion.

2. Tolerance – its basic elements from a juridical point of view

“Tolerance” is a relational notion: it moves within the relationship between individuals, individuals and communities, and between communities, whenever man-made differences (in particular: diversity in religious and/or political belief, personal attitudes and behavior)² seem to be non acceptable to the respectively other side of the relation, and tries to regulate and arrange this relationship by means of a mutual acceptance. This acceptance exists in two degrees, depending on whether one reacts only in a passive way and renounces any countermeasures (passive tolerance; in Canon Law: *dissimulatio*), or he recognizes the adversary together with his different attitudes as something positive (positive tolerance).

Thus, tolerance refers to the different beliefs or behaviors as well as to the respective persons or communities that share this belief. In reality, the other person/community and her belief present themselves as an inseparable unity, but we have to treat the two elements apart from each other. The immediate object of tolerance is the belief or conviction which, in itself, is not acceptable for and not shared by the tolerant person. To define tolerance as the relationship between two beliefs (incompatible with each other)³ would end up in denying tolerance altogether. The relation between two different beliefs or doctrines is not a personal relationship, but the objective question of the material compatibility or incompatibility, independent from subjective beliefs. Tolerance as a principle and attitude qualifies an interpersonal relationship in view of dissenting opinions or beliefs, and is therefore related to the concept of law.

Law, by its very nature, regulates the interpersonal relations of persons on the basis of the “*suum cuique*”, i.e. everyone must be given what is

2 In contrast to natural or physical evils, like physical pain and suffering, natural disasters etc. In these circumstances, the virtue required is not tolerance, but *patience*.

3 This comes true in particular, whenever the idea of tolerance is put in relation with an *absolute truth*. Any kind of tolerance against an absolute truth as such is hardly conceivable or even impossible. Cfr. Krämer 1984: 113.

owed to him by justice (*debitum ex iustitia*). The compulsory character “ex iustitia” is due to a special title, e.g. contract, unlawful damaging, respect of the person’s dignity and human rights etc. The law with its rights and duties is the object of justice, is the “*ipsa res iusta*” according to Thomas Aquinas.⁴

Tolerance as an interpersonal relation meets the sphere of law inasmuch as it safeguards the fulfillment of duties towards other people, so that they receive what is owed to them by reasons of law in several important sectors of human life. Tolerance is always connected with the rights of the other people; the respect of their freedom (of thought, of belief etc.) is owed to them. Tolerance necessarily moves within this frame: the rights/freedoms of one are limited by the same rights/freedoms of other people (and other communities). Nevertheless, tolerance is not a legal rule, but a moral-juridical principle of law that refers to a large number of different issues or objects owed to the other people (*debita ex iustitia*, in many different situations). But the Constitution of a State and other laws that protect the human dignity and the right to the free development of one’s personality can be seen as manifestations or consequences of the idea of tolerance; in other words: tolerance can give rise to the creation of concrete enforceable rights and duties. Besides that, tolerance can serve as a principle for interpreting the exercise of one’s rights and its limits, as well as a principle for weighing up between the positive and the negative aspect of the religious freedom, and for harmonizing the range of fundamental rights in case they are in conflict against each other (e.g. between religious freedom and freedom of art).⁵ This conflict needs to be solved in a way that safeguards a maximum of tolerance in favor of both parties involved.

It is in the nature of tolerance that this principle cannot be applied to people who fight against tolerance, especially by brute force or violence. Otherwise tolerance would result in destroying itself.

Tolerance must not be confused with any kind of indifferentism or relativism. These attitudes are not at all required as prerequisites of tolerance, nor are they manifestations of tolerance. On the contrary, tolerance as the deliberate recognition of other persons as different (from some points of view) requires the own identity (i.e. a solid and well based conviction in the fields of belief, attitudes, convictions and behavior) of the one who

4 STh II-II, q. 57. This is a “realistic” theory of law that avoids a positivistic as well as a pure naturalistic theory. Thus, law is not an external, artificial addition to human relations, rather it’s them *immanent*. For a more detailed explanation of the “juridical realism” see: Schoupe 1987; Errázuriz 2000; Hervada 2013.

5 Cfr. Püttner 1977; Krämer 1984; Steiner 1987.

practices tolerance; otherwise tolerance would not be possible due to the lack of a real contra position.⁶

3. *The roots of the idea of tolerance*

a) *In the history of Canon Law*

We leave aside the question of tolerance of the Church “ad extra”, and restrict our short remarks on tolerance as a relationship between the Authority of the Church and the faithful, in view of the compliance with the discipline of the Church and Canon Law. Instead of analyzing the sources of Eastern (“oikonomia”) and Latin Canon Law – especially in its classic period from the 11th to the 14th century – in all details and systematically⁷, we will restrict ourselves to the most distinguishing features and some important examples.

aa) *Catholic tradition*

In classic Latin Canon Law in the Middle Ages and therefore in the *Corpus Iuris Canonici*, the most important source of Canon Law until the Codex Iuris Canonici 1917, “tolerantia” is present in several different contexts and questions, as a principle within the legal order of the Church.⁸ In the “Decretum Gratiani” (ca. 1140)⁹ the *quaestio* 4 of *Causa XXIII* is dedicated to the problem of tolerance in the hands of the Church’s authorities. Gra-

6 “Toleranz bedeutet nun: die andersartige Überzeugung ertragen, selbst wenn man sie nicht teilt. Toleranz ist noch keine Stellungnahme zur Wahrheit, sondern bleibt eine Forderung der Mitmenschlichkeit. Sie setzt eine eigene Überzeugung voraus und räumt dem Mitmenschen das ihm von Natur aus zukommende Persönlichkeitsrecht ein, sein Leben entsprechend seiner Überzeugung zu gestalten. Insofern steht Toleranz auch nicht im Widerspruch zum Absolutheitsanspruch des christlichen Glaubens”: Gründel 1986: 98.

7 Cfr. Olivero 1953; Condorelli 1960.

8 In this context, we do not deal with the development of the principle of tolerance as a matter of theological thinking generally during the history of the Church. See for this: Schreiner 1990; Angenendt 2018.

9 The original title is *Concordia discordantium canonum*. This collection of sources of the first millennium is regarded as the starting point of the science of Canon Law (Canonistic). It is the first of five parts of the *Corpus Iuris Canonici* (published in 1580). Cfr. Gaudemet 1994: 389–401; Fantappiè 2011: 101–110.

tian distinguishes between two groups of addressees: the faithful (tolerance within the Church) and persons “qui non sunt nostri iuris” (tolerance of the Church ad extra).¹⁰ The numerous sources presented by Gratian in *quaestio* 4 deal exclusively with tolerance within the Church, especially towards heretics. Gratian’s doctrine on this argument is not coherent: he presents many sources in favor of tolerance¹¹, but many others against it¹². These last ones contributed, together with the doctrine of Thomas Aquinas¹³ (persistent heretics are not to be tolerated, but must be eliminated), decisively to the intolerance of the Church in the late Middle Ages and the modern age towards heretics.

But the question of tolerance did not touch upon heretics alone, but upon other kinds of infringements of the Church’s discipline, too. Tolerance in law is distinguished by the following characteristics: the Authority intentionally allows the infringement of a law (but not of divine law) without granting a permission or dispense, in order to avoid a worse evil or the loss of a good.¹⁴ The law remains in force; the tolerated act is not approved, and remains illicit, but proves to be the lesser evil compared

10 Decr. Grat., Dictum Gratiani post C XXIII, 4, 16.

11 Decr. Grat., C XXIII 4, 1–35. E.g: *Tolerandi sunt quidem mali pro pace, nec corporaliter ab eis recedatur...* (c. 1); *Quantus arrogantiae tumor est, quanta humilitatis et lenitatis oblivio, arrogantiae quanta iactatio, ut quis aut audeat, aut facere se posse credat, quod nec Apostolis concessit Dominus, ut zizania a frumento putet se posse discernere?* (c. 14). This argument, referring to Mt 13, 29–30, has been of particular importance (hold up e.g. by Augustinus) whenever the idea of tolerance has been defended by the Church. *Ecce quod crimina sunt punienda, quando salva pace ecclesiae fieri possunt; in quo tamen discretio adhibenda est. Aliquando enim delinquentium multitudo diu per patientiam ad poenitentiam est expectanda: aliquando in paucis est punienda, ut eorum exemplo ceteri terreatur et ad poenitentiam provocentur* (dictum post c. 25).

12 Decr. Grat., C XXIII 4, 36–54 and C XXIII 5.

13 Also Thomas distinguishes between non-Christians and faithful: *Infideles qui nunquam fidem susceperunt, ut Iudaei et gentiles, nullo modo sunt ad fidem compellendi; at infideles, haeretici et apostatae sunt cogendi, ut id adimpleant quod promiserunt*: STh II-II q. 10 a. 8 (*conclusio*). STh II-II q. 11 a. 3 (“*Utrum haeretici sint tolerandi*”): *qui vero post secundam correptionem in suo errore obstinati permanent, non modo excommunicationis sententia, sed etiam saecularibus principibus exterminandi, tradendi sunt*. Angenendt 2018 comments Thomas’ position as follows: “Faktisch bedeutet das einen offenen Bruch mit der ganzen zuvorigen Tradition, der zufolge in Glaubensdingen physische Gewalt wie erst recht die Tötung der Häretiker verboten waren” (102).

14 STh II-II q. 10 a. 11: “(Sic ergo et) in regimine humano illi qui praesunt, recte aliqua mala tolerant, ne aliqua bona impediuntur, vel etiam ne aliqua mala peiora incurrantur”.

with what would happen if the tolerance would not be granted (therefore it is called “*permissio comparativa*”). Thus, tolerance is the middle course between “*rigorem et dispensationem*”.¹⁵ This understanding of tolerance remains until the XXth century and is practised by the Holy See, too.¹⁶

bb) Orthodox tradition

On the basis of the New Testament¹⁷ and the teaching of the Church Fathers¹⁸, the Orthodox Churches distinguish two ways in the application of the law: its literal application (“*akribeia*”), i.e. the strict obedience to the written norm, and the principle of “*oikonomia*”, which is the exceptional non-application of a legal norm in a given case, due to the particular circumstances, for mercy in imitation of God’s mercy, on the basis of and as an expression of freedom and love, for the sake of the salvation. There is no definition and no regulation of “*oikonomia*” (this would be against its nature), but it is left to the discretion and responsibility of the bishop and of the Father confessor to decide in every single case on the application and on the effects of “*oikonomia*”.¹⁹ “*Oikonomia* is the essence of the Orthodox Church. There are certain instances in the life of the Church and her faithful, in which *akribeia* becomes a supreme injustice and, more generally speaking, the worth and significance of the pastoral

15 Nilles 1893: 247–256.

16 Nilles 1893 presents numerous examples for the whole period from classic Canon Law up to the end of the XIXth century. Cfr. also Di Pauli 1912: 250–269; 397–414.

17 E. g. Mk 2, 27: “The Sabbath was made for the good of man; man was not made for the Sabbath.” 2 Kor 3,6: “The capacity we have comes from God: for it is he who made us capable of serving the new covenant, which consists not of a written law, but of the Spirit. The written law brings death, but the Spirit gives life.”

18 Rodopoulos 1986; L’Huillier 1983; Archondonis 1983; besides that, the whole volume KANON XXIV (2016) with its 26 contributions is dedicated to “*Oikonomia, Dispensatio and aequitas canonica*”; Anapliotis 2019.

19 Therefore *oikonomia* is notably different from the *dispensation* according to the latin Canon Law, which is legally defined and regulated, also as far as the application and the effects are concerned (cfr. cc. 85–93 CIC; cc. 1536–1539 CCEO). It is in the nature of things, that “*oikonomia*” cannot be applied towards the truths of faith and divine law. It is, for example, made use of in questions concerning the recognition (or not) of mysteries (sacraments) celebrated (incorrectly or even invalidly) within or outside the Orthodox Churches, or when to decide on the reception of heretics, schismatics and *lapsi* into the Orthodox Church. Cfr. Archondonis 1983.

and soteriological principle of *Oikonomia* are so great in the fulfilment of the entire saving work of the Church, that this is placed above the very *akribeia*; the latter, as a notion also, is submitted to *Oikonomia* and does not prevail over it.”²⁰

Oikonomia also finds application in the theological and ecumenical dialogue²¹ and is therefore a basic principle for the relationship between Church authority and the faithful as well as in view of the relations of the Orthodox Church and the orthodox faithful *ad extra*.

In comparison with the idea of tolerance, the principle of *oikonomia* is a specific ecclesiastical, soteriological instrument and a means to a pastoral, salvific end. Nevertheless, within the area of application of *oikonomia*, the recognition of the other person as a value in itself that has to be accepted, and thus the idea of tolerance is implied. This comes true in particular, whenever Orthodox Churches, based on *oikonomia*, enter into an ecumenical dialogue; for dialogue necessarily requires the recognition of the other side in its diversity.

b) *Biblical and other theological roots*

Tolerance as an attitude towards each other is undoubtedly an immediate consequence of the second part of the great commandment to love: “love your neighbor as yourself” (Mk 12, 31; Lk 10, 27). But the most special, outstanding and significant biblical text – in view of the history of effectiveness, too – is the parable of the weeds, that goes: “... ‘Do you want us to go and pull up the weeds?’ they asked him. ‘No’, he answered, ‘because as you gather the weeds you might pull up some of the wheat along with them’” (Mt 13, 28 f.). This parable must be interpreted and understood together with the command to replace cursing with blessing: “Bless those who curse you, and pray for those who mistreat you” (Lk 6, 28).²²

The IInd Vatican Council has brought about a significant and irreversible change in the way of looking at things in several important questions. In view of tolerance, the following three “changes of course” are of particular importance:

20 Archondonis 1983: 49f.

21 Archondonis 1983.

22 Cfr. also Mt. 5, 45; 13, 49; Rom 12, 14; 1 Petr. 3, 9. Angenendt 2018: 16f. and 22–25. To the sources of tolerance inside the Church see also: Brinkmann 1980: 13–116.

(1) The opening up of the Church towards the whole world and its needs, instead of an isolated and self-defending position against the “bad” world; inclusion instead of exclusion; dialogue instead of isolation.²³ This way of thinking is to be found especially in the Pastoral Constitution *Gaudium et Spes* and in the decree *Ad Gentes*.

(2) The principle “*unitas in varietate*” and “*varietas in unitate*” is closely connected with the aforementioned element that entails the opening up of the Church towards plurality without giving up her own identity and mission. The Church has to scrutinize the signs of the times and to interpret them in the light of the Gospel (GS 4; 11); has to face all the differences and contexts of human life as ways that help to find out the truth more and more. Thus, the Church has to communicate with everybody and has to take up all the problems and views and to scrutinize them in the light of the faith. Thus, she remains able to communicate the faith with the people of our age, from which she receives a variety of helps (GS 44/3). Therefore, variety is now seen as enrichment, not as a dangerous threat to the unity of the Church. This is valid within the Church (not only within the Catholic Church [OE, LG 13], but in the relationship to the other Christian denominations, too: decree *Unitatis Redintegratio*) and *ad extra* as well (in relation to other denominations and religions, philosophies etc.). On the basis of Vat II the philosophies, the sciences, the culture, the society, the religions and the history are to be understood as *loci theologici (alieni)*.²⁴ The Holy Spirit is at work not only inside, but also outside the visible structure of the Church, where we can find elements of the true and the good (LG 16f., NA 2). This new course-setting of the Church also entails the need of communication and dialogue.

(3) The personalistic turn: the centrality of the human person is highlighted throughout the teachings of Vat II²⁵; chapter 1 of the first part of GS (12–22) is headed: *De humanae personae dignitate* (The dignity of the human person). *Dignitatis humanae* (DH) declares that the human person has a right to religious freedom, and that this right has its foundation in the very dignity of the human person (DH 2). The declaration DH awards the right to religious freedom in all its aspects to the religious

23 Cfr. Gründel 1986: 85–106.

24 Besides the *loci theologici proprii*, such as the Holy Scripture and the Apostolic Tradition, the Magisterium, theology, liturgy, *sensus fidelium* etc. Cfr. Hünemann 2003: 207–251.

25 “Etenim principium, subiectum et finis omnium institutorum socialium est et esse debet humana persona, quippe quae, suapte natura, vita sociali omnino indigeat” (GS 25).

communities, too (DH 4). This is not less than a paradigm shift in regard of the understanding of tolerance.

Up to the XXth century, the Catholic Church bluntly denied any right of the human person to religious freedom and freedom of conscience.²⁶ The point of reference in the matter of tolerance has always been the absolute truth (which the Church is thought to be in possession of), not the dignity of the human person. But according to Vat II (DH), the point of reference is the human person with its inalienable right to freedom based on the dignity of the person itself.²⁷ This dignity rightfully claims not to be just “tolerated”, but to get recognized and protected. To tolerate a person would be in contrast to her dignity; her religious or political belief can be tolerated (without giving up the own belief with its claim to be true).²⁸ The Church in this world does never possess the full and absolute truth, for truth is not a Corpus of unchanging doctrines, but needs to be realized in life and enriched by human experience of all kinds and times (cf. the *loci theologici*). This kind of openness of the concept of truth is not a threat to the integrity of the faith.²⁹

On the basis of DH we need to distinguish (not separate) between the other person that has to be unreservedly accepted for her human dignity on the one hand, and the belief of this person (or community) that seems to be non acceptable, on the other hand. The consequences of this distinction for Canon Law will be made clear in the last part of this article.

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- 26 Isensee 1987: 296–336; Hilpert 1991: 151–153; Mantecón 2012; Pohle 1899: 1867: “Ein gleich verwerfliches Heilmittel gegen die Intoleranz bildet das vom Liberalismus vorgeschlagene Prinzip der schrankenlosen Gewissen- und Cultusfreiheit, d.i. der staatlichen Anerkennung oder Duldung aller Religionen und Culte. Ganz abgesehen davon, dass dieses auf dem Boden des krassen Indifferentismus erwachsene Prinzip bestimmt gegen die katholische Glaubenslehre verstösst (vgl. Encyklika Pius IX. *Quanta cura* vom 8. Dec. 1864 ...), läuft dasselbe auch den klarsten Grundsätzen des Naturrechts stracks zuwider”.
- 27 Brinkmann 1980 points out that tolerance is not in contrast to the claim of the absolute truth defended by the Church (118–168) nor to the hierarchical structure of the Church (169–227); both elements require tolerance that prevents the Church from becoming an authoritarian or totalitarian system. Fundamental rights of the faithful would be necessary and would be manifestations of “coagulated tolerance” (228–270). Cfr. *Commissio Theologica Internationalis* 1985.
- 28 “Ohne sich selbst und ihren Wahrheitsanspruch zu relativieren, kann und muss jetzt die Kirche vorbehaltlos für die Religionsfreiheit eintreten, weil es dabei um die Würde des Menschen geht. Die Wahrheitsansprüche konkurrierender Religionen müssen toleriert werden”: Heinzmann 2008: 405.
- 29 “Die Autorität der Wahrheit darf der Autorität dessen, der sie zu verkünden hat, nicht unterworfen werden”: Heinzmann 2008: 407.

c) *Human dignity as the basis of tolerance*

The official recognition of the right of the human person to religious freedom as founded in the very dignity of the human person by Vatican II (DH) is irreversible. It is a firm milestone in the development of the Church's dealing with the idea of tolerance. Human dignity is the most solid fundament of the aforementioned right, since this dignity itself is based on the truth according to which every man is created "ad imaginem Dei" (Gen 1,26), is endowed with a conscience – the most secret core and sanctuary of a man, where he is alone with God (GS 16) – and is raised up to a divine dignity. This dignity is definitely due to the Incarnation of God's Word in the person of Jesus Christ.³⁰

Besides, the christian faithful receives, by baptism, the dignity and freedom of the sons of God.³¹ Thus, the human dignity of the faithful is elevated to the supranatural level and assumes a new quality. This is not a second dignity, besides the "natural" one, just as human being; it is the human dignity raised up and made perfect on a supernatural level. This new quality, together with the nature of the Church and its mission, entails that the features of tolerance inside the Church³² and its juridical structure are different from the tolerance of the Church *ad extra*, e.g. towards other religious communities and their beliefs.

4. *Tolerance in present Canon Law*

As far as the Canon Law of the Orthodox Churches is concerned, we have to refer to the explanation of the concept of "oikonomia" within the Chapter on the "roots of tolerance in the history of Canon Law" (3.a).³³

30 GS 22 declares: "In the mystery of the incarnate Word does the mystery of man take on light... Human nature as He assumed it was not annulled, by that very fact it has been raised up to a divine dignity in our respect, too." Cfr. GS 12; Hilpert 1991: 94–98.

31 "Populus ille messianicus ... habet pro conditione dignitatem libertatemque filiorum Dei in quorum cordibus Spiritus Sanctus sicut in templo inhabitat": LG 9/2. Cfr. Leo the Great: "Agnosce, o Christiane, dignitatem tuam": PL 54, 192. Cfr. c. 208 CIC, c. 11 CCEO; Hervada 1994.

32 E.g. in the relationship between authority and dissenters in matters of faith and customs, especially if they hold a pastoral or teaching office in the Church.

33 Cfr. also Anapliotis 2016: 233; Anapliotis 2019.

The CIC/1983 uses the term “tolerare” only once in c. 5 § 1: Customs contrary to the prescriptions of the Code normally are suppressed, unless the Code expressly provides otherwise or unless they are centenary or immemorial customs which can be tolerated, if, in the judgment of the ordinary, they cannot be removed due to the circumstances of places and persons. But the Code does not in any way regulate neither the concept nor the range of application of tolerance. The CCEO does not even mention this legal institution.

But, as we have seen, it is present in Latin Canon Law as part of its legal heritage (*traditio canonica*). In this regard c. 6 § 2 CIC states: Insofar as they repeat former Canon Law, the Canons of this Code must be assessed also in accord with canonical tradition.³⁴ Therefore, the concept of tolerance, used in c. 5 § 1 CIC, is to be understood in present Canon Law in the sense of the respective canonical tradition (above 3. a): the Authority deliberately is indulgent towards infringements of human Canon Law without thereby legitimizing them as lawful. The illegitimacy remains, but the person concerned is granted a certain protected space of action and gets subjectively entitled to remain in the tolerated behavior until further notice. Granting tolerance most probably falls within the competence of the administrative authority in the context of the application of law, on condition of the existence of a correspondingly important reason: to avoid greater evil or to prevent the loss of a greater value/good. Infringements of *ius divinum* can never be tolerated.

In Canon Law, tolerance is one of several instruments of flexibility of law, such as *aequitas canonica*, dispensation, privileges, dissimulation (passive tolerance) and *epikia*.³⁵

They all aim to adapt the application of law to the concrete needs of the persons involved in a case, in order to make sure that Canon Law reaches its ultimate and proper goal: the *salus animarum*, which is the supreme law in the Church (c. 1752 CIC).

5. Resume and Prospect

From a juridical point of view, tolerance is midway between dissimulation (i.e. intentionally ignore the infringement of a rule, passive tolerance, and

34 This rule intends to safeguard the necessary continuity of present Canon Law with its own tradition. Cfr. Pree 2012.

35 More in detail: Pree 2000; Pree 2019.

refrain from countermeasures in order to avoid greater evil) and positive approval (recognition) of a fact.

a) *Tolerance in present Canon Law*

Several rules of the Codes in force require tolerance implicitly, as a precondition, although they do not use the term “tolerance” or “tolerare”, e.g. the duty of bishops to treat non catholics with love (c. 383 §§ 3 and 4 CIC; c. 192 § 3 CCEO); or the rules on ecumenism³⁶; or the dignity of the human person (which entails the tolerance of dissenting opinions and beliefs) as a matter of the Church’s teaching office³⁷ or the recognition of customs contrary to existing laws (c. 26 CIC; c. 1507 § 3 CCEO).

Tolerance as a determined legal institution is expressly provided only in c. 5 § 1 CIC (customs contrary to the prescriptions of the Code can be tolerated on particular conditions). In virtue of c. 6 § 2 CIC, tolerance as a legal institution is thus present in the legal order of the Church.

b) *What tolerance in Canon Law stands for – Consequences*

The breakthrough into the official recognition of religious freedom by Vat II has been made possible by anchoring it in the very dignity of the human person (DH 2); instead of refusing it with reference to the authority of the absolute truth. Religious freedom must not be seen in contrast to the truth. Truth and freedom cause each other: truth is the basis of freedom: “the truth will make you free” (John 8, 32); and freedom is indispensable for grasping and realizing the truth, which can be accepted (and kept up) only by a personal, free assent.³⁸ Thus, Vat II highlights the dignity of

36 Cfr. cc. 383 § 3, 755 CIC; 902–908 CCEO; Pont. Consilium ad unitatem christianorum fovendam, Directory on Ecumenism (25.03.1993).

37 Cc. 747 § 2, 768 § 2; cc. 595 § 2, 616 § 2 CCEO.

38 *Every man has the duty, and therefore the right, to seek the truth in matters religious in order that he may with prudence form for himself right and true judgments of conscience, under use of all suitable means. Truth, however, is to be sought after in a manner proper to the dignity of the human person and his social nature... Moreover, as the truth is discovered, it is by a personal assent that man are to adhere to it.* DH 3. Cfr. also DH 9 and 10.

the human person and its freedom without eliminating or reducing the demands of the truth.³⁹

This relationship between human dignity, truth and freedom is crucial for the understanding of tolerance in Canon Law, because it allows to distinguish within human relations, between the human person and his beliefs.⁴⁰ Tolerance never refers to other persons, but only to the beliefs, convictions and ways of behavior of other persons or communities. In terms of law: We owe the other persons the tolerance (respect) of their beliefs, because we have to recognize and protect their dignity as human persons.

On this basis, two dimensions or functions of tolerance come to light:

(1) *Tolerance as a moral attitude*

Tolerance should be seen as a virtue of everybody, especially of the faithful, as a necessary consequence of the second part of the great commandment to love: to love the neighbor as yourself (Mk 12, 31; Lk 10, 27). This love necessarily requires the respect of the other person's conviction or belief (within the general limits of tolerance), even if this conviction in itself seems to be not acceptable. This virtue is to be exercised towards everybody, towards the other faithful within his own Church, too. In the context of religious beliefs and convictions, tolerance is not a hindrance to bear witness to one's own belief or conviction, but is able to protect oneself from any kind of dishonest "proselytism", because tolerance harmonizes the respect of the dignity and freedom of the others with one's own freedom to give away one's faith.⁴¹ The virtue of tolerance is of particular importance also inside the Church, e.g. to prevent from destructive and disgraceful polarizations between groups of different convictions and

39 This doctrine takes into consideration man's inability of fully grasping the truth, which is not a product of man's intelligence. It needs to be realized in life and gets enriched by human experience (cfr. the *loci theologici*), and is open to be formulated in different manners and words: DV 2–8; UR 4, 14–18; LG 13.

40 Cfr. *Commissio Theologica Internationalis* 1985.

41 *However, in spreading religious faith and in introducing religious practices everyone ought at all times to refrain from any manner of action which might seem to carry a hint of coercion or of a kind of persuasion that would be dishonorable or unworthy, especially when dealing with poor or uneducated people. Such a manner of action would have to be considered an abuse of one's right and a violation of the right of others* (DH 4).

interests, like between faithful which follow a conservative or traditionalist view and faithful with more or less progressive attitudes.

Tolerance is, as a moral attitude, a guiding principle for the exercise of one's own rights.

Tolerance takes into account the moral weakness and sinfulness of men and tries to solve possible conflicts resulting from it.⁴²

(2) *Tolerance as a moral-juridical principle*

At the juridical level, tolerance serves as a general principle of law⁴³, i.e. a moral-juridical guideline as a basis and structuring principle of Canon Law, and therefore a multi-functional principle both inside the legal order of the Church and with regard to the relations ad extra (with non-catholic persons and communities; with secular institutions). In the same way that justice (*iustitia: suum cuique tribuere*) is an indispensable prerequisite for love (*caritas*), tolerance proves to be a prerequisite (or even an essential element) for justice.

aa) Ad intra

Regarding Canon Law itself, human dignity should be expressly recognized, since it is the irrefutable basis of tolerance.⁴⁴ Apart from this, Canon Law must harmonize the freedom of the faithful (the exercise of their rights) with keeping up the unity and identity (of the Church and its mission) in the essentials, in order to safeguard and protect the internal bonum commune and the necessary discipline. Religious freedom

42 "Das Toleranzethos nimmt den Christen in seinem "Status viatoris" ernst, es rechnet realistisch mit seinen Schwächen und seinem Versagen und versucht in den daraus resultierenden Konfliktsituationen jedem Christen das ihm Zustehende zukommen zu lassen; damit dürfte es nicht wenig zum innerkirchlichen Frieden beitragen"; Brinkmann 1980: 279.

43 Cfr. Pree 2003.

44 The *Schema* "Lex Ecclesiae Fundamentalis" (1969), i.e. the draft of a Constitutional Law of the entire Catholic Church, provided: "Ecclesia omnibus et singulis hominibus utpote ad imaginem Dei creatis dignitatem personae humanae propriam recognoscit, itemque officia et iura quae ex eadem profluunt agnoscit, atque, omnium hominum vocationis ad salutem ratione, etiam tuetur" (can. 3). The project of this planned law has been given up, and the quoted Canon has not been taken over into the CIC/1983. More in detail: Pree 2016.

of the faithful inside the Church⁴⁵, due to the confessional character of the Church, notably differs from the concept of religious freedom as a fundamental right in the relationship between citizen and State authority in the legal orders of the religiously neutral States. Therefore, tolerance in Canon Law is objectively limited, depending on the constellation in which the question might arise. The following five constellations may serve as examples:⁴⁶ (1) the relation between the authority and the faithful: the authority has to combine tolerance with the own duties towards the faithful. In questions of discipline, tolerance is possible within certain limits, as has been said above. (2) The relation between the faithful: dissenting opinions and religious practices are to be tolerated within certain limits. The argument about questions of the *bonum commune* in the Church should give rise to fruitful and objective discussions and to the formation of a public opinion inside the Church. (3) The relation between the Superior of an Institute of consecrated life and the members of this Institute; the vows leave their mark on the mutual rights and duties. (4) The relationship between catholic parents with their duties of education and their minor children. (5) The relationship between the diocesan bishop and the priests and deacons of his diocese on the basis of canonical obedience (cfr. c. 273 CIC; c. 370 CCEO).

In all these relations tolerance can take place, but in each of them in a different manner.

It is to be emphasized that acting within the limits of its own competence or within the legally granted freedom (exercise of rights) can never be the object of tolerance. The authority does not “tolerate” the exercise of the rights of the faithful (but has to acknowledge and protect them), and the faithful must respect the rights of the others (cfr. c. 223 § 1 CIC; c. 26 § 1 CCEO). The question of tolerance towards convictions, customs or behavior that one cannot accept, arises, whenever these convictions are esteemed as illegal, illegitimate or even *contra fides et mores*.

45 The faith can be taken on only in full freedom, without coercion. But after having taken on the faith and won insight into its truth, there is no legitimate way back or any right to give up the truth. Cfr. C. 748 §§ 1 and 2 CIC; c. 586 CCEO. Cfr. Errázuriz 1991.

46 In reality, each of these relations is a complex of different mutual rights and duties. Within the given limits of space it is not possible to deal with each of them in detail, but only selectively. It would need separated investigations, in as far tolerance is to be put into practice in the different fields of the mission of the Church, e.g. in questions of liturgy, faith, discipline, forms of spirituality etc.

Furthermore, inside the Church tolerance as a moral-juridical principle can serve as a principle guiding the exercise of everybody's own rights, especially in view of the limits of its legitimate exercise; and also as principle for adequately coordinating rights and duties inside the Church in cases of their conflicts.⁴⁷ Above that, tolerance is a necessary precondition for the formation of a public opinion in the Church and for the development of the *sensus fidelium*. It helps to bring about an intra-ecclesial, legitimate pluralism⁴⁸, which is not a danger to the identity of the Church, but rather a manifestation of life and of the richness of gifts of the Holy Spirit.⁴⁹

bb) Ad extra

With regard to the relations between the Church and other denominations or religions, it should be underlined that tolerance towards the different beliefs, convictions and customs (within the general limits of tolerance) is an indispensable prerequisite for any kind of ecumenical and inter-religious dialogue. Many elements of sanctification and of truth are found outside of the Church's visible structure (LG 8; UR 3 and 4). The authentic traditions and theologies of other Churches and religious communities belong to the possible *loci theologici* in the true sense of the teachings of Vat II.⁵⁰

Tolerance – with its inherent distinction between the person(s) or communities on the one hand and their religious or ideological beliefs on the other hand – is the fundament of any kind of contact, negotiation and cooperation between the Church and secular Institutions like States, particularly if they are States with an official religion (or ideology) of State.

47 With regard to the possible functions of tolerance in secular law: Krämer 1984: 117–121.

48 Gründel 1986: 100 states: "Pluralismus steht unter dem Diktat der Fülle; er lässt in fairer Konkurrenz auch den anderen gelten, weiß sich einer Wertordnung und dem Gemeinwohl verpflichtet. Ein solcher richtiger Pluralismus geht fair mit dem Andersdenkenden um, lehnt jede Benachteiligung oder Ausschaltung des Gegners um eigener Interessen willen ab, müht sich um Einheit. Dagegen wäre es Ausdruck eines schlechten Pluralismus, wollte man den eigenen oder den gegnerischen Standpunkt ideologisieren, Tagesfragen zu Grundsatzentscheidungen, Ermessensfragen zu aufgeblähten Systemen machen. Gerade Kirche sollte jener Ort sein, in dem solche polaren Spannungen in Achtung und Liebe ausgetragen werden: Kirche als ‚Ort des Gesprächs‘," with reference to Egenter 1978.

49 Cfr. UR 17.

50 Hünemann 2003: 223–251 and 275.

Taking into account all the dimensions tolerance might have in Canon Law, this virtue and principle could become a stimulating factor for any kind of other legal system for the sake of a peaceful coexistence of all religious communities and cultural groups within Ukraine. Each “player” in this “game” within the State would be a winner – for the benefit of the *bonum commune* – and thus for the benefit of all.

References

- Anaplotis, Anargyros (2016): Die Quellen des orthodoxen Kirchenrechts heute und ihr staatlicher Rahmen. In: Leb, Ioan Vasile et al. (ed.): Die Orthodoxe Kirche in der Selbstdarstellung. Ein Kompendium, Berlin, 229–241.
- (2019): Oikonomia and its limits in Orthodox Canon Law. In: *Ancilla Iuris*, 73–84.
- Angenendt, Arnold (2018): “Lasst beides wachsen bis zur Ernte ...”. Toleranz in der Geschichte des Christentums, Münster.
- Archondonis, Bartholomeos (1983): The Problem of Oikonomia Today. In: *KANON (Yearbook of the Society for the Law of the Oriental Churches)* 6, 39–50.
- Brieskorn, Norbert (2010): Toleranz. In: Brugger, Walter/Schöndorf, Harald (ed.): *Philosophisches Wörterbuch*, Freiburg i.B., 509.
- Brinkmann, Josef (1980): Toleranz in der Kirche. Eine moraltheologische Untersuchung über institutionelle Aspekte innerkirchlicher Toleranz, Paderborn, 13–116.
- Commissio Theologica Internationalis (1985): *Theses de dignitate necnon de iuribus personae humanae*. In: *Gregorianum* 66, 5–23.
- Condorelli, Mario (1960): *I fondamenti giuridici della tolleranza religiosa nell’elaborazione canonistica dei secoli XII-XIV. Contributo storico-dogmatico*, Milano.
- Di Pauli, A. (1912): *Dissimulare poteris*. In: *Archiv für katholisches Kirchenrecht* 92, 250–269 and 397–414.
- Egenter, Richard (1978): *Miteinander umgehen – Auftrag und Chance des Pluralismus in der Kirche*, München.
- Errázuriz, Carlos J. (1991): *Il “Munus docendi Ecclesiae”: Diritti e doveri dei fedeli*, Milano.
- (2000): *Il diritto e la giustizia nella Chiesa. Per una teoria fondamentale del diritto canonico*, Milano.
- Fantappiè, Carlo (2011): *Storia del diritto canonico e delle istituzioni della Chiesa*, Bologna.
- Gaudemet, Jean (1994): *Église et Cité. Histoire du droit canonique*, Paris.

- Gründel, Johannes (1986): Zuwendung zur Welt. Öffnung der Kirche für die Dimension der Welt als pastorale Leitidee des Zweiten Vatikanischen Konzils. In: König, Franz Card. (ed.): Die bleibende Bedeutung des Zweiten Vatikanischen Konzils, Düsseldorf, 85–106.
- Heinzmann, Richard (2008): Die Erklärung des II. Vatikanums zur Religionsfreiheit. In: Eugen-Biser-Stiftung (ed.), Dialog aus christlichem Ursprung (Eugen Biser zum 90. Geburtstag), Limburg, 394–407.
- Hervada, Javier (1994): La dignidad y la libertad de los hijos de Dios. In: *Fidelium Iura* 4, 9–31.
- (2013): *Cos'è il diritto? La moderna risposta del realismo giuridico*, Roma. (a translation from the Spanish original “*Qué es el derecho? La moderna respuesta del realismo jurídico*, 2008).
- Hilpert, Konrad (1991): Die Menschenrechte. Geschichte-Theologie-Aktualität, Düsseldorf.
- (2001): Toleranz. In: *LThK* ³X, col. 95–101.
- Höffe, Otfried (2008): Toleranz. In: Höffe, Otfried/Forschner, Maximilian/Horn, Christoph/Vossenkuhl, Wilhelm (ed.), *Lexikon der Ethik*, 7th edition, München, 315–317.
- L'Huillier, Pierre (1983): L'économie dans la tradition de l'Eglise Orthodoxe. In: *KANON* (Yearbook of the Society for the Law of the Oriental Churches) 6, 19–38.
- Hünemann, Peter (2003): Dogmatische Prinzipienlehre, Münster.
- Isensee, Josef (1987): Keine Freiheit für den Irrtum. In: *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Kan. Abt.* 72, 296–336.
- Krämer, Achim (1984): Toleranz als Rechtsprinzip. In: *Zeitschrift für evangelisches Kirchenrecht* 29, 113–121.
- Mantecón, Joaquín (2012): Libertad religiosa. In: *Diccionario General de Derecho Canónico*, vol. 5, 161–168.
- Nilles, Nikolaus (1893): Tolerari potest. De iuridico valore decreti tolerantiae commentarius. In: *Zeitschrift für katholische Theologie* 17, 245–296.
- Olivero, Giuseppe (1953): *Dissimulatio e tolerantia nell'ordinamento canonico*, Milano.
- Pohle (1899): Toleranz. In: *Wetzer und Welte's Kirchenlexikon*, 2nd edition, vol. 11, col. 1857–1870.
- Pree, Helmuth (2000): Le tecniche canoniche di flessibilizzazione del diritto: Possibilità e limiti ecclesiali di impiego. In: *Ius Ecclesiae* 12, 375–418.
- (2003): Generalia Iuris Principia im CIC/1983 und ihre Bedeutung für das kanonische Recht. In: *Archiv für katholisches Kirchenrecht* 172, 38–57.
- (2012): Tradición canónica. In: *Diccionario General de Derecho Canónico*, vol. 7, 619–621.
- (2016): Gelten die Menschenrechte auch im Inneren der Kirche? In: *Archiv für katholisches Kirchenrecht* 185, 62–87.

- (2019): Flexibilization Instruments in Catholic Canon Law. In: *Ancilla Iuris*, 85–95.
- Püttner, Günter (1977): *Toleranz als Verfassungsprinzip*, Berlin.
- Rodopoulos, Panteleimon (1986): *Oikonomia nach orthodoxem Kirchenrecht*. In: *Österreichisches Archiv für Kirchenrecht* 36, 223–231.
- Schouppe, Jean-Pierre (1987): *Le réalisme juridique*, Bruxelles.
- Schreiner, Klaus (1990): *Toleranz*. In: Brunner, Otto/Conze, Werner/Koselleck, Reinhart (ed.): *Geschichtliche Grundbegriffe. Historisches Lexikon zur politisch-sozialen Sprache in Deutschland*, vol. 6, 445–605.
- Steiner, Udo (1987): *Toleranz II. Rechtlich*. In: *EvStLex*, 3rd edition, vol. 2, col. 3630–3638.

