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New lay offices in the administrative management of german dioceses

Comparison of recent diocesan laws on the organisation of the curia with regard to compliance and separation of powers

Zusammenfassung: *Einige Diözesen in Deutschland haben in den vergangenen Jahren Amtsleiter bzw. Verwaltungsdirektoren in ihren Diözesankurien etabliert, um die Generalvikare zu entlasten und Compliance-Standards zu verwirklichen. Dieser Beitrag nimmt die Gesetze zur Ordnung von fünf Diözesankurien (Eichstätt, Hamburg, Köln, München und Münster) in den Blick. Während im Erzbistum Köln der Ansatz der Gewaltenteilung innerhalb der Kurie aufgrund der klaren Trennung der Geschäftsbereiche von Generalvikar, Diözesanökonom und Amtsleiter erkennbar ist, überlappen sich andernorts Kompetenzbereiche und unterlaufen die kodikarisch vorgesehene Differenzierung zwischen Generalvikar und Ökonom. Der Beitrag versteht sich als Erwiderung auf den Vorschlag von Johannes Klösges, der unter anderem die Ernennung von Laien zum Generalvikar gefordert hatte, und tritt für Gewaltenteilung ein.*

Abstract: *In recent years, some German dioceses have established administrative directors in their diocesan curia in order to relieve the vicars general and to implement compliance standards. This article looks at the laws on the order of five diocesan curia (Eichstätt, Hamburg, Cologne, Munich and Münster). While in the archdiocese of Cologne the approach of separation of powers within the curia is recognisable due to the clear separation of the business areas of vicar general, diocesan finance officer and administrative director, elsewhere areas of competence overlap and undermine the differentiation between vicar general and finance officer provided for in the code of canon law. The article is intended as a response to the proposal of Johannes Klösges, who had called for the appointment of lay people to the position of vicar general. It promotes the ideas of the control of powers in the diocesan curia.*

Schlagwörter: Diözesankurie, Verwaltung, Compliance, Gewaltenteilung, Laienpartizipation
Keywords: diocesan curia, administration, compliance, division of powers, lay participation

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1. Introduction

While the word "layperson" in theological usage refers to non-clergy (see c. 207 §1 Code/1983), in the profane understanding of the word, clergy in particular are probably more frequently perceived as laypeople in the administration of such large bodies as the German

dioceses. Due to the constitutional structure of the Church, it is primarily theologians who, as bishops and vicars general, lead institutions worth billions while the non-ordained members of the people of God are recognised by the Second Vatican Council as offering "their special skills to make the care of souls and the administration of the temporalities of the Church more efficient and effective [...]" (AA 10). The incumbent successor of St Peter recently even recognised administration as a specifically lay, because female, principle in the Church.¹

The involvement of lay people in management tasks within diocesan curiae is therefore not only called for in the sense of a church reform aimed at democratisation - the pros and cons of which are not to be discussed here.² It would also serve to professionalise church administrative action through the greater integration of specialist expertise, which is why in some German dioceses office structures have been renewed in recent years and management positions in the area of administration have been filled by lay people. The diocesan laws enacted to restructure the curia in the (arch)dioceses of Munich-Freising, Hamburg, Eichstätt, Münster and Cologne are the subject of this article. After analysing these norms, the article will examine the extent to which the laws enable lay participation in church governance and the extent to which the new structures are suitable for establishing compliance³ and the control of powers in the diocesan curia. This question appears relevant in light of the financial

¹ In November 2022, Pope Francis said in an interview with American Magazine that in addition to the Petrine principle, which justifies the exclusion of women from the ordained ministry, and the Marian principle, which realises the Church as the receiving bride of Christ, there is also the principle of administration: "There is a third way: the administrative way. The ministerial way, the ecclesial way, let us say, Marian, and the administrative way, which is not a theological thing, it is something of normal administration. And, in this aspect, I believe we have to give more space to women. [...] When a woman enters politics or manages things, generally she does better." - MALONE, Matt et al: Exclusive: Pope Francis discusses Ukraine, U.S. bishops and more. Interview in American Magazine from 28 November 2022, available online at: <https://bit.ly/3X13Cnp> [accessed on: 10.06.2023].

² This demand is exemplified by the "Synodaler Weg", a reform initiative of the German Bishops' Conference and the Central Committee of German Catholics, which is non-binding in terms of canon law - see DER SYNODALE WEG: Basic text "„Macht und Gewaltenteilung in der Kirche – Gemeinsame Teilnahme und Teilhabe am Sendungsauftrag" of 3 February 2022 No. 41, published by the Office of the Synodal Path, Bonn 2022.

³ The term "compliance" is understood to mean "'legal conformity, observance of law and order' and 'integrity, honesty or business ethics'" - accordingly, it is about the implementation of a structural and procedural organisation that is intended to minimise risks to the legal conformity of institutional actions, see PREUSCHE, Reinhard; WÜRZ, Karl: Compliance, Freiburg i. Br.¹ 2015, p. 8f.

scandals in Limburg in 2013,⁴ and Eichstätt in 2018,⁵ where, according to the law firm WSW, those responsible "established or perpetuated an organisational structure based on their own desire to maintain power, which ultimately amounts to a 'wet biotope' for criminals in the area of assets."⁶ Inspired by this, the Association of German Dioceses presented a handout on "Church Corporate Governance" in 2021⁷, which poses the following questions: "Are the tasks, competences, accountabilities and responsibilities in the (arch)diocese appropriately delineated and documented? - Do members of supervisory bodies have the necessary professional qualifications (such as theological/ethical, legal or economic qualifications, including personnel management skills)?"⁸ Finally, the latest proposal by the Paderborn diocesan judge Johannes Klösges to fill the office of vicar general with a layperson after obtaining a Roman dispensation will be discussed.⁹

2. Comparison of the diocesan laws on the organisation of the curia

The diocesan laws on the organisation of curiae, with which the establishment of an administrative director / head of office / office management takes place,¹⁰ can be summarised in three groups, as the norms of the Bavarian dioceses from Munich-Freising (2019) and Eichstätt (2020) are almost identical,¹¹ while the Münster law (2021) is very similar to the

⁴ See SCHÜLLER, Thomas Zu einigen kirchenrechtlichen Dimensionen der Causa Tebartz van Elst, in: Valentin, Joachim (ed.): Der Fall Tebartz-van Elst. Kirchenkrise unter dem Brennglas, Freiburg i. Br. 2014, pp. 119-148.

⁵ WASTL, Ulrich; PUSCH, Martin: : Finanzskandal im Bistum Eichstätt. Ursachen, Verantwortlichkeiten, Konsequenzen und Empfehlungen of 3 February 2019, available online at: <https://bit.ly/3NUe5P2> [accessed on: 10.06.2023].

⁶ Ibid, 145.

⁷ VERBAND DER DIÖZESEN DEUTSCHLANDS: Kirchliche Corporate Governance Grundsätze guter Finanzwirtschaft in deutschen (Erz-)Bistümern, Bonn 2021.

⁸ Ibid., 26f.

⁹ On the proposal, see KLÖSGES, Johannes: Mächtig ohnmächtig. Neue Leitungsgämter in deutschen Diözesen, in: Herder Korrespondenz 4 (2023), pp. 26-29.

¹⁰ In the following, the individual designations are used indiscriminately for all dioceses, unless the context indicates otherwise, in order to enable an undisturbed reading flow.

¹¹ See DER ERZBISCHOF VON MÜNCHEN UND FREISING: Diözesangesetz zur Neuordnung der Leitungsstrukturen des Erzbischöflichen Ordinariates München vom 12. Dezember 2019 in: Amtsblatt für das Erzbistum München und Freising 3/2020, p. 59-70; DER BISCHOF VON EICHSTÄTT: Diözesangesetz zur Neuordnung der Verwaltungsleitung in der Diözese Eichstätt vom 29. Juni 2020, in: Pastoralblatt. Amtsblatt des Bistums Eichstätt 4/2020, p. 97-103.

Hamburg law (2020).¹² The most recent norm comes from Cologne (2022).¹³ - Some aspects such as the establishment of the office and appointment; task profile; relationship between the administrative director and vicar general and diocesan finance officer; deputisation regulations and regulations in the event of a vacancy in the episcopal chair are examined in this chapter.

2.1 Establishment and appointment

In the Bavarian dioceses, the office of "Amtschef/Amtschefin" is established in Art. 1 §1 of the respective laws. It is stated that the office "can be filled either by establishing a church civil servant relationship or by means of an employment contract" (Munich Art. 1 §3 / Eichstätt Art. 1 §3).¹⁴ In any case, the basic order of ecclesiastical service must be observed, which, however - as Klösge has already written with regard to the diocese of Münster - does not apply to clergy who establish an incardination relationship with their diocese. Consequently, it seems questionable whether an ordained minister can hold the office of head of office at all.¹⁵ It seems surprising that, unlike in the diocese of Eichstätt, where the bishop freely delegates the office, there is no specific regulation regarding who is responsible for filling the office in the Archdiocese of Munich-Freising. Reference must be made here to the codicological norm of c. 148 Code/1983, which states: "The provision of offices is also the competence of the authority to whom it belongs to erect, change, and suppress them unless the law establishes otherwise." This is confirmed once again in c. 157 Code/1983. Consequently, the head of office in Munich is also appointed by the archbishop.

In the Archdiocese of Hamburg, it is standardised that "in accordance with cc. 145, 148 Code Iuris Canonici, the office of 'Administrative Director' is hereby established in the Archbishop's Vicariate General" (Hamburg §4 I), while in Münster recourse is made to the hitherto unestablished office of Chancellor of the Curia, which is newly established in accordance with

¹² See DER ERZBISCHOF VON HAMBURG: Gesetz über die Neuordnung der Verwaltungsleitung des Erzbistums Hamburg vom 17. März 2020, in: Kirchliches Amtsblatt für das Erzbistum Hamburg 3/2020, pp. 23–27; DER BISCHOF VON MÜNSTER: Gesetz zur Neuordnung der Leitungsstrukturen des Bischöflichen Generalvikariates Münster vom 18. Januar 2021, in: Kirchliches Amtsblatt für das Bistum Münster 2/2021, pp. 93-101.

¹³ See DER ERZBISCHOF VON KÖLN: Diözesangesetz zur Ordnung der Erzbischöflichen Kurie im Erzbistum Köln vom 18. November 2022, in: Amtsblatt des Erzbistums Köln 12/2022, p. 191-193.

¹⁴ For the sake of simplicity, the laws mentioned in footnotes 9-11 are cited with the location of the authority that issued them.

¹⁵ See KLÖSGES: Mächtig ohnmächtig (see note 9), p. 26.

c. 482 §1 Code/1983 (Münster §5 I), whereby the office holder has the title "Administrative Director" (Hamburg §4 II / Münster §5 II) and is freely appointed by the (arch)bishop in accordance with c. 157 Code/1983 (Hamburg §5 I / Münster §6 I). Prior to the appointment, a selection process takes place, which is the responsibility of the vicar general: "In agreement with the [arch]bishop, the vicar general determines how this office is to be filled" (Hamburg §6 I / Münster §7 I). In each case, the Administrative Director is a senior member of staff (Hamburg §6 II / Münster §7 II).

In accordance with the Cologne law, the office of "head of office" is newly established with reference to c. 145 §2 Code/1983 (Art. 4 §1 Code/1983), whereby the aforementioned paragraph of the Code refers to the "obligations and rights" are "proper to individual ecclesiastical offices" and are later standardised in Art. 5. Unlike in the other dioceses, the appointment of the office bearer is not made entirely freely by the archbishop, but "after consultation with the vicar general and the finance officer" and "for five years", "whereby reappointment is possible" (Art. 4 §2 p. 1). The right of appeal granted to both office holders (albeit without the sanction of nullity in the event of non-compliance) represents a sensible restriction on the archbishop's freedom of appointment, as it makes sense to involve precisely those persons in the selection process who will later have to work with the post holder in particular. The limitation on the term of office is a peculiarity of Cologne, as is the reference that the head of office must be "in full communion with the Catholic Church and experienced in matters of administrative organisation" (Art. 4 §2 p. 2), whereby reference is also made here to the Basic Regulations for the Service of the Church. Only in Cologne is there also a reference to the procedure for the dismissal of the head of office, which can only take place "for serious cause" and again "after consultation with the vicar general and finance officer" (Art. 4 §2 p. 4). With regard to the dismissal as well as the limitation of the term of office, Cologne adopts the regulation that the Code provides in a similar way with regard to the diocesan finance officer in c. 494 §2 Code/1983 - albeit supplemented by a right to be heard by the Council of Administration and the College of Consultors.¹⁶ In view of the almost

¹⁶ In c. 494 §2 Code/1983 it says: "The Finance officer is to be appointed for a Five year term but can be appointed for other Five year terms at the end of this period. The finance officer is not to be removed while in this function except for a grave cause to be assessed by the bishop after he has heard the college of consultors and the Finance council."

identical wording of the norm for the finance officer and the head of office, it can also be seen that both offices were conceived in parallel with regard to their position and appointment.

To summarise, it should be noted that the Cologne diocesan law has the highest density of norms with regard to the regulations on establishment, appointment and dismissal and sets out more detailed regulations. It should be emphasised that the practice of referring to codicological norms, which is common there as well as in Hamburg and Münster, is helpful in finding the anchoring of the new offices in the overall church law and creating legal clarity - especially when, as in Munich, questions such as who actually appoints the head of office are not regulated in the diocesan law.

Excursus: Administrative Director as Chancellor?

A look should be taken at the question of whether it makes sense to also assign the office of chancellor to the administrative director, as in Münster, where such an office was only established with the new diocesan law. This alone is noteworthy, as the Chancellor of the Curia is bindingly provided for by the Code, and not just - as Klösge states - for almost 40 years after the current Code 1983 came into force, but for more than 100 years. The Code of 1917 also already recognised this office, which was reserved for clerics at the time (see can. 372 §1 Code/1917).¹⁷ In Münster, it may be due to the non-observance of this norm that the office lends itself to linking administrative leadership to it. When Klösge problematises the fact that the duties provided for in the Code are different from those in the Münster law, he should refer to c. 482 §1 Code/1983: "In every curia a chancellor is to be appointed whose principal function, unless particular law establishes otherwise, is to take care that acts of the curia are gathered, arranged, and safeguarded in the archive of the curia."¹⁸ It is unproblematic to assign tasks to the chancellor by law, especially as legal practices that deviate from the Code already exist, for example in North America.¹⁹ In order to do justice to

¹⁷ See *ibid.* In c. 372 §1 Code/1917 it says: "In qualibet Curia constituatur ab Episcopo cancellarius qui sit sacerdos, cuius praecipuum munus sit acta Curiae in archivo custodire, ordine chronologico disponere et de eisdem indicis tabulam conficere." ("In each curia, the bishop is to appoint a chancellor who is a priest and whose main task is to keep the acts of the curia in the archive, to organise them chronologically and to index them in an overview.") - Translation MM).

¹⁸ Emphasis added by the author of this work.

¹⁹ For references to this practice, see PLATEN, Peter: Die Ausübung kirchlicher Leitungsgewalt durch Laien. Rechtssystematische Überlegungen aus der Perspektive des „Handelns durch andere“ (= Beihefte zum Münsterischen Kommentar zum Codex Iuris Canonici 47), Essen 2007, pp. 357-360; THE SAME. Rechtsgeschichtliche Entwicklung des "Handelns durch andere" im kanonischen Recht (= Beihefte zum

these differences, the legislator has created the possibility of restricting or expanding the portfolio of duties of the chancellor under special law.²⁰

Peter Platen expressly points out that the office of chancellor is ideally suited to involving lay people in the exercise of leadership.²¹ Against the background of the debate on the question of whether and how lay people can be involved in the exercise of leadership, this starting point is recommended due to the fact that the Code creates an office that can also be exercised by lay people. In this way, the dogmatically delicate question, which numerous theologians and canonists have struggled with, can be circumvented to a certain extent.²² But more on this later. Suffice it to say here that, according to Platen, one solution is to delegate the power of governance, whereby the layperson involved should be bound as closely as possible to the delegate. Platen writes: "Thus, for example, the chancellor of the curia [...] is already subject to comprehensive instructions and dependent on the diocesan bishop and vicar general or a possibly responsible episcopal vicar via the ecclesiastical office transferred to these persons. In particular, if a delegation is not only made for the one-off performance of a single act, but if it involves regularly recurring tasks, the close relationship with the ordinarius authorised to

Münsterischer Kommentar zum Codex Iuris Canonici 48), Essen 2007, pp. 372-377. On the homepage of the US diocese of Richmond, the chancellor is named as being responsible, for example, for dispensation requests and other administrative tasks: "The Chancellor serves the diocesan bishop as notary and secretary of the diocesan curia, and assists in carrying out the administrative needs of the diocese. Among the duties entrusted to this office are requests for dispensations and permissions, and those canonical matters entrusted to it by the bishop." - Catholic Diocese of Richmond: Homepage. Office of the Chancellor, available online at: <https://bit.ly/46BXp5E> [viewed on: 17.10.2023]. Similarly, in the Diocese of Providence: „In the Diocese of Providence, the Chancellor is also the Bishop's delegate for granting marriage dispensations and permissions, and works with the Vicars-General to advise and counsel the Bishop in the interpretation and application of canon law within the Diocese. The Chancellor also serves as secretary for diocesan (non-parish) corporations and authorises the Extraordinary Ministers of Holy Communion and maintains records of those appointed." - Diocese of Providence: Homepage. Office of the Chancellor, available online at: <https://bit.ly/3tsYe1J> [viewed on: 17.10.2023].

²⁰ See BIER, Georg: Commentary on c. 482, in: Münsterischer Kommentar zum Codex Iuris Canonici (MKCIC), recital 2.

²¹ See: Die Ausübung kirchlicher Leitungsgewalt durch Laien (as note 19), pp. 357-360.

²² Only as an example, in addition to Platen from more recent times, see ACKERMANN, Konrad M.: Die Sacra Potestas im Werk von Alfons Maria Stickler und Klaus Mörsdorf. Rechtssystematische Überlegungen zur Möglichkeit einer Mitwirkung von Laien an der kirchlichen Regierungsgewalt (= Kirchen- und Religionsrecht 32), Münster 2020; BIHL, Benjamin: Weihe und Jurisdiktion, Wiederauflage eines klassischen theologischen Problems unter neuen Vorzeichen, in: Münchener Theologische Zeitschrift 69,3 (2018), pp. 288-304; HAHN, Judith: Potestas incerta. Das Ambiguitätsproblem des Laienleitungsrechts, in: Sellmann, Matthias / Jürgens, Benedikt (eds.): Wer entscheidet, wer was entscheidet? Zum Reformbedarf kirchlicher Führungspraxis (= Quaestiones disputatae 312), Freiburg i. Br. 2020, pp. 259-273; MECKEL, Thomas / PULTE, Matthias (eds.): Leitung, Vollmacht, Ämter und Dienste Zwischen römischer Reform und teilkirchlichen Initiativen (= Kirchen- und Religionsrecht 33), Münster 2021.

delegate should ensure a permanent close connection to the delegate."²³ In short: The head of office exercising leadership authority is allowed to do all the more, the more closely he is bound to the bishop - and the office of chancellor is closely bound to the bishop.

Nevertheless, there are also reasons against appointing the head of office as chancellor - for example, if the office already exists and is exercised by a person who, as the curia's highest documentary official, holds the portfolio of tasks that the Code characterises outside of the special provisions of particular law. A notary does not have to be suitable to perform administrative tasks, for example in personnel administration, nor conversely does a head of administration with economic expertise have to be willing to prepare, issue and store documents and files as an archivist. In this case, it is advisable to separate the two offices in the interests of an appropriate division of responsibilities. The obligation to follow instructions and the close relationship with the bishop can also be standardised under particular law for the administrative director - this would include the regulations on free appointment (see c. 482 §1 Code/1983 in conjunction with cc. 148 / 157 Code/1983), dismissal (see c. 485 Code/1983) and the binding of the holder of the office to standards guiding his actions.

2.2 Task profile

With regard to the task profile, all five dioceses stipulate that the Administrative Director is in charge of administration and should "ensure that administrative processes are carried out efficiently and transparently in accordance with the rules" (see Munich Art. 2 §8 I / Eichstätt Art. 2 §6 I). He "directs the administration of the Vicariate General in all administrative and economic matters" (Hamburg §7 I / Münster §8 I) and ensures "the safeguarding of a professional, efficient and transparent administration to the required extent as well as the coordination and networking of all organisational units of the Archbishop's Curia" (Cologne Art. 5 §2). The heads of office in all dioceses are limited in their power by pastoral guidelines set by the bishop or vicar general and by the economic plan / budget of the (arch)diocese (see Hamburg §8 I / Münster §9 I).²⁴ One thing the dioceses have in common is that the head of

²³ PLATEN: Die Ausübung kirchlicher Leitungsgewalt durch Laien (as note 19), p. 358.

²⁴ In accordance with c. 493 Code/1983, the budget also applies in any case to the diocesan administration to which the head of office belongs, irrespective of a renewed standardisation through particular law, see BIER, Georg: Commentary on c. 493, in: MKCIC, recital 5.

office has power of representation in external relations.²⁵ With the exception of Cologne, the heads of office are *expressis verbis* authorised to represent the diocese vis-à-vis the public and the media if matters relating to their area of office are dealt with there.²⁶

In Eichstätt, the area of responsibility is specified in a decree on the area of responsibility of the head of office.²⁷ Comparable decrees on the delegation of competences - less detailed - can also be found in Hamburg and Münster.²⁸ In Eichstätt, paragraph I §1 contains a catalogue of tasks, which is presented here as an example due to its detail. The head of office is responsible for the following tasks: Mutual exchange with the moderator of the Curia and the Ordinariate with regard to their administrative actions;²⁹ Determination of the structural and procedural organisation of the Episcopal Ordinariate with the exception of the office of the Vicar General; implementation of the pastoral goals of administrative action determined by the bishop; determination of administrative standards for the Episcopal Curia with the exception of the Official's area of responsibility; Managing and exercising the function of employer/supervisor vis-à-vis the heads of some departments;³⁰ exercising the powers of the bishop vis-à-vis the diocesan finance officer if the bishop does not take action himself - the vicar general must also be involved in drawing up the economic plan; managing Department I (Central Services);³¹ representing the Diocese of Eichstätt in civil legal proceedings, before state courts and in disputes before ecclesiastical labour courts and the employees of the

²⁵ With regard to the norms on judicial and extrajudicial representation, see Munich Art. 2 §9 I; Eichstätt Art. 2 §7 I; Hamburg §9 I; Münster §10 I; Cologne Art. 6 §1.

²⁶ See Munich Art. 2 §8 I No. 7; Hamburg §8 IV; Münster §9 IV; in Eichstätt a separate decree regulates the responsibilities of the head of office, see the next paragraph.

²⁷ See DER BISCHOF VON EICHSTÄTT: Dekret über den Geschäftsbereich des Amtschefs / der Amtschefin, in: Pastoralblatt. Amtsblatt für die Diözese Eichstätt 4/2020, pp. 103-107.

²⁸ The decrees there do not include a catalogue of competences, but rather develop responsibility for the areas of business and administration, deal with supervisory management, the possibility of issuing administrative decrees, the role of the administrative director as a superior, administrative regulations and communication, see DER GENERALVIKAR VON HAMBURG: Allgemeines Dekret über die Delegation von Aufgaben und Kompetenzen des Generalvikars vom 01. April 2020, in: Kirchliches Amtsblatt für das Erzbistum Hamburg 4/2020, pp. 46-48; DER BISCHOF VON MÜNSTER: Allgemeines Dekret über die Delegation von Aufgaben und Kompetenzen des Generalvikars vom 18. Januar 2021, in: Kirchliches Amtsblatt für das Bistum Münster 2/2021, pp. 102-105.

²⁹ See DER BISCHOF VON EICHSTÄTT: Dekret über den Geschäftsbereich des Amtschefs, paragraph I, nos. 1-18.

³⁰ The offices assigned to the Head of Office are a) Chancellor, b) Creation and Climate Protection, c) Occupational Health and Safety, d) Ombudsman's Office, e) Internal Audit, f) Office for Church Music and g) Main Departments of the Episcopal Ordinariate with the exception of all matters relating to personnel matters or the incardination of clergy – see personnel matters or the incardination relationship of clerics - see *ibid.*, paragraph I no. 5.

³¹ While the decree only mentions "Department I", its area of responsibility can be seen in the organisation chart of the Diocese of Eichstätt, see BISTUM EICHSTÄTT: Organigramm des Bischöflichen Ordinariats, available online at: <https://bit.ly/3PuHujS> [viewed on: 23.06.2023].

Ordinariate; Participation in the Personnel Commission; matters relating to employee representation; participation in committees (Diocesan Asset Management Council, Diocesan Tax Committee, College of Consultants) as a diocesan representative; representation of the Vicar General on the board of the Diocesan Council; representation of the diocese in church associations in consultation with the Vicar General and representation of the diocese's position as a shareholder if the Vicar General has no jurisdiction; Dealing with outstanding property matters; finally, "all other matters of the Episcopal Ordinariate for which responsibility is not expressly or clearly defined, unless they necessarily require Holy Orders due to their sacramental reference"³² as well as "the evaluation of all the aforementioned procedures, tasks and processes"³³ .

The detailed naming of tasks is unique in comparison to the other four dioceses analysed, although in Cologne it is noticeable that the law names areas of responsibility very compactly.³⁴ If one only looks at the diocesan laws, one finds a definition of tasks *ex negativo*, in that the area of responsibility of the vicar general is standardised there and the impression is created that all tasks not explicitly assigned to him would then be the responsibility of the administrative director. This is problematic if the supplementary decree remains at an abstract level and could also offer room for interpretation under the buzzwords of "economic" and "administrative matters".

In the five dioceses, the vicar general is responsible for the "theological-pastoral" profile and sets targets, sometimes in consultation with the (arch)bishop, to which the administrative director is bound.³⁵ In the Bavarian dioceses, individual competences are named such as the performance of tasks that have a direct sacramental content or reference to the sacrament of Holy Orders or the liturgy or that concern the structures of the territorial or categorical places of pastoral care; furthermore, the issuing of ecclesiastical administrative acts such as the granting of dispensations and privileges; personnel matters that establish or change the status

³² DER BISCHOF VON EICHSTÄTT: Dekret über den Geschäftsbereich des Amtschefs (as in note 27), paragraph I no. 17.

³³ Ibid, no. 18.

³⁴ In Cologne, in addition to the task of "ensuring a professional, efficient and transparent administration as well as the coordination and networking of all organisational units of the Archbishop's Curia" and the competence to "establish binding administrative standards for the entire Archbishop's Curia" (Art. 5 §2), only the task of being the superior of all non-pastoral employees (Art. 5 §7) is mentioned.

³⁵ On the allocation of competences to the Vicar General, see the diocesan laws for Munich Art. 2 §§ 4-5; Eichstätt Art. 2 §3; Hamburg §3; Münster §3 and Cologne Art. 2.

of pastoral staff; finally, personnel matters and the supervision of the head of office and finance officer. In Munich, matters relating to the supervision of foundations are the prerogative of the Vicar General. In Eichstätt, he is responsible for issuing instructions regarding asset management in accordance with c. 1276 §2 Code/1983,³⁶ also for compliance and Tax-CMS.³⁷ In view of the expertise required, it is questionable whether this task would not also be better delegated to the head of office or the finance officer.

In the (arch)dioceses of Cologne, Hamburg and Münster, there are comparable circumscriptions of competences. Here, too, the vicar general is assigned all liturgical tasks and those that require the reception of ordination, explicitly the issuing of administrative acts such as dispensations or the granting of privileges, as well as the fulfilment of special mandates and the role of supervisor for pastoral staff and - except in Cologne - for the administrative director. It is noteworthy that in the Archdiocese of Hamburg, the "strategic-pastoral realisation of archdiocesan indications in accordance with can. 493" (Hamburg §3 II lit. b) is entrusted to the vicar general. The cited norm deals with the preparation of the budget in accordance with the instructions of the archbishop, to whom the management is bound, and thus appears to regulate the competence to manage the funds earmarked for pastoral budget items.

What all dioceses have in common is that the Administrative Director is responsible for the management of some committees, such as the chairmanship of the Ordinariate or House Conference (see Munich Art. 2 §15 I / Münster §17 II) in the area of episcopal administration, but also the representation of the bishop in the Diocesan Asset Management Council - also in coordination with the Vicar General (see Hamburg §8 II / §9 III).

The special feature of the Cologne approach is the tripartite division in the curia organisation, so that the area of competence of the head of office can be distinguished not only from that of the vicar general, but also from that of the diocesan finance officer, who defines "economic framework specifications" (Art. 5 §3) to which the head of office is bound. This is different in

³⁶ In principle, the instructions for regulating the administration of property according to c. 1276 Code/1983 are to be issued by "the Ordinaries". The legal definition of c. 134 §1 Code/1983 indicates that within a diocese this can only be the diocesan bishop, episcopal vicars or the vicar general.

³⁷ See STOCKMANN, Peter: Peter: Die Eichstätter Diözesankurie zwischen Transparenz und Transformation, in: Berkmann, Burkhard J. (ed.): Die Diözesankurie. Blick hinter die Kulissen der Bistumsverwaltung (= Adnotationes in ius canonicum 60), Berlin 2021, pp. 113-131; here: p. 115-120.

the Archdiocese of Hamburg, where no finance officer has been appointed to date and the administrative director is responsible for his area of responsibility, a "diocesan finance officer plus", so to speak, who is responsible for all economic matters.³⁸ This will be problematised later.

While the task profile of the administrative director falls into the administrative-economic area everywhere, there are small differences in the conception of the office. It is therefore surprising that the vicars general retain some responsibilities in economic matters. Foundation supervision, compliance or the particular legal supplement to asset management in accordance with c. 1276 §2 are examples of this.

Furthermore, it is questionable how practicable the definition of a task profile of an administrative directorate can be *ex negativo*, especially if it is supplemented by some nebulous provisions, such as that all tasks that require ordination are reserved for the vicar general. If we look at the depth of the dispute about the question of lay participation in leadership and the significant discussion about when this leadership is actually exercised and when it is only a matter of auxiliary services or other forms of authorisation, then this question is anything but clear-cut. A non-theologian in particular may find it extremely difficult to deal with such questions and to define their area of competence accordingly. A clear allocation of responsibilities - as can be found in the decree of the Bishop of Eichstätt - is helpful here. Aspects such as clarity of standards are indispensable on the way to an improved legal culture and the establishment of constitutional standards. Concretisation in the individual laws is desirable.

2.3 Relationship with the Vicar General / conflict of law rules

Another aspect relates to the relationship between the head of office and the vicar general. The laws contain general clauses on cooperation that refer to a desirable harmony, but do not promise a simple solution in the event of conflict.³⁹ Particularly in view of the sometimes

³⁸ Johannes Klösges rightly criticises this practice when he points out that it would make sense to first create the codicillary binding office of the finance officer before establishing new offices and structures that ignore current canon law - see KLÖSGES: Mächtig ohnmächtig (see note 9), p. 27f.

³⁹ In the Archdiocese of Hamburg, for example, §11 states: "The Vicar General and the Administrative Director work together in a trusting, mutually supportive and communicative manner." Similar clauses can be found in Munich (Art. 2 §2), Münster (§12) and Cologne (Art. 7).

ambiguous allocation of competences, conflicts can certainly arise as to who has decision-making powers in one case or another. What do the diocesan laws regulate?

In the four (arch)dioceses of Munich-Freising, Eichstätt, Hamburg and Münster, the head of office is under the ultimate supervision of the vicar general, who can act in the area of responsibility of the administrative director in the event of "imminent danger or imminent damage and in each case if the administrative director does not act in good time or fails to act" (Hamburg §13 I / Münster §14 I) or "if this appears to be unavoidably necessary to safeguard the highest interests of the church or the archdiocese of Hamburg" (Hamburg §13 II / Münster §14 II). Klösges also criticised the fact that it is at the discretion of the vicar general to determine the case of danger, stating that "the vicar general is still guaranteed *carte blanche* freedom of action and decision-making" and that he has the "competence authority"⁴⁰. In the Archdiocese of Munich-Freising, the vicar general can also intervene in the area of competence of the head of office, except in the cases mentioned, if he has previously consulted with the archbishop.⁴¹ In Eichstätt, the Vicar General only has the authority to intervene in such a way that he is also the moderator of the curia and can issue instructions to the head of office "if he considers this to be necessary, taking into account the personal responsibility of the head of office, in order to ensure the achievement of the pastoral goals of the diocesan administrative action and if he has, as far as possible, agreed on this in advance with the Bishop of Eichstätt" (Eichstätt Art. 2 §2 III). In fact, Klösges' criticism should be emphasised to the extent that there may be differences in interpretation as to when "imminent danger", the "safeguarding of the highest interests of the Church" and, in particular, the "achievement of pastoral objectives of diocesan administrative action" can be invoked. If the former can at least be fixed to the extent that an actual situation of danger can be justified on the basis of objective criteria, it may surprise some people that the church administration pursues pastoral goals at all and uses these to justify a veto in an idiosyncratic manner.

Even the standard from Hamburg and Münster (§3 III in each case) may not completely remedy this when it states: "Measures in the Vicar General's area of responsibility must

⁴⁰ See KLÖSGES: Mächtig ohnmächtig (see note 9), p. 27.

⁴¹ "In the area of tasks assigned to the head of office, the vicar general may only act in individual cases and in consultation with the archbishop." - Munich Art. 2 §5 III.

comply with administrative and economic framework requirements from the Administrative Director's area of responsibility." Although the administrative director has a prerogative in administrative matters, this does not mean that the two meet on an equal footing in complex issues with administrative and pastoral implications if one can outdo the other - if this is necessary for the good of the church. This is particularly true in view of the fact that, unlike in Munich, the head of office is not only accountable to the archbishop (Munich Art 2 §10), but also to the vicar general (see Hamburg §5 II / Münster §6 II), while in both dioceses (in Münster together with the finance officer) the administrative director has a right of veto in cases where measures cannot be covered by the budget, the use of required budget funds jeopardises the fulfilment of tasks in other priority areas, general budget principles under public law are not observed, or there is a threat of legal or economic damage (see Hamburg §12 I / Münster §13 I). In Münster, the existing finance officer can also veto a decision for these reasons.⁴² If he, the Administrative Director and the Vicar General do not reach an agreement on the matter, the Bishop decides in accordance with the statutes of the Church Tax Council (see Hamburg §12 II / Münster §13 II).

To summarise, this means that the administrative director is appointed by the vicar general in agreement with the (arch)bishop, is accountable to the vicar general and, in the urgent cases mentioned, the vicar general can intervene in the area of responsibility of the head of office. He therefore appears as an employee of the Vicar General to support him in administrative and economic matters. However, there is no consistent shift of authority in the present case, which binds ultimately binding legal authority below the bishop to an official with an expectedly higher level of expertise - the head of office also lacks the necessary independence to assert himself and the right of veto in economic matters vis-à-vis the vicar general. An efficient form of power control would look different.

The Archdiocese of Cologne has taken a different approach in this regard, with a curia structure that has been divided into three parts since January 2023: pastoral care, which is the responsibility of the Vicar General, economic matters, which are the responsibility of the diocesan finance officer, and administration, which is the responsibility of the head of office. Although the latter is only appointed after consultation with the vicar general and the finance

⁴² As has already been pointed out, there is no diocesan finance officer in the Archdiocese of Hamburg and his tasks therefore fall to the Administrative Director.

officer (see Art. 4 §2), there is otherwise a separation of the areas of responsibility, so that the head of office is only circumscribed by the strategic-pastoral guidelines and the economic framework specifications of his counterparts (see Art. 5 §3). The same applies vice versa, in that his administrative guidelines must be observed (see Art. 2 §4). He and the office management are bound by the finance officer insofar as measures from their business areas must be implemented in agreement with him (see Art. 3 §5). In Cologne, too, there is a duty of accountability on the part of the office management, albeit exclusively to the archbishop, who is to be informed of all important events (see Art. 5 §6). It can be said that the Cologne office management meets the vicar general as well as the finance officer on an equal footing and that a separation of powers has been created below the archbishop that does more justice to corporate governance.

2.4 The position of the diocesan finance officer

According to c. 494 §1 Code/1983, the office of diocesan finance officer is mandatory, even if not all dioceses - such as Hamburg - implement this binding norm.⁴³ This is questionable because one of the few moments of control of power within a curia remains unrealised, as the finance officer is supposed to be "completely exempt from and independent of the vicar general"⁴⁴. For this reason, Platen points out that the participation of lay people in the exercise of leadership authority should not take place through the delegation of powers from the vicar general to the finance officer, as the relationship of independence between the two could otherwise be damaged if the finance officer were bound by instructions to the vicar general in some matters, while in case of doubt he should be responsible for economic matters against the will of the vicar general.⁴⁵ In accordance with c. 494 §3 Code/1983, he is bound by instructions and accountable solely to the diocesan bishop and the Council for the Administration of Property, "whereby the management of property matters is the responsibility of the Council for the Administration of Property, while the finance officer is

⁴³ See ALTHAUS, Rüdiger: Die Vermögensverwaltung auf diözesaner Ebene in Deutschland - oder: Impressionen einer Nichtrezeption des Codex, in: Güthoff, Elmar; Haering, Stephan (eds.): *Ius quia iustum*. Festschrift für Helmuth Pree zum 65. Geburtstag, Berlin 2015, pp. 699-718, here: p. 704.

⁴⁴ PREE, Helmuth: Der Diözesanökonom, sein rechtliches Verhältnis zum Diözesanbischof und seine Rechtsstellung in der bischöflichen Kurie, in: *Archiv für Katholisches Kirchenrecht* 182 (2023), pp. 22-43, here: p. 42.

⁴⁵ Platen proposes strengthening the office of the chancellor or creating a separate diocesan office, to which leadership power is then delegated by real delegation - see PLATEN, Peter: Macht und Gewaltenteilung: Leitung(sgewalt) in der Diözese, in: *Theologie und Glaube* 111 (2021), pp. 137-149, here: p. 143-145.

responsible for their execution"⁴⁶. Although the finance officer is appointed by the bishop, he is first responsible to the property management council.⁴⁷

A large variance can be seen in the five dioceses analysed. In the Archdiocese of Munich-Freising, the finance officer is named as a governing body (see Munich Art. 2 §1 II), but at the same time is subject to a fourfold division: "Insofar as the diocesan finance officer is also the archbishop's finance director, he/she reports to the head of office, unless he/she acts as diocesan finance officer or the vicar general is not responsible. The Archbishop may commission the Vicar General in general, in part or in individual cases to fulfil the tasks and powers incumbent upon him in relation to the Diocesan Finance officer." (Munich Art. 2 §13) - The finance officer is the servant of four masters, the archbishop, the vicar general, the head of office as well as the asset management council, depending on the task.

In the diocese of Eichstätt, the finance officer is barely mentioned.⁴⁸ He is only mentioned in the "Decree on the portfolio of the head of office", where it is stated that he is responsible for "exercising the powers of the Bishop of Eichstätt in relation to the diocesan finance officer, insofar as the Bishop of Eichstätt does not act himself and with the proviso that the Vicar General is to be involved in the preparation of the annual economic plan"⁴⁹. The bishop is granted the right to appoint the finance officer (see c. 494 §1 Code/1983) and to remove him from office for serious cause after hearing the College of Consultors and the Asset Management Council (see c. 494 §2 Code/1982); furthermore, the finance officer manages the diocesan assets "under the authority of the bishop" (c. 494 §3 Code/1983). It is questionable whether these rights could be exercised by the head of office, as this requires a special mandate that is usually only conferred on vicars general or episcopal vicars.⁵⁰ In the interests of legal certainty, it is advisable to continue to leave these rights to the bishop and,

⁴⁶ PLATEN, Peter: Die Diözesankurie, in: Haering, Stephan et al. (ed.): Handbuch des katholischen Kirchenrechts, Regensburg³ 2015, pp. 638-651, here: p. 649.

⁴⁷ See *ibid.* p. 649 f.

⁴⁸ According to a conference contribution by Peter Stockmann, one could even get the impression that the finance officer, as head of the Episcopal Finance Chamber, is merely one of the heads of department of the Ordinariate, but does not fulfil a senior management role at the level of vicar general and head of office, as is the case in Munich, Münster and Cologne - see STOCKMANN: Die Eichstätter Diözesankurie zwischen Transparenz und Transformation (see note 37), p. 117.

⁴⁹ See DER BISCHOF VON EICHSTÄTT: Dekret über den Geschäftsbereich des Amtschefs, paragraph I no. 6.

⁵⁰ See BIER, Georg: Commentary on c. 494, in: MKCIC, recital 2. In Hamburg and Munich it is expressly stated that special mandates can only be exercised by the vicar general (see Hamburg §3 II lit. f / Münster §3 II No. 5).

in the interests of the division of tasks and powers, to allow the diocesan finance officer to exercise his office unhindered by other curial actors in order to be able to assert his independence.

The non-appointment of the finance officer in the Archdiocese of Hamburg is a special case.⁵¹ His duties are to be carried out by the administrative director "until the appointment of a finance officer" (see Hamburg §8 II), which also leads to a more than unfortunate confusion of offices and undermining of the implied separation of powers in the archdiocese. This is all the more true as the Administrative Director in Hamburg - as Klösges rightly stated - chairs meetings of the Economic Council, as the Asset Management Council is called in Hamburg, as the Archbishop's authorised representative and is also the chairman of the committee, according to whose instructions and under whose supervision he is then supposed to carry out his work as a finance officer.⁵² It would be in the interests of compliance to maintain the separation of management and supervision that is a matter of course in companies - moreover, it is a criminal omission not to establish it where it is provided for under canon law. While it is questionable that representatives of the diocesan leadership often belong to one of the central supervisory bodies in the church hierarchy and asset management as canons, the practice in Hamburg falls even below this level, as the head of finance is supposed to supervise himself - no lessons seem to have been learnt from the scandals of the past.⁵³ This must be emphasised once again with regard to the relationship of dependency between the vicar general and the administrative director, which was described in the previous sub-chapter and once again proves to be difficult at this point, as it not only relates to the intertwining of theological-pastoral management and administration, which is a matter of course in dioceses without a head of office, but also results in a relationship of dependency between the vicar general and the administrative director, who acts as a quasi-finance officer, which is not provided for in the code and is inadmissible in terms of compliance.

⁵¹ With the questionable reference that the vicar general had not yet been appointed finance officer either, the Hamburg curial Klaus Kottmann also reports on this - see KOTTMANN, Klaus: Die Diözesankurie des Erzbistums Hamburg, in: Berkmann, Burkhard J. (ed.): Die Diözesankurie. Blick hinter die Kulissen der Bistumsverwaltung (= Annotaciones in ius canonicum 60), Berlin 2021, pp. 39-60, here: p. 43f.

⁵² See KLÖSGES: Mächtig ohnmächtig (see note 9), p. 27.

⁵³ The necessary separation of management and supervision was pointed out in the Eichstätt investigation report, see WASTL; PUSCH: Finanzskandal im Bistum Eichstätt (see note 5), p. 105f.; also see SCHÜLLER: Zu einigen kirchenrechtlichen Dimensionen der Causa Tebartz van Elst (see note 4), p. 140.

In the diocese of Münster, there is a similar regulation to that in Munich, as the finance officer is bound by instructions and accountable to the Asset Management Council in accordance with the provisions of the Code. However, if he acts as head of the "main administration department", he reports to the chancellor - "regardless of the responsibility of the diocesan asset management council" (Münster §15). The bishop can delegate to the vicar general the tasks incumbent upon him in relation to the finance officer. In addition to criticising the fourfold supervision by different bodies, it should be noted in Münster that the areas of responsibility of the finance officer and chancellor overlap. The latter manages economic matters "irrespective of the competences and responsibilities of the diocesan finance officer on the basis of the authority delegated to him by the diocesan bishop" (Münster §8 I). The right of veto vis-à-vis the vicar general exists on the part of both the chancellor and the finance officer (see Münster §13 I), giving the impression that there is a dual responsibility in economic matters. This is questionable, as the responsibilities of the finance officer and the asset management council would be undermined if the chancellor is also entrusted with corresponding competences in economic matters and in the context of asset management and carries out official acts that are actually the responsibility of the finance officer, who is accountable for budget management. A stricter separation of duties would be welcome here.

The specific legal provisions for the Cologne archdiocese have already been described. In contrast to the other dioceses, the finance officer here is responsible for his area of office under the supervision of the archbishop and the asset management council, he has a veto right to safeguard the economic guidelines and acts as a senior employee on an equal footing with the vicar general and office management.

2.5 Substitution regulations

Another relevant aspect of comparison is the deputisation regulations. Here, the (arch)dioceses of Munich-Freising, Eichstätt and Münster each stipulate in a similar way that the vicar general is represented by the head of office in areas of responsibility that do not require ordination authority (see Munich Art. 2 §7 / Eichstätt Art. 2 §5 / Münster §4). A separate priestly representative is to be appointed for tasks that require the reception of ordination. The regulation appears questionable since - as already seen in the analysis of the task profile - it is not at all clear when the reception of holy orders is required in order to fulfil

certain official duties. Insofar as the Vicar General acts as Ordinary, would not the head of the office also be Ordinary in the event of his incapacity? Some questions may arise here as to which powers can and cannot be exercised by lay people - for example, the granting of the *facultas* of confession according to c. 966 Code/1983 or the authorisation to confirm according to c. 883 §2 Code/1983 in the context of conversions or adult baptisms.⁵⁴ Against this background, it seems better to follow the provisions of the archbishoprics of Hamburg and Cologne, according to which the vicar general and administrative director - as well as the finance officer in Cologne - each have their own representatives and do not represent each other (see Hamburg §10 I-II / Cologne Art. 8).

In Munich and Eichstätt, the head of office is represented by the vicar general or by a person appointed for this purpose from among the heads of department (see Munich Art. 2 §11 / Eichstätt Art. 2 §7). In Münster, representation is not the responsibility of the vicar general, but of a head of department appointed for this purpose (see Münster §11).

2.6 Regulation in the event of a vacancy

The vicar general dies with the bishop, so it is said with regard to the loss of office of the *alter ego* of the diocesan bishop, which is legally standardised according to c. 481 §1 Code/1983. While the leadership of the diocese in such a case passes to a diocesan administrator to be elected, it is questionable what happens to the other leading members of the curia?

In the (arch)dioceses of Munich-Freising, Eichstätt, Hamburg and Münster, the stability of the office of the head of office is guaranteed, as the norms expressly state: "The office and its appointment remain unaffected by a vacancy of the archbishop's see in accordance with cann. 416 ff. or its obstruction pursuant to cann. 412 ff. Code remain unaffected." (Munich Art. 1 §4 / Eichstätt Art. 1 §4) In Hamburg and Münster it is also stated that the decree on the delegation of competences to the Administrative Director does not cease to apply in the event of a vacancy of the see (see Hamburg §7 IV / Münster §8 IV). What may initially be confusing is that the delegate loses his office, but the authority delegated to the delegate before the loss of office is retained. However, this is covered by law, as stated in c. 142 §1 Code/1983:

⁵⁴ For a discussion of some of the questions to be asked here, see LAUKEMPER-ISERMANN, Beatrix: Zur Mitarbeit von Laien in der bischöflichen Verwaltung. Rechtliche Möglichkeiten der Anwendung des can. 129 §2 CIC (= Beihefte zum Münsterischen Kommentar zum Codex Iuris Canonici), Essen 1996, pp. 74-87.

"Delegated authority expires [...] but not by the expiry of the right of the delegate, unless this is evident from attached clauses." Even if the vicar general and bishop are no longer in office, the administrative director can therefore continue to fulfil his office unchanged.⁵⁵ However, he must also observe the principle: "*Sede vacante nihil innovetur.*" (c. 428 §1 Code/1983) - His powers are therefore limited to day-to-day business.

In Cologne, the regulations in the event of a vacancy for the head of office are roughly the same as the universal canon law for the diocesan finance officer. Appointed for five years, the head of office remains in office even in the event of a vacancy (see Cologne Art. 4 §4). It also regulates the case in which the end of the term of office falls during the period of vacancy: in such a conceivable situation, the diocesan administrator can leave the position vacant, make urgent decisions from its area of responsibility himself or appoint a head of office for the duration of the vacancy. It is also conceivable that he could extend the term of office of a previous head of office for the duration of the vacancy until a new archbishop can decide.

3. Systematic reflection on some aspects of the curia reforms

After the essential aspects of the diocesan laws have been presented and compared, some aspects will be reflected upon in principle. After a look at the ideal-typical diocesan curia according to the Code, the focus will be on the aspect of compliance and control of authority in the diocesan curia, Klösger's proposal to appoint lay people as vicars general, concluded by an excursus on the possibility of lay participation in church governance created by the new administrative authorities.

3.1 The diocesan curia according to the Code/1983

Firstly, the structure of the diocesan curia as presented in the Code/1983 should be described. At its head is the diocesan bishop, in whose person the unity of the three powers distinguished according to c. 135 §1 Code/1983 - legislative, executive and judicial - culminates "according to the law" in accordance with c. 391 §1.⁵⁶ Nevertheless, these powers are not only

⁵⁵ There are no attached clauses ("during my term of office") in the four dioceses, but they would be conceivable, see SOCHA, Hubert: Commentary on c. 142, in: MKCIC, recital 8.

⁵⁶ "It is for the diocesan bishop to govern the particular church entrusted to him with legislative, executive, and judicial power according to the norm of law." (c. 391 §1 Code/1983) - The insertion " according to the norm

differentiated in theory, but are also separated in practice below the person of the bishop: he alone is responsible for the legislative power, which he cannot delegate as a rule according to c. 135 §2 Code/1983, but for the exercise of which he can only be advised.⁵⁷ In the exercise of the other powers, the bishop is supported by the diocesan curia,⁵⁸ i.e. the judicial vicar, often called the official, and the judges of the diocese in the area of judicial power,⁵⁹ by the vicar general and, if necessary, the episcopal vicars in the area of executive power. While there can certainly be no talk of an effective separation of powers, Platen speaks of a "separation of functions", which corresponds to the guiding principles of the 1967 Code reform.⁶⁰ "The functional separation of powers, which becomes clear with regard to the diocesan curia in organisational terms in the demarcation of the offices of vicar general and episcopal vicar(s) from the judicial vicar or official, is underlined in personal terms by the fact that the office of vicar general - apart from exceptions - is incompatible with that of judicial vicar (see c. 1420 §1 Code/1983). Thus the authority assigned to the vicar general with the designation vicar general or ordinariate used in German-speaking countries is also distinguished from the diocesan court headed by the judicial vicar or official, which also bears the designation officialate or consistory."⁶¹ Within the curia, the vicar general and judicial vicar thus form at least an initial counterbalance to each other, although effective control of power is not yet evident due to the continuing lack of administrative jurisdiction at diocesan level.

The administrative authority of the curia is headed by at least one vicar general, who must be appointed as a priest in each diocese by the bishop (see c. 475 §1 Code/1983). According to c. 479 §1 Code/1983, "to administer the goods of the diocese under the authority of the bishop

of law " refers to the already clear obligation of the diocesan bishop to universal church law, which is one of his duties to uphold (see c. 392 §1 Code/1983), see BIER, Georg: Commentary on c. 391, in: MKCIC, recital 5.

⁵⁷ According to the Code, the bishop's advisory bodies are various councils (Council of Priests, College of Consultors, Pastoral Council) and in particular the diocesan synod, see BIER, Georg: Commentary on c. 391 (see note 56), margin no. 7.

⁵⁸ "The diocesan curia consists of those institutions and persons which assist the bishop in the governance of the whole diocese, especially in guiding pastoral action, in caring for the administration of the diocese, and in exercising judicial power." (c. 469 Code/1983) - The curia is a body strictly orientated towards the bishop: he appoints its office bearers (see c. 470 Code/1983), who are to fulfil their ministry according to his instructions (see c. 471 1° Code/1983).

⁵⁹ As a rule, the bishop does not exercise the judicial power himself; rather, according to c. 1420 §1 Code/1983, he is obliged to appoint a judicial vicar and, according to c. 1421 Code/1983, other judges. These are bound by their conscience independently of the bishop's instructions (c. 1608 Codex/1983), see BIER: Commentary on c. 391 (see note 56), recital 10.

⁶⁰ See: Die Diözesankurie (as note 46), p. 639.

⁶¹ Ibid, p. 639f.

in accord with the budget determined by the Finance council and, from the income of the diocese, to meet expenses which the bishop or others designated by him have legitimately authorized". He is accountable to the bishop and may not act against his will (see c. 480 Code/1983). - The same applies to the episcopal vicars who, according to c. 476 Code/1983, have the same power of leadership as the vicar general for a specific area, a specific business area or in relation to a specific group of people. In this context, the leadership authority of the vicar general is not limited by that of an episcopal vicar, at least in the external relationship; he is free to act effectively and legally in their area of responsibility as well.⁶² It is certainly not to be expected that the Vicar General's mere possibility of exercising leadership authority within the area of responsibility of an episcopal vicar will lead to him doing so on a regular basis. In the interests of good organisational structure, it is much more advisable to respect the internal responsibilities, which are usually defined by the bishop. The office of the vicar general may be comparable to the role of the authorised signatory under commercial law (see §§48-53 HGB), whose authority can only be limited internally.⁶³ - Nevertheless, there is nothing to be said against such a limitation; after all, the bishop must be able to fulfil his duty to coordinate and order his administration in accordance with c. 473 §1 Code/1983, which clearly includes the definition of responsibilities. A moderator of the curia can also be appointed in accordance with c. 473 §2-3 Code/1983 to coordinate the actions of the vicars general and episcopal vicars; as a rule, the vicar general himself fulfils this task.⁶⁴

While the Chancellor of the Curia has already been introduced, the other bodies provided for by canon law are the Asset Management Council and the Diocesan Finance officer. The former consists of at least three faithful appointed by the bishop (see c. 492 §1 Code/1983), who are appointed for five years (see c. 492 §2 Code/1983). The committee not only draws up the budget in accordance with the instructions of the bishop (see c. 493 Code/1983), but also has

⁶² See BIER, Georg: Commentary on c. 479, in: MKCIC, recital 3.

⁶³ This does not apply to the sale and encumbrance of real estate, which requires a separate power of attorney authorisation, quasi a special mandate of the merchant. On the legal concept of procuration, see GÜTHER, Robert *Rechtliche Grundlagen. Die Prokura im Handelsverkehr*, in: Fissenewert, Peter (ed.): *Die Prokura. Rechte und Pflichten von Prokuristinnen und Prokuristen*, Freiburg i. Br.⁵ 2022, pp. 19-68.

⁶⁴ This is also provided for by the law itself in c. 473 §3 Codex/1983: "If, at the discretion of the bishop, local circumstances do not suggest otherwise, the vicar general or, if there is more than one, one of the vicars general is to be appointed moderator of the curia vicars general is to be appointed moderator of the curia."

certain rights of appeal to him,⁶⁵ and acts as the accountable body in accordance with c. 1277 §2 Code/1983. In the area of asset management, the diocesan asset management council is therefore the authoritative body, without which even the bishop cannot effectively carry out certain legal transactions. In addition, the rights of the College of Consultors must be taken into account.⁶⁶ After consulting the College of Consultors and the Council for the Administration of Property, the bishop appoints a finance officer for a five-year term (see c. 494 §1 Code/1983), who is to "administer the diocesan assets under the authority of the bishop in accordance with the budget determined by the Council for the Administration of Property and to make such expenditures from the diocesan income as the bishop or other persons authorised by him to do so have lawfully ordered" (c. 494 §3 Code/1983); he is responsible for the accounts (see c. 494 §4 Code/1983). According to the conception of the Code, the diocesan finance officer stands alongside the vicar general as the executive body of asset management and is bound to the bishop and the asset management council as a "governing body with normative, directive and supervisory powers"⁶⁷. Within the diocesan curia, the financial administration is thus functionally separated from the rest of the administration under the direction of the vicar general - at least in the ideal case provided for in the code. On the one hand, this separation of functions serves to relieve the other officials - above all the vicar general - and also establishes asset management and supervision beyond the ordinaries' unlimited powers of access. Irrespective of the questionable independence of the asset management council and finance officer due to their appointment by the bishop, the separation of their areas of responsibility indicates that it is the will of the legislator to understand and treat church assets as assets of the faithful in accordance with c. 1287 §2 Code/1983: "According to norms to be determined by particular law, administrators are to render an account to the faithful concerning the goods overed by the faithful to the Church"

With regard to the introduction of administrative directors in the dioceses, this separation of functions must therefore also be taken into account. Despite all the good intentions of wanting to establish professionalisation and control of powers in this way, nothing would be

⁶⁵ Rights of approval exist in particular for major legal transactions (see cc. 1291, 1292 §1, 1295, 1277 Code/1983), he has the right to be heard in accordance with cc. 494 §2, 1263, 1277, 1281 §2, 1305 and 1310 §2 Code/1983.

⁶⁶ In Germany, according to c. 502 §3 Code/1983, the cathedral chapters act as a college of consultors and exercise the rights in the context of asset management (see cc. 494 §1, 1277, 1292 §1, 1295 Code/1983).

⁶⁷ PLATEN: Die Diözesankurie (as note 46), p. 649.

gained for the dioceses if a head of office were to be bound by the instructions of the vicar general in the area of the vicar general's remit, while he is to form a counterweight to him in the area of asset management. This would make the separation of powers more difficult.

3.2 Compliance and separation of powers in the diocesan curia with heads of office

Separation of powers and control are important concerns of church reform processes, including the Synodal Path.⁶⁸ The introduction of compliance standards was a particular concern of the Archbishop of Cologne when implementing his reform of the Curia in 2022. A problematising preliminary remark should be made here: The supreme sovereign of the Church is the Pope; he has "by virtue of his office he possesses supreme, full, immediate, and universal ordinary power in the Church, which he is always able to exercise freely"; gleich dahinter c. 381: „all ordinary, proper, and immediate power.“ (c. 331 Code/1983), while the diocesan bishop has "ordinary, proper and direct power" (c. 381 Code/1983) in his diocese. The pope and bishop are the heads of the Church, who have the power of governance, only theoretically differentiated into legislative, executive and judicial power (see c. 135 §1 Code/1983). Effective control of power at the highest level is therefore not achievable on the basis of the current dogmatic findings.

Nevertheless, despite the unity of powers in the hierarchical top office, the question of whether and to what extent the separation of powers can be realised below it must be considered. The fact that there are organs of management and also of supervision is not alien to canon law.⁶⁹ With regard to the restructuring of the diocesan curia, a kind of separation of powers according to departments can also be established, which provides the vicar general, who until now has been the *alter ego* of the diocesan bishop with comprehensive leadership powers, with counterparts not only for finances but also for administration. However, there

⁶⁸ Thus the basic text of the forum "Power and the Separation of Powers": "The service which the bishops and, as their co-workers, the pastors perform in the Church is characterised by the connection between the power of ordination and the power of governance (c. 129 Code/1983). 3 However, it does not exclude a separation of powers appropriate to the Church in the area of governance, in which executive, legislative and judicial powers can be distinguished in order to enable more transparency and control as well as more participation and cooperation." - DER SYNODALE WEG: Grundtext „Macht und Gewaltenteilung in der Kirche – Gemeinsame Teilnahme und Teilhabe am Sendungsauftrag" No. 49, p. 29.

⁶⁹ Reference has already been made to the Diocesan Asset Management Council and the College of Consultors, which in Germany is realised in the cathedral chapters, have already been mentioned.

are major differences, particularly with regard to the organisation of the relationship between the vicar general, the head of office and the diocesan finance officer.

If one compares the different personal constellations in the dioceses, the following picture emerges: In the (arch)dioceses of Munich-Freising, Eichstätt and Münster, the management of the diocesan curia is carried out by the vicar general, who is supported in the sense of subordination by a head of office supervised by him, who exercises partial supervision over the diocesan finance officer, where the latter acts as head of a finance department, while he reports to the asset management council in the areas in which he acts as finance officer. A disentanglement of areas of responsibility would be desirable, as a complicated structure of responsibilities has been created in which the finance officer in particular is the servant of several masters. In the dioceses mentioned, as in Hamburg, the vicar general also has the authority to act in cases of pastoral necessity and in cases of imminent danger in the area of responsibility of the administrative director.⁷⁰ The obvious connection between decision-making power and responsibility means that the vicar general continues to bear ultimate responsibility in administrative and economic matters. One would have to ask why he did not prevent any damage that occurred in the field of administration, as would have been within his competence and therefore his responsibility. - In this respect, the head of office appears to be a helpful colleague who relieves the vicar general, but not an equal body that can effectively limit his power of leadership and relieve him of responsibility with regard to issues in which, as a theologian, he can probably only rarely demonstrate professional expertise and ultimate responsibility.

In Hamburg, there is a comparable model of subordination of the administrative director to the vicar general in the absence of compliance with the canonical provisions on the office of diocesan finance officer, which is more or less exercised by the administrative director. If there has never been a finance officer before, this may be a step forward - albeit one that does not even raise the North German archdiocese to the compliance level of the 1983 Code Iuris Canonici. The duplication of tasks described above, whereby the head of the office acting as a quasi-finance-officer also chairs the Asset Management Board, undermines the relationship between management and supervision. Furthermore, as an employee reporting to the vicar

⁷⁰ This criticism was made by Klösges, see KLÖSGES: Mächtig ohnmächtig (see note 9), p. 27.

general, he is not as independent as would appear desirable. With Berkmann, one can say: "According to the codicological conception, he [the diocesan finance officer; MM], as an executive body in the area of assets, is subject to the instructions of both the diocesan bishop and the diocesan asset management council, but not to the vicar general, to whose area of responsibility he is rather subordinate. Since c. 494 §3 assigns the authority to issue instructions to the bishop, but not to the local ordinary, the vicar general would require a special mandate due to c. 134 §3 Code, which would, however, disturb the balance of the Code. The vicar general and the diocesan finance officer are both active in the area of administration, but in different sectors: one can issue sovereign acts of the *potestas exsecutiva*, the other is responsible for the administration of assets. Their coexistence, as envisaged by the Code, can therefore be understood in a certain sense as a 'separation of powers' within the administration, as power can also be exercised through finance."⁷¹ With regard to Hamburg, his criticism of the conception of the office of the administrative director is also correct: "If one considers that the administrative director in turn exercises part of the area of responsibility of the vicar general and is not really independent of him, this construction raises questions with regard to the autonomy of the finance officer."⁷² The personal union of vicar general and diocesan finance officer that was established in the diocese of Limburg until 2016 was already part of the history of financial scandals in the Catholic Church in Germany.⁷³

In terms of the separation of powers, the Cologne diocesan law stands out in comparison, as it establishes a separation of pastoral, finance and administration - each of which is the responsibility of the vicar general, finance officer and head of office - and each of which has its own representatives. This division of responsibilities enables the three management offices to act independently of each other and to represent the interests of their respective areas. The finance officer's right of veto, which goes beyond the codicil regulations, further enhances his office. In particular, this creates an authority that can demand the legal and budgetary requirements in a binding manner and thus represents a controlling body that binds the

⁷¹ BERKMANN, Burkard J.: Diözesankurien im deutschen Sprachraum: Vergleichende und weiterführende Überlegungen, in: The same (ed.): Die Diözesankurie. Blick hinter die Kulissen der Bistumsverwaltung (= Adnotationes in ius canonicum 60), Berlin 2021, pp. 181-228, here: p. 198f.

⁷² Ibid, p. 200.

⁷³ See *ibid.*, also with reference to SCHÜLLER: Zu einigen kirchenrechtlichen Dimensionen der Causa Tebartz van Elst (see note 4), p. 140.

administrative actions of the office management and vicar general to the law.⁷⁴ The finance officer should ensure that assets are managed in accordance with the legal principles - albeit under the archbishop, who has the final decision in case of doubt.⁷⁵ However, a good archbishop will be well advised to bind himself to legal requirements. The three actors are accountable to the archbishop and - in the case of the diocesan finance officer - to the diocesan asset management council, but not to the vicar general, so that the areas are not mixed up and the relationship of independence is maintained.

Finally, the remaining competences of the vicar general should be addressed. Berkmann states that the diocesan bishop can only reserve powers vis-à-vis the vicar general himself in accordance with c. 479 §1 Code/1983, but not to a minister other than himself.⁷⁶ Bier supports the position in the Münster Commentary and points out that the bishop is not authorised to withhold powers from the vicar general, which he then transfers to an episcopal vicar.⁷⁷ The vicar general thus has all the powers that the head of office also has, as it is legally impossible to withhold them in favour of the head of office. This inevitably compromises the independence of the head of office. Nevertheless, this is a theoretical question that regulates the external relationship, but can certainly be subject to the conditions described above in the internal relationship: From a purely legal point of view, the vicar general and the administrative director in all the dioceses dealt with here are also entitled to external powers of representation. However, this does not mean that each of them can carry out legal transactions ignoring the other - even if they are authorised to do so under civil law. Furthermore, the question remains as to whether the bishop, if he reserves powers for himself, cannot delegate tasks to someone other than his vicar general, while he himself remains the sole holder of the delegated *potestas*.⁷⁸

⁷⁴ As already described, such veto rights on the part of the office management and the finance officer also exist in Hamburg and Münster, although their exercise could be inhibited here by the relationship of dependence on the vicar general.

⁷⁵ On the functions of the executive power in the constitutional structure of the state and its contribution to a separation of powers, see MÖLLERS, Christoph: Dogmatik der grundgesetzlichen Gewaltengliederung, in: Archiv des öffentlichen Rechts 132/4 (2007), pp. 493-538, here: p. 514-517.

⁷⁶ See BERKMANN: Diözesankurien im deutschen Sprachraum (see note 71), pp. 221f.

⁷⁷ See BIER: Commentary on c. 479 (see note 62), recital 3.

⁷⁸ This is also the point made by Bier, who explains that the bishop can certainly withhold powers from himself and later transfer them generally or in individual cases to the vicar general, who then fulfils them by virtue of the *potestas delegata* of the diocesan bishop, but not by virtue of the *potestas ordinaria vicaria*, as he usually does, see *ibid.* c. 479 §1 Code/1983 could then also be interpreted as meaning that the bishop can also merely

Finally, it should be noted that the separation of powers is realised very differently in the dioceses. While the Archdiocese of Hamburg does not yet fulfil the minimum level stipulated by Code 1983, the Cologne Curia appears to provide a model for the implementation of compliance standards - at least with regard to the norms under investigation – that other dioceses could also follow.

3.3 On the proposal to appoint a lay person as Vicar General

Finally, I would like to briefly comment on the proposal with which Klösger concludes his article on administrative directors. It reads: "If diocesan bishops are really serious about giving lay people the powers of a vicar general or even an episcopal vicar, another approach is obvious: it would be logical to submit to the competent authority - the dicastery for legislative texts - the question of whether and under what circumstances the requirement of c. 478 §1 that vicars general and episcopal vicars must be priests can be dispensed with."⁷⁹ Klösger's underlying assumption seems to be that the newly created offices are intended to replace the vicar general, so that it is preferable in the interests of legal clarity to confer them on a layperson. However, this fails to recognise that the vicar general is still responsible for areas such as pastoral strategic planning, pastoral staff and responsibility for the staff units, for example for canon law or prevention and intervention.⁸⁰

The involvement of lay people in the management of a diocese recruits expertise in economic, legal and administrative matters. If the office of vicar general were to fall into the hands of a lay business finance officer or lawyer, for example, theological and pastoral competences would be left out. This would certainly not represent any progress for the professionalisation of the curia. It would merely reverse an existing problem and from now on a theologian would no longer have to deal with tax law, but a business lawyer would have to deal with the planning of pastoral priorities and sacramental law issues. This would give the impression that

reserve a *potestas ordinaria*, which does not prevent him from delegating the same to a third party. It would be worth asking the dicastery for the interpretation of legal texts to what extent such reservations would do justice to the norm.

⁷⁹ KLÖSGER: Mächtig ohnmächtig (see note 9), p. 29.

⁸⁰ The tasks remaining for the Vicar General have already been described in subchapter 2.3; a look at the organisational charts of the dioceses can also help here, see ERZBISTUM KÖLN: Organigramm des Erzbischöflichen Generalvikariates, available online at: <https://lmy.de/DIBnDRxt> [viewed on: 30.06.2023]; ERZBISTUM HAMBURG: Organigramm des Erzbischöflichen Generalvikariates, available online at: <https://lmy.de/WKzLykCZ> [viewed on: 30.06.2023].

a diocese is an administrative apparatus - but ecclesiologicaly this would be questionable. Even if today the impression may often arise that the vicar general appears "neither as the chief theologian nor as the pastoral strategist of the diocese, but rather as the bearer of executive power to issue administrative acts (c. 479 §1 Code)"⁸¹ and it may perhaps cause surprise here and there that the work of the diocesan curia follows pastoral guidelines, it is to be hoped that this will give rise to what was once described as an "awareness of what is missing"⁸².

In addition, the question would once again become virulent as to what extent lay people can even bear the leadership authority that goes hand in hand with the granting of dispensations for marriage, for example. The range of tasks of the vicar general also includes questions relating to the liturgy, the sacraments and the sacramental constitution of the church. Although it is not without precedent historically that lay people are vicars general and this was even discussed in the course of the Code reform, the substantive reference to a spiritual dimension of the Church and the position in the hierarchy would be much stronger than is currently the case.⁸³ Against this background, it seems unlikely that the dicastery for the interpretation of the legal texts would agree to Klösger's proposal; moreover, there are good reasons why German bishops would not request this at all.

Excursus: Participation of lay people in church leadership

The question of the ability of lay people to participate in leadership positions in the church is not irrelevant to the topic at hand and will therefore be addressed in a further excursus. - It is being discussed, not least in Germany, primarily in the context of the process "The Synodal Way", which has no status under church law.⁸⁴ It has also been an issue in theology and canon law for decades.

⁸¹ BERKMANN: Diözesankurien im deutschen Sprachraum (see note 71), p. 225.

⁸² HABERMAS, Jürgen: Ein Bewusstsein von dem, was fehlt. Über Glauben und Wissen und den Defaitismus der modernen Vernunft, in: Neue Zürcher Zeitung Online of 10 February 2007, available online at: <http://bitly.ws/K5G3> [viewed on: 30.06.2023].

⁸³ With regard to the precedents and the proposal to allow lay people access to the office of vicar general, see: Die Ausübung kirchlicher Leitungsgewalt durch Laien (as note 19), especially pp. 331f.; LAUKEMPER-ISERMANN: Zur Mitarbeit von Laien in der bischöflichen Verwaltung (as note 54), 35, fn. 115.

⁸⁴ A basic text of the Synodal Way states: "The ecclesiological task that must be fulfilled today is to redefine the relationship between the common priesthood of all and the special priesthood of ministry, both in the understanding of sacramental ministry and in the understanding and practice of leadership tasks. It is important that the communion structure of the Church finds a social and legal form that makes one-sided

Specifically, this concerns the question of the unity of *sacra potestas*, the "sacred power", and the extent to which the exercise of *potestas regiminis* (power of governance) is bound to *potestas ordinis* (power of ordination) - i.e. whether non-clergy can be holders of ecclesiastical power of governance.⁸⁵ Canon law recognises relevant norms on this in c. 129 Code/1983, according to which the assumption of leadership authority is reserved to the consecrated (§1),⁸⁶ while the laity "can cooperate" in this (§2).⁸⁷ In c. 274 §1 Code/1983 it is stated: "„Only clerics can obtain offices for whose exercise the power of orders or the power of ecclesiastical governance is required", while according to c. 1421 §2 Code/1983 the office of judge, which is associated with authority, namely *potestas iudicialis* (see c. 135 §1 Code/1983), can also be conferred on lay people according to c. 1421 §2 Code/1983 following the decision of a bishops' conference. This contradiction has been discussed time and again.⁸⁸ As early as 1977, the Congregation for the Doctrine of the Faith stated in the course of the Code reform that the question of the extent to which lay people could be involved in the *potestas regiminis* could not be answered precisely.⁸⁹ They were only excluded from "internal hierarchical offices", which, after the office of the Pope, would certainly also include the offices of the heads of the particular church, especially the diocesan bishop.

power relations impossible and makes participation opportunities binding for all." - DER SYNODALE WEG: Grundtext „Macht und Gewaltenteilung in der Kirche – Gemeinsame Teilnahme und Teilhabe am Sendungsauftrag" of 3 February 2022 No. 41, published by the Office of the Synodal Way, Bonn 2022, p. 24f.

⁸⁵ The contradictions are also dealt with in detail in relevant qualification works. For an extensive exegesis of the norm, in particular with a historical background, on c. 129 §2 Codex/1983, see LAUKEMPER-ISERMANN: Zur Mitarbeit von Laien in der bischöflichen Verwaltung; über rechtshistorische Hintergründe und Möglichkeiten zur Ausgestaltung der Beteiligung von Laien an der Ausübung von Leitungsgewalt (see note 54); see PLATEN: Die Ausübung kirchlicher Leitungsgewalt durch Laien (as note 19), especially pp. 281-396.

⁸⁶ "Those who have received sacred orders are qualified, according to the norm of the prescripts of the law, for the power of governance, which exists in the Church by divine institution and is also called the power of jurisdiction." (c. 129 §1 Code/1983)

⁸⁷ " Lay members of the Christian faithful can cooperate in the exercise of this same power according to the norm of law " (c. 129 §2 Code/1983)

⁸⁸ Sometimes c. 1421 §2 Code/1983 has been characterised as a *lex specialis* to c. 274 §1 Code/1983 and thus an exception, see: Die Ausübung kirchlicher Leitungsgewalt durch Laien (as note 19), p. 300f.; URRUTIA, Francisco J.: Delegation of the Executive Power of Governance, in: *Studia Canonica* 19 (1985), pp. 339-355, here: p. 343f. Others have gone so far as to question the obligatory nature of c. 274 §1 Code/1983, as it would be an irritating norm due to the contradictions in the legal system and therefore not obligatory according to c. 14 Code/1983 due to the *dubium iuris*, see PROVOST, James: The Participation of the Laity in the Governance of the Church, in: *Studia Canonica* 17 (1983), pp. 417-448, here: p. 444f. Still others believe that the restriction of c. 274 §1 Codex/1983 refers only to the "principal offices", meaning the pope, the bishops and the pastors, see LABANDEIRA, Eduardo: *Tratado de Derecho Administrativo Canónico*, Pamplona 1988, p. 86f.

⁸⁹ This is how Laukemper-Isermann refers to the Congregation's response of 8 February 1977, see LAUKEMPER-ISERMANN: Zur Mitarbeit von Laien in der bischöflichen Verwaltung (see note 54), p. 11.

Although Klösger considers this question to have been clarified by the highest authority in his essay on ministerial leadership,⁹⁰ his critical statement that "the theological imbalance to the Council's teaching must be accepted"⁹¹ should not be left unconsidered. The Council that preceded the Code reform had not dogmatised a doctrine of divine right with regard to the link between the power of consecration and the power of governance, but there was nonetheless controversy during its reception as to whether the doctrine of the *sacra potestas* of bishops was primarily intended to strengthen their office vis-à-vis papal primacy or whether it was not a matter of excluding the laity from the power of governance.⁹² The latter would - as already mentioned - contradict the tradition of the Church and still raises questions today. The fact that the clarification of the relationship between *potestas ordinis* and *potestas regiminis* is and remains a desideratum is also shown by the *Instrumentum laboris* for the first assembly of the Synod of Bishops on synodality in 2023.⁹³

This consideration should serve as an opportunity to draw attention to a proposal that was already put forward in the context of the Code reform in an expert opinion by Jean Beyer, although it was later rejected.⁹⁴ This is based on the distinction between the *potestas quae ordine sacra innitur* and the *potestas quae ordine sacra non innitur*, i.e. the authority that

⁹⁰ In particular, he addresses the possibility of a collegial court with a majority of lay members, which was permitted after *Mitis Iudex Dominus Iesus* and the associated amendment to c. 1673 §3 Code/1983, see POPE FRANCIS: *Motu Proprio "Mitis Iudex Dominus Iesus"* of 15 August 2015 Art. 1, in: *Acta Apostolicae Sedis* 107 (9/2015), pp. 958-967, here: p. 961f. Klösger also refers to the deliberative right to vote granted to Nathalie Becquart at the current Synod of Bishops on synodality, whereby it must be asked here to what extent this is really a participation in ecclesial governance, since the Synod of Bishops is ultimately not a governing body, but rather an advisory body, which submits proposals to the Pope, but whose results ultimately only become legally binding if he enacts them in post-apostolic letters by virtue of his own authority - on this, see GRAULICH, Markus: *Experimentierfeld und Beispiel der Synodalität*, in: *The same / Rahner, Johanna (ed.): Synodalität in der katholischen Kirche. Die Studie der Internationalen Theologischen Kommission im Diskurs*, Freiburg i. Br. 2020, pp. 243-273, here: pp. 266-272; overall, see KLÖSGER: *Mächtig ohnmächtig* (see note 9), p. 27.

⁹¹ KLÖSGER: *Mächtig ohnmächtig* (see note 9), p. 27.

⁹² The assumption that the "sacred power" was primarily intended to end the concession system and not a clerical reservation of power of governance can be found in HAHN: *Potestas incerta* (see note 22), pp. 260-262. The question was also discussed in the 1981 Plenaria debates on what is now c. 129 Code/1983, the question was discussed, with the then Cardinal Archbishop of Munich Ratzinger taking the position that the Council wanted precisely the unity of ordination and leadership, while an expert opinion by Jean Beyer strengthened the argument of tradition, according to which it could not be that the Church had erred for centuries in the participation of lay people in leadership, see LAUKEMPER-ISERMANN: *Zur Mitarbeit von Laien in der bischöflichen Verwaltung* (see note 54), pp. 12-27.

⁹³ In particular, the question of how women - especially in the religious order - can be involved in the leadership of the Church is also questioned in the *Instrumentum laboris* published in June 2023, see GENERALVERSAMMLUNG DER BISCHOFSSYNODE: *Instrumentum laboris für die erste Sitzung im Oktober 2023 vom 20. Juni 2023*, pp. 48-59, available online at: <http://bitly.ws/K3Em> [viewed on: 30.06.2023].

⁹⁴ For the content of his expert opinion, see LAUKEMPER-ISERMANN: *Zur Mitarbeit von Laien in der bischöflichen administration* (see note 54), pp. 19-27.

presupposes sacred ordination and the authority that does not presuppose it.⁹⁵ Accordingly, not all power of leadership would be bound to the reception of Holy Orders. Beyer's proposal should be reconsidered on the basis of two parameters that could determine in which cases lay people could also exercise the *potestas regiminis*.

On the one hand, it must be considered to what extent a task should be the responsibility of the priest, who is characterised by the *configuratio Christi* (see LG 21), due to its sacramental character.⁹⁶ If, when administering the sacraments, it is not the ordained minister who acts as a man, but Christ acting through him as an instrument conformed to the Lord, the tasks associated with the sacramental dimension of the Church should be entrusted to an ordained minister.⁹⁷ However, not all leadership in the Church is of a sacramental quality and no one would want to claim that economic matters are dealt with *in personam Christi capitis*, so that certain administrative leadership tasks can be entrusted to lay people. Cardinal Palazzini had pointed out this distinction in the Plenaria on the Code reform of 20 October 1981, who only understood liturgy and preaching as prerogatives of the clergy, in the area of which the power of leadership was necessarily bound to the power of ordination.⁹⁸ Bihl has also recently argued along these lines when he seeks to measure the question of the unity of powers using a model of reciprocal proportionality and argues that the *munus sanctificandi* requires the priest predominantly as a passive instrument of the actively acting Christ, while the *munus regendi* depends on the competences of the actively acting man and not on the Lord himself, who remains rather passive here.⁹⁹ The administration of *munus sanctificandi* and *munus docendi*

⁹⁵ The latter is to be understood, for example, as the *potestas dominativa*, which is exercised in the management of religious institutes. religious institutes. Consociative power (power of associations and societies) and potestas domestica and associational power) and the *potestas domestica* (domestic power). For an overview of the powers, see SOCHA, Hubert: Commentary on c. 129, in: MKCIC, recital 17.

⁹⁶ At this point, the question arises as to whether a distinction should also be made between priests and deacons. Although c. 129 §1 Codx/1983 only speaks of the reception of holy orders and also allows the deacon to appear as a possible bearer of leadership authority, the connection between leadership authority and an action *in personam Christi capitis*, which, as a result of the change in the law by the Motu Proprio Omnium *in mentem* according to c. 1009 §3 Code/1983, only applies to bishops and priests, should be reflected upon from a dogmatic point of view. See POPE BENEDICT XVI: Motu Proprio *Omnium in mentem*, in: Acta Apostolicae Sedis 102 (2010), pp. 8-10.

⁹⁷ Nevertheless, not all administration of the sacraments is reserved for clergy. We should remember here the baptism of necessity (c. 861 §2 Code/1983), of which the following also applies: "He [Christ; MM] is present in the sacraments, so that when a man baptizes it is really Christ Himself who baptizes." (SC 7)

⁹⁸ See LAUKEMPER-ISERMANN: Zur Mitarbeit von Laien in der bischöflichen Verwaltung (see note 54), p. 29.

⁹⁹ He distinguishes between the active pole and the passive pole of priestly action. The active pole refers to what the priest does of his own accord, while the passive pole refers to that side of the priest through which Christ acts through him, see BIHL, Benjamin: Weihe und Jurisdiktion, pp. 294-301.

required more leadership action on the basis of consecration - consequently, the *potestas regiminis quae ordine sacra innitur* would be involved here - than the administration of *munus regendi*. In addition, it would have to be asked more fundamentally to what extent this even encompasses the questions of the administration of a diocese raised in this essay. In his catechesis on the *munus regendi* on the occasion of the Year for Priests 2010, Pope Benedict XVI. spoke of the participation of priests in the mission "to care for the people of God, to be educators in the faith and to give guidance to the Christian community, to animate and sustain it or, as the Council says `must see to it either by themselves or through others that the faithful are led individually in the Holy Spirit to a development of their own vocation according to the Gospel, to a sincere and practical charity, and to that freedom with which Christ has made us free' (*Presbyterorum Ordinis* 6). Every shepherd, then, is the means by which Christ himself loves people."¹⁰⁰ These words do not directly bring to mind economic plans and tax CMS, but rather describe the *munus regendi* as pastoral care for the faithful, which has little to do with the portfolio of tasks of the heads of ministry. If the power of governance *in the Church* according to c. 129 §1 Code/1983 refers primarily to the administration of the *Church's actions as a Church* associated with the *munera ecclesiae*, one could even assume that, in view of the current portfolio of tasks, the management of an ordinariate does not affect the highly politicised dispute about the unity of ordination and governance.¹⁰¹ The administration of temporal goods is at least not a process with a sacramental dimension. It does not concern the very essence of the church, but rather contributes indirectly to making it possible. Admittedly, one could also argue that the teleological determination of church assets, for example, draws a connecting line through which asset management and administration are then also connected in certain respects with the sanctification and proclamation ministry of the church.

The second parameter may offer a solution here. It - and the "*cooperari possunt*" of the laity in c. 129 §2 Code/1983 already points in this direction - refers to the fact that the laity should

¹⁰⁰ POPE BENEDICT XVI: Address to the General Audience of 26 May 2010, available online at: <https://bit.ly/46S8K0R> [viewed on: 18.10.2023].

¹⁰¹ The fact that offices such as that of diocesan finance officer have long been exercised by lay people shows that this approach is already being practised in legal practice. Conversely, with regard to c. 150 Code/1983, a prerogative of the priest in pastoral care is also standardised: "An office which entails the full care of souls and for whose fulfillment the exercise of the priestly order is required cannot be conferred validly on one who is not yet a priest."

not have absolute power of governance, but only a relative one, which can be categorised in the hierarchy of the Church and is exercised below a superior - such as the bishop. Using the terms *potestas regiminis principalis*, which is reserved for the clergy, and *potestas regiminis cooperativa*, Bennloch Poveda had already pointed out the possibility that lay people can be holders of relative leadership authority.¹⁰² Platen's approach to the delegation of leadership power, presented on the basis of Erdö's considerations, also ties in with this, since the delegate never attains a *potestas of his own* accord, but only by being bound back to a delegate, and in this respect is hierarchically bound back, subordinated to the bishop and inserted into a close legal relationship with him.¹⁰³ With regard to the diocesan finance officer or the lay judges, it can also be stated that they are primarily responsible for the implementation and application of the law established by the legitimate authority, and in this respect they only ever act within a framework set by the hierarchy itself, and are therefore only vested with a power of governance that is bound back to them. This intrinsic logic corresponds to the provision in c. 135 §2 Code/1983, according to which legislative power cannot, as a rule, be delegated.¹⁰⁴ Beyer's approach could be reconsidered in such a way that the *potestas quae ordine sacra innitur* is understood as absolute power of governance, while the *potestas quae ordine sacra non innitur* is understood as relative power of governance, insofar as the latter does not mean the establishment of one's own law, but only the application and enforcement of the law given by the superiors by virtue of *potestas executiva* and *potestas iudicialis*.¹⁰⁵

The dioceses choose the path of delegation - more precisely, real delegation, in which the authorisation is not delegated to a person, but to an office - when establishing a head of

¹⁰² See BENNLOCH POVEDA, Antonio: Código de derecho canónico. Edición bilingüe, fuentes y comentarios de Todos los Canones, Valencia 1992, pp. 83f. - A description of his position can also be found in LAUKEMPER-ISERMANN: Zur Mitarbeit von Laien in der bischöflichen Verwaltung (see note 54), pp. 48-52.

¹⁰³ See: Die Ausübung kirchlicher Leitungsgewalt durch Laien (see note 19), p. 330f. The commentary in SOCHA, Hubert: Kommentar zu c. 129, in: MKCIC, recital 10, follows a similar line, emphasising that lay people cannot be pastors in the theological sense.

¹⁰⁴ In his commentary, Socha points out that this is a legal, but not an ontological reservation. Nevertheless, the present case shows that the *potestas regiminis legislativa* is handled very sensitively and may only be delegated in a few cases or with the consent of the highest authority, see SOCHA, Hubert: Commentary on c. 135, in: MKCIC, recital 9.

¹⁰⁵ It must certainly be taken into account here that the classic distinction between legislative, executive and judicial powers does not always provide a useful scheme: The setting of administrative acts is generally assigned to the executive, although this can also involve legislative acts that enact laws and may not merely concretise existing law.

office.¹⁰⁶ This seems better than the delegation of an office with *potestas ordinaria vicaria* (see c. 131 §§1-2 Code/1983), which would contradict the controversial norm from c. 274 §1 Code/1983 and lead to a lack of legal certainty.¹⁰⁷ The office of the head of office, which is part of the ecclesiastical hierarchy and exercises the *potestas exsecutiva* in the diocesan administration in dependence on a bishop, is also a legal institution which, in its current form, does not contradict the teaching of the Second Vatican Council on the unity of powers on which canon law is based. Finally, the prominent office of the bishop is not limited by administrative directors. Rather, it is strengthened by the fact that he is not only given the authority to establish the law, but also to enforce it with the help of qualified officials. It only makes sense that the administration of earthly goods and the organisation of such large institutions as the German dioceses should be entrusted to those who are qualified to do so thanks to their business and legal training.

4. Outlook

For a final conclusion, some insights can be gained from the comparison of the diocesan laws on the organisation of curiae in Munich, Eichstätt, Hamburg, Münster and Cologne. For example, it was shown that the detailed regulations on the appointment and dismissal of the head of office in Cologne are helpful in order to avoid regulatory gaps at a later date. The question of whether the office of chancellor is a necessary point of reference for locating administrative directors in the organisational structure of church law was also investigated. This can be answered in the affirmative by stating that although the appointment of an administrative director as chancellor is not mandatory, it is important that the office is embedded in the hierarchy of the church. The norms from the diocese of Eichstätt are convincing with regard to the detailed assignment of tasks to the head of office, who does not have to derive his area of responsibility from the abstract formula of the "economic-

¹⁰⁶ With regard to the mode of delegation, Klösges and Berkmann's criticism that this cannot - as is the case in the Archdiocese of Hamburg - be carried out by a general decree of the Vicar General, as the Vicar General simply lacks the authority to carry out legislative acts, must of course be agreed with. The delegation of authority by the diocesan bishop promises legal certainty, otherwise this can also be carried out by the vicar general in an administrative act. See BERKMANN: Diözesankurien im deutschen Sprachraum (see note 71), pp. 219-221; KLÖSGES: Mächtig ohnmächtig (see note 9), p. 28.

¹⁰⁷ Berkmann also favours delegation, especially as it does not lead to the vicar general being deprived of his authority, but rather continues to act as its holder - possible conflicts over the erosion of the office of vicar general are thus avoided, see BERKMANN: Diözesankurien im deutschen Sprachraum (see note 71), pp. 219-223.

administrative", but can rely very specifically on the competences assigned to him. This seems helpful, as the description of the tasks of the vicar general found in other laws means that the responsibilities of the head of office have to be derived more *ex negativo*, which is neither in the interests of legal clarity nor legal certainty and pre-programmes disputes over competences.

The question of the extent to which forms of separation of powers could be established in the curia was examined in detail. It was striking that the vicar general - with the exception of the Archdiocese of Cologne - is always vested with the right to act within the jurisdiction of the head of office, insofar as this is necessary for the good of the Church or in the event of imminent danger. The existing accountability obligations not only to the (arch)bishop, but also to his *alter ego*, also suggest that the administrative director should rather be an employee of the vicar general and not a counterweight to him with competences in the sense of the separation of powers. With regard to the Archdiocese of Hamburg, it has been criticised in detail that the mandatory office of diocesan finance officer has not been established and that the North German diocese does not meet the compliance requirements in this respect. The situation is different in the Archdiocese of Cologne, whose curia is divided into the areas of pastoral care, economics/finance and administration. As far as can be seen from the legal norms, those involved in these areas treat each other as equals - i.e. without mutual accountability or representation regulations as in other dioceses. Of course, here too, all ecclesiastical authority accumulates in the office of the diocesan bishop, but in Cologne in particular, one may recognise that at least at the level subordinate to him, organisational structures based on the separation of powers are in place. The cardinal archbishop in the cathedral city is thus presenting a model that could set a precedent.

The question of how the participation of lay people in the office of administrative director is realised was also looked at comprehensively. Here it was shown that the path of real delegation in the dioceses outlined by Platen and Laukemper-Isermann was realised, which is associated with a high degree of legal certainty in view of the much disputed question of the unity of ordination and leadership authority. Two parameters could be presented by which participation can be measured: On the one hand, issues related to pastoral care, liturgy and the administration of the sacraments should be reserved to the clergy; on the other hand, the lay minister should be inserted into the hierarchy so that there is a close relationship with the

bishop, from whom the lay person in question is delegated his competences and under whose supervision he exercises his responsibilities. Against this background, too, the proposal by Klösger, whose article published in April in the Herder-Korrespondenz was repeatedly the starting point for the considerations made here, must be rejected, according to which Rome should be asked for the dispensation to make a lay person vicar general. On the one hand, this seems unwise, because the insertion into the hierarchy as well as the proximity to the sacramental constitution of the Church would lead to the question of power being raised again, while on the other hand, it does not seem sensible to involve a lay person who is skilled in business administration and law with pastoral and canon law issues.

All in all, it can be assumed that the opportunity created by the new models of office management represents an important contribution to equipping dioceses with professionally qualified management staff on the one hand and establishing forms of modern compliance in the church sector on the other. The fact that the approach is catching on can now also be seen from the fact that the diocese of Trier also newly established the office of "Executive Director" on 30 June 2023.¹⁰⁸

¹⁰⁸ See NEUMANN, Felix: Generalvikariat im Bistum Trier bekommt Doppelspitze, article on katholisch.de from 30 June 2023, available online at: <https://lmy.de/CUalTvXu> [accessed on: 30.06.2023].