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Sexual abuse in comparison of canon law of Roman Catholic Church and national criminal law on the example of Slovakia*

Introduction

The public is quite often confronted with cases where there are partnerships and subsequently sexual practices between age-generating partners, and it is not uncommon for such cases to occur precisely in connection with the exercise of the profession of educators, teachers or other persons entrusted with youth care (e.g. pastors and clerics). In Slovakia there were important cases that swept across Slovakia – suspicions of sexual abuse in the youth centre “Clean Day” in Galanta which appeared in September 2016¹, the case of a pastor from a village Nevidzany who had abused an 11-year-old girl from November 2011 to September 2012, and who was also legally convicted of this act². The case of a teacher who had abused her 12-year-old pupil at a primary

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¹ See e.g.: <https://www.topky.sk/cl/10/1574155/Desive-svedectva-o-praktikach-v-Galante--FOTO-Za-murmi-tohto-centra-sa-mali-diat-ohavnosti-> (accessed: 22.08.2021) <https://www.dnes24.sk/kauza-zneuzivanie-maloletych-v-galante-sex-s-dievcatami-tu-mali-viaceri-terapeuti-249899> (accessed: 22.08.2021).

² See e.g.: <https://www.topky.sk/cl/10/1574155/Desive-svedectva-o-praktikach-v-Galante--FOTO-Za-murmi-tohto-centra-sa-mali-diat-ohavnosti-> (accessed: 22.08.2021); <https://www.dnes24.sk/kauza-zneuzivanie-maloletych-v-galante-sex-s-dievcatami-tu-mali-viaceri-terapeuti-249899> (accessed: 22.08.2021).

school in village Koškovce from March to October 2013 and was also found guilty by a valid judgment³.

However, Slovakia is not the only one state with such cases. From Australian country towns to schools in Ireland and cities across the US, the Catholic Church has faced child sexual abuse accusations in the last few decades. Cardinal George Pell was convicted of abusing two choir boys in Melbourne in 1996. He was Australia's highest-ranking Catholic, and was previously Vatican treasurer. Theodore McCarrick, a former cardinal in the US, was defrocked over abuse claims just 10 days earlier - making him the most senior Catholic figure to be dismissed from the priesthood in modern times⁴. The bishop of Bruges, Roger Vangheluwe, resigned in April 2010 after admitting that he had sexually abused a boy for years when he was a priest and after being made a bishop⁵. There were many of such similar cases throughout the world, reported news from the year 2010 alleged that: "there were documented some 300 cases of alleged sexual abuse by Belgian clergy (...) more than 4,000 US Roman Catholic priests had faced sexual abuse allegations in the last 50 years, in cases involving more than 10,000 children – mostly boys (...). Since the start of 2010, at least 300 people have made allegations of sexual or physical abuse by priests across the Pope's home country. Claims are being investigated in 18 of Germany's 27 Roman Catholic dioceses (...). In March 2010, Dutch bishops ordered an independent inquiry into more than 200 allegations of sexual abuse of children by priests"⁶. Other cases were reported from Italy, Switzerland, Malta, Austria and Spain⁷. This article cannot mention all of them, but the mentioned cases show that this problem is not something unusual and no country is exception. This proves that sexual abuse represents an important social issue and needs the response from the society to struggle against it. The typical solution of the sexual abuse of children in almost all countries is the criminal responsibility of sexual abuse which is in accordance with the international consensus incorporated in the Lanzarote Convention from 25 October 2007⁸.

In the cases of teachers and tutors only secular criminal responsibility comes into consideration. However, in case of pastors and clerics of Roman catholic church the situation differs – there comes into play also secondary responsibility – the responsibility under Canon Law. What is the difference

³ See e.g.: <http://www.pluska.sk/krimi/domace-krimi/priznanie-ucitelky-dany-ako-som-zviedla-12-rocneho.html> (accessed: 22.08.2021).

⁴ <https://www.bbc.com/news/world-44209971> (accessed: 22.08.2021).

⁵ <https://www.bbc.com/news/10407559> (accessed: 22.08.2021).

⁶ <https://www.bbc.com/news/10407559> (accessed: 22.08.2021).

⁷ <https://www.bbc.com/news/10407559> (accessed: 22.08.2021).

⁸ <https://rm.coe.int/protection-of-children-against-sexual-exploitation-and-sexual-abuse/1680794e97> (accessed: 22.08.2021).

between those two responsibilities? And how the Catholic Church deals with this problem in its own rows?

The responsibility under the Slovak criminal law

The sexual abuse shall be punished under Slovak criminal law under provision of Art. 201 Sec. 1 of Slovak Criminal Code⁹: “Any person who has sexual intercourse with a person under fifteen years of age, or who subjects such person to other sexual abuse, shall be liable to a term of imprisonment of three to ten years”.

It means that in normal cases where the general perpetrator commits such crime, he/she would face the imprisonment of 3 to 10 years. However, the priests and clerics are regarded as special type of perpetrator who could be punished with more serious punishment.

Under provision of Art. 201 sec. 2 of Slovak Criminal Code: “The offender shall be liable to a term of imprisonment of seven to twelve years if he commits the offence referred to in paragraph 1:

- a) acting in a more serious manner,
- b) against a protected person, or
- c) by reason of specific motivation”.

More serious manner

The Criminal Code of Slovakia from 2005 introduced couple of universal terms that are used for several criminal offences. “The essence of qualifying features lies in the fact that they are features sharpening the type seriousness of the basic facts of the crime, which, when they approach the basic facts of the crime, together with it create a qualified facts of the crime which contains a higher rate of punishment than the basic facts of the crime”¹⁰.

The main principle of the use and application of special qualification features is that their use is possible only if the given feature is not contained in the basic facts of the crime (§ 38 sec. 1 CC). The overall meaning of these features is, in particular, that their accession to the basic facts of the crime increases the gravity of the act and therefore it is also appropriate to punish the offender more severely if he fulfils the given feature. Thus, the commission of a criminal offense in the basic and qualified basic facts of the crime must

⁹ Act No. 300/2005 Coll. Criminal Code as amended, hereinafter also as CC or Criminal Code.

¹⁰ E. Burda, J. Čentéš, J. Kolesár, J. ZÁHORA et al., *Trestný zákon. Všeobecná časť. Komentár – I.diel*, Praha 2010, p. 1032.

also be distinguished by the fact that the accession of a given specific qualification feature must increase the seriousness of the criminal offense. Such an understanding of special qualification terms can also be defined from the following wording from the literature: “The same classification in specific qualified facts of the crime has an effect on the determination of rates of punishment, so that a certain qualification circumstance in similar cases has approximately the same effect on the increased rates of punishment”¹¹.

It follows that a specific qualification feature should therefore be taken into account if, in the given specific circumstances, the act shows a higher dangerousness and seriousness to society and stricter punishment of the perpetrator is appropriate. Therefore, for some selected crimes, some special qualification features do not apply because the perpetrator’s actions could not be influenced by this feature. A simple example is crime of negligent homicide or crime of negligent bodily injury, if they were committed in transport where is it not possible to attribute to the perpetrator the fact that he committed the crime on the “protected person”¹² because given the fact that it is a negligent crime where the perpetrator himself did not decide by his own will who would become the victim of the crime and thus this fact does not increase the seriousness of the crime.

Breach of an important obligation

The Criminal Code defines as one of the more serious forms of action a “breach of an important obligation arising from the offender’s employment, position or function or imposed on him by law”¹³.

“An important obligation can generally be considered to be an obligation the breach of which in a given situation generally increases to a significant extent, in particular, the danger to human life and health. However, it can also be damage to property or other rights of the injured party. These are obligations that arise for the offender from his competence in a job or functional classification, while the obligations may arise not only from the law, but also on the basis of the law also from another generally binding legal regulation. In order for an important obligation to be breach, it must be clearly es-

¹¹ I. Mencerová, L. Tobiášová, Y. Turayová et al., *Trestné právo hmotné. Osobitná časť*, Šamorín 2014, p. 12.

¹² Protected person within the meaning of Sec. 139 CC means a child, a pregnant woman, a close person, a dependent person, an elderly person, a sick person, a person enjoying protection under international law, a public agent or a person performing his duties imposed by law, witness, an expert, an interpreter or a translator, or a medical professional in the exercise of the medical profession aimed at saving life or protecting health

¹³ Art. 138 letter h) CC.

establish that there is a casual link between the breach of such an obligation and the consequence of the offense”¹⁴.

“A breach of an important obligation cannot be mechanically considered a breach of any obligation, but only a breach of such an obligation, which can usually result in such a significant interference with the rights of others that if this important obligation is breached in a causal link with a crime, effectiveness of this crime is significantly increased compared to a common crime of a similar nature (R 31/1966). This is not a breach of an important obligation, although a breach of that obligation may have fatal consequences in a particular case if, in general, it is not an important obligation”¹⁵.

Breach of an important obligation may result from:

- a) the offender’s employment,
- b) the offender’s position,
- c) the offender’s function,
- d) law or other generally binding regulation¹⁶.

Ad a) Employment is work performed for remuneration within the employment relation regulated by the Labor Code, or on the basis of another labour relationship. The peculiarity between the employment relations is so-called state service¹⁷.

Ad b) Position is any legally binding position in which the offender finds himself, unless it is at the same time an obligation arising from his employment or function. The professional literature cites as an example the position of a convicted person in the execution of imprisonment, the position of an entrepreneur, attorney and other liberal professions, the position resulting from the rank of the armed corps, etc.¹⁸

Ad c) Function may or may not be an employment relation, but from the performance of this function stem specific obligations, e.g. mayor, chairperson of a civil abolition, position in a registered church. A functionary may be a person in the public sector, in the private sector or between the public and private sectors, and the duties in this position may arise from a generally binding legal regulation, internal regulation or another internal act¹⁹.

Ad d) Breach of an obligation imposed by law or other generally binding legal regulation can be understood as an extension of responsibility for the fulfilment of important obligations by all individuals concerned, even if they are not in a specific employment, position, or function, but if this important

¹⁴ Judgement of the Slovak Cupreme Court R 31/1996, [in:] I. Mencerová, L. Tobiášová, Y. Turayová et al., *Trestné právo hmotn...*, p. 18.

¹⁵ E. Burda, J. Čentěš, J. Kolesár, J. Záhora et al., op. cit., p. 1043.

¹⁶ Ibidem, p. 1044.

¹⁷ Ibidem, p. 1045.

¹⁸ See: ibidem.

¹⁹ Ibidem.

obligation is clearly identifiable in a particular piece of legislation. It can therefore be stated that that wording is chosen by the legislature “to cover the breach of all the relevant important obligations of the offender arising from his profession, job classification, employment, position or function, which are obligations relating to the protection of life and health and which are important from this point of view”²⁰.

As is clear from the above wordings, the literature and practice of the courts are important for defining what is meant by employment, position, function, as well as what is meant by a breach of an ‘important’ obligation. Nevertheless, in certain cases it may be questionable whether this is:

- a) a person who is in the specified position, employment or function,
- b) an ‘important’ obligation.

In principle, practice of the courts does not provide a clear and exhaustive list of employments and other positions for which it is relevant to take this qualification feature into account, nor is it possible to provide a catalogue of important obligations. Practice in this regard relies on sufficient rational assessment and expertise of law enforcement authorities, which must assess on a case-by-case basis whether or not this is the case.

It must be reiterated that not a breach of every obligation arising from an employment, position or function is a breach of an important obligation. The Criminal Code defines, in addition to § 138 letter h) CC also an aggravation according to § 37 letter e) CC, i.e. that the offender “has abused his or her employment, profession, function or position to obtain an unjustified or disproportionate advantage”. The Criminal Code recognises different degrees of breaching of obligations arising from employment, position, function, while not all of them can be subordinated to a ‘more serious course of action’; some are just an ‘aggravation’.

It follows from the above that not every breach of labour obligations is automatically a ‘breach of an important obligation’ within the meaning of § 138 letter h) CC. The court in the case of application of § 138 letter h) CC must execute evidence to determine whether or not there is such a type of obligation and therefore there is no general criterion, which is understood as an ‘important obligation’ within the meaning of this provision. The application of this provision in a specific case depends on the free assessment of the court and must clearly stand on the evidence taken from a procedural point of view.

²⁰ J. Čentěš et. al., *Trestný zákon. Velký komentár*, 2. aktualizované vyd., Eurokódex 2015, p. 257.

Criminal responsibility of the pastor or cleric

The position of a teacher, educator or religious person authorised to pastoral or educational activity meets the conditions of a person in 'employment, position or function'. In case of sexual intercourse between these persons and their trustees, there may occur also a violation of 'important' obligation arising from their employment, position, or function.

The court or law enforcement authority is obliged to examine what obligations arise for clerics in their professions, if they are not given directly by law but are e.g. given exclusively by the employment agreement, i.e. another type of regulation that is not generally binding (Code of Canon Law).

The professional literature states that in criminal proceedings it is not necessary to prove:

- a) notorious facts,
- b) facts for which the presumption of truth applies until proven otherwise,
- c) legal regulations published in the Collection of Laws²¹.

It follows that knowledge of the content of the duties of a particular job, profession, or function is not covered by the 'presumption of well-known facts'. Failure to determine these circumstances does not allow, without the appropriate evidence, to apply the qualification using § 138 letter. h) CC and therefore neither the qualification of a stricter punishment for sexual abuse according to Art. 201 sec. 2 letter a) CC.

The court in criminal proceedings takes into account, in particular, the evidence proposed by the parties and should itself be only an arbitrator which supervises the legality and smoothness of the court proceedings, and which ultimately decides on the basis of the evidence presented. „The Criminal Procedure Code²² prefers elements of the adversarial process, where the activity in proving is carried out mainly by the parties, i.e. the prosecutor, the accused, resp. advocate”²³.

The court, as an impartial decision-making body, should therefore only take evidence which can contribute to an objective investigation of the case and which can alter the facts in favour and against the accused, if this can have a decisive influence on the decision in the case. From the above, it can be stated that if neither the prosecutor nor the injured party proposes, during the criminal proceedings, to prove whether or not there was a breach of any important obligation of the accused arising from their employment or position, then the court must decide the case without taking into account this qualification feature.

²¹ J. Čentěš et al., *Trestné právo procesné...*, p. 326–327.

²² Act No. 301/2005 Coll. Criminal Procedure Code as amended, hereinafter also as CPC or Criminal Procedure Code.

²³ J. Čentěš et al., *Trestné právo procesné...*, p. 79.

It must also be emphasised that, from a procedural point of view, it is not sufficient for the application of that qualification feature to ‘add’ that qualification feature to the legal classification of the act. If the court intends to apply the ‘breach of an important obligation’ sign, this would also have to be clearly defined in the court decision in order to be specifically identified. In this context, it is necessary to point out that this fact must clearly follow from the reasoning of the judgment as it follows from § 168 par. 1 CPC: „If the judgment contains a reasoning, the court shall state briefly in what facts it has established as evidence, on which evidence it bases its findings of fact and what considerations it has taken in assessing the evidence taken, in particular if they contradict each other. It must be clear from the reasoning how the court dealt with the defense, why it did not grant the request for additional evidence and what legal considerations it followed when assessing the proven facts according to the relevant provisions of the law on guilt and punishment. If the judgment contains other statements, those statements must be substantiated”.

Case law from Slovakia

The fact that the injured person is a minor cannot affect the assessment of a ‘breach of an important obligation’ because there is *de iure* an obligation in every profession to ‘not have sexual contact with persons under the age of 15’. The position of pastor or cleric in this case can be considered as a profession that allows contact with minors.

In the proceedings of the District Court of Nitra, case no. 4T 50/2014, it was proved that it was the fact that the accused acted in relation to the injured party as a pastor allowed him to commit a crime, i.e. “the crime was committed in a direct causal connection with the violation of the duties of a clergyman”²⁴.

With respect to all of the above arguments, a procedure which substantially increases the severity of a crime due to its performance, circumstances and consequence, should necessarily be considered, in a general theoretical sense, as the fulfilment of the ‘growing mode of proceedings’. With regard to the circumstances of the case, it can be stated that the position of the pastor in this case facilitates the committing of a crime, facilitates its secrecy and brings the perpetrator to a *de facto* advantage in the form of camouflage of this activity of his pastoral mission.

Based on the above analysis, it can be stated that from the point of view of Criminal Code, in the case of committing a crime of sexual abuse by pastor, the application of the qualification mark according to Art. 138 letter. h) CC is

²⁴ Judgement of DC of Nitra case No. 4T 50/2014 dated January 12, 2015.

given. However, from the procedural point of view, this fact cannot be considered as a matter of 'legal assessment' but rather a matter which is subject to proper evidence, and the alleged violation of an important obligation must arise logically and unequivocally from the evidence taken in criminal proceedings.

The responsibility under canon law

In the following part the position of a pastor of the Roman Catholic Church in the meaning of the Code of Canon Law (hereinafter also referred to as CCL)²⁵ as a representative of the church or religious society is analysed²⁶.

Basic principles of canon criminal law

The idea of punishing the religious delicts in the meaning of Canon Law is expressed in the canon 1311 CCL: „The Church has the innate and proper right to coerce offending members of the Christian faithful with penal sanctions”. In the meaning of canon 11 CCL: “Merely ecclesiastical laws bind those

²⁵ Codex iuris canonici announced in 1983.

²⁶ In the context of this article, a pastor is also meant by another person who actually performs the office of pastor, as defined, e.g. in Canon 515, § 1: “A parish is a certain community of the Christian faithful stably constituted in a particular church, whose pastoral care is entrusted to a pastor (parochus) as its proper pastor (pastor) under the authority of the diocesan bishop”; resp. in Canon 519: “The pastor (parochus) is the proper pastor (pastor) of the parish entrusted to him, exercising the pastoral care of the community committed to him under the authority of the diocesan bishop in whose ministry of Christ he has been called to share, so that for that same community he carries out the functions of teaching, sanctifying, and governing, also with the cooperation of other presbyters or deacons and with the assistance of lay members of the Christian faithful, according to the norm of law”.

By analogy, similar obligations apply e.g. also to the parochial vicar, who may in certain circumstances perform the function of pastor, as follows from Can. 541 § 1: “When a parish becomes vacant or a pastor has been impeded from exercising his pastoral function and before the appointment of a parochial administrator, the parochial vicar is to assume the governance of the parish temporarily”. Resp. he performs an auxiliary function in addition to the performance of the function of pastor in the sense of Canon 545 § 1: “Whenever it is necessary or opportune in order to carry out the pastoral care of a parish fittingly, one or more parochial vicars can be associated with the pastor. As co-workers with the pastor and sharers in his solicitude, they are to offer service in the pastoral ministry by common counsel and effort with the pastor and under his authority” and § 2: “A parochial vicar can be assigned either to assist in exercising the entire pastoral ministry for the whole parish, a determined part of the parish, or a certain group of the Christian faithful of the parish, or even to assist in fulfilling a specific ministry in different parishes together”. Available at: https://www.vatican.va/archive/ENG1104/_P1U.HTM (accessed: 22.08.2021).

who have been baptized in the Catholic Church or received into it, possess the efficient use of reason”.

The Roman Catholic Church could be seen as an autonomous society which has its own legal system, including the rules of criminal law. In addition to the legislative and executive powers, it also owns the judiciary and has established a system of institutions that have the right to impose sanctions for violations of the norms of canonical criminal law and also exercise other competencies entrusted to them by the norms of canonical criminal law²⁷.

Canon criminal law is part of the public law of the Catholic Church. If the legal system of the Catholic Church considers a certain illegal act to be very serious and socially dangerous, it classifies it as criminal according to the norms of canonical criminal law and protects the public interest defined by the norms of canonical criminal law (competent ecclesiastical authority – e.g. diocesan bishop) and decides on guilt and punishment as a public body²⁸.

Canon criminal law has its substantive part (book 6 of the Code) and procedural part (book 7 of the Code). The norms of canonical substantive criminal law are contained in the 6th book of the Code (in canons 1311 to 1399). Canon's substantive criminal law has its general part (canons 1311 to 1363) and a special part (canons 1364 to 1399). The general part contains norms that apply to all the facts of ecclesiastical offenses, e.g. norms stipulating the conditions of criminal liability, types of punishments, application of punishments (suspension of punishment, waiver of punishment, suspension of execution of punishment), termination of punishments. The special part contains norms establishing the facts of individual ecclesiastical offenses classified according to a common criterion (group objects) into six titles²⁹.

The higher canonical criminal liability arises when the norms of canonical criminal law are violated, resp. to disrupt social relations, which are protected by the norms of canonical criminal law. The basis of canonical criminal liability is the unlawful conduct of subjects of canon law (believers), for which it is possible to impose a canonical punishment. This is an illegal act, the features of which are established by law (Code of Canon Law), and for which the competent ecclesiastical authority imposes punishments, resp. sanctions provided for by a criminal law or a criminal order.

Tortious liability forms part of canonical criminal liability, on the basis of which the believer, after fulfilling the conditions (age, sanity, intention)³⁰,

²⁷ M. Nemeč, *Základy kánonického práva*, 2. vyd., Bratislava–Trnava 2006, p. 162.

²⁸ *Ibidem*, p. 162–163.

²⁹ *Ibidem*, p. 163–164.

³⁰ Can. 1321 § 2 CCL: “A penalty established by a law or precept binds the person who has deliberately violated the law or precept; however, a person who violated a law or precept by omitting necessary diligence is not punished unless the law or precept provides otherwise”.

Can. 1322 CCL: “Those who habitually lack the use of reason are considered to be incapable of a delict, even if they violated a law or precept while seemingly sane”.

assumes responsibility for the offense committed and at the same time the obligation to bear the legal consequences of his intentional wrongdoing – ecclesiastical tort.

In the meaning of canon 1312 § 1 CCL: “The following are penal sanctions in the Church:

- 1) medicinal penalties, or censures, which are listed in cann. 1331–1333;
- 2) expiatory penalties mentioned in can. 1336”.

Censures are as following:

Excommunication (can. 1331 CCL) consists of expulsion from the Church, it excludes the offender from eligibility for ecclesiastical offices and the sacraments and cause the cessation of all rights in the Church.

Interdict (can. 1332 CCL) is a prohibition on holding services in a particular place or in respect of a particular person. It is either a special interdict, when one church or certain persons are punished, or a general interdict, which punishes the whole parish or diocese, or its inhabitants.

Suspension (can. 1333 CCL) is the suspension of all or some of the official rights of ecclesiastical officials for a certain period of time or until their improvement.

Expiatory penalties are as following (can. 1336 § 1 CCL): “In addition to other penalties which the law may have established, the following are expiatory penalties which can affect an offender either perpetually, for a prescribed time, or for an indeterminate time:

- 1) a prohibition or an order concerning residence in a certain place or territory;
- 2) privation of a power, office, function, right, privilege, faculty, favor, title, or insignia, even merely honorary;
- 3) a prohibition against exercising those things listed under n. 2, or a prohibition against exercising them in a certain place or outside a certain place; these prohibitions are never under pain of nullity;
- 4) a penal transfer to another office;
- 5) dismissal from the clerical state”.

Pope John Paul II. in 1979 placed canonical criminal law in the image of the church, which “protects the rights of individual believers, but also the common good as an integral condition for the development of the human and Christian person. Punishment in the field of view of the ecclesial community is in fact nothing more than a finding of the situation or state in which the offender finds himself. It is a means to help the offender find full communion in the church, which he has broken with his offenses”³¹.

Can 1323, sec. 1. CCL: “The following are not subject to a penalty when they have violated a law or precept: 1/ a person who has not yet completed the sixteenth year of age”.

³¹ V. Filo, *Učiaca úloha cirkvi (Tretia kniha)*, *Časné majetky cirkvi (Piata kniha)*, *Sankcie v cirkvi (Šiesta kniha)*, *Procesy (Siedma kniha)*, Bratislava 1994, p. 63.

Thus, canonical criminal law has undergone great changes in the history of the Church. The result of this development was a clear distinction between sin and tort, the introduction of a distinction between the forum of repentance and the forum of discipline and the criminal forum in it. The means by which the church responds to sin have been shown to be different. In general, these are pastoral and legal remedies, but also criminal means, which are mentioned in the Sixth and Seventh Books of the current Code of Canon Law³².

The purpose of canon criminal law is to be able to force a certain desirable action from two states: clergy and believers with the help of a certain threat of sanction, that is, punishment. However, the Church is very reluctant to use this right and very rarely in practice. The imposition of a sentence is a kind of last measure (*ultima ratio*), occurring only in cases of the most serious illegal conducts, when it is necessary for the correction of the offender and/or for the restoration of ecclesiastical order. Despite the comprehensive legislation in the Sixth and Seventh Books of the Code, measures of a preventive nature are at the forefront³³.

Responsibility for sexual abuse in the light of canon law

Canon 515: “A parish is a certain community of the Christian faithful stably constituted in a particular church, whose pastoral care is entrusted to a pastor (parochus) as its proper pastor (pastor) under the authority of the diocesan bishop”.

Canon 519: “The pastor (parochus) is the proper pastor (pastor) of the parish entrusted to him, exercising the pastoral care of the community committed to him under the authority of the diocesan bishop in whose ministry of Christ he has been called to share, so that for that same community he carries out the functions of teaching, sanctifying, and governing, also with the cooperation of other presbyters or deacons and with the assistance of lay members of the Christian faithful, according to the norm of law”.

The duties of a pastor are established by e.g. canon 521: “§ 2 Moreover, he is to be outstanding in sound doctrine and integrity of morals and endowed with zeal for souls and other virtues; he is also to possess those qualities which are required by universal or particular law to care for the parish in question”.

³² Ibidem, p. 62.

³³ E.g.: Can. 1341: “An ordinary is to take care to initiate a judicial or administrative process to impose or declare penalties only after he has ascertained that fraternal correction or rebuke or other means of pastoral solicitude cannot sufficiently repair the scandal, restore justice, reform the offender”.

Can. 1317: “Penalties are to be established only insofar as they are truly necessary to provide more suitably for ecclesiastical discipline. Particular law, however, cannot establish a penalty of dismissal from the clerical state”.

The duties of the other consecrated persons, however, are scattered in other canons which are applicable to all consecrated persons, including pastors, e.g. Canon 277, Art. 1 and 2: “§ 1 Clerics are obliged to observe perfect and perpetual continence for the sake of the kingdom of heaven and therefore are bound to celibacy which is a special gift of God by which sacred ministers can adhere more easily to Christ with an undivided heart and are able to dedicate themselves more freely to the service of God and humanity. § 2 Clerics are to behave with due prudence towards persons whose company can endanger their obligation to observe continence or give rise to scandal among the faithful”.

Overall, the Code of Canon Law contains a number of obligations which apply to a pastor as a specific function – the ‘pastor’, but also general obligations that apply to such an individual as a ‘consecrated person’. Their specific calculation would require a deeper analysis of canon law for which there is not enough space in this article. However, in the *Codex iuris canonici* from 1983 there is no special provisions about prohibition of sexual abuse. In any case, it is possible to clearly identify from Canon 277 the duty of the cleric to observe celibacy and to refrain from any contact and visit by persons who would endanger his condition. The so called ‘adultery’, or the violations of the sixth commandment is clearly defined as the most serious violations of the Canon law.

Canon 538 states that: “§ 1. A pastor ceases from office by removal or transfer carried out by the diocesan bishop according to the norm of law, by resignation made by the pastor himself for a just cause and accepted by the same bishop for validity, and by lapse of time if he had been appointed for a definite period according to the prescripts of particular law mentioned in can. 522”.

The reasons for the removal are not specified directly in the part relating to the implementation of the office of a pastor, but apply to all consecrated persons.

In the part of the Code of Canon Law: Book IV. – Sanctions in the Church, Part II. – Penalties for Individual Delicts, Title V. – Delicts Against Special Obligations (Cann. 1392–1396) concerning ecclesiastical delicts, we find finally the punishments and sanctions for the delicts of adultery and violations of the sixth commandment:

Canon 1395: “§ 1. A cleric who lives in concubinage, other than the case mentioned in can. 1394, and a cleric who persists with scandal in another external sin against the sixth commandment of the Decalogue is to be punished by a suspension. If he persists in the delict after a warning, other penalties can gradually be added, including dismissal from the clerical state. § 2. A cleric who in another way has committed an offense against the sixth commandment of the Decalogue, if the delict was committed by force or threats or

publicly or with a minor below the age of sixteen years, is to be punished with just penalties, not excluding dismissal from the clerical state if the case so warrants”.

From the above mentioned provisions is clear, that for the clerics, pastors and other consecrated persons is presumed the sanction suspension or dismissal from the clerical state in case of sexual abuse.

The “new” canon law

Pope Francis has changed the Roman Catholic Church’s laws to explicitly criminalise sexual abuse. It is the biggest overhaul of the criminal code for nearly 40 years. The new rules make sexual abuse, grooming minors for sex, possessing child pornography and covering up abuse a criminal offence under Vatican law. The Pope said one aim was to “reduce the number of cases in which the (...) penalty was left to the discretion of authorities”³⁴.

The changes to the Code of Canon Law took 11 years to develop and included input from canonist and criminal law experts. Pope Francis has worked to tackle sexual abuse allegations involving Catholic priests since he became pontiff in 2013. Victims and critics had complained for decades that the previous laws were outdated, designed to protect perpetrators and were open to interpretation. The new code replaces the last major changes made by Pope John Paul II in 1983. It is designed to have clearer and more specific language, and dictates that bishops must take action when a complaint is made. The new rules come into effect on 8 December³⁵.

The code says a priest can lose their position if they used “force, threats or abuse of his authority” to engage in sexual acts. For the first time, laypeople working within the Church system, such as administrators, can also face punishment for abuse, such as losing their jobs, paying fines or being removed from their communities.

The new rules also criminalise ‘grooming’ of minors or vulnerable adults to pressure them to take part in pornography. It is the first time the Church has officially recognised grooming as a method used by sexual predators to exploit and abuse victims.

The law has also taken away the discretionary power that had previously allowed high-ranking Church officials to ignore or cover up allegations of abuse to protect priests. Now, anyone found guilty of this could be charged with negligence in failing to properly investigate and punish sexual predators.

³⁴ <https://www.bbc.com/news/world-europe-57318959> (accessed: 14.07.2021).

³⁵ *Ibidem*.

Monsignor Filippo Iannone, who leads the Vatican department that oversaw the changes, said there had been “a climate of excessive slack in the interpretation of penal law”, where mercy was sometimes put before justice³⁶.

The changes come under the new heading of “offences against human life, dignity and liberty”, which replaces the previously vague “crimes against special obligations”. The relevant provisions are as following:

Canon 1398 as in effect since 8 December 2021: “§ 1. A cleric is to be punished with deprivation of office and with other just penalties, not excluding, where the case calls for it, dismissal from the clerical state, if he:

1° commits an offence against the sixth commandment of the Decalogue with a minor or with a person who habitually has an imperfect use of reason or with one to whom the law recognises equal protection;

2° grooms or induces a minor or a person who habitually has an imperfect use of reason or one to whom the law recognises equal protection to expose himself or herself pornographically or to take part in pornographic exhibitions, whether real or simulated;

3° immorally acquires, retains, exhibits or distributes, in whatever manner and by whatever technology, pornographic images of minors or of persons who habitually have an imperfect use of reason.

§ 2. A member of an institute of consecrated life or of a society of apostolic life, or any one of the faithful who enjoys a dignity or performs an office or function in the Church, who commits an offence mentioned in § 1 or in can. 1395 § 3 is to be punished according to the provision of can. 1336 §§ 2–4, with the addition of other penalties according to the gravity of the offence”³⁷.

Advocates have long demanded the Church remove the reference to the sixth commandment, and define the abuse as a crime against children instead of a violation of priestly celibacy. “Describing child sexual abuse as the canonical crime of ‘adultery’ is wrong and minimises the criminal nature of abuse inflicted on child victims. A canonical crime relating to child sexual abuse should be clearly identified as a crime against the child”³⁸.

Conclusion

Violation of the celibacy of the pastor, or for any violation of the 6th commandment (“you will not commit adultery”), ‘suspension from office’ according

³⁶ Ibidem.

³⁷ Codex iuris canonici announced in effect since 8 December 2021, https://www.vatican.va/archive/cod-iuris-canonici/eng/documents/cic_lib6_en.pdf (accessed: 22.08.2021).

³⁸ The Roman Catholic Church: Safeguarding in the Roman Catholic Church in England and Wales, Report from November 2020, published 4 December 2020, <https://www.iicsa.org.uk/key-documents/23357/view/catholic-church-investigation-report-4-december-2020.pdf> (accessed: 22.08.2021).

to canon 538 is possible. It can be concluded that the obligation to observe celibacy can be categorised for the pastor as an 'important duty' within the ecclesiastical regulations of the Roman Catholic Church, whereas dismissal from the clerical state is presumed for such violation according to canon 1395. Sanction for this violation may be considered the most severe punishment that can be imposed on a consecrated person under the Code of Canon Law.

The obligation to 'observe celibacy' can be considered an obligation that should also be taken into account in secular criminal law in terms of 'violation of an important duty', as the sanction for this violation is already reflected in the Code of Canon Law and this fact may also be taken into account in the sanctioning of the perpetrator by secular criminal law with regard to the provisions on the imposition of a sentence which should be fair, proportionate, and sufficient to re-educate and remedy the perpetrator, including taking into account other sanctions imposed on him for this act in other proceedings.

Although the secular criminal law and canon criminal law exist as the separate legal systems with totally different sanctions and subjects of application, sexual abuse could be seen as a crossing issue, where those both systems try to combat against this social problem, with different methods and different sanctions.

It is true that the secular criminal law has the strict and severe sanctions which are mainly connected with deprivation of liberty punishment and that are applicable generally on a non-specified group of perpetrator. The sanctions in the scope of canon law should supplement the secular responsibility with the special sanctions for the particular cases committed within the community of consecrated persons. Also canon law from the year 1983 show the signs of responsibility for the sexual abuse of children with strict and severe sanctions for the pastors and clerics for violations of the 6th commandment.

However, the latest changes in the canon law show that the position of the Roman Catholic Church to this social problem has developed more accurate and precise to this issue and that also in the community of Roman Catholic Church is the sexual abuse separately defined problem which desires the special attention. Hopefully the changing position of the leaders of the Roman Catholic Church help to diminish and successfully struggle this problem.

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Summary

Sexual abuse in comparison of canon law of Roman Catholic Church and national criminal law on the example of Slovakia

Keywords: criminal law, canon law, sexual abuse, sanctions, criminal responsibility, pastor.

Lately we are facing the new rules of Roman Catholic Church Law, that are also focused on the sexual abuse of minors and its punishment, announced on June 1st, 2021. These new rules should come into effect on 8 December 2021. This occasion offers a good opportunity for analysis of this specific social problem (sexual abuse) and its punishment from the religious and secular perspectives. Authors offers an example of national law of Slovakia in comparison with Roman Catholic Church Law and the way how they deal with the problem of sexual abuse.

In this paper, we report on the criminal responsibility of pastors and clerics for the sexual abuse in the light of national criminal law and Canon Law. This is significant because the position of pastor could influence also the responsibility according to secular criminal law, and on the other side, the responsibility in criminal law is not only one and the consequences for clerics will appear also in the scope of Canon law. The criminal and Canon Law responsibility exist separately but in this case is important to think how they influence each other.

Streszczenie

Wykorzystywanie seksualne w świetle prawa kanonicznego Kościoła rzymskokatolickiego i krajowego prawa karnego na przykładzie Słowacji

Słowa kluczowe: prawo karne, prawo kanoniczne, wykorzystywanie seksualne, sankcje, odpowiedzialność karna, ksiądz.

Ostatnimi czasy mamy do czynienia z nowymi przepisami prawa Kościoła rzymskokatolickiego, które koncentrują się na karaniu za wykorzystywanie seksualne nieletnich, ogłoszonymi 1 czerwca 2021 r. Nowe przepisy powinny wejść w życie 8 grudnia 2021 r. Jest to dobra okazja do analizy tego specyficznego problemu społecznego, jakim jest wykorzystywanie seksualne, i jego karania (z perspektywy religijnej i świeckiej). Autorzy przytaczają przykład prawa krajowego Słowacji, porównując z prawem Kościoła rzymskokatolickiego, oraz sposoby radzenia sobie z problemem wykorzystywania seksualnego.

W niniejszym artykule opisano odpowiedzialność karną księży i kleryków za nadużycia seksualne w świetle krajowego prawa karnego i prawa kanonicznego. Jest to o tyle istotne, że pozycja księdza może wpływać także na odpowiedzialność według świeckiego prawa karnego, a z drugiej strony odpowiedzialność karna nie jest jedyną, zatem konsekwencje dla duchownych pojawią się także w zakresie prawa kanonicznego. Odpowiedzialność karna i kanoniczna istnieje oddzielnie, ale w tym przypadku ważne jest, aby zastanowić się, w jaki sposób wpływają na siebie.