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"VOLUNTARY AND UNLAWFUL ABANDONMENT OF THE SACRED MINISTRY" IN THE LIGHT OF THE REVISED PROVISIONS OF CANON PENAL LAW IN THE 1983 CODE OF CANON LAW

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Abstract. The article aims to familiarize the reader with the legislative actions of the Pope. It is noteworthy that since the promulgation of the 1983 Code of Canon Law (CIC/83), no other amendment has been made to penal law that would be comparable in scale. Based on an analysis of Canon 1392 of the CIC, which was carried out to show the positive effects of the amendment, the article describes in detail the issue of interest. The author's aim is to show the abandonment of the sacred ministry as an offence. Accordingly, key concepts are explained, and an analysis of the subject and object dimensions of the offence is carried out. Furthermore, in the last part of the study, criminal sanctions and actions of the ecclesiastical authority are presented. Various research methods have been used to create the narrative, including the dogmatic-legal method, the historical-legal method, the philological method, the analytical method, and the synthetic method.

Keywords: ecclesiastical offence, amendment of canon penal law, abandonment of the sacred ministry, criminal sanctions, suspension, expiatory penalties.

Streszczenie. „Porzucenie dobrowolne i bezprawne świętej posługi" w świetle znowelizowanych przepisów kanonicznego prawa karnego w Kodeksie Prawa Kanonicznego z 1983 roku. Tematyka zaprezentowana w artykule ma przybliżyć czytelnikowi działania ustawodawcze papieża. Warto podkreślić, że od momentu promulgacji Kodek-

su Prawa Kanonicznego z 1983 roku, aż dotąd nie przeprowadzono nowelizacji prawa karnego, na tak szeroką skalę. Przedstawiona analiza kanonu 1392 KPK miała na celu pokazać pozytywne skutki przeprowadzonej nowelizacji. Stworzono artykuł, który szczegółowo opisuje interesującą nas problematykę. Celem autora było ukazanie porzucenie świętej posługi przez osobę duchowną jako przestępstwa. W związku z tym wyjaśniono kluczowe pojęcia, przeprowadzono analizę przedmiotowego i podmiotowego wymiaru przestępstwa. Ponadto w ostatniej części studium przedstawiono sankcje karne i działania władzy kościelnej. Do stworzenia powyższej narracji wykorzystano różne metody badawcze m.in. dogmatyczno-prawną, historyczno-prawną, filologiczną, analityczną oraz syntetyczną.

Słowa kluczowe: przestępstwo kościelne, nowelizacja kanonicznego prawa karnego, porzucenie świętej posługi, sankcje karne, suspensa, kary ekspiacyjne.

ADMISSION

The pontificate of Pope Francis has contributed to many changes in ecclesiastical legislation. Among the many accomplished, it is worth noting the amendment to Book Six of the Code of Canon Law of 1983 – Penal Sanctions in the Church (*De Sanctionibus poenalibus in Ecclesia*). To this end, Pope Francis promulgated the new Apostolic Constitution *Pascite Dei Gregem* on May 23, 2021. In it, he justified the need to amend the provisions of canon penal law and the need to penalize important areas of the Church. The new regulations have been in force since 8 December 2021. Following them, it can be seen that the legislator has instituted new ecclesiastical crimes. One of them is the crime of abandonment of the sacred ministry by a cleric, which is placed in the fifth title of the sixth book, Crimes contrary to special duties (*De delictis contra speciales obligationes*), in canon 1392: „Clericus qui sacrum minsterium volutariae et illegitime relinquit, per sex menses continuos, animo sese subducendi a competenti Ecclesiae auctoritate, pro delicti gravitate, suspensione vel etiam poenis in can. 1336, §§ 2–4, statutis puniatur, et in casibus gravioribus dimitti potest e statu clericali" (can. 1392 of the Code of Canon Law). It will be the subject of consideration. So far, in Polish and foreign canonical literature, the above topics have been discussed in a very general way. In connection with the amendment of the provisions of canon penal law, only commentaries have been published, which very laconically touch on the above matter. There is no detailed study devoted tothis issue. The proximate aim is to

present the abandonment of the sacred ministry by the cleric as a canonical crime. Therefore, its objective and subject-matter dimensions will be discussed. The further aim will be to present the amendment of canon penal law as an effective tool for combating perpetrators, who are mostly criminals obey clergy.

1. EXPLANATION OF THE MAIN TERMS OF THE LEGAL PROVISION

In Canon 1392, the legislator has included two key terms that must be clarified before a penal-canonical analysis can be carried out. It should be emphasized that this is necessary because the interpretation of the provisions of canon penal law, in accordance with Canon 18 of the Code of Canon Law, requires a strict interpretation. Remigiusz Sobański emphasizes that grammatical and logical interpretation is often ambiguous. Only a strict interpretation takes into account the words and their meaning, so that they retain their meaning.[1] The termism explained below.

1.1. "SACRED MINISTRY" – (SACRUM MINISTERIUM)

The concept of "sacred ministries" (*sacrum ministerium*) is presented differently by many experts in canonry. Sometimes in the literature authors define it as a narrow aspect of the life of clergy, while others apply this term to all the rights and duties of the clergy. Bruno Fabio Phingin pointed out that the source of the exercise of the sacred ministry is the ordination that the candidate receives. Commenting on Canon 1009 § 3 of the Code of Canon Law, he pointed out that the sacred ministry is the performance of functions resulting from the ordination received. The expert defines it as an activity resulting from ordination, but also as those that belong to the clergy, m.in. incardination, excardination, rights and duties of clergy, celebration of the sacraments, preaching the Word of God, ob-

[1] Remigiusz Sobański, „Normy Ogólne. Kanon 18," w *Komentarz do Kodeksu Prawa Kanonicznego. Księga Pierwsza Normy Ogólne*, t. I, red. Józef Krukowski (Poznań: Pallottinum, 2003), 71–72.

servance of celibacy, preservation of residence, and many others.[2] Paweł Kaleta defines the term sacred ministry in a different way. Like Phingin, he points out that it results directly from the sacrament of Holy Orders. Contrary to the Italian expert, he perceives it only through the prism of the rights and duties of clergy.[3] Zbigniew Janczewski defines the sacred ministry as the activities performed by the clergyman, as the minister of the holy sacraments. It is worth emphasizing that this view is very important, but it concerns a narrow area of the Church's activity – the celebration of the holy sacraments.[4] Tadeusz Pawluk understood the term as actions taken by a clergyman in order to carry out the mission of the Church. He derived his assumptions from the documents that were published during the sessions of *Vatican II*.[5] Tomás Rincón-Pérez linked the term "sacred ministry" to canons 273 and 274 of the Code of Canon Law and to a document issued by the Pontifical Council for Legislative Affairs. By the term "sacred ministry" he meant the canonical duty of obedience to the Pope and the Ordinary, and the readiness to accept and faithfully carry out the tasks and offices entrusted to him by his own Ordinary. Commenting on the canons and the document issued by the Dicastery of the Roman Curia, he emphasized that the direct element connecting the priest with the exercise of the sacred ministry is incardination, and indirectly the juridical position of the cleric. It is worth noting that the Spanish author pointed out that the personal and spiritual life of a cleric do not fall within the scope of canonical obedience – they enjoy the right of autonomy. He understood the incardination of clergy as a bond of subordination that does not generate any generalized subordination, but is limited to the area of the clerical ministry and the duties resulting from the clerical state.[6]

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[2] Bruno Fabio Phingin, *Il nuovo sistema Penale Della Chiesa*, (Venezia: Marcianum Press, 2021), 451.

[3] Paweł Kaleta, *Przestępstwa przeciwko specjalnym obowiązkom*, w: *Komentarz do Kodeksu Prawa Kanonicznego. Księga VI. Sankcje Karne w Kościele zreformowane przez papieża Franciszka*, t. IV/2, red. Józef Krukowski (Poznań: Pallottinum, 2022), 310.

[4] Zbigniew Janczewski, *Ustanawianie szafarzy świętych sakramentów w Kościele łacińskim i Kościołach Wschodnich* (Warszawa: Wydawnictwo UKSW, 2004), 13–15.

[5] Tadeusz Pawluk, *Prawo kanoniczne według Kodeksu Jana Pawła II. Lud Boży i jego nauczanie i uświęcenie* (Olsztyn: Warmińskie Wydawnictwo Diecezjalne, 1992), 76–78.

[6] Tomás Rincón-Pérez, „Księga II Lud Boży. Tytuł III – Święci szafarze, czyli duchowni. Komentarz do kanonów 273–274 KPK," w *Codex Iuris Canonici. Kodeks*

It is worth noting that the term "sacred ministry" is a concept defined in various ways. It covers various areas of activity of the clergy. Certainly, the personal life of a clergyman and his spiritual life cannot be qualified for this term. All other acts which the cleric performs, which arise from the power of ordination, from the power of government, from functions and offices, fall under the term "sacred ministry".

1.2. VOLUNTARY (*VOLUNTARIAE*) AND UNLAWFUL (*ILLEGITIME*) ABANDONMENT

In addition to the term "sacred ministry", another term that the legislator has included in the legal provision is "voluntary and unlawful abandonment". The term is made up of a verb and two adjectives. According to Paweł Kaleta, the act of abandonment is connected with *voluntariae*, these two words indicate the character of the person and his freedom.[7] The above-mentioned features of a human act are directly connected with intentional guilt, that is, with conscious and free action, which is necessary for the occurrence of an ecclesiastical crime. To this end, reference should be made to Canon 2200 § 1 of the Code of Canon Law of 1917, which defined the concept of intentional guilt. "Dolus heic est deliberate voluntas violandi legem, eique opponitur ex parte intelectus defectus cognitationis et ex parte voluntatis defectus liberates" (can. 2200 § 1, KPK1917). In the Code of Canon Law of 1983, the guilt of intention was expressed in Canon 1321 as: "legem vel preceptum deliberate violavit", the amendment of the provisions of penal law did not change anything in this regard. According to Velasio de Paolis and Daniele Cito, the definitions of intentional fault in the 1917 and 1983

Prawa Kanonicznego. Komentarz. Powszechne i partykularne ustawodawstwo Kościoła katolickiego. Podstawowe akty polskiego prawa wyznaniowego. Edycja polska na podstawie wydania hiszpańskiego, red. Piotr Majer (Kraków: Woulters Kluwers, 2011), 256–257; Pontifical Council for Legislative Texts, „Explanatory Note on the Responsibilities of the Diocesan Bishop in Relation to Priests Incardinated in the Diocese," *Communicationes* 36 (2004): 33–38.

[7] Kaleta, „Przestępstwa przeciwko specjalnym obowiązkom," 312.

Code are the same.[8] Angelo Giuseppe Urru and Raffaele Botta, on the other hand, noted that intentional fault is made up of three elements. The first element concerns the intellectual sphere, which is responsible for learning the rules of the world. The second element concerns the volitional sphere, which is responsible for choice and voluntariness. The third element is related to the intention to act, i.e. the intention to commit a crime.[9] Andrea D'Auria spoke about intentional fault. He investigated the causes of intentional fault. He stated that in order for it to arise, it is necessary that the appropriate conditions be met on the part of the intellect and the will. On the side of the intellect there must be knowledge of the law or the penal order. As a result, the entity must foresee the consequences of criminal conduct and must also be aware of the practical fact that its conduct will have a negative effect in the form of imposing a penalty.[10] He emphasised that the freedom of decision depends on the knowledge of the criminal law or the criminal order. Andrea D'Auria's thought was commented on by Dariusz Borek, who emphasized that intentional guilt not only leads to the voluntary nature of the act, but also creates two types of consciousness in the mind of the subject: lawlessness and crime.[11] Borek's statement was a repetition of the thought of Gommarus Michiels, who stressed that the subject does not need to be aware of crime and lawlessness due to hatred of a statute or legal order. It is sufficient for him to have knowledge that he is aiming at an act prohibited by law or an unlawful result.[12] Grzegorz Leszczyński also presents a different view on the definition of intentional fault. He draws attention to the volitional factor, which assumes that the will must have freedom of choice (libertas eligendi) and freedom of action

[8] Velasio de Paolis, *Le sanzioni nella Chiesa Commento al. Codice di Diritto Canonico. Libro VI* (Roma: Urbaniana University Press, 2001), 139–140; Daniele Cito, „Nota al m.p. Sacramentorum sanctitatis tutela," *Ius Ecclesiae* 14 (2002): 321–328.

[9] Angelo Giuseppe Urru, *Punire Per Salvare. Il sistema Penale Nella* Chiesa (Roma:Viverlen, 2001), 54–56; Raffaele Botta, *La standard Penale Nel diritto Della* Chiesa (Bologna: Il Mulino, 2001), 138–139.

[10] Andrea D'Auria, *L'imputabilita Nel diritto Penale canonico* (Roma: Pontificio Instituto Biblico, 1997), 39–40.

[11] Dariusz Borek, *Concursus in delicto. Formy zjawiskowe przestępstwa w kanonicznym prawie karnym (studium prawno-historyczne)* (Warszawa: Wydawnictwo UKSW, 2014), 57–58.

[12] Gommarus Michiels, *De delictis Et Poenis, Commentarius libri V Codicis Iuris Canonici*Vol. I, (Parisiis– Tornats–Romae–Neo Eborates, 1961), 111–112.

(*libertas agendi*). The volitional nature of the action focuses on the infringement that is committed and its consequences that may occur in the event of a breach of the criminal sanction. Less attention is paid to the law itself and the criminal sanction attached to it.[13] Jerzy Syryjczyk warns that the volitional side of action should not be confused or confused with the desire to commit a crime, because these are two different realities. Dariusz Borek argues that intentional fault is related to intention, i.e. intent. This is a constitutive element of intentional fault.[14] Borek understands intent as a positive intention to commit an act in which one is aware that one violates a law or a criminal order and violates the interests protected by it. Jerzy Syryjczyk describes it as a motivation for criminal activity,[15] and Tadeusz Pawluk understands it in a similar way.[16] Borek noted that intention can be divided into different types. Direct (*dolus directus*) occurs when the subject explicitly wants the prohibited act. It appears regardless of the motives of this action. The mere fact that the perpetrator wants to commit a crime is enough. Direct intent can be divided into general (*dolus generalis*) and specific (*dolus specificus*). The first will be expressed through the general intention to commit the crime, while the second will require specific motivation and intention. In the criminal law literature there are other forms of intent: indirect and potential. The first is characterized by the fact that a single offence has several effects and the perpetrator is liable for all of them. Contingency intent means that the subject is aware that he is committing a crime, but nevertheless continues to act. Franciszek Bączkowicz explains that this kind of intention may manifest itself in the fact that the perpetrator is not sure whether a given action is prohibited, but undertakes it, even if it is so. The first has not been introduced into the system of canon penal law, and the second involves unintentional guilt (*culpa*). In view of the above statements, it should be noted that only the intention in the form of dolus *directus and dolus specificus* constitute the

[13] Grzegorz Leszczyński, „The Concept of Accountability in the Criminal Law of the Church", *Canon law* 47, No. 1–2 (2004).

[14] Jerzy Syryjczyk, *Sankcje w Kościele. Część ogólna. Komentarz* (Warszawa: Wydawnictwo UKSW, 2008), 112.

[15] Syryjczyk, *Sankcje w Kościele. Część ogólna,* 113–114.

[16] Pawluk, „Prawo kanoniczne według Kodeksu Jana Pawła II," 82–83.

basis for attributing the perpetrator of the crime to the subject and imposing an ecclesiastical penalty on him.[17]

The abandonment must also be unlawful (*illegitandme*). Conjunction applied (voluntary and unlawful abandonment – K.K.) indicates that the entity's conduct should violate a norm contained in the statute or criminal order. The adjective *illegitime* in ecclesiastical legislation has been juxtaposed with another Latin phrase *externa legis violatio* – an external violation of the penal law. Velasio de Paolis noted that the violation must be committed in the physical world in order to be verified by the senses.[18] Bruno Fabio Pighin stressed that the *corpus delicti* must include the external action that constitutes the object of the crime.[19] Jerzy Syryjczyk pointed out that the externality of the act is a requirement and determines the objective element. An external act is an act or omission of a natural person.[20] A broader understanding was presented by Dariusz Borek. An external act is an act or omission that must leave the sphere of thoughts, feelings, and desires. You can't call it pure intent. It should enter the external and physical world so that it can be objectively noticed and defined by the senses.[21] Antonio Calabrese stated that the lack of externality of the act violates the principle of *nullum crimen sine actione*.[22] Paweł Kaleta emphasizes that *the term illegitime* refers to an act that goes beyond the limits of legal regulations specified in a statute or a criminal order.[23]

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[17] Franciszek Bączkiewicz, *Prawo Kanoniczne. Podręcznik dla duchowieństwa* (Opole: Wydawnictwo Diecezjalne św. Krzyża, 1957), 357–358.

[18] Velasio de Paolis, *De sanctionibus in Ecclesia. Adnotationes in Codicem. Liber VI* (Roma: E.P.U.G., 1984), 40–41.

[19] Bruno Fabio Phingin, Diritto penale canonico (Venezia: Marcianum Press, 2008), 70–71.

[20] Syryjczyk, *Sankcje w Kościele. Część ogólna*, 101–102.

[21] Borek, *Concursus in delicto*, 49.

[22] Antonio Calabrese, *Diritto Penale canonico* (Città Del Vaticano: Libreria Editrice Vaticana, 2006), 30–32.

[23] Kaleta, „Przestępstwa przeciwko specjalnym obowiązkom," 311.

2. PENAL ANALYSIS OF THE ECCLESIASTICAL OFFENSE CONTAINED IN CANON 1392 OF THE CODE OF CANON LAW

Francis' amendment to canon penal law established new ecclesiastical crimes. Canon 1392 is a prime example of this. So far, it has not appeared in the penal norms of the Code of Canon Law of 1983. The legislator noted that more and more clergy in various countries were abandoning the exercise of the sacred ministry. However, after a shorter or longer period of time, they returned and announced to the ecclesiastical authorities that they were ready to exercise the sacred ministry again. The legislator, bearing in mind the above events, has determined that abandonment of the sacred ministry is a canonical crime. The canon defines its objective and subjective character. In proceeding to the analysis of the penal-canonical law, it is necessary to recall again the content of the canon: "A cleric who has voluntarily and unlawfully abandoned the sacred ministry for six months continuously with the intention of freeing himself from ecclesiastical authority, according to the gravity of the offense, is to be punished with suspension or also with the penalties established in canon 1336 §2–4, and in more serious cases he may be expelled from the clerical state." (canon 1392 Code of Canon Law). From linguistic analysis, the first conclusion can be drawn. Hebuilt a new legal structure in the Ponder, which is to be a response to the events that were taking place in the community of the Church. An important element is the inclusion of the deadline, since it allows the correction of the perpetrator, as well as the imposition of an ecclesiastical penalty by the Ordinary. Therefore, it is worth discussing the objective and subjective dimensions of the crime.

2.1. OBJECTIVE AND PERSONAL DIMENSION OF THE OFFENCE

The most common action in this matter will be for a priest to leave a parish or diocese without the presumed permission of the ordinary. Usually, in such a case, the clergyman does not inform about the purpose of his trip. It is rare for some to leave a letter in their service apartment in the rectory, information about the reasons for their behavior and leaving the parish or abandoning the sacred ministry. At this point, it is worth recalling the letter of July 1, 1926, published by the Sacred Congregation

of the Council, in which it indicated the reasons for the abandonment of the sacred ministry by the clergy. Among them, he mentions: lack of faith, nervous breakdowns, health reasons, farming or hunting, spending time relaxing in the mountains or by the sea, in the theater, in the cinema or in paid work. Faced with the above, the authors of the letter placed on the ordinaries the duty of conducting a canonical investigation, and in the case of proving the guilt of the perpetrator, they obliged the bishops to impose ecclesiastical penalties according to the gravity of the offense.[24] According to Paweł Kaleta, Canon 1392 refers to the canonical tradition, but for the sake of full illustration, it should be interpreted in conjunction with Canon 283 § 1 of the Code of Canon Law.[25] In it, the legislator emphasized that "clerics, even if they do not hold a residence office, should not, however, leave their diocese for a longer period of time, which must be determined by particular law, without the permission – at least presumed – of their own ordinary" (canon 283 § 1, Code of Canon Law) In Józef Krukowski's opinion, a priest who is away from the parish for a long time should inform the ordinary and provide pastoral ministry to the faithful.[26] The most common acts are clergymen who hold the office of a parish priest in a parish without a vicar. When they want to leave the parish, they find a substitute for themselves during their absence. Certainly, an expiatory element in relation to the norm contained in Canon 1392 of the Code of Canon Law is the right to leave, which all clergy are entitled to. In addition, a cleric who has resigned from office and it has been legally accepted and then leaves the office, parishes or dioceses, does not commit a crime. Bruno Fabio Phingin emphasizes that the crime of abandoning the sacred ministry is also linked to the violation of Canon 273 of the Code of Canon Law. The author reminds us that the incardination of a cleric into a diocese, institute, or association gives rise to a canonical obligation of respect and obedience to the ordinary, because of the bond between

[24] Sacra Congregatio Concili, „Litterae Circulares ad Omnes De Ordinaries sacerdotibus valetudinis alias rusticationis Animique causa extra suam Dioecesim Se conferentibus," *Acta Apostolicae Sedis* 18 (1926): 312–313.

[25] Kaleta, „Przestępstwa przeciwko specjalnym obowiązkom", 312.

[26] Józef Krukowski, „Obowiązki i uprawnienia duchownych. Komentarz do kanonu 283 KPK," w *Komentarz do Kodeksu Prawa Kanonicznego. Księga druga. Lud Boży*, t. II, red. Józef Krukowski (Poznań: Pallottinum, 2005), 106–107.

the clergy and the ordinary.[27] Józef Krukowski emphasizes that respect for the Pope and the Ordinary is to be shown externally through common signs expressing the recognition of dignity and authority. It states that the term Ordinary includes the diocesan Bishop and the Superiors of the Heads of the Particular Churches, who are generally and Bishops, who are almost equivalent to him.[28] It is worth emphasizing that canonical obedience has its limitations. They are determined by Canon 220 of the Code of Canon Law, thanks to which personal life is not subject to the obligation of obedience, but is the object of their own intimacy. To sum up the considerations made so far in this area, the cleric's behavior must be an external act aimed at the voluntary and unlawful abandonment of the sacred ministry, with the intention of freeing himself from the bonds of ecclesiastical authority.

An important role in the construction of the crime is played by the term. It is an integral part of the objective dimension of the offence – it involves the possibility of changing the perpetrator's behaviour. The text clearly defines the time that the legislator has set aside for the cleric to use for reflection, correction and a return to the exercise of the sacred ministry. The expression "uninterrupted for six months" (*per sex menses contiunos*) has a preclusive role (*limitation period*) and opens up many juridical possibilities that can be undertaken by the Ordinary. After the lapse of 6 months, which has not been interrupted by anything (m.in. by the correction of the perpetrator), the Ordinary should impose a correctional penalty (*suspensa*) on the cleric and may initiate proceedings against the subject of the offense: penal-judicial or administrative-penal, in order to impose expiatory penalties – canon 1336 § 2–4. It is worth emphasizing that fora period of 6 months, the Ordinary should call the cleric to obedience by means of a canonical admonition (canon 1347 § 1 of the Code of Canon Law). The phrase in the canon (*per sex menses contiunos)* indicates that we are dealing with continuous tense. According to Canon 201 § 1 of the Code of Criminal Procedure, continuous time is a reality in which no interruption is allowed. During this period of 6 months, a manifestation of this is that the priest does not respond to any requests sent by the ec-

[27] Phingin, „Il nuovo sistema," 452.

[28] Krukowski, „Obowiązki i uprawnienia duchownych. Komentarz do kanonu 273 KPK," 93–94.

clesiastical authority. The subjective dimension of the crime is connected with the clergy – (*delicta propria*). According to the norms of the law, the clergy are deacons, priests and bishops. Only they can be the subject of a crime. Consecrated persons (men) who have been ordained are also subject to the norms of Canon 1392 of the Code of Canon Law.

3. PENAL SANCTION AND ACTIONS OF ECCLESIASTICAL AUTHORITY

After a certain period of time (6 months), the ecclesiastical authority may impose certain penal sanctions. The Ordinary is obliged to impose on the perpetrator of an act the penalty of correctional suspension *ferendae sententiae,* in accordance with Canon 1347 § 1 of the Code of Canon Law. The effect of suspension is that this type of punishment suspends the cleric from the acts resulting from ordination or ordination and acts of the power to govern, or only from acts of the power to govern. According to Kaleta, the ecclesiastical authorities can also impose a mandatory penalty, in which case the gravity of the offense, the extent of the offense and the damage caused by the priest's abandonment of the sacred ministry must be taken into account.[29] The author based his reflections on the thought of Bruno Fabio Phingin, who noted that obligatory penalties should be imposed only after the canonical procedure has been conducted. He clearly stated that the obligatory nature of the penalty is related to canon 1336 § 2–4, i.e., expiatory penalties.[30] For this reason, the Ordinary, depending on the consequences of the offense, has the option of imposing a suspension or, after a canonical procedure, expiatory penalties. They can take various forms, namely, an order to reside in a particular place, a prohibition or deprivation of offices, tasks, ministries, functions, and all or part of the ecclesiastical salary. It is worth mentioning that in some cases the penalty of dismissal from the clerical state may be imposed. Until the pontificate of Pope Benedict XVI (2005–2013), dismissal from the clerical state was most often applied to the most serious crimes (*delicta graviora*). When he gave the Congregation for the Clergy (now the Dicastery for the Clergy) the power to transfer clergy to the lay state and to exempt

[29] Kaleta, „Przestępstwa przeciwko specjalnym obowiązkom," 313.
[30] Phingin, „Il nuovo sistema," 453.

them from celibacy, this type of expiatory punishment began to be applied more frequently. In this regard, the Congregation sent a circular letter on April 18, 2009 to all the bishops of the world, and on March 17, 2010, it issued the procedural guidelines that should be observed in the application of the procedure for the transfer of a cleric to the lay state. The faculties conferred on the Dicastery of the Roman Curia apply not only to lay clergy, but also to religious and those incorporated into societies of apostolic life. In our case, it is worth mentioning the third entitlement, which allows for the transfer to the lay state and exemption from the obligation to maintain celibacy,[31] in the case of clergy who have voluntarily abandoned the ministry and have not exercised it continuously for more than 5 years.[32] In this regard, it is necessary to ask whether this power can be exercised in the light of canon 1392 of the Code of Canon Law. In the opinion of Marek Stokłosa, the third power makes it possible to carry out appropriate administrative proceedings with the participation of the competent ordinary. The purpose of the proceedings is to confirm the fact that the priest voluntarily abandoned the ministry, as well as to be sure that his wicked state lasts for a very long time – at least 5 years. Until December 8, 2021, it could be used because it was not punitive in nature. It served as an alternative to the procedure defined in 1980 by the Congregation for the Doctrine of the Faith, which allowed the Ordinary to request on his own initiative the transfer of a cleric to the holy state.[33] Stokłosa's view is confirmedby the research of Damian Guillerme Astigueta, who points out that the third power has never been criminal in nature. Similar conclusions were reached by Waldemar Barszcz, who emphasizes that until December 8, 2021, the voluntary and unlawful abandonment of the sacred ministry was not a canonical crime, but the legal basis for the actions of the Holly See is canon 1399 of the Code of Canon Law and canon 276 § 2 1° of the Code of Canon Law. Consequently, the Holy See imposed

[31] Congregazione per il Clero, „Lettera circolare Prot. N. 20090556, 18.04.2009," *Revista Española de Derecho Canónico* 67 (2010), 391–400.

[32] Congregazione per il Clero, Lettera circolare Prot. N. 20100823, 17.03.2010.

[33] Marek Stokłosa, „Utrata przynależności do stanu duchownego na podstawie specjalnych uprawnień przyznanych Kongregacji ds. Duchowieństwa," *Prawo Kanoniczne* 54 (2011) nr 1–2: 66.

the penalty of expulsion of clerics for abandoning the sacred ministry.[34] Due to the amendment of canon law, the third power should not be applied to Canon 1392 of the Code of Canon Law. In this regard, criminal proceedings must be carried out through the courts or administratively, in accordance with the canons 1717–1729 of the Code of Canon Law.[35]

CONCLUSION

The amendment to the canon penal law showed the legislator as a person who reads the changes taking place in the ecclesiastical community. He is not indifferent to new phenomena which can bring doubts or disturb the social order of the ecclesial community. One of the new dangerous phenomena is the abandonment of the sacred ministry by the clergy. The unlawful, voluntary and reckless behaviour of the clergy forced the legislator to take certain actions. The voluntary and unlawful abandonment of the sacred ministry from December 8, 2021, is a canonical crime. The agent of this action can only be a cleric who abandons his duties in order to free himself from ecclesiastical authority. The legislator has set a time limit of 6 months within which the perpetrator of the act may renounce resistance, enter the path of conversion and penance, and return to his or her duties resulting from ordination. In order to bring the problem of interest to us closer, key concepts have been explained fora better understanding of the subject. After their presentation, the objective and subjective dimensions of the prohibited act were presented. An analysis of Canon 1392 of the Code of Criminal Procedure has shown that the legislator linked the objective nature of the offence to a specific time limit. On this basis, controversy has arisen as to what kind of crime we are dealing with in this case. It should be emphasized that the offense contained in Canon 1392 of the Code of Canon Law can be perceived in different ways. By some as an attempted crime, especially when the perpetrator

[34] Damian Guillermo Astigueta, „Facolta concesse Alla Congregazione per il Clero," *Periodica* 99 (2010): 13–14.

[35] Waldemar Barszcz, „Przyczyny i procedury przeniesienia duchownych do stanu świeckiego na podstawie uprawnień Kongregacji ds. Duchowieństwa," *Prawo Kanoniczne* 54, nr 3–4 (2011): 64–65.

returns to the exercise of the sacred ministry within 6 months, finally as a formal crime, still others will classify it as a consequential crime. To sum up, by defining this type of crime, the legislator thus maintained the proper order in the community of the Church, moreover, it protected the faithful from *error communis* – canon 144 of the Code of Canon Law, which is particularly important in the context of the validly celebration of the holy sacraments.

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