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ON REMISSION OF PENALTIES
IN THE 1983 CODE OF CANON LAW.
THE PROBLEM OUTLINED

INTRODUCTION

After the Second Vatican Council, the question of *latae sententiae* ecclesiastical penalties was addressed by bishops, theologians, and especially jurists who, encouraged by the conclusions of the Synod of Bishops in 1967, insisted on changes already in the early Schemata of the revised Code of Canon Law [Suchecki 1999, 32-48]. The author discusses the idea of ecclesiastical penalty and remissions from such penalties in the internal sacramental forum as provided for in Title IV, Book VI of the 1983 Code of Canon Law.¹

When the 1917 Code of Canon Law² was being revised, significant modifications were made to the area of penal law. Reserved sins were completely abrogated [ibid.]. The distinction between the reservation of sins and the reservation of censures was completely abrogated, and only the censures reserved to the Holy See were retained. “As the fundamental leg-

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¹ *Codex Iuris Canonici auctoritate Ioannis Pauli PP. II promulgatus* (25.01.1983), AAS 75 (1983), pars II, pp. 1-317 [“CIC/83”].

² *Codex Iuris Canonici auctoritate Pii X Pontificis Maximiiussu digestus. Benedicti Papae XV auctoritate promulgatus* (27.05.1917), AAS 9 (1917), pars II, pp. 1-593 [“CIC/17”].

islative document of the Church, rested upon the juridical and legislative legacy of Revelation and Tradition, the Code of Canon Law must be considered an indispensable instrument to maintain a proper order in the individual and social life as well as in the work of the Church.”³

1. THE IDEA OF ECCLESIASTICAL PENALTY

“The Church has its own inherent right to constrain with penal sanctions Christ’s faithful who commit offences” (Can. 1311 § 1 CIC/83). The primary objective and supreme law of the Church is the salvation of souls: *salus animarum suprema lex*. Penalties are required in the Church community to restore justice, to reform offenders, and to repair scandals (cf. Can. 1341) [Suhecki 1999, 32-48]. Every penalty aims to make sure that the offender can be saved, the salvation being their the ultimate goal and, consequently, conversion. What is more, penalties are established to protect ecclesiastical discipline. Through the imposition or declaration of penalties, ecclesiastical discipline and order can be maintained. Deprivations and prohibitions imposed along with ecclesiastical penalties are intended to reform the offender. The Church cannot tolerate the conduct of the faithful who commit offences, and she has the duty to penalize as part of her mission toward the offender.

Penal sanctions in the Church are the last remedy – *extrema ratio*. When the ordinary finds that neither fraternal correction, warning, nor other means of pastoral care can sufficiently repair the scandal, restore justice, and reform the offender, he will impose or declare penalties. Can. 1317 provides, “Penalties are to be established only in so far as they are really necessary for the better maintenance of ecclesiastical discipline. Dismissal from the clerical state, however, cannot be laid down by a lower legislator.” The criterion of necessity is the general rule for the imposition of any penalty [ibid., 93-98]. In other words, in the cited canon, the ecclesiastical legislator actually recommends that ecclesiastical penalties be reduced, although they are necessary for the good of the Church and the salvation of souls. When looking at Can. 1342, the legislator recommends a double penal process for the imposition of penalties: administrative and

³ See <http://separacja.pl/prawo-kanoniczne.html> [last access: 19.09.2023].

judicial, however, it is in support of the penal judicial process [Danelis 2005, 289-301].

2. REMISSION OF ECCLESIASTICAL PENALTIES IN THE INTERNAL SACRAMENTAL FORUM

In the tradition of canon law, there are numerous terms that allude to the internal sacramental forum: *forum conscientiae*, *forum Dei*, *iudicium conscientiae*, *iudicium animarum in foro poenitentiali*, *forum spirituale et penitenziale*. The internal forum is termed sacramental because it encompasses cases that fall under the jurisdiction of the Church that are not known to the community of the faithful. Jurists are divided in the discussion on the distinction between the internal and external forum. Pio Ciprotti strongly insisted on a clear-cut separation of the two. He stressed that internal cases be limited to the internal sacramental forum, while external situations to the sphere of law. V. De Paolis voices an opposite view. He argues that CIC/83 does not reduce the internal forum only to the sacramental domain. His argument is that both the internal and external forums are integral components of canon law, and that the effects of penalties are not limited to the conscience of the individual but also affect the entire community of the faithful.

In CIC/83, the ecclesiastical legislator made a clear division in the naming convention by removing some and ordering other concepts, among them, *forum conscientiae*, *forum Dei*, *iudicium conscientiae*, which had related to the internal forum in the past. The power of governing, also known as the power of jurisdiction, is, according to Can. 130, exercised for the external forum, and sometimes, however, it is exercised for the internal forum alone: *Utrumque forum ad Ecclesiam pertinent, et per Ecclesiam exercetur*.

CIC 83 introduced the term *facultas*, i.e. authority/faculty, while narrowing its meaning to the internal sacramental forum. The minister of the Sacrament of Penance is only the priest who has the faculty (*facultas*) to absolve sins validly and to exercise the priestly order for the faithful whom he absolves.

In ordinary situations, remission from a penalty is granted to individuals in the external forum. In accordance with Can. 1361, “§ 1. A remission

can be granted even to a person who is not present, or conditionally. § 2. A remission in the external forum is to be granted in writing, unless a grave reason suggests otherwise. The legislator encourages maximum caution, therefore, “The petition for remission or the remission itself is not to be made public, except in so far as this would either be useful for the protection of the good name of the offender, or be necessary to repair scandal” (Can. 1361 § 3).

The legislator also provides for the option of remission from penalties in ordinary situations, urgent situations and in danger of death (Can. 976), in the internal sacramental forum and before the person is remitted externally. In ordinary situations, the ecclesiastical legislator imposes restrictions on both absolution from sins and remission from ecclesiastical penalties. The restriction concerning absolution refers to the case of false reports of solicitation. In this case, the confessor cannot grant absolution until the penitent formally recalls the false report and repairs the ensuing harm.

CIC/83 introduced a significant change regarding the prohibition of absolution, under penalty of invalidity, of an accomplice in a sin against the sixth commandment of the Decalogue. The restriction retained by the legislator concerns the invalidity of absolution, and the change covers danger of death. In such circumstances, absolution would be valid and licit, even if another priest is present at the scene.

2.1. Remission of penalties in ordinary situations – competent authority

Title VI, Book VI CIC/83 covers the remission of penalties and the prescription of actions (Cans 1354-1363). A penalty may cease in a number of ways: after its expiration if imposed for a definite period (expiatory penalties Can. 1336); by remission by the superior; by prescription – a criminal action (Can. 1362); through the death of the penalized person; amnesty is not provided.

The code expressly names persons having the power to dispense and release from a penalty for a violation of a law or precept. The remission of penalties in ordinary situations takes place in the external forum. Still, the ecclesiastical legislator maintained the previous laws, which were re-organized and refined, thus providing for the remission of *latae sententiae*

medicinal penalties, which have not yet been declared and are not reserved to the Holy See in the internal sacramental forum, before obtaining a remission from penalties in the external forum or independently of the external one.

The CIC Schema of 1980 provided for the power (*facultas*) of remission of ecclesiastical penalties in ordinary and extraordinary situations, as well as in danger of death. In spite of long-lasting discussions and numerous proposals, CIC/83 kept the option of remission in the internal sacramental forum before a subsequent remission in the external forum or independently of obtaining a remission in the external forum.

The faculty (*facultas*) to remit penalties in ordinary situations in the internal sacramental forum is held by: the ordinary who has authorized the tribunal to impose or declare a penalty or who, by a decree, either personally or through another, imposed or declared it, and the ordinary of the place where the offender actually is: "Provided it is not reserved to the Apostolic See, a penalty established by law which is *ferendae sententiae* and has been imposed, or which is *latae sententiae* and has been declared, can be remitted by the following: 1° the Ordinary who initiated the judicial proceedings to impose or declare the penalty, or who by a decree, either personally or through another, imposed or declared it; 2° the Ordinary of the place where the offender actually is, after consulting the Ordinary mentioned in n. 1, unless because of extraordinary circumstances this is impossible" (Can. 1355 § 1). In these cases, there is no obligation to approach the competent superior because the penalties have not been reserved or declared by the Holy See.

The faculty (*facultas*) to remit penalties in ordinary situations in the internal sacramental forum applies to all *latae sententiae* medicinal penalties which have not yet been declared and are not reserved to the Holy See: "Provided it is not reserved to the Apostolic See, a penalty established by law which is *latae sententiae* and has not yet been declared can be remitted by the following: 1° the Ordinary in respect of his subjects; 2° the Ordinary of the place also in respect of those actually in his territory or of those who committed the offence in his territory; 3° any Bishop, but only in the course of sacramental confession" Can. 1355 § 2).

Moreover, a *ferendae* or a *latae sententiae* penalty established in a precept that has not been issued by the Apostolic See, can be remitted by: "1° the author of the precept; 2° the Ordinary who initiated the judicial pro-

ceedings to impose or declare the penalty, or who by a decree, either personally or through another, imposed or declared it; 3° the Ordinary of the place where the offender actually is” (Can. 1356 § 1). Before seeking a remission from penalty, it is necessary to consult the one who issued the precept (unless impossible due to extraordinary circumstances) or the one who imposed or declared the penalty (Can. 1356 § 2).

By virtue of the law on the internal sacramental forum and by virtue of office, the ordinary faculty to remit the censure of excommunication or interdiction, by virtue of the law itself, if not yet declared and reserved to the Holy See, can be exercised by canon penitentiary, both of a cathedral church and of a collegial church (Can. 508), chaplains working in prisons, hospitals, and on sea journeys (Can. 566 § 2). A canon penitentiary may also absolve outsiders within the diocese and can absolve members of the diocese also outside the territory of the diocese.

Chaplains may offer a remission from penalties under the granted faculty and only within specific structures. The faculty cannot be delegated to others. V. De Polis noted that Can. 566 § 2 did not limit the chaplains’ faculty only to the internal forum. Also Can. 1357 § 1, added to CIC/83 in the last editorial version, does not refer to Can. 566 § 2. Despite this wording, the faculty of chaplains concerns the internal forum, as evidenced by the fact that the term *absolvere* applies to it.

2.2. Remission of penalties in urgent situations

Remission of penalties in urgent situations was provided for by CIC/17. Despite some constraints that remained in CIC/83 regarding the remission of ecclesiastical penalties in the internal sacramental forum, the ecclesiastical legislator made significant alterations by extending the faculty of absolving sins to all priests but only in urgent situations.

2.2.1. It is difficult for the penitent to remain in the state of grave sin (Can. 1357 § 1)

In CIC/83, the ecclesiastical legislator granted the confessor the authority to remit ecclesiastical penalties in the internal sacramental forum, provided that certain circumstances occur. According to Can. 1357 § 1, without prejudice to the provisions of Cans 508 and 976, a confessor can in the internal sacramental forum remit five censures of excommunication

which has not been declared or two censures of excommunication not reserved to the Holy See or interdict binding by the law itself, if it is difficult for the penitent to remain in a state of grave sin for the time necessary for the a competent superior to provide. In the internal sacramental forum, the confessor may also remit the penitent of the penalties that the local ordinary and the bishop may free from in the circumstances prescribed by the law. In Can. 1357 § 1, the ecclesiastical legislator expresses concern for the penitent who finds themselves in a situation defined by the law. This concern for the salvation of the faithful who have offended allows the confessor to remit their penalties and, consequently, enables the offender to participate in the Sacrament of Penance and the Sacrament of the Eucharist when it is difficult for them to remain in sin.

Unlike in CIC/17, the penitent's concern about the risk of scandal or defamation as a result of submission to the penalty imposed in the external forum is not taken into account. Challenges reported during the revision of CIC/17 and related to access to the Sacraments of Penance and the Sacrament of the Eucharist by the faithful incurring censures and to the absence of the relevant wording of Can. 1357 in the Schema from 1973, had an impact on the proposed changes. The rejected proposals of the subcommittees, which proposed changes to the effects of censures with a view to allowing access to the Sacrament of Penance and the Eucharist, resulted in the 1980 Schema being supplemented with new provisions.

The ecclesiastical legislator orders the confessor who grants a remission from censure (Can. 1357 § 2) to impose upon the penitent, under pain of again incurring the censure, the obligation to have recourse to the competent superior or to a priest having the requisite faculty within one month, and to abide by his instructions.

In the meantime, the confessor is to impose an appropriate penance and, to the necessary extent, to require reparation of scandal and harm. The confessor can also have recourse to the Holy See without mentioning the penitent's name. CIC/83 provides for the option of referring an absolved penitent to the competent ecclesiastical superior, as well as to the canon penitentiary of a cathedral church or a collegial church. Under Can. 508 §1, he has the faculty to grant remission from *latae sententiae* penalties not imposed only in the internal sacramental forum, if they are not reserved to the Holy See. All the faithful in the diocese may seek remission from these penalties.

The same obligation of recourse to the competent superior binds the faithful who, after recuperating, have been granted a remission, in accordance with Can. 976, from a censure imposed or declared or reserved to the Holy See (Can. 1357 § 3).

2.2.2. In danger of death (Can. 976)

In Can. 1352 § 1, the ecclesiastical legislator expressly prohibits the reception of the Sacraments of Confession and the Eucharist to the faithful who have incurred the censures of excommunication or interdict. This prohibition is suspended when the offender is in danger of death. According to Can. 976, any priest may absolve validly and licitly any penitents who are in danger of death from any censures and sins, even if an approved priest is also present.

When the danger of death has ceased, persons who have been remitted an imposed or declared censure or one reserved to the Holy See (can. (Can. 1357 § 3) have the same duty of recourse to a competent authority as those who have been remitted under Can. 976.

2.2.3. Conditions required for a remission from a censure (Cans 1358 § 1; 1360)

In the remission of ecclesiastical penalties which have been imposed or incurred by virtue of the law, in particular medicinal penalties, such as censures, Can. 1358 § 1 provides, “A remission of a censure cannot be granted except to an offender whose contempt has been purged in accordance with can. 1347 § 2. However, once the contempt has been purged, the remission cannot be refused, without prejudice to the provision of can. 1361 § 4.”

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**On Remission of Penalties in the 1983 Code of Canon Law.
The Problem Outlined**

Abstract

The article discusses the concept of penalties in the Church and the remission of such penalties internally as provided for in Title IV of Book VI of the 1983 Code of Canon Law. The author outlines the concept of ecclesiastical penalties. Next, he looks at who is competent to lift penal sanctions in both ordinary and urgent necessities.

Keywords: Church; canon law; ecclesiastical penalties; Book VI of the Code of Canon Law

**Zwalnianie z kar w Kodeksie Prawa Kanonicznego z 1983 roku.
Zarys problematyki**

Abstrakt

W artykule zostało przedstawione pojęcie kary kościelnej, a następnie zagadnienia dotyczące zwalniania z kar kościelnych w zakresie wewnętrznym sakramentalnym uregulowane w Tytule IV Księgi VI Kodeksu Prawa Kanonicznego z 1983 r. Autor w pierwszej kolejności scharakteryzował pojęcie kary kościelnej. Następnie przeanalizował władzę kompetentną w zakresie zwalniania z kar w sytuacjach zwyczajnych, jak też zagadnienie uwalniania z kar w sytuacjach nagłych.

Słowa kluczowe: Kościół; prawo kanoniczne; kary w Kościele; Księga VI Kodeksu Prawa Kanonicznego

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