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LIABILITY OF JURIDICAL PERSONS OF THE ROMAN CATHOLIC CHURCH FOR OFFENCES AGAINST SEXUAL FREEDOM AND DECENCY COMMITTED BY MEMBERS OF THE CLERGY AGAINST MINORS

1. Introduction

In Art. 197-205 of the Penal Code,¹ the legislator addresses offences against sexual freedom and decency. These crimes largely overlap with the provisions of ecclesiastical law on the violation of the sixth commandment.² Penal law specifically safeguards the sphere of sexuality of minors, i.e. persons under 18 years of age. Unlike with adults, protection of the sexual freedom of a minor does not refer to the respect of minor's will [Hołyst 2003, 73] but is intended to defend them in the event of their incapability of making decisions and expressing will, or in the case of a lack of understanding due to immaturity [Jarząbek–Bielecka 2016, 39-42]. Consequently, the Polish legislator decided to penalise a sexual intercourse with a minor under 15 years of age,³ while the church legislator,

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¹ Act of 6 June 1997, the Penal Code, Journal of Laws of 2018, item 1600 as amended [henceforth cited as: PC].

² For more, see Stawniak, Jarząbek–Bielecka and Bielecka–Gąszcz 2017, 139-72; Syryjczyk 2008; Borek 2015; Lempa 2013; Saj 2016; Filar 2006; Lew–Starowicz 2000; Suchecki 2003, 37-65.

³ In accordance with the governmental Draft act amending Act – Penal Code and some other acts, a paedophile offence will be punished much more severely than now. For raping a child, a paedophile will be imprisoned for up to 30 years; penal protection against paedophile acts will be extended to children under 16, and the register of convicts will also disclose the perpetrator's profession, see <https://legislacja.rcl.gov.pl/projekt/12320403> [accessed: 16.05.2019]. In addition, paedophile crimes will not be subject to the statute of

in the 1983 Code of Canon Law,⁴ points to a minor under the age of 16 as a passive subject of the offence of sexual harassment. That limit was raised in the non-code standards of 2001⁵ and then in the new text, *Normae de gravioribus delictis*, approved on 21 May 2010⁶ where the age of the victim of such an offence was determined at 18.

The problem of liability of juridical persons of the Roman Catholic Church (RCC) for offences against sexual freedom and decency committed by the members of the clergy against minors has been raised only in few Polish-language scientific studies so far.⁷ The offence has also been in several civil suits,⁸ the most famous of which was the judgement of the

limitations (time-barred), as it is now generally accepted in canon law, cf. Stokłosa 2013, 139-54.

⁴ *Codex Iuris Canonici auctoritate Ioannis Pauli PP. II promulgatus* (25.01.1983), AAS 75 (1983) pars II, p. 1-317 [henceforth cited as: CIC/83]; Ioannes Paulus PP. II, *Constitutio apostolica Sacrae disciplinae leges* (25.01.1983), AAS 75 (1983), pars II, p. VII-XIV.

⁵ Ioannes Paulus PP. II, *Litterae apostolicae motu proprio datae quibus Normae de gravioribus delictis Congregationi pro Doctrina Fidei reservatis promulgantur Sacramentorum sanctitatis tutela* (30.04.2001), AAS 93 (2001), p. 737-39.

⁶ *Congregatio pro Doctrina Fidei, Normae de gravioribus delictis* (21.05.2010), AAS 102 (2010), p. 419-31.

⁷ Particularly noteworthy is a comparative study by M. Nesterowicz [Nesterowicz 2014] who contrasted the regulations in force in the United States with the Polish legal system. In my opinion, the author goes too far in his proposal to graft the U.S. solutions on liability of ecclesiastical juridical persons for illegal acts committed by clergymen. The distinctness of the two legal systems is not sufficiently emphasised, and where their distinct character is more than substantial, the author seems to ignore it for their practical application. It should be stressed, however, that Polish courts examining similar cases follow positive law. They do not enjoy too much freedom in adjudicating based on precedents, as is the case in the U.S. legal system. Besides, the major difference between the systems is that in the absence of relevant provisions, as was the case with paedophilia in the American Roman Catholic Church, the courts had the option of issuing a precedent ruling. Such practices are not essentially possible in the Polish legal system as they go beyond its existing framework.

⁸ The Helsinki Foundation for Human Rights points to the precedent case of Marcin K. who, at the age of 12, was molested for several months by the Rev. Zbigniew R. The perpetrator was sentenced in a criminal trial to two years of absolute deprivation of liberty, and in separate church proceedings he was expelled from the clerical state. In 2013 the victim brought an action against the perpetrator of the illegal act and against the Koszalin-Kołobrzeg Diocese and St Adalbert Parish in Kołobrzeg for violation of personal interests in connection with the suffered harassment. The court in Koszalin dismissed the action against the diocese and the parish following a settlement with

Court of Appeal in Poznań which awarded a PLN 1 M pecuniary compensation and a rest-of-life annuity to a woman who had fallen victim to sexual harassment as a child. The perpetrator was a former member of the Society of Christ Fathers for Poles Living Abroad.⁹ The society appealed against the judgement to the highest instance (the Supreme Court) arguing, “Under binding Polish law, liability for such acts (including civil damages) cannot be transferred from the perpetrator to ecclesiastical juridical persons. The perpetrators of such acts commit them on their own account and are held personally liable before the victims and under the law.”¹⁰ Despite their appeal, the Society of Christ Fathers decided to pay the compensation to the victim.

The judgement of the Court of Appeal in Poznań is perceived as a breakthrough case, not only because of the unprecedented amount of compensation in Polish case-law but primarily because of the adopted interpretation of Art. 430 of the Civil Code.¹¹ For the court assumed that the RCC could be financially liable for the acts of a paedophile priest just

Marcin K. according to which the defendant “reimbursed the costs of psychological therapy incurred by the plaintiff in a gesture of Christian assistance.” Still, Zbigniew R.’s case continued and ended with an award of PLN 50,000 in damages by the Regional Court in Koszalin. See *Uгода pomiędzy diecezją i parafią a ofiarą księdza pedofila*, <https://www.hfhr.pl/ugoda-pomiedzy-diecezja-i-parafia-a-ofiara-ksiedza-pedofila/> [accessed: 16.05.2019].

⁹ The Rev. Roman B. was arrested in 2008 and in 2010 sentenced to four years of psychiatric treatment in the hospital ward of his correctional facility. After leaving prison, he returned to his congregation. He stayed at the congregation house of the Society of Christ Fathers in Puszczykowo, home for retired priests, where he assisted older confreres. He was suspended in all pastoral activities and obeyed the suspension; he was not involved in any priestly activities in parishes; he did teach religion classes, nor did he have contact with children and the youth because the chapel in Puszczykowo is not public. Ultimately, however, according to the Holy See’s order, a criminal and administrative trial was launched against the Rev. Roman B. As a result, he was expelled from the clerical state by a decree of 19 December 2017. A separate process concerning expulsion from the congregation close with an expulsion decree of 25 June 2018. Roman B. is therefore neither a clergyman nor a member of the Society of Christ Fathers. See <https://www.gosc.pl/doc/5032742.Ks-Roman-B-wydalony-ze-stanuduchownego-i-ze-zgromadzenia> [accessed: 16.05.2019].

¹⁰ See <https://wpolityce.pl/spoleczenstwo/414763-pelnomocnik-tchr-odpowiada-na-wyrok-poznanskiego-sadu> [accessed: 16.05.2019].

¹¹ Act of 23 April 1964, the Civil Code, Journal of Laws of 2019, item 1145 as amended [henceforth cited as: CC].

as any entity that, on its own account and under its direction, entrusts the performance of certain activities to another person who causes damage. Until then, the perpetrator of an illegal act had been liable both under state penal law¹² and under canon law, as well as being held liable for damages under civil law. In the event of civil liability, it falls under Art. 415 CC in conjunction with Art. 11 of the Code of Civil Procedure.¹³ Given that the civil court was bound by the decision of the criminal court as to the commission of the offence, civil liability came somewhat automatically.

Presently, it is suggested that the liability of the RCC (diocese, parish) for an offence of a clergyman can be rested upon the provisions of the Civil Code, in particular: Art. 416 providing for the liability of a legal person for a fault of its body, Art. 429 providing for the liability of a legal person based on choice and supervision and Art. 430 providing for the liability of a legal person for the action of a person entrusted with performing it. In addition, it is suggested that the Act on Liability of Collective Entities for Acts Prohibited under Penalty¹⁴ can also be referred to in the discussed matters.

¹² Protection against sexual abuse of minors under canon law and penal law is parallel to the protection given by the state. The autonomy of the canonical legal system cannot, however, release the state from the obligation to prosecute sexual offences committed against minors even if the perpetrator is subject to the ecclesiastical jurisdiction. Neither the ecclesiastical authority is in a position to oppose prosecution by the state, nor can the state interfere in canonical processes initiated to inflict punishment for such crimes. Nor can the Roman Catholic Church assign her duty to prosecute sex offenders who fall under her jurisdiction. Crimes against human dignity and sexuality provided for in canon law, unlike those in the Polish Penal Code, are not universal, i.e. not every perpetrator of a sexual offence will be punished by the Roman Catholic Church for their immoral conduct. They are limited to the cases of sexual abuse committed by both diocesan priests and the religious. A church offence described as a grave mortal sin results in the loss of sanctifying grace. It is at the same time a socially harmful act because it may be conducive to a spiritual fall of other persons.

¹³ Act of 17 November 1964, the Code of Civil Procedure, Journal of Laws of 2018, item 1360 as amended henceforth cited as: CCP].

¹⁴ Act of 28 October 2002 on Liability of Collective Entities for Acts Prohibited under Penalty, Journal of Laws of 2019, item 628 as amended [henceforth cited as: ALCE]; the question of recourse to the ALCE in cases involving the Roman Catholic Church, as raised by some lawyers under Art. 16 para. 1 point 7 ALCE, is linked to the proposal of changes regarding the records of church income.

However, before looking deeper into the question of possible liability of the RCC for illegal acts committed by the clergy, the question of ecclesiastical juridical persons should be highlighted.

2. Legal persons of the Roman Catholic Church

The relations between the Republic of Poland and the RCC are basically set out in two normative acts: the Act of 17 May 1989 on Relations between the State and the Roman Catholic Church in the Republic of Poland¹⁵ and the Concordat between the Holy See and the Republic of Poland of 28 July 1993.¹⁶ In Art. 3 para. 2 ARSCC, the legislator determines the relationship between the act and other legal provisions that are also applicable to these relations if not in conflict. The above article sets out that any applicable provisions of Polish law apply to all matters not covered by the ARSCC. This means that the ARSCC is a *lex specialis* in relation to other generally applicable provisions of Polish law. Consequently, in the event of conflicting laws, the provisions of the ARSCC prevail in all matters regarding State-Church relations, including the legal and property situation of the RCC in the Republic of Poland.

The construct of juridical persons of the RCC in the Republic of Poland means that the organisational structure of the Church (Art. 5 ARSCC) includes ecclesiastical organisational units enjoying legal personality as listed in Art. 6-9 ARSCC. There are three categories of juridical personality that allow the RCC to enter into relations with other entities.¹⁷ The first one is the public-law personality of the Holy See, the representative of the RCC in international relations (can. 113 CIC/83). The second one is the juridical personality of a particular Church, usually covering the territory of

¹⁵ Act of 17 May 1989 on Relations between the State and the Roman Catholic Church in the Republic of Poland, Journal of Laws of 2019, item 1347 [henceforth cited as: ARSCC].

¹⁶ Concordat between the Holy See and the Republic of Poland done at Warsaw on 28 July 1993, Journal of Laws of 1998, No. 51, item 318 [henceforth cited as: Concordat].

¹⁷ Resolution of the Civil Chamber of the Supreme Court of 19 November 2008, file ref. III CSK 91/08.

a country as part of the universal Church.¹⁸ The third one is the civil-law personality of ecclesiastical organisational units participating in legal transactions in a country.

In accordance with Art. 7 ARSCC, the following territorial organisational units of the RCC are juridical personalities: metropolises, archdioceses, dioceses, apostolic administrations, and parishes.¹⁹ Their bodies are, respectively: 1) the Metropolitan of Gniezno (Primate of Poland) for the Gniezno Metropolis; a metropolitan for other metropolises; 2) an archdiocesan archbishop or archdiocese administrator for archdioceses; 3) a diocesan bishop or diocesan administrator for dioceses; 4) an apostolic administrator for apostolic administrations; 5) a parish priest or parish administrator for parishes. In accordance with Art. 4 of the Concordat, the Republic of Poland recognises the juridical personality of the RCC and the same of all territorial and personal ecclesiastical institutions that have been given such personality under canon law. In this respect, ecclesiastical authorities are only obligated to notify the competent public administrative bodies.²⁰

¹⁸ In accordance with Art. 6 ARSCC, the all-Poland juridical person of the Roman Catholic Church is the Polish Episcopal Conference.

¹⁹ Territory-based juridical persons are also: 1) rectoral churches (rectorates); 2) Caritas Polska; 3) diocesan Caritas; 4) Papal Missionary Works. On the other hand, juridical persons of a personal nature pursuant to Art. 8 para. 1 ARSCC are: 1) Military Ordinariate; 2) chapters; 3) personal parishes; 4) Conference of Major Superiors of Male Orders; 5) Conference of Major Superiors of Female Orders; 6) institutes of consecrated life (religious institutes and secular institutes) and associations of apostolic life; 7) provinces of religious orders; 8) abbeys, independent monasteries, religious houses; 9) upper and lower diocesan seminaries; 10) higher and lower religious seminaries if independent, according to the regulations of the relevant order.

²⁰ Cf. Announcement of the Minister of Foreign Affairs of 27 November 2014: Guidelines on notification of state authorities of juridical personality obtained by territorial and personal ecclesiastical institutions (Art. 4 para. 2 of the Concordat) and on notification of the appointment and dismissal of a person acting as a body of juridical person. Journal of Laws of the Ministry of Foreign Affairs, item 30; Art. 13 ARSCC and Art. 14 of the Act of 17 May 1989 on Guarantees of Freedom of Conscience and Religion, Journal of Laws of 2017, item 1153).

3. Liability for damage: general

The author of the Polish Civil Code provided for liability of an entity using the services of another person for damages caused by that person to a third party. The legislator fails to offer a precise definition of the concept of service, but it should be understood broadly as some kind of performance for an entrusting entity. This liability, also known as vicarious liability, sometimes depends on the entrusting entity's fault in the choice of the performer and supervision over them. Some systems presume such fault, while in others, including the Polish legal system, this liability is independent of fault and is defined as no-fault liability.²¹ This approach currently prevails across modern European legal systems.

3.1. Liability for fault in choice and supervision

A more general provision in relation to Art. 430 CC is Art. 429 CC. As an extra condition for liability for damage, the discussed provision points to fault in the choice of a person entrusted with the performance of some activities who, unlike in Art. 430 CC which addressed such a person in greater detail, is the so-called independent performer not subject to the supervision of the entrusting entity. This regulation defines the liability of persons accepting orders, work, etc. In this case, the liability may be borne by the superior (entrusting entity) even if the entrusted performer has caused damage without their fault, i.e. unintentionally.²² Such a regulation is rested on the conviction the entrusting entity should be more careful in choosing a person for the performance of services by verifying their professional qualification and even personal attributes for the sake of safety of third parties. The entrusting party's liability is therefore founded on the lack of diligence in the choice of performer. The entrusting entity is released from liability only when: there is no fault in the choice of the performer or specific services are entrusted to a person with certain

²¹ According to some jurists, the view that liability under Art. 430 CC can be seen as no-fault should be ruled out because the provision in question alludes to the doer's fault. It can be inferred that the concept contained in this provision is in fact mixed liability, i.e. objective and subjective at the same time [Rembieleński 1969, 41 ff.].

²² Fault in choice must not be seen as equivalent to the fault provided under Art. 415 CC.

attributes, i.e. a person, an enterprise or an establishment which perform such services within the scope of their professional activities.

This should be understood as making a wrong choice, i.e. appointing a person without appropriate qualification to perform the entrusted services. This qualification can be field-specific but also some personal qualities of the performer can be taken into account, such as health status, inclinations, habits, traits. The entrusting entity therefore commits fault in choice, which proves wrong as it could have chosen another person or cancelled the choice. Therefore, this is a special type of fault: justified by failure to exercise due diligence in gathering information about potential performers of specific services.

The application of the regulation in question in cases of liability of ecclesiastical juridical persons for illegal acts committed by the clergy does not seem to be admissible due to the lack of the core element of performer's independence. The recognition of a priest in a parish or a religious in an institute of consecrated life as an independent performer would oppose the fundamental attribute of the RRC as a body equipped with a hierarchical constitution governed by canon law (CIC/83, Book II, Part II). Certainly, a clergyman is subordinated and dependent on the bishop who, in the diocese entrusted to him has all ordinary, proper, and immediate power which is required for the exercise of his pastoral function except for cases which the law or a decree of the Supreme Pontiff reserves to the supreme authority or to another ecclesiastical authority (can. 381 CIC/83). However, a priest can be regarded as a highly qualified employee, given his many years of education in seminaries. However, a priest incardinated in a diocese does not operate on his own but acts on behalf of the RCC and is subject to her authority even if only generally and without specifying his scope of performance.

3.2. Liability for a subordinate

The concept of liability independent of the entrusting entity's fault adopted in the Polish legal system through Art. 430 CC highlights two main criteria: the hierarchical relationship between the entrusting entity and the performer and the performer's fault. The *ratio legis* that underlies its establishment is the so-called guarantee consideration [Machnikowski and

Śmieja 2018, 479]. The legislator assumed that the entrusting entity, as the economically stronger party, is able to guarantee redress of damage suffered by an injured party more effectively than the performer of entrusted services. In the case of liability of ecclesiastical juridical persons, such a construct is also supported by canon law. According to canon law, clergymen or the religious swear or profess poverty, and, therefore, own little or no property at all (can. 573 CIC/83).

The hierarchical relationship in Art. 430 CC provides that a person who performs a service is supervised by the entrusting entity and has the duty to follow its instructions. Such a wording may suggest that this is a close hierarchical relationship in which the superior is empowered to instruct the subordinate on specific performance.²³ Speaking of similar challenges in the Polish legal system, the case-law on healthcare system representatives providing treatment is quite well-established. The case-law of the Supreme Court clearly departs from the literal wording of the CC provision and only applies the criterion of organisational subordination of the performer. A physician who undertakes a therapy or establishes a diagnosis performs these activities independently and is not subject to superior's instruction in this respect. However, it is the medical establishment that employs the physician causing damage that is held liable under Art. 430 CC in accordance with the doctrine and case-law.²⁴

Therefore, subordination in performance should be regarded as general and only setting the overall direction of subordinate's activities [Rembéliński 1969, 96f]. The legislator also fails to define the types of hierarchical relationships that should exist between subordinates and

²³ Such understanding would limit the field of application of the standard laid down under Art. 430 CC to a narrow group of strictly supervised person who would perform their activities without freedom or independence, like physical workers performing simple jobs. Persons subordinated in organisational terms would be excluded but would retain a significant autonomy of performance, including freedom of decision-making. These would be white-collar workers, creative people, or scientists.

²⁴ Such cases often imply the so-called anonymous fault where damage has been caused by a team of physicians and other auxiliary personnel. However, this means the objectification of liability in the absence of the possibility to impute fault to a specific person [Machnikowski and Śmieja 2018, 476].

principals. They can be of a legal²⁵ or factual nature. The former case is any service relationships as in uniformed services, e.g. in the military, the Police. This is important because in elaborate organisational structures where hierarchical relations are a fact instructions can be given by different persons at different levels of the organisational structure, and, thus, the responsibility for subordinate's action or inaction must be properly assigned to a body that, in normal circumstances, should benefit from their services. Therefore, it will not always be a person having direct or indirect authority over the subordinate. For example, a clergyman who is also a religion teacher employed under a contract of employment at school and committing an illegal act against a minor while fulfilling his teaching duties will be held liable under penal law alone as well as jointly and severally with the educational establishment. The very concept of Art. 430 CC and the well-established case-law on liability of temporary agency workers lead to the same conclusion.²⁶

As indicated above, entrusting the performance of services is broadly understood in the doctrine as: a contract, instruction, commission, request, etc. It is also emphasised that such services are of one-off character and are conventional or simple in form. Also, according to the doctrine, whether they are performed for free or for consideration is irrelevant. Basically, however, due to the existence of a hierarchical relationship, cases of entrusting a certain range of tasks and obligations to the performer should be considered explicitly and implicitly.

On the other hand, the wording, "in carrying out that act," implies a limitation of liability of the entrusting entity only to the effects of that act

²⁵ For example, an employment relationship subject to the provisions of the Labour Code (Act of 26 June 1974, the Labour Code, Journal of Laws of 2019, item 1040, as amended, henceforth cited as: LC) and other specific laws. However, the same does not apply to civil-law relations in performing services, such as a contract of mandate or a contract for specific work, because they do not imply subordination within the meaning of Art. 430 CC.

²⁶ The doctrine is guided by a principle whereby only one superior is responsible for their subordinate's action. The best examples are cases of appointment for temporary work. And although, originally, the prevailing view was that a private temporary employment agency was to be liable for temporary worker's actions, today the prevailing view is that liability should be borne by the temporary employer who entrusts the employee with activities to the benefit of the former; for more, see Sobczyk 2005, 97.

over which the entrusting entity could have had some influence. Based on that, the issue of the nature of the relationship existing between a performed act and the resulting damage is also debated. Consequently, a distinction is drawn between the situation when damage was caused while performing an act and the one when damage was caused only when there was an opportunity of performing that act. In the United States, one of the grounds of liability of the RCC is the *respondeat superior* principle²⁷ which helps assess whether a subordinate acted within the scope of their employment. The U.S. dioceses challenged the argument that priests had remained in incardination when committing offences. Some representatives of the doctrine shared that view and argued that the RCC could not bear no-fault liability for “unauthorized, unknown and unexpected offences committed by their officers and volunteers. Most jurisdictions rejected the RCC’s liability for sexual abuse committed by priests based on the *respondeat superior* principle, recognizing that such acts were outside the scope of their incardination (employment), and that they did not fall within the priestly duties and tasks” [Nesterowicz 2014, 13]. This problem has not yet been resolved in the doctrine and case-law in a way that lays down any principle, so if any resolution can be reached, it can only be done on a case-by-case basis. This can be referred to the position of some representatives of the doctrine in the Polish legal system. According to some representatives of the doctrine [Machnikowski and Śmieja 2018, 470], in cases of intentional action of a subordinate, the superior’s liability may be excluded in the absence of a link between the performance of entrusted services and damage caused. This situation, in the opinion of those representatives, occurs when the performer violates the standards of conduct when acting for a purpose other than the performance of an entrusted activity. In other words, when the perpetrator’s goal from the very beginning is to violate the law. The superior’s liability will, however, be taken into account when the perpetrator, in direct intent, consents to a possible violation of the law in order to perform an entrusted activity.

Performer’s fault, in accordance with Art. 415 CC, is equivalent to their objectively unlawful conduct that entails the possibility of individual liability. Therefore, the circumstances excluding the unlawfulness of an act

²⁷ Originating in Roman law, *Qui faciet per alium, facit per se* [Nesterowicz 2014, 11].

or fault may apply to the performer, thus removing the entrusting entity's liability.

3.3. Liability of a juridical person for a fault of its body

Liability for damage caused by a natural person acting as the body of a juridical person is of a different nature.²⁸ It is the liability of a juridical person for damage caused by a fault of its own body pursuant to Art. 416 CC. Some cases that the RCC dealt with in the United States, which have not yet surfaced in the Polish RCC, are ones that, in the author's opinion, could fall under the aforesaid article. If it were demonstrated that the legal authority of a diocese or parish, that is, a diocesan bishop or parish priest, respectively, knew, or were bound to know by exercising due diligence, about cases of sexual abuse committed by their subordinated priests, and, yet, they were hiding the facts related to such offences or were tolerating them, or were neglecting their supervision or were hiring priests convicted for sexual offences, they would be held liable under Art. 416 CC for damage caused by a fault of their own body, in addition to the criminal liability provided for in Art. 240 PC amended by the Act of 23 March 2017 amending the Act – Penal Law, the Act on Juvenile Proceedings and the Act – Code of Criminal Procedure.²⁹ To prove liability in such cases in the United States was not very challenging as the acts of the perpetrators were of continuous nature and spread over time and affected many victims [Nesterowicz 2014, 9-11].

4. Extenuating circumstances

It should be stressed that the standard laid down in Art. 430 CC does not make the entrusting entity's liability for damages caused by the performer depend on the performer's faulty action or even the objective unlawfulness of their action [Machnikowski and Śmieja 2018, 473]. The aforesaid standard does not refer to the element of fault in the choice or the performer

²⁸ Separate regulations have been adopted in the case of liability of the State Treasury, local government units and other juridical persons exercising public authority by virtue of law (Art. 417 et seq. CC) for damage caused by illegal acts or omissions in the exercise of public authority by natural persons as part of their duties.

²⁹ Journal of Laws, item 773.

or supervision over them. The indicated elements are irrelevant to the scope and essence of the entrusting entity's liability. Therefore, based on the provision in question, it does not matter what level of diligence the superior exercised when selecting its subordinates, or how it used its managerial position when dealing with them. These circumstances are not relevant to the resolution of this matter and should not be covered by evidence-taking proceedings, according to the opinion prevailing in the doctrine, because the lack of fault does not release the supervisor from liability, and, if an element of fault is present, it does not affect the court's decision on the case. The so-called authority risk outlined above can be justified in various ways. One of them is to assert that a superior exercising authority over a subordinate may instruct them on the performance of a specific activity and offer them guidance and recommendations. In addition to authority as such, it is also stressed that the superior expects certain benefits as a result of the subordinate's activities, it is, therefore, justified to expect that it will be encumbered with any possible economic consequences of these activities. However, it seems that in the case of liability of ecclesiastical juridical persons, the entrusting entity's liability may be justified by the fact that the subordinate operates within the organisation established and managed by the superior, and that the clergyman himself has gone through a long-term education preparing him for his pastoral duties.

It should be noted that the liability provided for in Art. 430 CC is absolute. There is no possibility of evading it based on any extenuating circumstances, i.e. statutory circumstances excluding liability. In principle, such circumstances can be the causes of damage, e.g. the exclusive fault of the injured party, third party, etc. Allowing such circumstances under statute would entail a shift in the distribution of the burden of proof because in the event of absolute liability for a subordinate their fault would have to be demonstrated by the injured party. Under extenuating circumstances, the entity at risk of liability would have to prove the circumstances that might exclude it. Such a solution could also help clear doubts concerning the causal link as one of the conditions for the entrusting entity's liability. In the author's opinion, this would be a justified extension of the superior's agency whose agency in the current legal status is reduced only to entrusting the perpetrator with the performance of specific activities which afforded the opportunity for damage to occur. Entrustment, now

regarded as an indirect cause of damage, is in no way linked to the entrusting entity's wilful conduct and is a sufficient justification for attributing liability to the superior. This statutory approach is interpreted in the literature on the subject and case-law in a far broader manner.

On top of that, it should be noted that liability for a subordinate is at the same time joint and several liability with them in accordance with Art. 441 § 1 CC. However, the overwhelming majority of cases fall under the exception provided for in Art. 120 LC, i.e. the limiting of liability of contractors who are employees if damage is caused while performing work as part of their duties. In such a case, the obligation to repair the damage rests almost exclusively with the employer who is only entitled to a limited legal recourse. However, this regulation only applies to damage caused unintentionally. In the case of intentional damage, the employee is liable in full, and the restriction provided for in Art. 114 LC does not apply.

Conclusion

A widespread practice in the United States is for the Roman Catholic Church to make settlements with victims of paedophile priests, thus recognising the Church's institutional liability for such cases in legal precedents. In Europe similar practices are seen in France or Germany where the Church has established special funds. In Poland some representatives of the doctrine propose that the regulations of the Civil Code be pursued effectively. However, some regulations that they point to cannot, in my opinion, be applied directly because they generate significant interpretation issues, as is the case with Art. 430 CC providing for the superior's liability for subordinates. The Liability for damage caused by a fault in selection and supervision as provided in Art. 429 CC should not apply to members of the clergy as they do not meet the criteria of "performer" contained in this legal norm. In the author's opinion, however, the liability provided for in Art. 416 CC for a fault of a juridical person's body can apply. The changes to the law suggested in this article are likely to resolve this issue in a way that should benefit the victims of sexual offences and, at the same time, help distribute liability evenly, e.g. if extenuating circumstances were to be allowed for.

Translated by Konrad Szulga

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**Liability of Juridical Persons of the Roman Catholic Church for Offences
against Sexual Freedom and Decency Committed by Members
of the Clergy against Minors**

Summary

The author examines grounds for the liability of juridical persons of the Roman Catholic Church for offences against sexual freedom and decency perpetrated against minors while first legal action is instituted in Poland against dioceses and parishes. The article looks at the possibility of civil liability of the Polish Roman Catholic Church to arise based on own fault (Art. 415 of the Civil Code), based on fault of the juridical person's body (Art. 416 of the Civil Code), based on fault when hiring a priest (Art. 429 of the Civil Code)) and based on responsibility for employee's actions (Art. 430 of the Civil Code).

Key words: liability of juridical persons, Roman Catholic Church, minor

**Odpowiedzialność osób prawnych Kościoła katolickiego za przestępstwa
przeciwko wolności seksualnej i obyczajności
popelnione przez osoby duchowne na szkodę osób małoletnich**

Streszczenie

Autor analizuje podstawy odpowiedzialności osób prawnych Kościoła katolickiego za przestępstwa przeciwko wolności seksualnej i obyczajności na szkodę osób małoletnich w czasie gdy po raz pierwszy w Polsce podejmowane były działania prawne przeciwko diecezji i parafii. Artykuł odnosi się do możliwości odpowiedzialności cywilnej polskiego Kościoła katolickiego na podstawie odpowiedzialności z własnej winy (art. 415 Kodeksu cywilnego), odpowiedzialności z winy organu osoby prawnej (art. 416 Kodeksu cywilnego), odpowiedzialności za wina przy wyborze kapłana (art. 429 Kodeksu cywilnego) i odpowiedzialność za pracownika (art. 430 Kodeksu cywilnego).

Słowa kluczowe: odpowiedzialność osób prawnych, Kościół katolicki, małoletni

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