

Łukasz Sztolf

THE LOSS OF THE OFFICE OF PASTOR UNDER THE 1983 CODE OF CANON LAW

Introduction

Parish is the smallest community of the People of God. A person becomes a member of a parish not through physical birth but through faith in Jesus Christ and baptism. It is a pastor (parish priest) who exercises the pastoral care of this community and falls under the authority of the diocesan bishop as regards the manner of managing his office. Through his ordination, the parish priest carries out his triple functions of teaching, sanctifying, and governing. He is also responsible for the economic and administrative matters as well as for mutual relations with his associates: the vicars and the parish council.

The purpose of this article is to discuss the procedure of loss of the office of a parish priest as provided in universal law of the Roman Catholic Church, i.e. the 1983 Code of Canon Law.¹ Under canon law, the loss of an ecclesiastical office can have various forms (can. 184-196 CIC/83). The article looks into the different procedures of vacating the office of a pastor, both territorial and personal one. The causes of losing the office of a pastor include: the lapse of time (i.e. reaching the retirement age, priest's death, expiration of the term of office); permanent obstacles to holding the office, such as illness, exile, banishments; resignation at the priest's own request; transfer to another pastoral institution or office as well as punitive removal without entrusting another office or the privation of office. The result of a lost office by a parish priest leads to the situation of *sede vacante* or *sede impedita* [Sitarz 2014, 213] and requires the needs of the local community of believers, who have

ŁUKASZ SZTOLF, J.C.L., Ph.D. student in the Department of Public and Constitutional Church Law, Institute of Canon Law, Faculty of Law, Canon Law and Administration, the John Paul II Catholic University of Lublin; Al. Raławickie 14, 20-950 Lublin, Poland; e-mail: lukasz.sztolf@gmail.com; <https://orcid.org/0000-0003-2529-1492>

¹ *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].

lost their pastor, to be attended to properly.

1. Lapse of time

With regard to the office of pastor, the term “lapse of time” covers the three main reasons that sever the legal bond existing between the office holder and the office itself [Eichmann 1929, 156]. The first one is the reaching of retirement age, the other the priest’s death. Both vacate the office and necessitate the appointment of a successor. The third reason, which is less frequent in canon law, is the end of priest’s term of office (can. 522). If this is the case, a parish priest is appointed for a specific period, which under a decree of relevant particular law. In practice, at least for now, this method of vacating the office of parish priest has not been used in Poland [Bartnik 2008, 18-19]. This is mainly due to the fact that the office in question should be marked by stability (can. 522).

This solution is a *novum* in universal law before and after 1917 when there was a vague division into removable and non-removable pastors. Therefore, the Second Vatican Council “adopted the procedure of removal as the only system that takes into account the need to care for souls, and, from the legal point of view, recognized it as an ordinary personal relationship between the parish priest and the bishop within the confines of the ecclesiastical organization” [Calvo 2011, 450].

1.1. Reaching the age of retirement

The canon law legislator established the pastor’s retirement age at 75. A priest who has reached this age is requested to submit his resignation from office to his diocesan bishop (can. 538). This is in line with the provisions of the Second Vatican Council. “Pastors who, due to an old age or some other serious cause, experience obstacles to the proper and fruitful performance of their duties, are earnestly requested to resign from their office, either voluntarily or at the request of the bishop. Those who resign should be offered ade-

quate support from the bishop.”² In the Motu Proprio *Ingravescent aetatem*,³ Pope Paul VI said, “encouragement to bishops and parish priests to resign from their office before the age of 75 was recalled” [Calvo 2011, 464].

The mere fact of resigning from office before the diocesan bishop does not automatically alter the status of the resigning priest. “The bishop is not obliged to accept resignation submitted by the pastor; he may accept it or put it aside having considered all the circumstances of the person and place” [Krukowski 2005, 448-50]. In order for a resignation not to become invalid, it should be examined by the diocesan bishop within three months (can. 189 § 3).

1.2. Death

Another circumstance of the loss of office by a pastor related to the lapse of time is the priest’s death. This is when an extraordinary situation occurs (*sede vacante*). Before the appointment of a parochial administrator in accordance with canon law, the duties of the deceased pastor are temporarily transferred to the parish vicar. If there are several vicars, the one who is senior in appointed will assume the governance of the parish. When a parish has no vicars, a pastor from another parish is competent to take over the vacancy, “usually it is a dean, and in the case of a dean parish, the vice-dean” (can. 541 § 1) [Krukowski 2005, 453]. The one who has assumed the governance of a parish temporarily is immediately to inform the local ordinary about the vacancy of the parish (can. 541 § 2). The diocesan bishop is obliged to appoint a parochial administrator or a successor to the deceased pastor without undue delay.

1.3. Specific term of office

The CIC/83 provides for a third reason for vacating office based on the lapse of time. This is pastor’s appointment for a specific period (term). It should be noted that “in accordance with the general rule, a pastor should po-

² Sacrosanctum Concilium Oecumenicum Vaticanum II, Decretum de pastorali episcoporum munere in Ecclesia *Christus Dominus* (28.10.1965), AAS 58 (1966), p. 673-96 [henceforth cited as: CD], no. 31.

³ Paulus PP. VI, Motu proprio *Ingravescentem aetatem* (21.11.1970), AAS 62 (1970), p. 810-13.

ssess stability and therefore is to be appointed for an indefinite period of time” [Sitarz 2013, 140]; however, under particular law, a pastor can be appointed only for a specific period if the conference of bishops has permitted this by a decree (can. 522). If this is the case, the bishop may extend the appointment for the consecutive periods, and the procedure of transfer and removal of the pastor is not required (can. 1740-1752), yet such a decision should be given in writing. The office is not vacated automatically upon the expiry of the term of office. It takes place only upon written communication by the competent authority in accordance with the principle of notification [Sitarz 2009, 1456]. Prior to receiving the notification, the pastor cannot abandon his current office and keeps exercising it validly and decently, regardless of how much time has elapsed since the end of the period of appointment [Sobański 2003, 276].

In Poland, there have been attempts to introduce the term of office for parish priests, yet it has not gone any further beyond a mere proposal. The proponents of this solution pointed to religious institutes as examples. If such changes are made in the future, they will require the consent of all diocesan bishops. Meanwhile, “no diocesan bishop in Poland can appoint a parish priest for a specific period of office” [Sitarz 2013, 141].

Therefore, it should be stressed that appointment of a parish priest for a specific period is uncommon in Europe, however common law provides for such a possibility. It all depends on the approach established and adopted by the competent episcopal conference. “The ecclesiastical legislator empowers the episcopal conference to follow the practice of appointing parish priests by the diocesan bishops of a given country for a specified period of time, i.e. for a specified term of office. In issuing a decree on this matter, the episcopal conference is guided by the intention to unify the practice throughout the country” [Krukowski 2005, 422]. Therefore, the power of the diocesan bishop to appoint a pastor for a specific period is confined and conditional upon obtaining the appropriate authorization from the episcopal conference to implement such a legal act [Calvo 2011, 450]; this most often happens under a general decree of the conference [Sitarz 2013, 140]. The bishop cannot appoint a pastor for a term shorter than that provided for by the issued general decree (CD 31).

Also, the episcopal conference is not in a position to make a term of office

an obligation; they may only take advantage of the possibility of filling the office of a parish priest for a specific period of time because the appointment is always made by the diocesan bishop and not by the conference. “The appointment of a pastor for a specified period means that upon the expiry of this period his pastoral authority in the parish ceases. The bishop may extend his appointment for another period, or he may choose not to extend it” [Krukowski 2005, 422]. Therefore, when the time specified in the appointment expires, there is no need to implement the procedure specified in the CIC/83 in order to remove the priest from his office. However, “the office does not cease automatically at the end of the term but only upon written communication by the competent authority in accordance with the principles of notification” [Sitarz 2013, 140].

2. Obstacles to hold the office

In the event that a parish priest faces some obstacles to the exercise of his parochial duties, an extraordinary situation occurs, *sede impedita* [Sitarz and Romanko 2012, 1331-333]. Such obstacles can be ill health, captivity, exile, banishment or another serious obstacle (can. 539). In such circumstances, the diocesan bishop should appoint a parochial administrator as soon as possible (can. 540), guided by the supreme law of the Church, which is the salvation of souls (can. 1752).

M. Sitarz defines the extraordinary situations caused by the obstacles to stay in the office of parish priest. “Captivity (*captivitas*) should be understood not only that pastor’s imprisoned but also house arrest (internment). Banishment (*relegatio*) means the removal of a parish priest from his parish, combined with the prohibition of returning. Exile (*exilium*) usually means forced abandonment of a parish, diocese, or country. Incapacity (*inhabilitas*) is a state of a mental or physical nature that prevents a parish priest from managing the parish and providing all or only some of the pastoral ministry” [Sitarz 2013, 145].

Can. 539 contains the wording “or some other cause,” which clearly indicates that the list of causes is open. Among these “other causes,” there may also be those that, for example, stem from the ecclesiastical penal law, such as the penalty of excommunication imposed on the parish priest (can. 1331 § 1), interdict (can. 1332) or suspension (can. 1333 § 1).

3. Resignation

Basically, resignation is related to the pastor's retirement from his office after reaching the age of 75. Unlike relinquishment, it is a voluntary decision of the pastor based on a fair cause. The second difference is that the pastor can resign at any age. The third difference is that the pastor can be entrusted with another office or function prior to retirement. "Having accepting pastor's resignation, the bishop decides how to attend to the pastoral needs of this parish community and what other church office should be entrusted to the resigning priest" [Sitarz 2013, 139f].

4. Transfer

Another form of vacating the office of pastor is the transfer to another office by the competent authority. "Based on can. 190 § 1, a transfer can be made only by a person who has the right of providing for the office which is lost as well as for the office which is conferred" [Dzierżoń 2009, 161]. It does not necessarily have to be a pastor's office in another parish. This mostly happens when the ministry of any pastor becomes harmful or at least ineffective for any cause (even through no grave personal negligence) (can. 1740). After the transfer, the prior office becomes vacant through the possession of the other office (can. 190 § 1).

"A transfer can follow the bishop's proposal if the good of souls or the necessity or advantage of the Church demands that (can. 1748) or can be the result of removal from office (can. 1746)" [Sitarz 2013, 139]. Thus, a transfer can be understood as promotion to a higher office or, conversely, as a form of punishment for a priest. However, "a pastor can only be moved against his will for a serious cause and in the manner prescribed by the law. A transfer against the officeholder's will may be rested on penal or administrative grounds" [Sobański 2003, 280].

There are two administrative paths that a transfer can follow: a general one when a pastor accepts the decision of the diocesan bishop (can. 190-191), and a special one when he is unwilling to move but is forced by the bishop (can. 191 § 2, 1748-1752). "If a pastor removed or the one to whom the bishop has proposed another office against his will, made a recourse against the removal or transfer decree, he must refrain from exercising the function

of pastor, vacate the rectory as soon as possible, and hand over everything belonging to the parish to the person to whom the bishop has entrusted the parish (can. 1447 § 1)” [Sobański 2003, 280]. While recourse against a decree of removal is pending, the diocesan bishop cannot appoint a new pastor for this parish. However, he can appoint a parochial administrator according to can. 1747 [Krukowski 2011, 409-24; Leszczyński 2008, 157-94].

5. Removal

This cause of vacating the office of a parish priest is described at length in the CIC/83 in can. 1740-1747. Removal from office may be by the law itself (*ipso iure*) or may be made by the diocesan bishop based on penal or administrative grounds. However, T. Pawluk underlines that in the case of the latter procedure, “a special administrative procedure applies to the removal and transfer of parish priests” [Pawluk 2002, 241], which is discussed in more detail below.

A pastor is removed from an ecclesiastical office by the law itself if he has lost the clerical state, has publicly defected from the Catholic faith or from the communion of the Church or has attempted marriage even if only civilly (can. 194 § 1). To remove a parish priest on grounds of his defection from the Catholic faith and attempting marriage, it is necessary for the competent authority to ascertain such facts (can. 194 § 2).

Removal on penal grounds takes place when the pastor has committed a canonical delict under can. 1333, 1336 and 1338, while observing can. 184 § 1 and 196.

The removal on administrative grounds takes place under can. 1740-1741 “when the ministry of any pastor becomes harmful or at least ineffective for any cause (even through no grave personal negligence)” [Sitarz 2013, 138].

The causes for which a pastor can be removed from his parish are the following: 1) a manner of acting which brings grave detriment or disturbance to ecclesiastical communion; 2) ineptitude or a permanent infirmity of mind or body; 3) loss of a good reputation among upright and responsible parishioners or an aversion to the pastor which it appears will not cease in a brief time; 4) grave neglect or violation of parochial duties which persists after a warning; 5) poor administration of temporal affairs with grave damage to

the Church whenever another remedy to this harm cannot be found (can. 1741).

If the pastor is a cleric who is a member of a religious institute or is incardinated in a society of apostolic life, “he may be removed by the diocesan bishop or the competent religious superior without following the procedure provided for in can. 1740-1752” [Sitarz 2013, 138]. Both superiors are required to issue prior notification of the decision to remove the pastor from office (can. 538 § 2, 682) [Chrapkowski and Krzywda 2006, 116].

6. Privation

The canon law legislator provides that privation from an ecclesiastical office (in the context of this paper, especially of a parish priest) is a penalty for a canonical delict (can. 196). Therefore, “privation is the loss of an ecclesiastical office decided either judicially or administratively in a trial or penal proceeding, as a penalty imposed for the committed delict” [Arrieta 2011, 195]. Therefore, it is undoubtedly a very severe punishment adequate to the gravest ecclesiastical offences (apostasy, schism, heresy – can. 1364 § 1, 1387; abuse of ecclesiastical power or function – can. 1389 § 1; attempted marriage by a cleric – can. 1394 § 1; violation of the obligation of residence – can. 1396; homicide or kidnapping – can. 1397; violation of the duties of a judge – can. 1457). The penalty of privation of office may be imposed for a definite or indefinite period; it depends on the type of proceedings and the competent ecclesiastical authority in charge. “Permanent privation of office may only be decided by courts (not by a decree – can. 1342 § 2), that is, in a penal process (can. 1717-1731)” [Sobański 2003, 286]. Under can. 143 § 2, an appeal can be made against judgement (or decree, if administrative proceedings were pending) that results in its suspension as well as the suspension of ordinary power related to the previously held office.

In can. 196 § 2, the legislator also specified precisely when the decree becomes effective. The norms related to the canonical penal process apply in this case (can. 1717-1731). “As soon as the decree of privation of office becomes enforceable, or has become a sentence, the removed pastor loses all rights related to the office and is released from any obligations thereto, and the office becomes vacant” [Sobański 2003, 286]. After vacating the office of a parish priest, the diocesan bishop or other authority equivalent at law are

not obliged to provide suitable support and housing for the removed pastor, as is the case when relinquishing the office (can. 538 § 3).

Therefore, privation of office “constitutes a special type of removal, subject to penal law in terms of scope and effect” [Arrieta 2011, 195]. It should be added that privation of office may take place by the law itself through expulsion from the clerical state for a delict of throwing away the consecrated species – can. 1367; using physical force against the Roman Pontiff – can. 1370 § 1; living in concubinage – can. 1395.

Among the penal grounds for losing the office of a parish priest, there may also be those that the Congregation for the Doctrine of the Faith, on the initiative of Pope Benedict XVI, included in the list of norms for the most serious delicts, *delicta graviora*, and entered into force on May 21, 2010.⁴ It should be stressed that they are judged only by the Congregation for the Doctrine of the Faith and are ranked among delicts against the sanctity of the Holy Sacrifice (Eucharist), confession, and crimes against morality.

Conclusion

Despite the fact that the ecclesiastical legislator in the CIC/83 clearly provides that the office of parish priest should be marked by stability and should be occupied for an indefinite period, after the reform triggered by the Second Vatican Council and the subsequent amendment of the CIC/83, it decided to abolish the previous division into removable and non-removable pastors. Therefore, a specific list was drawn up of the causes of vacating the office of a parish priest based on universal law. There are six causes of this kind: lapse of time (reaching the retirement age, death, and expiry of the term of office), obstacles to handling the office, resignation, transfer, removal and punitive privation of office.

The differences between these causes are different. The most common cause is related to the retirement of the parish priest or his death. Less often, the office of a parish priest is vacated following the voluntary resignation of the officeholder (before reaching the retirement age); this way always requires the consent of the diocesan bishop or another authority equivalent

⁴ Congregatio pro Doctrina Fidei, *Normae de gravioribus delictis* (21.05.2010), AAS 102 (2010), p. 419-31.

before the law.

The competent authority may also decide to transfer a parish priest to another parish or appoint him to a different function in the Church. In such a case, the consent of the officeholder is required.

On the other hand, a system of appointment of a pastor for a specific period (term of office) is rare as it requires the consent of the relevant episcopal conference and is often approached as an option. Equally rare is a situation where a pastor faces a specific impediment to managing his office, although it depends primarily on the geographical location of the parish.

There is also the penal dimension to the loss of the office of a parish priest. It manifests itself in two procedures: removal and privation.

All the above-mentioned methods invariably lead, although following different paths and producing different consequences, to the vacating of the office of parish priest; this, in turn, requires the office to be re-filled by another cleric who meets the applicable legal criteria.

REFERENCES

- Arrieta, Juan I. 2011. "Władza rządzenia." In *Codex Iuris Canonici. Kodeks Prawa Kanonicznego. Komentarz. Powszechne i partykularne ustawodawstwo Kościoła katolickiego. Podstawowe akty polskiego prawa wyznaniowego*. Edycja polska na podstawie wydania hiszpańskiego, ed. Piotr Majer, 163-95. Kraków: Wolters Kluwer Polska.
- Bartnik, Czesław. 2008. "W kwestii kadencyjności proboszczów." *Nasz Dziennik* 215 (3232):18-19.
- Calvo, Juan. 2011. "Parafie, proboszczowie i wikariusze parafialni." In *Codex Iuris Canonici. Kodeks Prawa Kanonicznego. Komentarz. Powszechne i partykularne ustawodawstwo Kościoła katolickiego. Podstawowe akty polskiego prawa wyznaniowego*. Edycja polska na podstawie wydania hiszpańskiego, ed. Piotr Majer, 440-71. Kraków: Wolters Kluwer Polska.
- Chrapkowski, Arnold, and Józef Krzywda. 2006. "Apostolstwo instytucji." In *Komentarz do Kodeksu Prawa Kanonicznego*. Vol. II/2: *Księga II. Lud Boży. Część III. Instytuty życia konsekrowanego i stowarzyszenia życia apostołskiego*, ed. Józef Krukowski, 7-185. Poznań: Pallottinum.
- Dzierżon, Ginter. 2009. "Przeniesienie z urzędu kościelnego." *Seminare XXVI*: 159-70.
- Eichmann, Eduard. 1929. *Kirchenrecht*. Vol. 1. Paderborn: Schöningh.
- Krukowski, Józef. 2005. "Parafie, proboszczowie i wikariusze parafialni." In *Komen-*

- tarz do Kodeksu Prawa Kanonicznego. Vol. II/1: *Księga II. Lud Boży. Część I. Wierni chrześcijanie. Część II. Ustrój hierarchiczny Kościoła*, ed. Józef Krukowski, 409-78. Poznań: Pallottinum.
- Krukowski, Józef. 2011. *Prawo administracyjne w Kościele*. Warszawa: Wydawnictwo UKSW.
- Leszczyński, Grzegorz. 2008. *Kościelna procedura administracyjna w Kodeksie Jana Pawła II*. Warszawa: Wydawnictwo UKSW.
- Pawluk, Tadeusz. 2002. *Prawo kanoniczne według Kodeksu Jana Pawła II*. Vol. 2: *Lud Boży jego nauczanie i uświęcanie*. Olsztyn: Warmińskie Wydawnictwo Diecezjalne.
- Sitarz, Mirosław. 2009. "Notyfikacja." In *Encyklopedia Katolicka*, vol. 13, ed. Edward Gigilewicz, 1456. Lublin: Towarzystwo Naukowe KUL.
- Sitarz, Mirosław. 2014. "Sede vacante." In *Wielka encyklopedia prawa*. Vol. 2: *Prawo kanoniczne*, ed. Grzegorz Leszczyński, 213-16. Warszawa: Fundacja „Ubi societas, ibi ius”.
- Sitarz, Mirosław. 2013. "Zarządzanie parafią w sytuacjach nadzwyczajnych." In *Parafia w prawie kanonicznym i prawie polskim*, ed. Sławoj L. Głódź, Józef Krukowski, and Mirosław Sitarz, 133-54. Lublin: Towarzystwo Naukowe KUL.
- Sitarz, Mirosław, and Agnieszka Romanko. 2012. "Sede impedita." In *Encyklopedia Katolicka*, vol. 17, ed. Edward Gigilewicz, 1331-333. Lublin: Towarzystwo Naukowe KUL.
- Sobański, Remigiusz. 2003. "Utrata urzędu kościelnego." In *Komentarz do Kodeksu Prawa Kanonicznego*. Vol. I: *Księga I. Normy ogólne*, ed. Józef Krukowski, 274-86. Poznań: Pallottinum.

The Loss of the Office of Pastor under the 1983 Code of Canon Law

Summary

This article presents ways of losing the office of pastor provided for by the common law of the Catholic Church, which is the 1983 Code of Canon Law. Despite the fact that the church legislator clearly states that the office of the pastor should be stable and be filled for an indefinite period, it was after the reform associated with the Second Vatican Council and the subsequent amendment of the Code of Canon Law that he decided to abolish the earlier division into removable pastor and indelible. That is why a specific catalog of ways of losing the office of pastor was included in the general law. These methods include: the passage of time, an obstacle in fulfilling the office of pastor, resignation, transfer, removal and deprivation. All of these methods, although in different ways and with different consequences, always lead to the packing of the priest's office, which is also associated with the need to be filled again by another priest who will of course meet the applicable legal criteria.

Key words: office, lost office, passage of time, resignation, transfer, removal, deprivation

Sposoby utraty urzędu proboszcza według Kodeksu Prawa Kanonicznego z 1983 roku

Streszczenie

W artykule przedstawiono sposoby utraty urzędu proboszcza przewidziane w powszechnym prawie Kościoła katolickiego, którym jest Kodeks Prawa Kanonicznego z 1983 r. Pomimo faktu, że ustawodawca kościelny wyraźnie stwierdza, że urząd proboszcza powinien być stabilny i być wypełniany na czas nieokreślony, to po reformie związanej z Soborem Watykańskim II i późniejszej zmianie Kodeksu Prawa Kanonicznego postanowił znieść wcześniejszy podział na proboszcza usuwalnego i nieusuwalnego. Dlatego w obecnym prawie powszechnym zawarty został ścisły katalog sposobów utraty urzędu proboszcza. Wśród tych sposobów wymienia się: upływ czasu, przeszkodę w pełnieniu urzędu, rezygnację, przeniesienie, usunięcie i pozbawienie. Wszystkie te sposoby, choć w różny sposób i z różnymi konsekwencjami, zawsze prowadzą do straty urzędu proboszcza, co wiąże się również z koniecznością ponownego obsadzenia go przez innego kapłana, który spełni obowiązujące kryteria prawne.

Słowa kluczowe: urząd, utrata urzędu, upływ czasu, rezygnacja, przeniesienie, usunięcie, pozbawienie

Informacje o Autorze: Mgr lic. ŁUKASZ SZTOLF, doktorant w Katedrze Kościelnego Prawa Publicznego i Konstytucyjnego, Instytut Prawa Kanonicznego, Wydział Prawa, Prawa Kanonicznego i Administracji, Katolicki Uniwersytet Lubelski Jana Pawła II; Al. Raławickie 14, 20-950 Lublin, Polska; e-mail: lukasz.sztolf@gmail.com; <https://orcid.org/0000-0003-2529-1492>

