Biuletyn Stowarzyszenia Kanonistów Polskich XXXIII (2023), nr 36 bis, s. 263-278

ECONOMIC ACTIVITY IN THE CHURCH – THE PENAL DIMENSION. COMMENTS ON THE AMENDMENT TO CANON 1376 CIC

DZIAŁALNOŚĆ GOSPODARCZA W KOŚCIELE – ASPEKT KARNY. UWAGI NA TLE NOWELIZACJI KAN. 1376 KPK

Rev. Prof. Dr. habil. Lucjan Świto

The University of Warmia and Mazury in Olsztyn, Poland
e-mail: lucjan.swito@uwm.edu.pl; https://orcid.org/0000-0002-6392-4599

Abstract

The 1983 Code of Canon Law does not contain any norms regulating the economic activity of ecclesiastical juridic persons. This does not mean, however, that canon law has no regard for that. The ecclesiastical legislator's concern for the supervision of economic activity is expressed in the regulation of rather complex ways of managing church property, including the special act of its alienation, and determination of penal sanctions for violating the relevant rules.

The penal norm of Canon 1377 that was previously in force, penalizing the alienation of church property without the requisite permission, has now been significantly extended. Pope Francis, reforming Book VI of the Code of Canon Law, expanded the scope and principles of penal liability for economic abuses by redacting Canon 1376 anew. The norm of this provision penalises the offence of misappropriating or preventing the gaining of benefits from church goods (which was previously absent from the Code) and the offence of performing unlawful acts in the administration of church goods (which has been significantly extended). Reflecting on the penal aspect of administration of church property, the article attempts to answer the following questions: What are these offences? What was the legislator's intention? What is the essence of the penal law reform in the area at hand?

Keywords: economic activity, church property, penal law, acts of administration, alienation

ISSN 1731-1438; e-ISSN 2719-7255
https://doi.org/10.32077/bskp.7974

Abstrakt

Kodeks Prawa Kanonicznego z 1983 r. nie zawiera żadnych norm, które by działalność gospodarczą kościelnych osób prawnych regulowały. Nie oznacza to jednak, że prawo kanoniczne w tej kwestii pozostaje obojętne. Troska ustawodawcy kościelnego o nadzór działalności gospodarczej wyraża się bowiem regulacją dość rozbudowanego sposobu zarządu dobrami kościelnymi, w tym jej szczególnym aktem – alienacją majątku, a także określeniem sankcji karnych za naruszenie obowiązujących w tej materii reguł.

Obowiązująca do tej pory norma karna kanonu 1377, penalizująca alienację dóbr kościelnych bez przepisanego prawem zezwolenia, została znacząco rozbudowana. Papież Franciszek reformując Księgę VI Kodeksu Prawa Kanonicznego poszerzył zakres i zasady odpowiedzialności karnej za nadużycia gospodarcze redagując na nowo kan. 1376. Norma tego przepisu penalizuje przestępstwo sprzeniewierzenia lub utrudnienia osiągnięcia korzyści z dóbr kościelnych (którego nie było w dotychczasowym kodeksie) oraz przestępstwo bezprawnych czynności w zarządzie dobrami kościelnymi (które zostało znacząco rozbudowane). Artykuł podejmując refleksję nad aspektem karnym zarządu dobrami kościelnymi jest więc próbą odpowiedzi na pytania: Na czym polegają te przestępstwa? Jaki był zamysł ustawodawcy? Co jest istotą reformy prawa karnego dokonanej w omawianym zakresie?

Słowa kluczowe: działalność gospodarcza, majątek kościelny, prawo karne, akty zarządu, alienacja

Introduction

From the very beginning, the Church has used temporal goods in carrying out its mission of human salvation, not profitably and commercially, but to attain its proper goals. These essentially are: 1) organisation of divine worship; 2) provision of decent maintenance for clergy and other workers of the Church; 3) conducting works of the apostolate and charity, especially for the sake of the needy [Wojcik 1987, 48].

The pursuance of these goals can vary greatly. In fact, ecclesiastical juridic persons may not only erect temples, manage cemeteries, run retreat houses, educational-welfare and childcare establishments, or hospitals, pharmacies, soup kitchens or night shelters, or engage in the manufacture and sale of devotional items, but may also conduct, for example, broadly-defined publishing and media activity, including the production of audiovisuals, rent and lease real estate.

Without delving into this issue, for the reasons of order we should only mention that under Polish law ecclesiastical entities can have the status of entrepreneurs and conduct business activity.[1] Indeed, neither the Polish Constitution[2] nor the Concordat, the latter regulating relations between the Polish state and the Catholic Church in Poland,[3] nor the Act of 17 May 1989 On Guarantees of Freedom of Conscience and Religion,[4] nor any other of the laws in force, including specific "denominational laws" regulating the relationship between the Polish state and individual churches and other religious organisations, prohibits legal persons in the Church from conducting business. These normative acts not only do not impose such restrictions, but it can be seen that these acts contain regulations directly relevant to the economic activity of churches and religious organisations.

To illustrate, Article 22(1) of the Concordat and (respectively) Article 21a of the Act of 2 July 2004 On Freedom of Economic Activity (superseded by the Act of 6 March 2018 – The Entrepreneurs Act[5]), clearly stipulates that activities serving humanitarian, charitable and welfare, scientific and educational-care purposes pursued by legal entities of churches and other religious organisations are legally equal to activities serving similar purposes and carried out by state institutions, with a number of acts containing norms regulating issues such as taxation of income from business operation of ecclesiastical legal persons. Next, Article 55(2) of the Act of 17 May 1989 On the Relations between the State and the Catholic Church in the Republic of Poland[6] provides that ecclesiastical legal persons are exempt from taxation on income from their non-economic activities, and in paragraph 3, the law stipulates that income from the business operation of ecclesiastical legal persons and companies whose shareholders are exclusively such persons is exempt from taxation in the part in which it was allocated in the tax year or in the following year for worship, educational, scientific, cultural, charitable and welfare activities, catechetical facilities,

---

1 For more on this, see Świto 2022, 5-22.

2 Constitution of the Republic of Poland of 2 April 1997, Journal of Laws No. 1997, item 483 as amended.

3 Concordat between the Holy See and the Republic of Poland of 28 July 1993, Journal of Laws No. 1998, No. 51, item 318 [henceforth: Concordat].

4 Journal of Laws No. 1989, No. 29, item 155 as amended.

5 Journal of Laws No. 2018, item 646.

6 Journal of Laws No. 1989, No. 29, item 154 as amended.

conservation of historical monuments, and for religious investments referred to in Article 41(2), and those church investments referred to in Article 41(3) involving catechetical facilities, charitable and welfare institutions, and repairs of them.

Thus, as illustrated by the practice of, for example, the Catholic Church in Poland, church legal persons actively participate in civil law transactions, can have the status of entrepreneurs and conduct business. This activity, on the one hand, is governed by the norms of civil law, which, according to the rule expressed in Canon 1290 of the 1983 Code of Canon Law,[7] are canonised by the ecclesiastical legislator. On the other hand, the activity of ecclesiastical entities – since it is pursued not within private and personal property, but within church property, that is, belonging to the entire community of the People of God – should be carefully supervised by ecclesiastical authority (Canon 1276).

The CIC/83 does not contain any norms governing the economic activity of church legal entities, which is not to say that canon law disregards this issue. It follows that the ecclesiastical legislator's concern for the supervision of economic activity is manifested in the regulation of a rather elaborate system for managing church property, including the special act of alienation of property, and in the definition of penal sanctions for violations of the rules in force in this matter.[8]

The previously operative penal norm of Canon 1377, penalising the alienation of ecclesiastical goods without a requisite permission,[9] has been significantly extended. In his reform of VI of the 1983 Code, Pope Francis broadened the scope and principles of criminal liability for economic misconduct by redrafting Canon 1376.

Accordingly, the following are to be punished with the penalties mentioned in Canon 1336 § 2-4, subject to the obligation of redressing the harm: "1° a person who steals ecclesiastical goods or prevents their proceeds from

---

[7] *Codex Iuris Canonici auctoritate Ioannis Pauli PP. II promulgatus* (25.01.1983), AAS 75 (1983), pars II, p. 1-317; English text available at: https://www.vatican.va/archive/cod-iuris-canonici/cic_index_en.html [henceforth: CIC/83]; legal state as of 18 May 2022.

[8] For more on this, see Świto 2010; Tomkiewicz 2013; Świto 2014, 595-609; Świto and Tomkiewicz 2014, 415-34; Świto and Tomkiewicz 2017, 393-408.

[9] Canon 1377: "A person who alienates ecclesiastical goods without the prescribed permission is to be punished with a just penalty."

being received; 2° a person who without the prescribed consultation, consent, or permission, or without another requirement imposed by law for validity or for lawfulness, alienates ecclesiastical goods or carries out an act of administration over them." The second paragraph provides that the following are to be punished justly, including by being removed from office, subject to the obligation of redressing the harm: 1° a person who through grave personal culpability commits the offence mentioned in § 1, n. 2; 2° a person who is found to have been otherwise gravely negligent in administering ecclesiastical goods."

Thus, the norm of this provision penalises misappropriation or preventing the gaining of benefits from church property (which was not featured in the 1983 Code) and unlawful acts in the administration of ecclesiastical goods (which has been significantly expanded).

What are these offences? What was the legislator's intention? What is the essence of the penal law reform executed in the area in question? Let us reflect on this, looking at the penal aspect of church property management.

1. The offence of misappropriation (embezzlement) of ecclesiastical goods or preventing the gaining of benefits from them

The offence of "misappropriation," known otherwise as embezzlement, is a qualified form of "appropriation," which is found in many legislations [Sośnicka 2013, 80-83]. This crime differs from theft because the perpetrator does not take a thing unlawfully, but it is entrusted to his care in good faith in a stable manner.[10] The person who entrusts (in canon law this is the competent ecclesiastical authority, e.g., a bishop or higher superior) expects that the thing will be returned to him, will not be destroyed and will be used for its intended purpose. So, when committing embezzlement, the perpetrator abuses the trust of the entrusting person. He appropriates the thing – in other words, he handles it as if he owned it.[11]

---

[10] It seems that the interpretation of the norm of Canon 1376 in *Komentarz do Kodeksu Prawa Kanonicznego*, Vol. 4/2: *Księga VI. Sankcje karne w kościele* is flawed since the legislative term 'misappropriate' (*substraho*) is assigned the meaning of the term 'theft' (*furo*) [Kaleta 2022, 241-42]. This is because the legislator does not speak of the unlawful taking of things, that is theft, but precisely about misappropriation, which is a different thing.

[11] This is sometimes said of a pastor who treats his parish as his own ranch or a private farm.

Misappropriation is thus a new offence that Pope Francis introduced into the CIC/83. This penal norm is addressed to all those who have been entrusted with the administration of material goods by the ecclesiastical authority: diocesan bishops with regard to the diocesan property, finance officers with regard to the property of religious institutes and provinces or dioceses, pastors with regard to parish property, seminary rectors with regard to seminary property, etc. This is because church property, as mentioned above, is not private property, but the property of the entire People of God, and therefore it should not only be managed in such a way that it does not suffer any damage, but, according to the Parable of the Talents, should be multiplied. This principle and wish were expressed by the ecclesiastical legislator in the norm of Canon 1284, which mentions the qualities of a good host who administers ecclesiastical property.[12] The criminal norm introduced by Pope Francis is thus a penalisation of failure to deliver on these duties. Not only activities involving a wilful depletion of church property (e.g. through unfavourable and undervalued sale, exchange or lease) are penalised, but also acts involving the omission or, put differently, failing to exercise due care (e.g., non-collection of due proceeds from the property owned or lack of care necessary for the protection of premises).

---

[12] Canon 1284: "§ 1. All administrators are bound to fulfil their function with the diligence of a good householder. §2. Consequently they must: 1) exercise vigilance so that the goods entrusted to their care are in no way lost or damaged, taking out insurance policies for this purpose insofar as necessary; 2) take care that the ownership of ecclesiastical goods is protected by civilly valid methods; 3) observe the prescripts of both canon and civil law or those imposed by a founder, a donor, or legitimate authority, and especially be on guard so that no damage comes to the Church from the non-observance of civil laws; 4) collect the return of goods and the income accurately and on time, protect what is collected, and use them according to the intention of the founder or legitimate norms; 5) pay at the stated time the interest due on a loan or mortgage and take care that the capital debt itself is repaid in a timely manner; 6) with the consent of the ordinary, invest the money which is left over after expenses and can be usefully set aside for the purposes of the juridic person; 7) keep well organized books of receipts and expenditures; 8) draw up a report of the administration at the end of each year; 9) organize correctly and protect in a suitable and proper archive the documents and records on which the property rights of the Church or the institute are based, and deposit authentic copies of them in the archive of the curia when it can be done conveniently. § 3. It is strongly recommended that administrators prepare budgets of incomes and expenditures each year; it is left to particular law, however, to require them and to determine more precisely the ways in which they are to be presented."

In addition, the norm of Canon 1376, 1º also penalises the conduct of the church property administrator, which is intended to impede the gaining of benefits from that property. This can occur, for example, when the previous administrator refuses to give his successor the documentation to enable the handling of the assets, or when, despite requesting an appropriate approval, there is a significant delay in making a (any) decision or in calling a meeting of the body that is competent to grant such approval.

2. The offence of performing unlawful acts in the administration of ecclesiastical property

Another proscribed act penalised by the norm of Canon 1376, 2º is the offence of committing unlawful acts in the administration of church property. Thus, here we speak of an act that does not involve ordinary administration of church property, or an alienating act that is a special form of it, while lacking the legally required consultation, consent or permissions, or fulfilling any other requirement mandated by law for validity or legitimacy.

2.1. The lack of prescribed consultations, consent or permissions in the performance of acts that do not involve ordinary administration of ecclesiastical property

According to the CIC/83, acts not involving ordinary administration are: "major acts of administration" (*actus maioris momenti*) and "acts of extraordinary administration" (*actus extraordinariae administrationis*), as well as "acts that exceed the limits and manner of ordinary administration" [Świto 2015, 105-16].

The first two terms appear in Canon 1277 and refer to acts of administration placed by the diocesan bishop with respect to diocesan goods. The third term occurs in Canon 1281 and refers to administrators of ecclesiastical legal persons subordinate to the diocesan bishop. According to the norm in question contained in Canon 1376 § 1, 2º, these administrators violate the law if they place such acts unless they requested consultation or permission from entities prescribed by law.

The situation of administrators of ecclesiastical juridic persons subject to the diocesan bishop, the situation – in principle – appears simple. These administrators (e.g., pastor, rector of a seminary) must obtain written consent from their ordinary before placing acts that go beyond the limits and manner of ordinary administration. Now, which acts exceed the limit and manner of ordinary administration, according to Canon 1281 § 2, should be determined by the statutes of these ecclesiastical legal entities. If, however, statutes do not specify that, this is the role of the diocesan bishop, who, having heard the opinion of the finance council, should make a list of such acts for persons under his authority. It is a separate issue how such lists function in individual dioceses, and whether and how aware administrators are of the need to obtain written permission from their ordinary.

However, acts of administration placed by the diocesan bishop with respect to diocesan goods pose a greater problem. Indeed, the difference between "major acts of administration with respect to the material condition of the diocese" (*actus maioris momenti*) and "acts of extraordinary administration" (*actus extraordinariae administrationis*) remains an open issue in legal science, raising fundamental questions. It happens that this distinction has a great deal of practical importance. For acts of administration of greater importance, the diocesan bishop should only hear the opinion of the finance council and the college of consultors, while for acts of extraordinary administration, the diocesan bishop should obtain the consent of these bodies for validity. Both failing to obtain the consent of the indicated persons for acts of extraordinary administration and failing to consult them when placing acts of greater importance will cause the invalidity of the act of administration taken by the diocesan bishop and consequently his penal liability. Under Canon 1277, the Polish Bishops' Conference should determine which acts should be classified as acts of extraordinary administration, but to date such a list has not been made.[13]

In other countries, for comparison, the bishops' conferences of Panama, Argentina, Canada or Colombia have developed a concrete list of acts considered as those of extraordinary administration, and the Bishops' Conference

[13] The Council of Diocesan Bishops, on 26 August 2012, adopted indications – in the form an instruction – on the management of ecclesiastical material goods. However, they are not binding within the meaning of Canon 1277 – see the Message of the Bishops of Jasna Góra dated 26 August 2012.

of Italy has additionally set specific amounts. Others, such as the bishops' conferences of San Domingo, Luxembourg, Brazil, and the Philippines took as their point of reference the material or monetary value of the undertaking, regardless of its nature, setting a maximum amount or a so-called the amount relative to the annual budget of the diocese or to some other criterion (Austria, Germany). Other conferences of bishops, for example, in Peru, Honduras, Mexico, Puerto Rico, and Portugal, considered acts of extraordinary governance to be those that exceed the ordinary budget, while the Bishops' Conference of the Netherlands adopted a mixed system [Dubiel 2007, 54-55].

2.2. The lack of prescribed consultations, consent or permissions in the performance of acts of alienation of church property, which are a special form of extraordinary administration

The obligation to obtain consultations, consent or permissions required by law, or to meet any other prescribed requirement law for validity or legitimacy, also requires acts of alienation, which are a special form of acts of extraordinary administration. Before we move on to specify entities to be consulted or give consent to alienation, and define, then, who is the addressee of the penal norm of Canon 1376 § 1, 2º, we need to recall briefly the structure of alienation itself and its object.

The term 'alienation' is used by the CIC/83 in two senses: *sensu stricto* and *sensu largo*. Alienation in the strict sense is any legal act that results in the transfer of ownership of the ecclesiastical property of a given public ecclesiastical juridic person to another ecclesiastical or secular entity through sale, exchange or donation. On the other hand, alienation in the broad sense is any other legal action as a result of which the property of a public ecclesiastical juridic person, albeit not disposed of, is at risk of deterioration as a result of the actions taken (e.g., mortgage, lease or rental). The regime required for acts of alienation – which when not observed gives rise to criminal liability under Canon 1376, 2º – is common to alienation: in the strict and broad senses [Świto 2010, 89-92].

This legal regime involving the obligation to obtain appropriate permissions to alienate does not apply to every asset of a church legal entity, but only to assets of a certain value or type. The object of alienation will thus be as follows: the so-called *patrimonium stabile*, things donated

to the Church by virtue of a vow, things of high artistic or historical value, relics, paintings serving as objects of veneration, and desacralised churches.

This principle is further specified in Canon 1292, which provides that if the value of the property intended to be alienated falls between the lowest and highest amounts determined for its own region by the episcopal conference (in Poland, the limits are now €100,000 and €1.7 million, respectively),[14] the competent authority in the case of legal persons not answering to the diocesan bishop is determined by their own statutes, while for other entities this entitlement is determined by the diocesan bishop with the consent of the finance council and the college of consultors and those concerned (§ 1). If, however, the value of the alienated goods exceeds the maximum amount (which in Poland is now €1.7 million), or if the case concerns things donated to the Church by virtue of a vow (*donaria votiva*), as well as things of high artistic or historical value, for the validity of the alienation, the permission of the Holy See is additionally required (§2). As regards things donated to the Church by reason of a vow, and things that are precious for artistic or historical reasons, the Holy See's consent to alienation is required regardless of the value of these things.

It should be mentioned here that a request for the consent of the Holy See should include a reasoned request from the diocesan bishop and a certified excerpt from the minutes of the meeting of the college of consultors and the meeting of the finance council, in which these bodies consented to the alienation (the minutes should indicate the existence of a *quorum*), and a valuation of the alienated item.

With regard to the subject of alienation, in turn, it should be highlighted that the regulation of alienation activities involves only ecclesiastical goods, i.e., property owned by public juridic persons in the Church (*personae iuridicae publice*).

Canon 116 § 1 provides that public juridic persons are groups of persons or things, established by the competent ecclesiastical authority to perform on behalf of the Church, within the scope designated

[14] Polish Bishops' Conference, *Dekret ogólny z dnia 11 marca 2021 r. w sprawie podwyższenia sumy maksymalnej alienacji* [General Decree of 11 March 2021 on Increasing the Sum of Maximum Alienation], https://episkopat.pl/dekret-ogolny-konferencji-episkopatu-polski-z-dnia-11-marca-2021-r-w-sprawie-podwyzszenia-sumy-maksymalnej-alienacji [accessed: 01.08.2022].

for them and in accordance with the law, their own tasks assigned to them for the public good; other legal entities are private persons.

Within the meaning of CIC/83, the subject of alienation will not be private ecclesiastical juridic persons or such church organizational units that do not have their own legal personality and operate only within the church legal entity that established them. The latter category includes unincorporated manufacturing, service and commercial establishments, charitable and welfare institutions, schools and other educational facilities. For the alienation of property held by these entities, the alienating entity will be the church legal person within which a particular organisational unit operates.

Each alienation must be a legitimate and valid act. The conditions of a legitimate alienation are specified in Canon 1293, which in § 1 stipulates that for an alienation whose value exceeds the lowest specified sum, the following are required: a just cause, valuation of the alienated thing, and also, as per § 2 of this prescript, the observance of other precautions prescribed by the legitimate authority.

The just causes (*iusta causa*) mentioned in Canon 1293 § 1, 1º include but are not limited to "urgent necessity, evident advantage, piety, charity, or some other grave pastoral reason."

The requirement for valuation of the alienated item is connected with the content of Canon 1294 § 1, which stipulates that "an asset ordinarily must not be alienated for a price less than that indicated in the appraisal." The valuation referred to in this prescript must be carried out by at least two experts, who are proficient in the field relevant to the studied object. The requirement of valuation of the alienated thing applies not only to alienation in the form of a sale of property, but also to acts of alienation taking the form of an exchange of goods. This is because only the knowledge of the real value of the alienated thing enables one to fully and judiciously assess whether the intended exchange will be adequate and whether its performance will not harm any of the parties.

With regard to the "precautions" mentioned in 1293 § 2, it should be noted that the said provision does not specify what precautions are to be taken, leaving this to the competent authority – that is, one competent to give consent to alienation – to adapt the regulation in question to local conditions and the current economic and social situation. Such a precaution

could be, for example, ordering a public auction or announcement, requiring that transactions be carried out based on the parity of the convertible currency, or requiring alienation only to a certain category of entities.

It is also worth mentioning that according to Canon 1998, "unless an asset is of little value, ecclesiastical goods are not to be sold or leased to the administrators of these goods or to their relatives up to the fourth degree of consanguinity or affinity without the special written permission of competent authority."

Among other conditions for the legitimacy of alienation is also the ban on incurring debts that cannot be repaid in "a period that is not too long" and on which interest cannot be paid from ordinary income (Canon 639 § 5). This guarantee norm is addressed only to religious and religious institutes.

As for alienation, it is subject to three basic conditions for its validity: 1) observing the requirements of state law, 2) consent granted by competent bodies, and 3) the specification of parts previously alienated.

The norm of Canon 1290 provides: "The general and particular provisions which the civil law in a territory has established for contracts and their disposition are to be observed with the same effects in canon law insofar as the matters are subject to the power of governance of the Church unless the provisions are contrary to divine law or canon law provides otherwise, and without prejudice to the prescript of can. 1547." It follows clearly from the wording of this prescript that for alienations taking place in the territory of the Republic of Poland, canon law has adopted as own the rules provided by civil law regarding the object, form, clauses, conditions, fees, etc., as well as the rules relating to the validity of obligations and legal actions. The requirement to observe state regulation is therefore a manifestation of the so-called canonisation of civil law.

If the alienated thing is divisible, the parts previously alienated must be listed in the application for alienation. This is intended to prevent the gradual alienation of a divisible thing and thus omit the requirement of obtaining the prescribed consent stipulated in the alienation procedure. Non-compliance, as per Canon 1292 § 3, results in the invalidity of consent.

A corresponding principle should be applied to cases of simultaneous alienation of multiple goods. Although this rule is not explicitly provided by Canon 1293 § 3, the directives in this regard are laid out

in the interpretation of the Pontifical Commission for the Authentic Interpretation of the Canons of the Code of 20 July 1929. Thus, in the case of simultaneous alienations of different goods held by one entity, the individual values of alienation should be summed, and on the basis of their aggregate value the body competent to grant consent should be determined. This rule is intended to exclude possible attempts to diminish the real sum of alienation and thus disregard the competence of the Holy See.

Now, turning to the specification of the addressee of the analysed penal norm of Canon 1376 § 1, 2º in the context of acts of alienation that involve the obligation to obtain requisite consultations, consent or permissions, or to meet any other requirements prescribed by law for validity or legitimacy, administrators of church property should be mentioned first. It follows that when undertaking actions related to alienation performed on behalf of legal entities (as their constituent bodies), they are directly obligated to obtain the permissions. On the other hand, those who are indirectly involved in the alienation process cannot be excluded from criminal liability either: the diocesan bishop, the members of the finance council and the college of consultors. Alienation, indeed, is a mechanism that requires the participation of not only of the administrators themselves, but also other subjects who supervise alienation by issuing appropriate permissions. This interpretation of the penal norm under analysis is not, therefore, extensive, but it takes into account its context – its *ratio legis* is to enhance protective measures and increase vigilance in the administration of church property, indirectly involving all participants.

3. Penal sanction

The penal sanction for misappropriation of church property or preventing the gaining of respective benefits, as well as the offence of performing unlawful acts in the administration of church goods, are – in addition to the duty to repair harm – the expiatory penalties enumerated in Canon 1336 § 2-4, affecting the offender either permanently or "for a determined or an indeterminate period": 1) an order to or prohibition against residing in a specific place or territory; 2) an order to pay a fine or a sum of money for ecclesiastical purposes, at rates established by an episcopal conference; 3) a ban on exercising in all places or in a specified place or territory or outside of them all or some offices, duties, ministries or functions,

or "only certain tasks attaching to offices or duties"; 4) a prohibition against "performing all or some acts of the power of order"; 5) a prohibition against "performing all or some acts of the power of governance"; 6) a ban on "exercising any right or privilege or using insignia or titles"; 7) a prohibition against "enjoying an active or passive voice in canonical elections or taking part with a right to vote in ecclesial councils or colleges"; 8) a ban on "wearing ecclesiastical or religious dress"; 9) a deprivation "of all or some offices, duties, ministries or functions, or only of certain functions attaching to offices or duties"; 10) a deprivation of "the faculty of hearing confessions or of preaching"; 11) a deprivation of "a delegated power of governance"; 12) a deprivation of "some right or privilege or insignia or title"; 13) a deprivation of "all ecclesiastical remuneration or part of it, in accordance with the guidelines established by the episcopal conference, without prejudice to the provision of can. 1350 1350 § 1"; 14) dismissal from the clerical state.

In addition, a just penalty, including deprivation of office, is provided for the offences of conducting unlawful acts in the management of ecclesiastical goods, if committed unintentionally but in a gravely culpable manner, as well as through grave negligence (Canon 1376 § 2).

Conclusions

In our attempt to answer the question posed earlier about the essence of the reform in question, we can say that our analysis of the regulation considered in the reality of the Church today affords two conclusions.

First, the amendment no doubt enhances the control of asset management in the Church. The previous norm of Canon 1377, which penalised the alienation of church property without a prescribed permission, did not seem to take into account either other forms of administration or the responsibility of administrators in the context of all abuses that were possible with regard to such management. In such a state of affairs, this penalization was, shall we say, significantly "watered down". Therefore, it can hardly be acknowledged that the Church's temporal goods are protected in a way that is consistent and adequate to the role these goods are supposed to play in the Church's activities.

The amendment discussed here both expanded the subjective scope of the aforementioned regulation, adapting it to the phenomena that are taking place *vis-a-vis* the circulation of property today (both ecclesiastical

and secular), and expanded – rightly so – the circle of entities bearing such responsibility. Thus, it has increased the relevance of the relationship between the powers associated with asset management and the liability resulting from it.

Second – and this is apparently a general reflection – the amendment is clearly part of the discourse taking place in the Catholic Church's contemporary doctrine of penal law. This discourse revolves around the thesis that the promulgation of the CIC/83 was followed by the announcement of the end of "true and proper criminal law" [Gerosa 1999, 226]. The thesis also implies – given the evolution of the philosophy of punishment in the canonical order that occurred in the late 20th century plus the associated exaggeration of pastoral considerations – that punishment has become a kind of last resort, and not always necessary.

The norm of Canon 1376, as it is today, is a powerful indication that penal law is an important instrument of pastoral influence. Its application serves both the good of the offender – his punishment serves to evoke repentance in him – and the good of the entire ecclesiastical community, which in this case is the basis of its economic functioning. For in some cases, as life shows, merely "appealing" will not suffice.

REFERENCES

Dubiel, Stanisław. 2007. *Uprawnienia majątkowe Kościoła Katolickiego w Polsce w świetle Kodeksu Prawa Kanonicznego z 1983 r., Konkordatu z 1993 r. i ustaw synodalnych.* Lublin: Wydawnictwo KUL.

Gerosa, Libero. 1999. *Prawo Kościoła*. Poznań: Pallotinum.

Kaleta, Paweł. 2022. "Przestępstwa przeciwko władzy kościelnej i przestępstwa związane z pełnieniem zadań kościelnych." In *Komentarz do Kodeksu Prawa Kanonicznego*. Vol. IV/2: *Księga VI. Sankcje karne w kościele*, edited by Józef Krukowski, 216-57. Poznań: Pallotinum.

Sośnicka, Aneta. 2013. *Przestępstwo i wykroczenie przywłaszczenia w polskim prawie karnym*. Warszawa: Wolters Kluwer Polska.

Świto, Lucjan, and Małgorzata Tomkiewicz. 2014. "L'alienazione dei beni ecclesiastici nella prospettiva giuridico-materiale e procedurale: domande e dubbi." *Ius Ecclesiae* 26, no. 2:415-34.

Świto, Lucjan, i Małgorzata Tomkiewicz. 2017. "Kompetencje Stolicy Apostolskiej w zakresie alienacji majątku Kościoła powszechnego w świetle Kodeksu Prawa Kanonicznego z 1983 r." In *Pecunia servire debet sed non regere. Księga*

Jubileuszowa dedykowana Księdzu Profesorowi Stanisławowi Dubielowi, edited by Krzysztof Wiak, and Paweł Kaleta, 393-408. Lublin: Wydawnictwo KUL.

Świto, Lucjan. 2010. *Alienacja majątku kościelnego w diecezjach rzymskokatolickich w Polsce*. Olsztyn: SQL.

Świto, Lucjan. 2014. "Biskup jako podmiot alienacji majątku kościelnego." In *Veritas Christi liberat. Księga Pamiątkowa ku czci Księdza Biskupa Jacka Jezierskiego w 65. rocznicę urodzin, 40. rocznicę kapłaństwa i 20. rocznicę biskupstwa*, edited by Katarzyna Parzych-Blakiewicz, Paweł Rabczyński, and Jacek Wojtkowski, 595-609. Olsztyn: Warmińskie Wydawnictwo Diecezjalne.

Świto, Lucjan. 2015. "Akty zarządu dobrami kościelnymi." *Prawo Kanoniczne* 58, no. 3:105-16.

Świto, Lucjan. 2022. "Działalność gospodarcza kościelnych osób prawnych a alienacja majątku Kościoła Katolickiego w Polsce. Problem spółek z ograniczoną odpowiedzialnością." *Studia z Prawa Wyznaniowego* 25:5-22. https://doi.org/10.31743/spw.13577

Tomkiewicz, Małgorzata. 2013. *Obrót majątkiem Kościoła rzymskokatolickiego w Polsce*. Olsztyn: SQL.

Wójcik, Walenty. 1987. "Dobra doczesne Kościoła." In Walenty Wójcik, Józef Krukowski, and Florian Lempa, *Komentarz do Kodeksu Prawa Kanonicznego z 1983 r*. Vol. 4: *Księga V. Dobra doczesne Kościoła. Księga VI. Sankcje w Kościele*, 11-109. Lublin: Redakcja Wydawnictw KUL.