

THE SACRAMENTAL SEAL AND ITS REFLECTIONS IN THE SPHERE OF CRIMINAL LAW*

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Summary. Sacramental seal is an institute, which undoubtedly has principal meaning and seriousness in the canonical law. It depends not only on the substance of the confession, which naturally has character of the absolute confidence between the confessor and the penitent, but also on the need to secure the highest level of protection of the sacrament of penance. Considering these reasons, the institute of the sacramental seal has the absolute protection by the canonical law, which is expressed by the prohibition of its breaching; it does not matter, what is the content of the confession. This paper, analysing of this significant institute, is focused not only the area of the canonical law, but also on the appropriate Slovak legal regulation.

Key words: the sacramental seal, the sacramental secret, the duty to keep the confidence, the confession

1. THE SACRAMENTAL SEAL – THE CHARACTERISTICS OF BASIC ATTRIBUTES

Reaching the aim to ideally understand the institute of the sacramental seal it is necessary to analyse the key word, which is closely connected with this institute, and this word is “the confession.” The confession can be simply defined as the penitent’s true and honest confession to the confessor with the aim to get the sacramental absolution and forgiveness. However, we would like to express that every communication realized between the confessor and the penitent is not automatically protected by the sacramental seal. For example, if the penitent only wants an advice from the confessor without the aim to get absolution or forgiveness, this situation does not have the basic attributes of the sacramental seal. On the other hand, the advising is not excluded from the sacramental seal absolutely, or telling it differently, this case also can be, fulfilling certain conditions, under the protection of the confidence. The problem is that the question of the be-

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ginning and the finishing of the confession is not quite simple and clear. Considering it simply, if the confessor's advice would be given without the confession, it will not have the protection by the sacramental seal; if it would not, the confessor will have the duty to respect the absolute secrecy of the content of the confession. Furthermore, the duty to keep the sacramental seal is not reduced only to communication, which is strictly realized within the confession booth [Bevilacqua 1996, 1733].

The legal definition of the sacramental seal comes from the Code of the Canon Law, which was enacted in 1983.¹ According to the can. 983, para. 1, "the sacramental seal is inviolable; therefore it is absolutely forbidden for a confessor to betray in any way a penitent in words or in any manner and for any reason." Telling it simply, the sacramental seal obligates the confessor to keep in secrecy anything, what was told within the realized confession. Considering it in the strictest sense of word, the sacramental seal obligates the confessor to keep in secrecy everything, what the penitent told without the confession with the aim to get forgiveness, and abstain any use of this information without the sacrament and without the penitent's consent – this use or disclosure of such information would mean the betraying of the penitent or, at least, would increase the penitent's suspicion in others [ibid., 1734–735].

We would like to add that also in the case, when the confession was interrupted earlier than the confessor gave the forgiveness, or in the case, when confessor did not give or delay the forgiveness, the confessor is obligated by the sacramental seal [Davis 1959, 317–18]. This obligation is connected with the penitent's intent to get the forgiveness and it is irrelevant, if he finally get it or not [Pekarčík 2004]. For the better explanation of this status, let us analyse it according to practical case. The penitent, who committed a murder crime, comes to the confessor to confess this sin and get the forgiveness. The confessor is not authorized to disclose the information, which received from this penitent without the confession. On the other hand, the confessor could make the forgiveness conditional that firstly the penitent has to disclose this crime for the state prosecuting authorities voluntarily. That means that the penitent has to show the repentance with the aim to get the forgiveness as soon as the willingness to repair the committed badness, if it is possible. In fact, the sacrament of the penance consists of three integral steps realized by the penitent on the one hand and the confessor's forgiveness on the other hand. Penitent's steps are as follows: the repentance, the confession and disclosure the sins to the confessor and the intent to realize the reparation of the committed badness.² However, in case, when the penitent denies to fulfil the conditions of the forgiveness, and therefore, he does not get the forgiveness (or it is delay), the confessor is not authorized to disclose the information, which the penitent told him within the confession [Bevilacqua 1996, 1738].

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].

² *Catechismus Catholicae Ecclesiae*, Libreria Editrice Vaticana, Città del Vaticano 1997, no. 1491.

Wholeness this interpretation finally contents that the confessor is obligated by the sacramental seal in relation with anybody, including even the penitent himself. Telling it by the other words, the confessor has to stay restrained also in the relation with the penitent himself. That means that the confessor is obligated to ask the penitent for the permission to talk to him about the previous sacraments of penance [Pekarčík 2004].

Making the previous interpretation exacter, we would like to consider also *Dictionnaire de Droit Canonique*, which tells us that “the sacramental seal is sigillum sacramentale from the moment, when the confessor’s lips became sealed by inviolable and untouchable manner [...] The secret comes from the substance of the belief itself, from the necessity to respect the sacrament of the confession, because any indiscretion would desecrate and tarnish it. Everything, what the confessor bring out in the confession booth, know because of the title of God’s substitution and not because of the human cognition or communication – the confessor would become wholly depersonalized from the character of the human cognition within the confession. It is necessary that the believers have the highest confidence to the perfect confidentiality of their confessors. Therefore; the confidential secret is more rigid and stricter than any other professional secrecy and it does not allow some exceptions.” Emile Jombart writes similarly that, taking into account the delicacy and grandeur of this institute as soon as the respect to believers, the Church declares that every priest, who realized the confession, is obligated, under the threat of very strict sanctions, by the obligation to keep the absolute secrecy about the sins, which the penitent discloses him within the confession. Therefore; the priest cannot use a knowledge (information) that he received within the confession, under any circumstances. The described secrecy, which does not allow any exception, is signed as sacramental, because of what the penitent tells the confessor during his confession, stay sealed and locked forever by the sacrament [Jombart 1957].

Furthermore, the legal theory distinguishes the interpretations of the sacramental seal in stricter and wider sense of word. The strict sense of the sacramental seal means that any confessor’s disclosure, which would cause the leak of the penitent’s identity or at least increase the penitent’s suspicion, is prohibited. The wider sense means that every disclosure, which is able to cause a desecration of the sacramental seal itself. Telling it differently, if the confessor would sin against the sacramental seal, he will commit not only the injustice against the penitent, but also sacrilege against the sacrament itself [Pekarčík 2004]. This interpretation is key for understanding of the doctrine of the Church, because it expresses double sense and aim of the sacramental seal [Bevilacqua 1996, 1736].

The clearest aim of the sacramental secrecy can be the penitent’s goodness itself – it can be recognized as some implicit contract on confidentiality between the confessor and penitent, which contains the duty to protect the penitent’s reputation against the discrediting by the disclosure of his sins because of the reaching of the justice. The other aim of the sacramental secrecy, which could be consider

as more principal, is the protection of the sacrament of penance itself. Although that the meaning of the protection of the penitent's privacy cannot be underestimated in no way, the obligation to the religion and the sacrament of penance is stronger, regardless of meaning, which has the obligation of the justice in the relation with the penitent. The reason of this declaration is the supremacy of the protection of the state that the individuals can tell the priests their sins freely and without a fear. If the confession would lose the attribute of the confidentiality, the penitents will blame on it, what means that the confession will lose its substance. Furthermore, it will cause the huge spiritual harm of the believers and Church itself. The disclosure, respectively only the possibility of disclosure of the sacramental seal causes that the penitent has distrust in the sacrament itself. If we consider the fact that the individual confession is the single way, which the penitent can use for the reconciliation with God and the Church (can. 960), the access to it as soon as its confidentiality must be guaranteed absolutely. Other case would threat the highest law of the Church – *salus animarum* [Pekarčík 2004]. Just because of this reason the Church has always carefully protected the confessional communication, considering it as the confidential relationship between the individual and God, which the priest mediates within the sacramental penance.

We can consider the idea that if the penitent gives the consent to the confessor to disclose the confessional information, the penitent's goodness stays protected. However, this argument ignores double aim of the sacramental seal, especially the priority of reaching the goodness of the sacrament of the confession. Telling it by the other words, the goodness of the belief prevails upon the goodness of the justice, and therefore, even in the case, when the penitent's goodness is protected, it is still necessary to keep the secrecy, because of the reason to secure the secrecy of the sacrament of the confession. Telling it by the other words, if the penitent gives the confessor the consent to disclose the information, which is protected by this secrecy, the confessor would still betray the penitent (the priest would disclose the information with the penitent's consent). However, even in this case, it is necessary to take into account the protection of the sacrament of the confession – this protection is the key aim of the sacramental secrecy and the aim of the protection of the penitent's secrecy is, although it has significant meaning, only the secondary one [Bevilacqua 1996, 1738].

These preliminary conclusions also contain the danger of the loss of the believers' confidence in this significant spiritual institute, which increases from the disclosure of the sacramental seal. If we would imagine the scenario that the penitent gives his consent to disclose the sacramental seal, it is impossible to tell that this danger will not increase. However, the penitent communicates the information about his consent with disclosure the sacramental seal, it naturally causes the question, if it is possible to secure that this communication will be known for everybody. The logical is also the question of what consequence will have this fact in relationship with the persons, who did not know about this information? If we allow that this communication will be publicly (commonly) known, we can-

not avoid the other situations that could authorized the priest to disclose the sacramental seal. If they would exist, there will appear the questions, where is the boarder of when the priest can and cannot to disclose the sacramental seal and what would become in case, when the penitent will decide to call off his consent with disclosure the sacramental seal. According to the manner of how the Church considers this situation, it is necessary to tell that the penitent is authorized to call off his consent, which he already gave, at any time [Regatillo and Zalba 1954, 365–66].

The doubts, which come from these questions, can only cause the raising the other doubts and uncertainties in the believer's minds as soon as undermining the institute of the sacrament of penance itself. According to this conclusion, the argument that the circumstances, although very extraordinary, when the priest can decide to breach the sacramental seal, is at least the speculative one or even wrong and unrealistic one, including the case, when it would be well-meaning [Bevilacqua 1996, 1739]. The truth of this view can be underlined by the John Paul II's speech from 1994, when he tells: "When our Lord Jesus Christ established that the believer has to confess his sins to the Church authority, He regulated absolute secrecy of the content of the confession in relationship with any other human being, any other mundane authority in any situation."³

Considering the wholeness of the interpretation, we would like to add that the obligation to keep the sacramental secrecy has the principal seriousness that it even persists after the penitent's death and still protects the information, which were confessed within the confession, against the disclosure. The reason of this continuity of the sacramental seal is that if only the one exception of the sacramental seal would be allowed, the spiritual goodness will be hugely harmed – the believers will naturally have the fear because of the disclosure of their sins and quit the practice of the sacrament of the penance. Therefore it is clear that the spiritual goodness of the Church community prevails upon any other well-reasoned exception – if it will be possible to breach the sacramental seal after the penitent's death, it immediately causes the desecration of the confession as soon as the violation of the honest of the belief and the principal aim of the sacramental secrecy [Bevilacqua 1996, 1737].

2. THE OBLIGATION OF THE SACRAMENTAL SECRECY VERSUS THE OBLIGATION OF THE PRESERVATION OF THE FURTIVENESS

However, the problematics connected with the keeping the secrecy about the circumstances that are included in the content of the realized confession is not only the priest's (confessor's) matter. As it was already interpreted, he has the duty (obligation) that explicitly regulates can. 983, para. 1, but this canon does

³ *Seal of Confession Must Be Kept. Address of Pope John Paul II. to the Apostolic Penitentiary, Confessors and Priests and Seminarians* (12.03.1994), in: *Pope Speaks*, Jan./Feb. 1995, at 13, 14 (1995).

not reduce this duty only to the single subject, because also the other persons, which are explicitly regulated by the following para. 2, have the similar duty. According to this paragraph, the duty to keep the sacramental seal load also: a) the translator, who participates in the confession; b) anybody, who find out about the sins in any way.

That means that the certain subjects are loaded by the duty to keep the secrecy about the circumstances, which they found out in the connection with the confession, *de facto* as soon as the priest. However, there exist two principal differences between the priest on the one hand and these subjects on the other hand. The first of them, which has the specific principality because of duty to keep the confidentiality of “the confessional information” in the legal order of Slovak Republic, is connected, at the first view, with irrelevant, but in fact the significant terminological view. The term of the sacramental secrecy (*sacramentale sigillum*) is possible to use only with the priest’s (the confessor) personality. If it is going on the subjects according to the letters a) and b), they have, according to can. 983, para. 2, only the duty to keep furtiveness (*secretum*) about the circumstances that they know because of the confession. The more significant difference between these two obligations is expresses by the canonical law in the context of the consequences, which come from their breaching. They are stricter in the case of the breaching of the sacramental secrecy, that means the breaching, which caused the priest – the confessor. The Code of the Canon Law distinguishes the direct breaching and indirect breaching. In the case of the direct breaching of the sacramental secrecy means the commitment of the very serious sin by the confessor, who is automatically excommunicated without the need of any external intervention by competent authority (the excommunication *latae sententiae*). This excommunication is exclusively reserved for the Holy See (can. 1388, para. 1). In the case of indirect breaching of the sacramental seal, that means the breaching, which is done because of the frivolousness or impetuousness and the penitent’s name is not disclosed, the Code does not regulates the determined punishment, but it obligates the competent authority to punish the confessor, according to the seriousness of the delict (*pro delicti gravitate puniatur*) (can. 1388, para. 1). This punishment is *ferendae sententiae*, that means that it could be awarded according to the penitent’s accusation, if he felt cheated or harmed because of the priest’s conduct [Pekarčík 2004].

Considering the breaching the duty to keep the furtiveness, the Code tells only about the award of the just punishment (*iusta poena puniatur*), which can be also the excommunication. This punishment is also *ferendae sententiae*, which must be awarded in every case, when the harmed penitent announces to the competent authority [ibid.].

3. THE DUTY TO KEEP THE SACRAMENTAL SECRECY, RESPECTIVELY THE FURTIVENESS IN THE LEGAL REGULATION OF SLOVAK REPUBLIC

The sacramental secret is regulated by can. 983 and 984 CIC/83. If we want to know of how the legal order of Slovak Republic reflects this canonical obligation, we have to examine the contract between Slovak Republic and Holy See from 24th November 2000.⁴ The question of the keeping the sacramental secrecy is regulated by Art. 8; according to this article: “The sacramental seal is untouchable. The untouchability of the sacramental seal includes the right to deny the testimony before the state authority of Slovak Republic. Slovak Republic also guarantees the untouchability of the confidentiality of the information, which was verbally or in writing given under the condition of the confidentiality to the person that is entrusted by the pastoral care.” The Fundamental Contract, respectively this article is not the single regulation in the Slovak legal order that regulate the duty to keep the sacramental seal. The particular legal regulations of the canon law are transposed also by the Slovak criminal law. The duty to keep the sacramental seal is also regulated by para. 130, sect. 2 of Slovak Criminal Procedure Act No. 301/2005 Z. z.⁵ According to this paragraph, the witness is authorized to deny the testimony, if his testimony shall breach the sacramental seal or the secret, which he was given, being the person with authorized pastoral care, verbally or in writing under the condition of the confidentiality. Considering this regulation, we can say that if the priest would be summoned as the witness by prosecuting authority to the interrogation about everything, what he knows about crime, the priest will be authorized to deny his testimony because of the sacramental seal.

In this connection, we would like to express that the right to deny the testimony because of the protection of the sacramental seal does not mean the right that the priest has not to come to the place of interrogation in certain time. The person, who has the right to deny the testimony, no matter of the reason, which establishes this right, is to obligated to respect the summons of the prosecuting authority and come for the realization of the interrogation. If he does not respect the summons, he risks the realization of stricter securing means – the execution according to para. 128 SCPA as soon as the fine according to para. 70 SCPA that could reach 1650 EUR. This process is also applicable for the priest. The absence of the realization of this measures against the priest has no legal basis according to SCPA as soon as the other legal act. The subject, who has not to come to the interrogation, is only the person with diplomatic liberties and immunities [Minárik, et al. 2006, 383]. Telling it simply, if the person authorized by the pastoral care is summoned to the interrogation of the witness, he is due to come to the place of the interroga-

⁴ The Fundamental Contract between Slovak Republic and Vatican, published in Collection of Law, No. 326/2001 [henceforth cited as: the Fundamental Contract].

⁵ Henceforth cited as: SCPA.

tion and he can realize the right to deny the testimony after his fulfilment the basic duty to come to the interrogation. The realization this right just means that this person could negate the duty according to para. 127, sect. 1 SCPA (the duty to testify about the circumstances that he knows about crime).

However, the legal regulation of the right to deny the testimony, regulated by SCPA, is not clear. If we consider para. 130, sect. 2 second sentence of SCPA in detail, we can come to the conclusion that the law-giver formulated the right to deny the testimony in the relationship with two explicitly named subjects: a) the person with the duty to keep the sacramental seal, and b) the person with the duty to keep the secret of the information, which he was given, being the person with authorized pastoral care, verbally or in writing under the condition of the confidentiality.

The certain problem can be named with the connection with the terminology that the Slovak law-giver uses in the relationship with the person at first place of this list. The Slovak law-giver, according to the Fundamental Contract as soon as para. 130, sect. 2 SCPA, uses the term “the sacramental seal,” but the canonical law, resp. Code of the Canonical Law does not know the term “the sacramental seal,” he only knows the term “the sacramental secret.” This problem is principal according to can. 983, para. 2 CIC/83 because this regulation regulates the specific duty to keep the furtiveness. The difference between the duty to keep the sacramental seal and the duty to keep the furtiveness is in the subjects, who have them. Telling it by the other words, the person with the duty to keep the confessional duty is only the priest, the person with the duty to keep the furtiveness is the different person. Considering the fact that the Slovak criminal procedure law does not distinguished these terms and uses only the term of the sacramental seal, we can come to the conclusion that this term includes the term of the sacramental secret as soon as the term of the furtiveness. However, this problem is not only the terminological one – his principality appears also in the investigative practice. In fact, if we use the restrictive interpretation and the term of the sacramental seal interpret only as the sacramental secret, we must formulate the conclusion that the person, who is different from the priest and who has the information included in the confession, would not have the right to deny the testimony according to para. 13, sect. 2 SCPA. That would mean the unconformity of the Slovak legal order with the canonical law. Therefore, it is necessary to use the interpretation that the authorized person to deny the testimony is not only the priest, but also the person, who is different from the priest and who has the duty to keep the furtiveness, which he has according to can. 983, para 2 CIC/83. That means that if this person would realise his right before the prosecuting authorities, these authorities will be due to respect his right as soon as the right of the person “clothed in the priestess raiment” [Polák 2011, 116].

CONCLUSIONS

On the basis of all the above mentioned facts it can be concluded that the place that belong to the institute of the seal of confession (sacramental seal) in the sphere of the canon law is more than significant. Regarding the sphere of the legal order of the Slovak Republic, it is true that the Slovak legislature did not remain completely idle in relation to its expression at the level of public law, but on the other hand in this respect it cannot be said that it is a state which would show the attribute of idealism and flawlessness. The obligation under the Fundamental Contract has found its reflection in the sphere of criminal law in the form of a right to refuse to testify regarding the information that create the content of the confession, but this expression in Slovak Criminal Procedure Act presents the only one mention which we can find in relation to the seal of confession in the Slovak Criminal Procedure Act. In other words, the approach of the Slovak legislature to the method of expressing the institute of canon law in question can be described as relatively brief. This statement is all the more noteworthy when we realize that the professional secrecy of a similar nature, namely the secrecy covering the communication between the accused person and his defense counsel, enjoys a much greater significance at the level of the Slovak Criminal Procedure Act, despite of the fact that the relationship between the priest and the penitent as well as the relationship between the accused and the defendant show considerable similarity resulting from the high degree of trust existing within them. This statement has the most striking character within the regulation of information and technical means. In this context the legislator failed to respond to the possibility of recording the content of the confession – this statement can lead to doubts about the compatibility of Slovak criminal law with the canonical law.

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TAJEMNICA SPOWIEDZI I JEJ ODZWIERCIEDLENIE W PRAWIE KARNYM

Streszczenie. Tajemnica spowiedzi ma niewątpliwie zasadnicze znaczenie w prawie kanonicznym. Zależy to nie tylko od istoty spowiedzi, która ma naturalnie charakter absolutnego zaufania spowie-

dnika i penitenta, ale także od potrzeby zapewnienia najwyższego poziomu ochrony sakramentu pokuty. Biorąc pod uwagę te powody, tajemnica sakramentalna jest objęta absolutną ochroną przez prawo kanoniczne, co wyraża się zakazem jej naruszenia; nie ma znaczenia, jaka jest treść spowiedzi. Niniejszy artykuł, analizując tajemnicę spowiedzi, koncentruje się nie tylko na obszarze prawa kanonicznego, ale także na odpowiednich słowackich przepisach prawnych.

Słowa kluczowe: tajemnica spowiedzi, tajemnica sakramentalna, obowiązek zachowania tajemnicy, spowiedź

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