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THE RIGHTS AND DUTIES OF CATHOLIC CHURCH FOUNDERS ACCORDING TO THE 1917 CODE OF CANON LAW

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Abstract. The issue of financing churches and religious associations in Poland is still topical and remains one of the main subjects of public debate. This is confirmed by the fact that in 2024 the Council of Ministers of the Republic of Poland started working on the system of financing the Church Fund, including the pension scheme for the clergy. At present, the state's financial support is provided mainly in the form of subsidies from the Church Fund for the maintenance and repair of sacred and ecclesiastical buildings of historical value or for the charitable and welfare activities of ecclesiastical legal entities. In the context of the proposed changes to Polish law, it is worth referring to historical legal regulations, including those of canon law. From the point of view of the Polish State and the Catholic Church, the fundamental acts regulating the system of financing the Church in the Second Republic were the Code of Canon Law of 1917 and the concordat between the Holy See and the Republic of Poland of 1925. In the first codification of canon law in the history of the Church, the ecclesiastical legislator regulated the institution of the church founder (patron or protector of the church), including their rights and duties. The main aim of this article is to analyse the canonical regulations and the state's implementation of these regulations in the light of the concordat. It also argues that the abolition of these legal provisions was justified and that historical regulations should not be taken into account when designing new systemic solutions for the financing of the Church and other religious associations.

Keywords: church foundations; right of patronage; patron; church-state relations; Polish law; canon law.

INTRODUCTION

On 11 January 2024, the President of the Council of Ministers of the Republic of Poland issued an order on the Inter-Ministerial Team for the Church Fund,[1] whose task is to work out changes to the system of financing the Church Fund,[2] including the pension scheme for the clergy.

[1] "Monitor Polski" of 2024, item 17.

[2] The Church Fund was established pursuant to Article 8 of the Act of 20 March 1950 on the Acquisition by the State of Mortmain Property, Guaranteeing Parish Priests

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Considering the subject matter of the present work, it should be emphasised that currently in the Polish state there is no formal concept of church founder (patron or protector of the church), i.e. an institution that was regulated in the 1917 Code of Canon Law.[3] The term refers to Catholic founders of churches, chapels or benefices and those who acquired the right of patronage from them. These persons held privileges for donating land for the construction of a church, as well as equipping and maintaining it. At the same time, they were also obliged to fulfil the duties set out in canon law, which included financial support of churches (Canon 1448 CIC/17) [Szady 2003, 6; Pankiewicz 2024, 237-50]. Bearing in mind the proposed changes to the Church Fund, the institution of the church founder should be revisited, if only for the possible consideration of the financing of the Church by lay believers, who are also citizens of the state.

Accordingly, the present article analyses the privileges held by church founders (patrons) in the past, i.e. the right of presentation, the right of support, and the right of honour, along with the obligations imposed on them in the CIC/17. Although the provisions described are no longer in force, as the 1983 Code of Canon Law[4] did not regulate this institution, its 'relics' are still present in various legal solutions and forms of support of the Catholic Church [Pankiewicz 2013, 41-61]. In the context of the ongoing public debate and the actions taken by the Council of Ministers of the Republic of Poland in this regard, the analysis of the rights and obligations of Catholic church founders as specified in to the CIC/17 takes on particular significance.

1. THE RIGHTS OF CATHOLIC CHURCH FOUNDERS

1.1. The right of presentation

The CIC/17 established certain rights for founders (patrons), who could be either clerical or lay persons. The most important right was the privilege of presentation (the so-called active right of patronage) [Głąb 1919, 11-12],

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the Possession of Farms and Establishing the Church Fund (Journal of Laws No. 9, item 87 as amended), as a form of compensation to churches for land property taken over by the state. See also Resolution No. 148 of the Council of Ministers of 7 November 1991 on the Statute of the Church Fund ("Monitor Polski" of 1991 No. 39, item 279).

[3] *Codex Iuris Canonici. Pii X Pontificis Maximi iussu digestus, Benedicti PP. XV auctoritate promulgatus* (27.05.1917), AAS 9 (1917), pars II, pp. 3-521 [hereinafter: CIC/17 or Pio-Benedictine Code]. For an English translation, see *The 1917 or Pio-Benedictine Code of Canon Law* available at https://cdn.restorethe54.com/media/pdf/1917-code-of-canon-law-english.pdf [accessed: 28.08.2024].

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

i.e. the presentation of a candidate for an ecclesiastical office[5] [Młynarczyk 1918, 130; Pasternak 1970, 94-95]. This was a unique privilege for lay people in particular, as it equipped them with a certain amount of power that was "naturally" ascribed to ecclesiastical authorities. That is why it was so important to strictly define the capacity of such persons to exercise the right of presentation [Grabowski 1948, 485] as well as their entitlement to execute legal acts [Pasternak 1970, 95-96].[6]

According to the CIC/17, the right of presentation was in the first instance given to a church founder. Additionally, this right could also be directly exercised by the founder's wife [Grabowski 1918, 97], provided that she had the right of patronage. Therefore, in a situation in which the right of presentation was vested only in the husband, his wife had only the right of his substitution by virtue of her power of attorney.[7] The right was also held by minors, but it could only be exercised by their legal representatives under civil law, i.e. their parents or guardians. In case the representatives were not Catholics, the right was suspended[8] [Bastrzykowski 1947, 35; Pasternak 1970, 96].

The Pio-Benedictine Code adopted the principles determining the legal capacity of minors as defined in secular law. In comparison, in its earlier regulations, the Church had allowed minors to exercise the right of presentation in person, despite the indication that this should be done by their guardians [Bączkowicz, Baron, and Stawinoga 1957, 388]. The right of presentation by proxy also concerned persons who had limited legal capacity, such as the mentally ill [Głąb 1919, 11].

According to the law, substitute patrons could only be persons who themselves had the capacity to be patrons and exercised the right of presentation at their own discretion.[9]

The CIC/17 also specified the situation in which there were several founders on a given benefice (co-patronage). The adoption of the general principle that the right of patronage was an indivisible right requires particular attention to the manner in which this right was exercised because it is difficult to imagine adopting this principle in relation to other rights,

[5] According to cannon law, the privilege of appointing and instituting parish priests belonged to the ordinary except for parishes reserved to the Holy See and in a situation in which such a power resulted from patronage or election (Canon 455 § 1 CIC/17).

[6] The right of presentation could not be exercised by persons afflicted by a censure or infamy (Canon 1470 § 4 CIC/17).

[7] See *Prawo patronatu* (print document) 1918, Uniwersytet Jagielloński, Towarzystwo Biblioteki Słuchaczów Prawa (co-author), Wydawnictwo Towarzystwa Biblioteki Słuchaczów Prawa Uniwersytetu Jagiellońskiego, Kraków, p. 79, https://dlibra.kul.pl/dlibra/publication/5337/edition/1478/content [hereinafter: *Prawo patronatu* 1918].

[8] Canon 1456 CIC/17: "Uxor per seipsam ius patronatus exercet, minores per parentes aut per tutores; quod si parentes vel tutores acatholici sint, ius patronatus interim suspensum manet."

[9] See *Prawo patronatu* 1918, p. 80.

which were divisible (e.g. privileges of honour or rent). The joint exercise of the right of presentation took place in two ways. First, a contract was permitted whereby the patrons, on behalf of themselves and their successors, undertook to exercise the right in a specific order. For the agreement to have the effects specified therein, the written consent of the ordinary was required [Grabowski 1918, 486]. This made it impossible for the agreement to be changed unilaterally in the future, either by the ordinary or by the patrons themselves since the consent of both the parties was needed.[10] Second, if a situation arose in which there was no relevant agreement on the order in which the right was exercised, the legislators allowed for the possibility of the patrons voting for a suitable candidate, who could be proposed by each patron individually, having the option to propose several candidates (*ius variandi*).[11] The candidate who received the greatest number of votes was presented. If a candidate did not receive at least a relative majority, and several candidates received the greatest and a reasonably equal number of votes, then all of them were presented[12] [Pasternak 1970, 96]. If, on the other hand, the right of presentation was held by a college,[13] the candidate who had received at least half of the votes was to be presented. The CIC/17 also regulated the voting procedure in a situation in which the best candidate had not been selected in the first round. If, in the first ballot, no candidate received the required half of the votes, another ballot was held. In case the situation from the first vote repeated, in which no candidate obtained an absolute number of votes, a third, and final, ballot was held. The candidate who had received the highest number of votes was presented. However, if it turned out that there were several candidates who had received an equal number of votes, all of them were presented[14] [ibid.]. It was also important that if a founder had a right of patronage derived from different titles (*ex diversis titulis*), they had as many votes as the titles they held.[15]

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[10] Canon 1459 § 1 CIC/17: "Si plures singulares personae sint patroni, possunt tum pro se tum pro suis successoribus de alternis praesentationibus inter se convenire. § 2. Ut autem haec conventio sit valida, accedat oportet Ordinarii consensus in scriptis datus, qui tamen semel praestitus nequit valide ab eodem Ordinario vel eius successoribus, patronis invitis, revocari."

[11] See *Prawo patronatu* 1918, p. 60.

[12] Canon 1460 § 2 CIC/17: "Si ius patronatus penes singulares personas sit, quae inter se de alternis praesentationibus non convenerint, ille praesentatus habeatur, qui maiorem saltem relative suffragiorum numerum retulerit; et si plures eundem, maiorem quam ceteri, suffragiorum numerum habuerint, omnes censeantur praesentati."

[13] The college included, among others, the chapter and the university senate.

[14] Canon 1460 § 1 CIC/17: "Si ius patronatus collegialiter exerceatur, ille praesentatus habeatur, qui maiorem suffragiorum numerum retulerit, ad normam can. 101 § 1; quod si, duobus scrutiniis sine effectu institutis in tertio scrutinio plures maiorem prae ceteris, sed aequalem inter se suffragiorum numerum habuerint, ii omnes praesentati censeantur."

[15] Canon 1460 § 3 CIC/17: "Qui ex diversis titulis ius patronatus obtinet, tot habet in praesentatione suffragia, quot titulos."

It should be noted that all patrons, lay or clerical, had the right to present one or more candidates.[16] They could exercise this right by presenting all the candidates together, as well as separately, one by one. This had to be done at the appointed time, without the possibility of excluding those previously presented, until their presentation was accepted by the ordinary.

Apart from specifying patrons' rights of presentation, the law listed the conditions that a candidate for an ecclesiastical office should fulfil (the so-called passive right of presentation)[17] [Głąb 1919, 12]. It was absolutely forbidden for a patron to present or vote for themselves [Grabowski 1948, 486] so as to ensure the number of votes required, and neither was it allowed to choose them for a presentation.[18]

The legislators also laid down rules for the selection of a candidate by means of an election should this be necessary (e.g. in the case of co-patronage). Candidates for filling a benefice could be presented, either by lay or clerical patrons, only if they had passed a special examination.[19] Examinations for those applying for secular patronage of benefices were to be held only if required by a particular (local) law. In such cases, any candidates who failed them could be excluded by the ordinary. The law specified that only clergymen suitable (*idoneum*) for the office of beneficiary could be presented (Canon 149 CIC/17) [Młynarczyk 1918, 47]. The requirements for the position were not only set out in common law but also in particular law and the provisions contained in the foundation act (Canon 153 § 1 CIC/17)[20] [Młynarczyk 1918, 110-12]. Clergymen had to fulfil these requirements on the day they were presented or, alternatively, on the day they were formally notified of being accepted by their superiors[21] [Pasternak 1970, 97].

In addition to patrons and their candidates for vacant offices, an important role was also played by local ordinaries. Bishops were equipped by the law with relevant prerogatives thanks to which they supervised the entire presentation process. Candidates for benefices were presented to ordinaries, who had not only the right but also the duty to assess whether the former

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16 Canon 1460 § 4 CIC/17: "Quilibet patronus, antequam praesentatio acceptetur, non unum tantum, sed plures praesentare potest, tum una simul tum etiam successive, intra tempus tamen praescriptum, modo illos ne excludat quos prius praesentavit."

17 See *Prawo patronatu* 1918, p. 42-46.

18 Canon 1461 CIC/17: "Nemo potest praesentare seipsum neque aliis patronis accedere ut suffragiorum numerum ad praesentationem necessarium pro se compleat."

19 Canon 1462 CIC/17: "Si ecclesiae vel beneficio provideri debeat per concursum, patronus, etiam laicus, non potest praesentare, nisi clericum legitime ex concursu probatum."

20 The foundation act could also specify the appointment of prelates (Canon 396 § 1) and canons (Canon 403) to the cathedral and collegiate chapter.

21 Canon 1463 CIC/17: "Persona praesentata debet esse idonea, idest, ipso praesentationis vel saltem acceptationis die, qualitatibus omnibus praedita, quae iure seu communi seu peculiari vel lege fundationis requiruntur."

were fit to perform the duties entrusted to them. In many cases, it was also bishops that were expected to see to the examinations and decided whether or not to exclude particular candidates from the presentation procedure. Bishops' autonomy in these matters was great. If they decided to reject a candidate, they were not obliged to give any reasons for their decision[22] even though the Pio-Benedictine Code allowed for the possibility of church founders appealing against such a decision to a higher ecclesiastical authority. If a bishop rejected a candidate, their patron was entitled to nominate another clergyman for the benefice, within the time limit for the presentation. However, the bishop, after examining the next candidate, could reject him, too. The benefice then became "free," i.e. the ordinary had the exclusive right to fill it. Such a solution made the position of church patrons much weaker. It should be noted that if a clerical patron presented a candidate who was not a *persona idonea* (suitable person), he lost his right of patronage. This was because there was a presumption that since the founder was a clerical person, he had done so deliberately.[23] For example, in the case of co-patronage, where ten co-patrons voted for two candidates, a situation could arise in which six patrons, including three clergymen, voted for a candidate who was unsuitable (*non idoneam*) for an ecclesiastical office. In that case, even though only four patrons had voted in favour of the second candidate, it was this candidate that was considered by the bishop. In such a situation, according to the law, the three clergymen who had voted for the unworthy candidate lost the right of patronage.[24]

In both first and second instance proceedings, it was possible for church founders and rejected candidates to exercise the so-called "right of recourse" to the Holy See. The procedure was strictly administrative, as the persons concerned had ten days to settle the matter, starting from the notification of the rejection of the candidate. After the appeal had been lodged, the case was subject to suspension, i.e. the benefice could not be filled before the conclusion of the dispute. When the need arose, the ordinary was obliged to temporarily hand over the benefice to an econome.[25] In the same

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[22] Canon 1464 CIC/17: "§ 1. Praesentatio fieri debet loci Ordinario, cuius est iudicare utrum idonea sit persona praesentata. § 2. Ordinarius ad suum formandum iudicium, debet ad normam can. 149 de persona praesentata diligenter inquirere et opportunas notitias, etiam secretas, si opus fuerit, assumere. § 3. Ordinarius non cogitur patrono patefacere rationes cur personam praesentatam admittere non posit."

[23] See *Prawo patronatu* 1918, p. 53.

[24] Ibid., p. 58-59.

[25] Canon 1465 § 1 CIC/17: "Si praesentatus non idoneus fuerit repertus, patronus, dummodo tempus utile ad praesentandum sua negligentia lapsum ne sit, potest alium intra tempus de quo in can. 1457 praesentare; sed si ne hic quidem idoneus repertus fuerit, ecclesia vel beneficium pro eo casu fit liberae collationis, nisi patronus vel praesentatus intra decem dies a significatione recusationis recursum a iudicio Ordinarii ad Sedem Apostolicam

provision, a presentation disgraced with simony, along with all of its consequences, was declared null and void by the law.[26]

Canon 1457 of the CIC/17 established a four-month limit for the exercise of the privilege of the presentation. The limit was counted from the date on which the patron was notified of the vacancy in the office and of the candidates who had taken an exam, if it was required. Such a measure served primarily to counteract the protracted procedure for filling vacant benefices, for it may have been in the patron's interest to prolong the vacancy, e.g. due to the presentation of a person close to them (their son) or the fact that they did not incur the costs of the candidate's upkeep during that period.[27] The time limit did not apply when there were obstacles during the proceedings (*tempus utile*). It should be noted that, depending on a specific act of foundation or custom, the time limit could be shorter[28] [Pasternak 1970, 97].

The failure to meet the deadline for making a presentation resulted in the benefice being conferred freely.[29] However, in the event of any dispute over the right of presentation between the patron and the ordinary or between the patrons, the proceedings were suspended until the dispute was resolved. Since the dispute could last for a long time, when necessary, the ordinary had the right to transfer the benefice to an econome designated by him.[30]

Once the presentation was made, i.e. it was accepted by the ordinary, the next stage followed, during which the presented clergyman acquired an ecclesiastical institution in the majesty of the law [ibid., 172]. The act of conferring the office was performed by the ordinary of the place in question, but, on the basis of his special delegation, this could also be done by the Vicar General.

Pursuant to Canon 1466 CIC/17, there could be a situation in which a church founder presented several candidates (*ius variandi*) at the time of making the presentation. Such a presentation could have a cumulative

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interposuerit; quo pendente, suspendatur collatio usque ad finem controversiae et interim, si opus sit, oeconomum ecclesiae vel beneficio vacanti Ordinarius praeficiat."

[26] Canon 1465 § 2 CIC/17: "Praesentatio, labe simoniaca infecta, est ipso iure irrita, et etiam institutionem forte subsecutam irritam reddit."

[27] See *Prawo patronatu* 1918, p. 46-47.

[28] Canon 1457 CIC/17: "Praesentatio, nullo iusto obstante impedimento, sive agatur de patronatu laicali sive de ecclesiastico et mixto fieri debet, nisi brevius tempus lege fundationis vel ligitima consuetudine praescriptum fuerit, saltem intra quatuor menses a die quo is, cui ius est instituendi, patronum certiorem fecerit de vacatione beneficii et de sacerdotibus qui in concursu fuerunt probati, si agatur de beneficio quod per concursum conferri debet."

[29] Canon 1458 § 1 CIC/17: "Si intra praescriptum tempus praesentatio facta non fuerit, ecclesia vel beneficium pro eo casu fit liberae collationis."

[30] Canon 1458 § 2 CIC/17: "Si vero lis, quae intra utile tempus dirimi nequeat, exoriatur sive circa ius praesentandi inter Ordinarium et patronum vel inter ipsos patronos, sive circa ius praelationis inter ipsos praesentatos, suspendatur collatio usque ad finem controversiae, et interim, si opus sit, oeconomum ecclesiae vel beneficio vacanti Ordinarius praeficiat."

or a private form. In the first variant, several candidates were presented at the same time, while in the second variant, each candidate was presented separately. This right was granted only to lay patrons.[31] The most suitable candidate was chosen by the ordinary,[32] who was also responsible for any wrong choices. As for cumulative presentations, bishops could confer an ecclesiastical office on the selected candidates before the deadline for the presentation. As for private presentations, this happened only after the deadline.[33]

Canon law set a time limit for the appointment of the candidate to the office, provided that no obstacles preventing it had arisen [Pasternak 1970, 97-98]. The presented person did not automatically receive the rights of a beneficiary but only the *ius ad rem*, i.e. the right to demand to receive a benefice [Głąb 1919, 14]. According to the law, the appointment was to take place within two months of the presentation.[34] Upon his induction into office, the appointee acquired *ius in rem*.[35] However, in case the bishop, without giving any reasons, had appointed another person who had not been represented by the patron, despite such a person meeting all the requirements as specified by canon law, the appointment was invalid when the patron requested it [ibid., 14-15].

The CIC/17 also specified situations in which the presentation procedure had to be repeated, i.e. when the presented person had died or officially resigned from office, in which case the church founder presented another candidate.[36] According to the law, this had to be done within four months.

When analysing the privilege of presentation, it should be noted that church founders did not always have to present their candidates for ecclesiastical offices themselves. In such cases, however, the person who was entitled to choose the clergyman for a given office had to obtain the patron's acceptance of the candidate, who had to meet all the necessary requirements (e.g. he had to be a person of noble origin). Once the founder had given their approval, they examined whether the choice had been made in accordance with the law. In case of any doubts, they could demand a lawsuit on the matter.[37]

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31 See *Prawo patronatu* 1918, p. 50-51.

32 Canon 1466 CIC/17: "§ 1. Legitime praesentatus, et idoneus repertus, acceptata praesentatione, ius habet ad canonicam institutionem. § 2. Ius concedendi canonicam institutionem proprium est Ordinarii loci, non autem Vicarii Generalis sine mandato speciali. § 3. Si plures et omnes idonei praesentati sint Ordinarius eligit quem magis idoneum in Domino iudicaverit."

33 See *Prawo patronatu* 1918, p. 51.

34 Canon 1467 CIC/17: "Institutio canonica pro quolibet beneficio etiam non curato dari debet, nullo iusto obstante impedimento, intra duos menses ex quo praesentatio facta sit."

35 See *Prawo patronatu* 1918, p. 54.

36 Canon 1468 CIC/17: "Si praesentatus ante canonicam institutionem renuntiaverit vel mortuus fuerit, patronus rursus ius praesentandi habet."

37 See *Prawo patronatu* 1918, p. 68-69.

It should also be noted that in a situation in which the Holy See granted a person the privilege of presentation to vacant benefices, or it was specified in concordats or otherwise, that privilege did not automatically entail any other privileges. Thus, it cannot be assumed that receiving the right of presentation also meant receiving the right of patronage. For this reason, such a person could not claim the rights granted to patrons in connection with their other titles [Grabowski 1948, 486-87].

After 1917, the exercise of the right of patronage in reborn Poland was a subject of the agreement concluded between the Holy See and Poland in 1925.[38] This agreement set out the procedure for the exercise of the right of presentation that substantially limited patrons' powers in presenting candidates to benefices, for it only allowed patrons to choose candidates presented by ordinaries.[39] Church founders had to make their choice within the prescribed period, and if they failed to do so, they lost this right. Thus, there was a "reversal" of the power to present candidates from patrons to ordinaries. Furthermore, in the case of filling a parish priest's benefice, the ordinary was obliged to submit the nomination for approval by the competent minister, in accordance with the provisions of the concordat.[40]

The CIC/17 also regulated situations in which there were popular elections and presentations to parochial benefices. The procedures for the appointment of suitable candidates to office could only be applied if the people had chosen their priest from three candidates presented by the local bishop.[41]

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[38] See Concordat concluded between the Holy See and the Republic of Poland, signed in Rome on February 10, 1925 (Journal of Laws No. 72, items 501 and 502). See also Laniewski and Kopystiański 1933, 11-29; Kacprzyk and Sitarz 2006, 531-42.

[39] Article 21 of the concordat: "The right of patronage of both the state and private individuals shall remain in force until a new arrangement. The presentation of a worthy clergyman to the vacant post shall be made by the patron within thirty days, according to a list of three names submitted by the Ordinary. If the presentation is not made within thirty days, the filling of the said benefice shall become free. In cases in which a parish priest's benefice is involved, the Ordinary, before making the appointment, shall consult the competent minister in accordance with art. XIX."

[40] Article 19 of the concordat: "The Polish Republic shall provide the competent authorities with the right to confer, in accordance with the provisions of canon law, ecclesiastical functions, offices, and benefices. In the granting of benefices to parish priests, the following rules shall be applied: In the lands of the Republic of Poland, parish priests' benefices may not be received, except with the permission of the Polish government, to the following: 1) unnaturalised foreigners, as well as persons who have not studied theology in theological institutes in Poland or in papal institutes; 2) persons whose activities are contrary to the security of the State. Before making an appointment to these benefices, the clerical authority shall consult the competent Minister of the Republic to ascertain that none of the reasons provided for in points 1) and 2) above preclude it. In the event that the said Minister does not, within thirty days, present such objections against the person whose appointment is sought, the ecclesiastical authority shall make the appointment."

[41] Canon 1452 CIC/17: "Electiones ac praesentationes populares ad beneficia etiam paroecialia, sicubi vigent, tolerari tantum possunt, si populus clericum seligat inter tres ab Ordinario loci designatos."

1.2. The right to support

In addition to the right of presentation, other patronage privileges were established, which could be written down in the foundation document.[42] The founder could, in accordance with the foundation act and with the consent of the ordinary, specify conditions that could be contrary to common law as long as they were fair and not detrimental to the benefice itself [Pasternak 1970, 146]. These were *iura utilia*, i.e. certain material rights (e.g. the right to an allowance or rent). Associated with these rights were also *iura onerosa* (e.g. *cura beneficia* – the right to inspect church property). Those rights were identified with the old concept of advocacy [Głąb 1919, 12].[43]

One of the basic privileges was the founder's right to draw a small annual salary. Interpreting this provision literally, one must conclude that its absence from the foundation act prevented the patron from later claiming such a benefit. A necessary prerequisite for exercising this entitlement was that the salary was clearly indicated in the document [Rittner 1912, 249], and that it was paid over a specified time or for life [Grabowski 1948, 487].

Another entitlement, which could accompany the annual salary or be granted separately, was the right to receive food and money from the benefice or church. This right was defined in general terms. When the patron was reduced to poverty through no personal fault, they could claim a payment even if they had relinquished the right of patronage to the church or if they had reserved the right to a salary in the foundation act. Under canon law, two requirements had to be met for a patron to exercise his right of maintenance. First, the church's income had to exceed the cost of the money requested, which included the beneficiary's living expenses. Second, for a patron to receive an allowance, their salary had to be insufficient to lift them out of poverty.[44]

1.3. The right to honours

In addition to entitlements of a strictly material nature, a church founder could also be granted immaterial ones, i.e. honours (*iura honorifica*, *honores*). Depending on local customs, these rights could take different forms, and, being public in character, they also had social significance [Grabowski

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[42] Canon 1417 § 1 CIC/17: "In limine fundationis fundator potest, de consensu Ordinarii, conditiones etiam iuri communi contrarias apponere, dummodo sint honestae et naturae beneficii ne repugnant."

[43] See also *Prawo patronatu* 1918, p. 71-73.

[44] Canon 1455 CIC/17: "Privilegia patronorum sunt: 2 Salva exsecutione onerum et honesta beneficiarii sustentatione, alimenta ex aequitate obtinendi ex ecclesiae vel beneficii reditibus, si qui supersint, quoties patronus inopiam nulla sua culpa redactus fuerit, etiamsi ipse iuri patronatus renuntiaverit in commodum Ecclesiae, vel pensio in limine fundationis ipsi patrono fuerit reservata, quae ad sublevandam eius inopiam non sufficiat." Cf. Rittner 1912, 249.

1948, 487], for they expressed the status of the patron in the founded church.[45]

Only three honourary rights of the founder were regulated in the CIC/17. The first was the right to include the clan or family coat of arms (*ius lystrae*) in the church of patronage. The second was the privilege of precedence over the other members of the congregation, e.g. during processions and services and while performing various functions. The third was the right to occupy a dignified place in the church, i.e. to be seated in special pews intended for patrons, which, however, could not be located in the chancel or under a canopy[46] [Bastrzykowski 1947, 36].

The list of honourary rights was not closed and, given local customs, these rights could take different forms.[47] This meant that the privileges specified in the Pio-Benedictine Code were not obligatory and were not granted to all patrons regardless of their place of residence. It should be emphasised that the CIC/17 did not abrogate the former rights of honour, whether they were part of common law or local tradition.[48] Therefore, they were still enjoyed along with those specified in the code, as illustrated especially by the privileges that concerned the liturgy [Nowicki 1938, 410]. The old honourary rights, which were commonly recognised although not taken into account in their entirety by general ecclesiastical law,[49] were defined in particular law or in foundation acts, or could have been acquired by way of prescription. Such rights included, among others, *honor sedis* (the right to occupy a dignified seat in the church or to use a prie-dieu), *ius precum* (the right for a person's surname to be mentioned during public prayers), *honor thuris* or *suffitus* during Mass (the right to incense when the founder was a man), *ius aspersionis* or *honor aquae benedictae* (the right to be sprinkled with holy water before others), *osculum pacis in missa sollemni* (the right to be handed

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45 See *Prawo patronatu* 1918, p. 69-71.

46 Canon 1455 CIC/17: "Privilegia patronorum sunt: 3 Habendi, si ita ferant legitimae locorum consuetudines, in sui patronatus ecclesia stemma gentis vel familiae, praecedentiam ante ceteros laicos in processionibus vel similibus functionibus, digniorem sedem in ecclesia, sed extra presbyterium et sine baldachino."

47 "In some places, they also have the right to a grave in the church (*ius sepulturae*), to be prayed for in public (*ius precum seu intercessionum*), the right to a candle, holy water, the kiss of peace (*osculum pacis*) by being given the cross to kiss, the right to incense, the right to a funeral service (*ius luctus ecclesiastici*), and others, depending on local custom" [Bączkowicz, Baron, and Stawinoga 1957, 392].

48 Patrons' honourary rights were discussed by E. Nowicki, who described the general principles in this respect and analysed honourary rights in general Prussian domestic law, pre-code church law, the CIC/17 and co-patronage, as well as the honourary rights of non-Catholic patrons. See Nowicki 1938, 407-13.

49 The basic principle adopted by general ecclesiastical law with regard to honourary rights was to give the patron priority over other lay persons (so-called *honour processionis*), except for persons representing the highest state authorities.

the pax except for the paten if the patron was a man), honor panis benedicti (the right of priority to receive Holy Communion), *ius cerei et palmarum* (the right of priority to be handed a candle during Candlemas and a palm on Palm Sunday), *ius or honour inscriptionis* (the right for the founder's clan or family coat of arms or a memorial plaque with the founder's name to be put on the church building), *ius or honour sepulturae* (the right to a dignified burial place for the founder and his family), *ius luctus ecclesiastici* (reciting prayers for the deceased founder and his family, celebrating a funeral mass, striking a bell, etc.) [Nowicki 1938, 408-10; Taczak 1915, 40-41].

2. THE DUTIES OF CATHOLIC CHURCH FOUNDERS

From the very beginning, the institution of church patronage was associated with protection of a church or benefice, known as advocacy [Taczak 1915, 43].[50] Patrons defended and represented the church and benefice of which they were the founders, for example in court and out-of-court disputes. As the owners of the property on which the church was built, they bore all the state burdens associated with it [Rittner 1912, 249].

In spite of the changes that had taken place over centuries with regard to the formation of the law of patronage and protection of churches and benefices, the CIC/17 specified not only founders' entitlements but also certain obligations incumbent upon them.[51] First, patrons were obliged to notify ordinaries that their church properties and benefices were being wasted as soon as they became aware of it. According to canon law, they were only expected to communicate such information, without being delegated to deal with the problem. Thus, they had no right to get involved in church governance itself. It was an obligation of no manifest character, but, more often than not, it could lead to patrons assuming responsibility for the whole situation.

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[50] See also *Prawo patronatu* 1918, p. 75-76.

[51] Caon 1469 CIC/17: "§ 1. Onera seu officia patronorum sunt: 1 Ordinarium loci monere, si bona ecclesiae seu beneficii dilapidari viderint, quin tamen se immisceant administrationi eorundem bonorum; 2 Aedificare denuo ecclesiam collapsam aut reparationes, iudicio Ordinarii, necessarias in eadem facere, si ex titulo aedificationis ius patronatus habeant, et nisi onus aedificandae denuo vel reparandae ecclesiae aliis incumbat ad normam can. 1186; 3 Supplere reditus, si ex titulo dotationis ius patronatus proveniat, cum ecclesiae vel beneficii reditus ita defecerint, ut nequeat amplius vel cultus decenter in ecclesia exerceri, vel beneficium conferri. § 2. Si ecclesia collapsa fuerit vel necessariis indigeat reparationibus, aut si reditus defecerint ad normam § 1, nn. 2, 3, ius patronatus interim quiescit. § 3. Si patronus, intra tempus ab Ordinario sub poena cessationis patronatus praefiniendum, ecclesiam denuo aedificaverit vel restauraverit aut reditus auxerit, ius patronatus revigescit; secus ipso iure et sine ulla declaratione cessat."

Other duties of the founder were strictly material. The CIC/17 established the patron's obligation to rebuild and repair a neglected church when they had the right of patronage by virtue of its construction, with the proviso, however, that they could not perform this duty without the express instruction of the local ordinary or when there was another person who was obliged to do so.[52]

The last duty imposed on patrons was that of ensuring enough money for the maintenance of the church. As stipulated by the law, church founders were obliged to replenish the church's revenue when it had diminished to such an extent that it resulted in undignified or discontinued worship or the fact that the benefice was impossible to fill.

When analysing the duties imposed on church founders by the Pio-Benedictine code, it should be noted that the fulfilment of those duties did not entail their interference in the internal affairs of the Church. Being obliged by canon law to perform specific tasks depending on their patronage title, patrons were nonetheless required to gain the local ordinary's approval in doing so.

3. CHURCH FOUNDERS' FAILURE TO PERFORM THEIR DUITES OR TO PERFORM THEM PROPERLY

3.1. Suspension of the right of patronage

Due to founders' failure to perform their duties or to perform them properly, their right of patronage could be suspended.[53] Under the CIC/17, the suspension of the right of patronage was the first punitive measure, which could result in a patron being deprived of the right as such.[54]

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[52] Canon 1186 CIC/17: "Salvis peculiaribus legitimisque cornsuetudinibus et conventionibus, et firma obligatione quae ad aliquem spectet etiam ex constituto legis civilis: 1. Onus reficiendi ecclesiam cathedralem incumbit ordine qui sequitur: Bonis fabricae, salva ea parte quae necessaria est ad cultum divinum celebrandum et ad ordinariam ecclesiae administrationem; Episcopo et canonicis pro rata proventuum; detractis necessariis ad honestam sustentationem; Dioecesanis, quos tamen Ordinarius loci suasione magis quam coactione inducatad sumptus necessarios, pro eorum viribus, praestandos; 2. Onus reficiendi ecclesiam paroecialem incumbit ordine qui sequitur: Bonis fabricae ecclesiae, ut supra; Patrono; Iis qui fructus aliquos ex ecclesia provenientes percipiunt secundum taxam pro rata redituum ab Ordinario statuendam; Paroecianis, quos tamen Ordinarius loci, ut supra, magis hortetur quam cogat; 3. Haec cum debita proportione serventur etiam quod attinet ad alias ecclesias." See also Grabowski 1948, 487; Bastrzykowski 1947, 36.

[53] Out of these two, it was patrons' failure to perform their duties altogether that was the basic premise behind the suspension.

[54] *Prawo patronatu* 1918, p. 108-109.

Under the threat of losing their patronage, patrons had to fulfil their overdue obligations within a time limit set by ordinaries.[55] When they had done so, the patronage was reinstated. Otherwise, it was terminated.

Another premise behind the suspension was censure[56] and infamy (loss of honour) [Łoziński 1897, 1-203; Pasternak 1970, 195]. When a patron was afflicted by these sanctions, the patronage was suspended until the person was freed from them.[57] Patronage was also suspended when the patron was a minor and his legal representatives (parents or guardians) were not Catholic.[58]

3.2. Loss of the right of patronage

The Pio-Benedictine Code specified the reasons for the loss of the right of patronage [Głąb 1919, 15-16; Taczak 1915, 39-40; Pasternak 1970, 195-96]. The first reason concerned founders who had failed to perform their obligations as patrons. In addition, the Holy See could abolish patronage after a given church or benefice had been dissolved.[59]

Under canon law, the right of patronage was also lost in the event of a private person having acquired this right by way of prescription over the period which was the same as in the civil legislation of the country concerned and which corresponded to the period of occupying the place in question.[60] However, in the case of prescription against ecclesiastical (moral) persons, the period was 30 years.[61]

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[55] Canon 1469 § 3 CIC/17: "Si patronus, intra tempus ab Ordinario sub poena cessationis patronatus praefiniendum, ecclesiam denuo aedificaverit vel restauraverit aut reditus auxerit, ius patronatus revigescit; secus ipso iure et sine ulla declaratione cessat."

[56] According to J.N. Opieliński, "Censure is 1. a punishment (*poena*), because it is inflicted for a transgression, i.e. an actual offence against the criminal law …. (2) Censure is a spiritual punishment (*poena spiritualis*) .... (3) Censure is a corrective punishment (*poena medicinalis*) .... For a censure to be valid, therefore, it is necessary that the offender should be obstinate (*contumax*), that is, that, despite warnings and admonitions, they should not adhere to the Church's regulations and persist in sin" [Opieliński 1894, 3-4].

[57] Canon 1470 § 4 CIC/17: "Censura aut infamia iuris innodati post sententiam condemnatoria vel declaratoriam, usque dum censura vel infamia perdurant, nequeunt ius patronatus exercere eiusque privilegiis uti."

[58] Canon 1456 CIC/17: "Uxor per seipsam ius patronatus exercet, minores per parentes aut per tutores; quod si parentes vel tutores acatholici sint, ius patronatus interim suspensum manet." See also Grabowski 1948, 485.

[59] Canon 1470 § 1 CIC/17: "Praeter casum de quo in can. 1469 § 3, ius patronatus exstinguitur: 2 Si Sancta Sedes ius patronatus revocaverit aut ipsam ecclesiam vel beneficium perpetuo suppresserit."

[60] Canon 1508 CIC/17: "Praescriptionem, tanquam acquirendi et se liberandi modum, prout est in legislatione civili respectivae nationis, Ecclesia pro bonis ecclesiasticis recipit, salvo praescripto canonum qui sequuntur."

[61] Canon 1511 § 2 CIC/17: "Quae ad aliam personam moralem ecclesiasticam, spatio triginta annorum."

Another premise behind the loss of patronage was related to the things constituting the objects of the patronage and the families who had been granted the patronage in a foundation act. In case such things ceased to exist and a family, clan, or line became extinct,[62] the right ceased to apply.[63]

Apart from losing their patronage, church founders were entitled to relinquish their right explicitly or implicitly, by behaving in a manner clearly indicating that they wished to do so.[64] However, the renunciation of the right of patronage could not affect the rights of the other co-patrons [Grabowski 1948, 487]. Similarly, the founder could give up their right to fill an ecclesiastical position for the first time, i.e. the right of presentation. In such a case, the founder gave their implicit consent for the beneficiary to be appointed by the bishop [Rittner 1912, 238].

The CIC/17 also allowed for the possibility of the patron losing the right of patronage in whole or in part as a result of their voluntary renunciation of this right, i.e. by making an appropriate declaration, provided that the submission of such a declaration did not cause any harm to the other co-patrons.[65]

Additionally, the right of patronage could be lost in a situation in which the founder agreed for the benefice under their patronage to be merged with another benefice of free endowment or to be converted into an elective or monastic benefice.

The loss of the right of patronage could also result from the patron's failure to perform the duties imposed on them. This concerned situations in which the person did not undertake the repair or reconstruction of the church or its equipment despite being clearly obliged to do so by the ordinary.[66]

Furthermore, the founder was threatened with the loss of their right of patronage after they had personally or with the help of third parties jeopardised the life or health of a clergyman, i.e. killed, maimed, or injured a rector or priest from the clergy of their church of patronage.[67] In such

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[62] See *Prawo patronatu* 1918, p. 104-108.

[63] Canon 1470 § 1 CIC/17: "Praeter casum de quo in can. 1469 § 3, ius patronatus exstinguitur: 4 Si res, cui ius patronatus inhaeret, pereat, aut exstinguatur familia, gens, linea cui secundum tabulas fundationis reservatur; quo in altero casu nec ius patronatus hereditarium evadit, nec Ordinarius valide permittere poterit donationem iuris patronatus alii fieri."

[64] *Prawo patronatu* 1918, p. 35-36.

[65] Canon 1470 § 1 CIC/17: "Praeter casum de quo in can. 1469 § 3, ius patronatus exstinguitur: 1 Si patronus iuri suo renuntiaverit; eius tamen renuntiatio ex integro fieri potest aut ex parte; nunquam vero potest aliis compatronis, si qui sint, damnum afferre."

[66] Canon 1469 § 3 CIC/17: "Si patronus, intra tempus ab Ordinario sub poena cessationis patronatus praefiniendum, ecclesiam denuo aedificaverit vel restauraverit aut reditus auxerit, ius patronatus revigescit; secus ipso iure et sine ulla declaratione cessat."

[67] Canon 1470 § 1 CIC/17: "Praeter casum de quo in can. 1469 § 3, ius patronatus exstinguitur: 6 Si patronus ius partronatus simoniace in alium transferre attentaverit; si lapsus fuerit

cases, the loss of patronage resulted from the subsequent legal procedure and sentence,[68] whose consequences also applied to the patron's heirs.[69] The code condemned all forms of lawless behaviour and stipulated that any founder would lose their patronage if they misappropriated or illegally occupied church property.

The loss of patronage also occurred if the patron had disposed of the right of patronage through simony (Canon 1470 § 1 CIC/17).

Since the right of patronage was closely linked to adherence to the Catholic faith (Canon 1470 § 1, 6˚CIC/17),[70] this right was lost by any church founder who had committed an act of apostasy, schism,[71] or heresy.[72] It should be emphasised that in the case of simony, apostasy, schism, heresy,

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in apostasiam, haeresim aut schisma; si bona ac iura ecclesiae vel beneficii iniuste usurpaverit aut detineat; si rectorem vel alium clericum ecclesiae servitio addictum aut beneficiarium per se vel per alios occiderit vel mutilaverit."

68 Canon 1470 § 3 CIC/17: "Ut ex delictis enumeratis in § 1, n. 6˚, patroni censeantur ius patronatus amississe, requiritur et sufficit sententia declaratoria."

69 Canon 1470 § 2 CIC/17: "Propter crimina de quibus in § 1, 6˚, ius patronatus amittit solus patronus reus et, ob delictum postremo memoratum, eius quoque heredes."

70 See also *Prawo patronatu* 1918, p. 108-10; Grabowski 1948, 487. It should be noted that even before the introduction of the Pio-Benedictine Code, in a situation in which a lay or ecclesiastical patron presented an excommunicated person for office, they were entitled to present a candidate again within the prescribed period. With regard to ecclesiastical patronage, the patron lost the privilege of presenting candidates to a benefice when they had presented an excommunicated person deliberately. The benefice then became *liberae collationis*. See Opieliński 1894, 236.

71 "Schism (Gr. *schizein* – to cut or to cleave) a division in the organisational structure of the Church consisting in the severance of jurisdictional ties with the Church and the denunciation of obedience to the Pope. In the moral aspect, it is a grave sin, violating the unity of the Church resulting from divine institution; consequently, it causes excommunication ipso facto' [Gigilewicz 2012].

72 "Heresy (Gr. *hairesis* – choice of parts), the rejection by an individual Christian or a religious group of one of the fundamental truths of the faith (or an aspect of it) that the Catholic Church, through the Teaching Office at a council or through the pope (*ex cathedra*) has obligatorily declared to be believed as a truth revealed by God (a dogma or symbol of the faith) or an erroneous interpretation of such a truth. Heresy can be a conscious and persistent doubting of a truth of the faith (Canon 751 CIC/83) or an unconscious deviation from it. If it is conscious and voluntary, it is something more than schism … and something less than apostasy (rejection of membership in the Church), constituting the gravest offence against the faith of the Church, its unity and apostolicity. Heresy is a concept opposed to orthodoxy .... In particular, the understanding of heresy was often reduced to questioning the decrees of the popes and the actual rejection of their jurisdictional primacy in the Church. According to the teaching of the popes, a heretic is a person who violates God's established order on earth, thus committing a political offence, for which they must be excommunicated. This understanding of heresy was partly curtailed by the Fourth Council of the Lateran (1215), which introduced the institution of the Inquisition and stated that declaring someone a heretic had to be preceded by an anathema, which gave the heretic a one-year period to admit that they were wrong" [Napiórkowski 2002, 456-62].

or unlawful appropriation of church property, the patron lost the right of patronage after a ruling that stated that fact. In such cases, it was only patrons themselves that lost the right as the effects of the ruling did not extend to their heirs (Canon 1470 CIC/17).

CONCLUSION

The major conclusion to be drawn from the above brief analysis of the provisions of the 1917 Code of Canon Law concerning the rights and duties of church founders (patrons or guardians of churches) and the Polish Concordat of 1925 is that the Church was justified in its prohibition of patronage in the future and its subsequent removal from the legal order. These changes were dictated by the extent to which the right of patronage was exercised and Poland's new political and legal system. At present, it would be difficult to imagine a situation in which, in view of Article 25(1) of the Constitution of the Republic of Poland of 2 April 1997,[73] the state or a lay person had the right to put forward a candidate for an ecclesiastical office. However, all forms of care and support for the activities of the Church, including its conservation and renovation of sacred and ecclesiastical buildings of historic value or engagement in charity and welfare projects should be preserved and strengthened. The legal solutions should include not only financing the Church from the state budget but also from the income of individual believers, for example in the form of tax relief.

To sum up, it should be emphasised that all forms of charitable and welfare activities of the Catholic Church can be taken advantage of by all citizens, including those who are not Catholics. As emphatically stated in Article 25(3) of the Polish Constitution, the State and the Church are obliged to cooperate for the individual and the common good.

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[73] Constitution of the Republic of Poland of 2 April 1997, Journal of Laws No. 78, item 483 as amended.

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