

THE SIGNIFICANCE OF CANON 1311 IN THE REVISED BOOK VI OF THE 1983 CODE OF CANON LAW

Dr. habil. Artur G. Miziński

The John Paul II Catholic University of Lublin, Poland
e-mail: artur.mizinski@kul.pl; <https://orcid.org/0009-0002-3381-8610>

Dr. habil. Marek Saj, University Professor

Cardinal Stefan Wyszyński University in Warsaw, Poland
e-mail: marek.saj@uksw.edu.pl; <https://orcid.org/0000-0002-0365-1277>

Abstract. In 2021, Pope Francis promulgated a revised version of Book VI of the 1983 Code of Canon Law, introducing a variety of modifications to the existing canon law and new categories of canonical offences. Following these revisions, the entire Code was re-translated into the Polish language. The article focuses on Cano. 1311, which has been reformulated to include two paragraphs, replacing the single-paragraph structure of the previous version. The authors highlight the significance of this canonical norm for understanding the Catholic Church's penal law.

Keywords: canon law; offence; penal sanctions; application of penalties; purpose of punishment in the Church.

INTRODUCTION

The canonical penal law for the Latin Church is set out primarily in the Code of Canon Law of 1983,¹ which was promulgated by John Paul II with his Apostolic Constitution *Sacrae disciplinae leges*.² The 1983 Code consists of seven thematic books and includes a total of 1752 canons. Since the Code was promulgated, many of its canons have been revised,³ which

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

² Ioannes Paulus PP. II, *Constitutio apostolica Sacrae disciplinae leges* (25.01.1983), AAS 75 (1983), pars II, pp. 7-14.

³ See *Nowelizacje tekstu Kodeksu Prawa Kanonicznego*, in: *Kodeks Prawa Kanonicznego promulgowany przez papieża Jana Pawła II w dniu 25 stycznia 1983 roku. Stan prawny na dzień 18 maja 2022 roku. Zaktualizowany przekład na język polski*, Pallottinum, Poznań 2022 [hereinafter: KPK/2021], p. 5.

reflects the dynamic nature of the law and the fact that, since it is meant to regulate the current life of the Christian community, it should be amended when necessary. However, until 2021, none of the Code's seven books had been revised in their entirety. The process of revising Book VI entitled "Penal Sanctions in the Church" (*De sanctionibus poenalibus in Ecclesia*), which included 89 canons (1311-1399), was initiated in 2007 by Benedict XVI. His work was completed by Pope Francis, who promulgated a new version of Book VI with his Apostolic Constitution *Pascite gregem Dei* on 23 May 2021. The revised version entered into force on 8 December 2021.⁴ In his Constitution *Pascite gregem Dei*, the Pope wrote: "in continuity with the overall features of the canonical system, in accordance with the Church's tradition as consolidated over time, the new text introduces various modifications to the law presently in force and introduces several new types of crime, corresponding to the growing need in various communities to ensure the restoration of justice and order that the delict infringed" (PGD, p. 25). Following these changes, experts in the Church's penal law began to publish commentaries on the revised penal system.⁵ Such commentaries were also published in Poland.⁶

The article is an attempt to present the provisions of Cano. 1311, focusing on the modifications introduced by Pope Francis. Cano. 1311, which opens Book VI, is of fundamental importance, as it introduces the norms that are included in the subsequent canons. The authors aim to show the grounds for punishing offences in the Church based this canon. All individuals vested with the authority to impose penal sanctions in the Church are required to act in accordance with the principles it sets forth. Furthermore, without understanding the *ratio legis* of the Church's penal law, it is impossible to understand the broader concept of ecclesiastical justice.

In order to distinguish between the versions of the canons before and after revisions, as well as between the earlier Polish translation of the 1983 Code and the most recent one, the abbreviations CIC/1983 and CIC/2021 and KPK/1983 and KPK/2021 are used, respectively. Nonetheless, the reference is always to the 1983 Code of Canon Law, as there is no 2021 Code of Canon Law.

⁴ Franciscus PP., *Constitutio apostolica Pascite gregem Dei* (23.05.2021), "L'Osservatore Romano" (edizione quotidiana) 161 (2021), no. 122, 1.06.2021, p. 2-4; Polish text in: "Akta Konferencji Episkopatu Polski" 33 (2021), p. 23-25 [hereinafter: PGD].

⁵ Among canonists writing in languages other than Polish, the following are worth noting: Pighin 2022; Arrieta 2023, 795-859.

⁶ For example: Kaleta 2022, 197-342; Krukowski 2022, 15-196; Trojanowski 2024a; Idem 2024b; Idem 2024c; Idem 2024d.

1. THE CHURCH’S RIGHT TO CONSTRAIN WITH PENAL
SANCTIONS

CIC/1983	CIC/2021
Cano. 1311: <i>Nativum et proprium Ecclesiae ius est christifideles delinquentes poenalibus sanctionibus coercere.</i>	Cano. 1311 § 1: <i>Nativum et proprium Ecclesiae ius est christifideles poenalibus sanctionibus coercendi qui delicta commiserint.</i>
KPK/1983	KPK/2021
Cano. 1311: <i>Kościół posiada wrodzone i własne prawo wymierzania sankcji karnych wiernym popełniającym przestępstwo.</i>	Cano. 1311 § 1: <i>Kościół posiada przyrodzone i własne prawo karcenia sankcjami karnymi wiernych, którzy popełnili przestępstwo.</i>

The first paragraph of Cano. 1311 presents three key issues that will be addressed here one by one: the Church’s own inherent right, the faithful, and the commission of an offence.

Before analysing the first paragraph of Cano. 1311, it is worth noting that it has a revised version in Latin, as well as in the Polish translation. While the Latin text has a slightly different sentence structure, its meaning has not changed. On the other hand, the new Polish translation is different from the previous one. First, it uses the term *prawo przyrodzone* (inherent right) instead of the term *prawo wrodzone* (innate right). When commenting on this change, B. Trojanowski writes that the new term “seems more appropriate, as it refers to the Church’s very nature rather than to a right granted at the moment of its founding, and thereby further emphasises that this right is an intrinsic element of the community founded by the Saviour” [Trojanowski 2024a, 14].⁷ Interestingly, the author of another commentary on this paragraph, which was published after the revision of Book VI, appears to have overlooked the change in the Polish translation. He explains the term *prawo wrodzone* (innate right) as used by the legislator, and fails to mention that the term *prawo przyrodzone* (inherent right) is used in the current Polish version [Krukowski 2022, 19].

Another noteworthy change is the replacement of the phrase *prawo wymierzania sankcji karnych* (right to coerce with penal sanctions) with *prawo karcenia sankcjami karnymi* (right to constrain with penal sanctions). This revision should be regarded positively, as the updated wording is more precise; however, this improvement has gone largely unnoticed by commentators. It can therefore be stated that the term “coercing” with penal sanctions is not precise enough. It would be more appropriate to talk about

⁷ In the footnote, Trojanowski also refers to the semantic meaning of these two expressions.

constraining with, or applying⁸ penal sanctions. Constraining has a broader meaning than inflicting penalties, because the latter could suggest that it refers only to penalties imposed after a criminal trial, whereas the Code also includes penalties imposed by force of the law itself, i.e. *latae sententiae* penalties,⁹ which are also used to constrain, though in a different way.

2. THE CHURCH'S OWN INHERENT RIGHT TO CONSTRAIN WITH PENAL SANCTIONS

The legislator in Cano. 1311 § 1 states that: "The Church has its own inherent right to constrain with penal sanctions Christ's faithful who commit offences."¹⁰ This means that this right has been given by Christ and also results from the very nature of the Church. It is not a right taken or borrowed from another system, e.g. a state system [Pawluk 1990, 65-66; Syryjczyk 2008, 41-45; Krukowski 2022, 19-20].

Although the Church's penal law in its current form has evolved over many centuries, it did not emerge suddenly; rather, it finds its origins in the institution established by Christ Himself and in the Church's inherently social character. While the New Testament does not set forth punishments or penal norms in the modern legal sense, it does provide guidelines and principles that later shaped the Church's penal law [Syryjczyk 2008, 35]. For example, the Gospel of Matthew (18:12-22) mentions how to deal with a sinner in the community, while the First Letter of St. Paul to the Corinthians (5:1-13) refers to the expulsion of an individual guilty of incest. Other sins mentioned in the New Testament that would later be codified as canonical offences include, for example, divisions within the faith (1 Tim 1:18-20; 1 John 4:2-6; 2 John 10-11) and heresies (2 Tim 2:14-18; Gal 1:8; Titus 3:10-11).¹¹

⁸ As a side note, it is noteworthy that Title V of the first part of Book VI of the 1983 Code of Canon Law was *Wymierzanie kar* (*De poenis applicandis*), whereas now it is *Stosowanie kar* (*De poenarum applicatione*). This difference is visible only in the Polish translation, as Latin versions from 1983 and 2021 are identical (*De poenis applicandis*).

⁹ Cano. 1314: "A penalty is ordinarily *ferendae sententiae*, that is, not binding upon the offender until it has been imposed. It is, however, *latae sententiae* if the law or precept expressly lays this down, so that it is incurred automatically upon the commission of an offence."

¹⁰ It is noteworthy that this paragraph largely reiterates Cano. 2214 § 1 of the 1917 Code of Canon Law, which shows both its importance and the lasting relevance of its provisions. *Codex Iuris Canonici Pii X Pontificis Maximi iussu digestus, Benedicti Papae XV auctoritate promulgatus* (27.05.1917), AAS 9 (1917), pars II, p. 2-593 [hereinafter: CIC/1917]: "Nativum et proprium Ecclesiae ius est, independens a qualibet humana auctoritate, coercendi delinquentes sibi subditos poenis tum spiritualibus tum etiam temporalibus".

¹¹ For more on the grounds of punishment in the Holy Scripture, see: Syryjczyk 2008, 34-39; Kielpiński 2023, 30-54; Zawacki 2016, 9-38.

3. THE FAITHFUL AS THE SUBJECT OF CONSTRAINING

Since the Church has its own inherent right to constrain with penal sanctions, it is worth asking who these sanctions can be imposed on. The answer can be found in the same canon, which explicitly mentions “the faithful” as the subject of penal sanctions. According to Cano. 204, “the Christian faithful are those who, inasmuch as they have been incorporated in Christ through baptism, have been constituted as the people of God; for this reason, since they have become sharers in Christ’s priestly, prophetic, and royal office in their own manner, they are called to exercise the mission which God has entrusted to the Church to fulfil in the world, in accord with the condition proper to each one.” Therefore, all individuals who have received baptism are considered members of the faithful [Krukowski 2005, 15-18; Syryjczyk 2008, 45]. It is noteworthy that in the year 2000, seven Churches in Poland (the Evangelical Augsburg Church, the Evangelical Methodist Church, the Evangelical Reformed Church, the Polish Catholic Church, the Polish Autocephalous Orthodox Church, the Old Catholic Mariavite Church, and the Roman Catholic Church) formally recognised the validity of baptism administered by each other’s clergy.¹² Accordingly, it can be stated that all members of these Churches are regarded as the faithful. However, such understanding of the term “faithful” would mean that the Roman Catholic Church could impose penal sanctions on all who have been baptised in any ecclesial community, and not just on the faithful of the Latin Church. With this in mind, it is worth recalling what J. Syryjczyk wrote: “A distinction must be made between the rights vested in the Church, or more precisely – its right to constrain all baptised persons – and the exercise of this right in relation to the separated brethren. In this matter the new Code refers to the teaching of the Second Vatican Council, which states that separated brethren can no longer be blamed for the sin involved in the separation and moreover, the Catholic Church should embrace them with brotherly respect and affection” [Syryjczyk 2008, 46].¹³ However, to avoid any ambiguity regarding whom the Catholic Church may subject to canonical penalties, the following provisions of the Code should be considered. In Cano. 1, we read that “the canons of this Code affect only the Latin Church” (CIC/2021, Cano. 1),¹⁴ and in Cano. 11: “Merely ecclesiastical laws bind those baptised in the Catholic Church or received into it and who enjoy the sufficient use

¹² See *Sakrament chrztu znakiem jedności. Deklaracja Kościołów w Polsce na progu trzeciego tysiąclecia* (23.01.2000), https://opoka.org.pl/biblioteka/T/TE/chrzest_deklaracja.html [accessed: 30.04.2025].

¹³ Concilium Vaticanum II, *Decretum de Oecumenismo Unitatis redintegratio* (21.11.1964), AAS 57 (1965), pp. 90-122, no. 3.

¹⁴ See more: Sobański 2003, 45-47.

of reason and, unless the law expressly provides otherwise, have completed seven years of age”(CIC/2021, Cano. 11).¹⁵ Thus, the Church’s authority to impose penal sanctions extends solely to members of the Catholic faithful [Pawluk 1990, 65-68; Syryjczyk 2008, 45-47].

4. PHYSICAL PERSONS AS THE SUBJECT TO CRIMINAL LIABILITY

Another question that arises when considering who may be subject to penal sanctions is whether the Church can punish only physical persons or also juridic persons. This question seems justified as the Code of Canon Law distinguishes between physical persons¹⁶ and juridic persons.¹⁷ With this in mind, it must be clearly stated that only physical persons may be subject to the Church’s penal sanctions. In Cano. 1311 § 1, the legislator does not literally refer to physical persons; however, the use of the term “the faithful” implies that only physical persons may be subject to the Church’s penal sanctions. It is not possible to impose penalties for an offence committed by a specific individual on others, even if they are legally connected to that person through a juridic entity. In such cases, the principle of personal responsibility takes precedence over any form of collective liability.¹⁸ This follows from the concept of so-called just punishment. It is the person who is at fault and who has committed an offence that is punished, not the innocent one. Without guilt,

¹⁵ See also: Sobański 2003, 60-62.

¹⁶ The Code deals with the issue of physical persons, especially regarding their canonical status in Canons 96-112. It does not explain the concept of “physical person,” as this term is by its nature clear and well-known. However, one can refer here to the dictionary definition, which states that a physical person is “an individual human being who is the subject of rights and obligations” [Sitarz 2004, 122]. A more detailed definition of a physical person can be found in the *Lexicon of Canon Law* see Sitarz 2019, 2003-2004.

¹⁷ KPK/2021, Cano. 113 § 2: “Besides physical persons, there are also in the Church juridic persons, that is, subjects in canon law of obligations and rights which correspond to their nature;” Cano. 115: “1. Juridic persons within the Church are aggregates either of persons or of things. 2. An aggregate of persons, which cannot be constituted unless it consists of at least three persons, is collegial if its members determine its action through participation in making its decisions, whether by equal right or not, according to the norm of law and its own statutes; otherwise it is non-collegial. 3. An aggregate of things or an autonomous foundation consists of goods or things, whether spiritual or material, and is directed by one or several physical persons or a college according to the norm of law and its statutes.” See also: Sitarz 2019, 2004-2007.

¹⁸ However, this was possible under the previous code law. A juridic person could be punished in the following way: a penalty was imposed on individual delinquent persons; on a given community as a whole, i.e. on all that were members of a juristic person; or on each individual member of the juristic person and on the community as a whole. CIC/1917, Cano. 2285 § 1: “Si communitas seu collegium clericorum delictum commiserit, suspensio ferri potest vel in singulas personas delinquentes vel in communitatem, uti talem, vel in personas delinquentes et communitatem.”

there is no criminal liability. Guilt is an essential element of a criminal offence [Syryjczyk 2008, 48]. This principle existed already in the Old Testament, although it concerned a sin [Myrcha 1986, 43-80; Maj 2016, 39-65]. Prophet Jeremiah wrote: "In those days they shall no longer say: The fathers have eaten sour grapes, and the children's teeth are set on edge. But every one shall die for his own sin; each man who eats sour grapes, his teeth shall be set on edge." (31:29-30). Thus, no one may be held liable for the sins of their ancestors. At this point, it is worth noting the practice among the faithful in Poland of requesting the celebration of Holy Masses for the atonement of so-called generational sins and for intergenerational healing. This practice was forbidden by the Polish episcopate.¹⁹

5. OFFENCE AS THE BASIS FOR PUNISHMENT

Another term that deserves attention in the first paragraph of Cano. 1311 is the term "offence." Penal sanctions may be imposed only on members of the faithful who have committed an offence, and such an offence must be duly proven. "When someone is in a proximate occasion of committing an offence or when, after an investigation, there is a serious suspicion that an offence has been committed, the Ordinary either personally or through another can give that person warning" (CIC/2021, Cano. 1339 § 1). This refers to giving a warning rather than imposing a penal sanction. However, an act must have certain characteristics to be classified as an offence. Although the Code of Canon Law does not provide a definition of an offence [Syryjczyk 2008, 99], the necessary elements of an offence can be found in Cano. 1321 § 2: "No one can be punished unless the commission by him or her of an external violation of a law or precept is gravely imputable by reason of malice or of culpability."²⁰ Accordingly, an offence can be defined as an external violation of a penal law or precept that carries at least an indeterminate penal sanction, which is gravely imputable, whether through intentional (deliberate) or negligent fault [Syryjczyk 2008, 100; Pawluk 1990, 68; Kaleta 2022, 45-46].²¹

It is worth reiterating that the Code of Canon Law provides for constraining with penal sanctions only for an offence committed. However, as J. Syryjczyk states, the original version of Cano. 1321 provided for punishment for causing

¹⁹ See <https://episkopat.pl/grzech-pokoleniowy-i-uzdrowienie-miedzypokoleniowe-problemy-teologiczne-i-pastoralne/> [accessed: 26.04.2025].

²⁰ In the version before revision, it was Cano. 1321 § 1, which is now § 2, because a new § 1 has been added, which reads: "Any person is considered innocent until the contrary is proved."

²¹ At this stage, it seems sufficient to focus on the general definition of an offence in canon penal law, as a detailed analysis would exceed the scope of this publication. Moreover, the essential elements of an offence are derived from canons other than Cano. 1311, which is examined here.

scandal through one's own conduct ("...qui legem vel praeceptum vidaverint vel scandalum dederint") [Syryjczyk 2008, 34]. This, however, was not included in the current version of the Code. If this original version had been included, an offence would not only consist in the violation of a penal law or penal precept, but also in the mere act of causing scandal [ibid.]. Consequently, a person could have incurred liability even in cases where no penal law was violated, but the act gave rise to scandal. The 1983 Code of Canon Law allows for imposing a just penalty, but of a lesser kind than that prescribed for the committed crime when the offender's actions or omissions resulted in scandal or other serious harm or danger (CIC/2021, Cano. 1328 § 2) [Krukowski 2022, 85-86]. However, what is at issue here is not merely any conduct, but the conduct that is directed toward the commission of an offence that has not yet taken place.

6. *RATIO LEGIS* OF THE CHURCH'S PENAL LAW

CIC/1983	CIC/2021
	<i>Cano. 1311 § 2: Qui Ecclesiae praeest bonum ipsius communitatis singulorumque christifidelium tueri ac promovere debet caritate pastorali, exemplo vitae, consilio et adhortatione et, si opus sit, etiam poenarum irrogatione vel declaratione, iuxta legis praecepta semper cum aequitate canonica applicanda, prae oculis habens iustitiae restitutionem, rei emendationem et scandali reparationem.</i>
KPK/1983	KPK/2021
	<i>Cano. 1311 § 2: Każdy, kto jest przełożonym w Kościele, zobowiązany jest strzec i promować dobro samej wspólnoty oraz poszczególnych wiernych przez miłość pasterską, przykład życia, radę i zachętę oraz, w razie potrzeby, także przez wymierzanie lub deklarowanie kar, zgodnie z przepisami ustawy, zawsze z zastosowaniem słuszności kanonicznej, mając na uwadze przywrócenie sprawiedliwości, poprawę przestępcy i naprawienie zgorzelenia.</i>

Originally, Cano. 1311 in the 1983 Code of Canon Law was not divided into paragraphs. After revisions, it consists of two paragraphs. The first paragraph retains the Canon's original content as discussed above, while the second one introduces a new aspect, which may be viewed as the *ratio legis* of the Church's penal law. Any analysis of the Church's penal law must begin with the question about its *ratio legis*, which is fundamental to understand both the purpose and application of penal law in the ecclesial community. These issues are addressed in paragraph. 2 of Cano. 1311, which outlines the responsibilities of the ecclesiastical Superior [Trojanowski 2024a,

15].²² Foremost among these is the duty to safeguard those entrusted to his care, where pastoral charity and the example of one's life are meant to draw others toward the good. This goal is also to be pursued through counsel and encouragement. The use of counsel, encouragement, and personal example as integral elements of pastoral ministry is emphasised in the Conciliar Constitution *Lumen gentium*,²³ a document to which Pope Francis also refers in his Apostolic Constitution *Pascite gregem Dei* (PGD, p. 2), where he adds that "love and mercy require that the Father act to correct what is wrong" (ibid.). These duties of superiors, and specifically of bishops, are also included in the Decree on the Pastoral Office of Bishops in the Church *Christus Dominus*: "Bishops should also be mindful of their obligation to give an example of holiness in charity, humility, and simplicity of life."²⁴ "In exercising their office of father and pastor, bishops should stand in the midst of their people as those who serve. Let them be good shepherds, [...]. Let them be true fathers who excel in the spirit of love and solicitude for all."²⁵

There may be cases where pastoral measures prove insufficient, leaving the superior no alternative but to impose a penalty in order to achieve the intended goal. However, it should be strongly emphasised that punishment is the last resort to be used when other measures have failed [Trojanowski 2024a, 15, 17]. Even so, these punishments should be viewed as something positive. As Pope Francis states, a revision of the penal discipline gave the Church's pastors a more flexible means of correction and salvation which may be "applied swiftly and with pastoral charity in order to avoid more serious evils and to bring healing to injuries caused by human weakness" (PGD, p. 24). And further, "Charity thus demands that the Church's pastors resort to the penal system whenever it is required" (ibid., p. 25). The Pope wrote clearly, citing his Address to Participants in the Plenary Session of the Pontifical Council for Legislative Texts on 21 February 2020, that "canonical sanctions also have a reparative and salvific end, and are primarily directed to the good of the faithful. In this sense, they represent a positive means for the realization of the Kingdom and for rebuilding justice in the community of the faithful, who are called to personal and common sanctification"

²² Trojanowski points out that "the addressees of this norm are not only bishops, but also all superiors [...] who have the competence to apply the laws contained in this book, and therefore, first of all, ordinaries [...], but these obligations can also be applied to judges."

²³ Sacrosanctum Concilium Vaticanum II, Constitutio dogmatica de Ecclesia *Lumen gentium* (21.11.1964), AAS 57 (1965), pp. 5-71, no. 27: "Bishops, as vicars and ambassadors of Christ, govern the particular churches entrusted to them by their counsel, exhortations, example, and even by their authority and sacred power, which indeed they use only for the edification of their flock in truth and holiness."

²⁴ Idem, Decretum de pastorali episcoporum munere in Ecclesia *Christus Dominus* (28.10.1965), AAS 58 (1966), pp. 673-701, no. 15.

²⁵ Ibid., no. 16.

(ibid.) According to the Holy Father, “it becomes necessary for bishops and superiors to inflict penalties. Negligence on the part of a bishop in resorting to the penal system is a sign that he has failed to carry out his duties honestly and faithfully” (ibid.) The Pope also referred to his two apostolic letters: *Come una madre amorevole* of 4 June 2016²⁶ and *Vos estis lux mundi* of 7 May 2019,²⁷ where this issue was expressly pointed out.

It should be emphasised that if penal sanctions are imposed, they must always be imposed in accordance with the provisions of the law, and their purpose is to achieve good by the restoration of justice, the correction of the offender, and the repair of scandal. The legislator lists these three aims of penal sanctions already in Cano. 1 of the Book on Penal Sanctions in the Church, to repeat them two more times: in Cano. 1341²⁸ and in Cano. 1343.²⁹ In the original version of Book VI, these aims were mentioned only once, in Cano. 1341.³⁰ On the other hand, the revised version of Book VI, mentions two of these aims: the restoration of justice and the repair of scandal in Canons 1335 and 1345.³¹ The number of canons addressing the aims of the Church’s penal sanctions highlights both the nature of punishment and the Church’s commitment to fulfilling these aims. A careful reading

²⁶ Franciscus PP, *Litterae apostolicae motu proprio Come una madre amorevole* (04.06.2019), AAS 108 (2016), pp. 715-17.

²⁷ Idem, *Litterae apostolicae motu proprio Vos estis lux mundi* (07.05.2019), AAS 111 (2019), pp. 823-31. These regulations were approved for a three-year period; however, they were revised after four years: Idem, *Litterae apostolicae motu proprio Vos estis lux mundi* (25.03.2023), AAS 115 (2023), pp. 394-404.

²⁸ KPK/2021, Cano. 1341: “The Ordinary must start a judicial or an administrative procedure for the imposition or the declaration of penalties when he perceives that neither by the methods of pastoral care, especially fraternal correction, nor by a warning or correction, can justice be sufficiently restored, the offender reformed, and the scandal repaired.”

²⁹ KPK/2021, Cano. 1343: “If a law or precept grants the judge the faculty to apply or not to apply a penalty, he is, without prejudice to the provision of Cano. 1326 § 3, to determine the matter according to his own conscience and prudence, and in accordance with what the restoration of justice, the reform of the offender and the repair of scandal require; in such cases the judge may also, if appropriate, modify the penalty or in its place impose a penance.”

³⁰ KPK/1983, Cano. 1341: “Only after he has ascertained that scandal cannot sufficiently be repaired, that justice cannot sufficiently be restored and that the accused cannot sufficiently be reformed by fraternal correction, rebuke and other ways of pastoral care is the ordinary then to provide for a judicial or administrative procedure to impose or to declare penalties.”

³¹ CIC/2021, Cano. 1335 § 1: “If the competent authority imposes or declares a censure in a judicial process or by an extra-judicial decree, it can also impose the expiatory penalties it considers necessary to restore justice or repair scandal;” Cano. 1345: “Whenever the offender had only an imperfect use of reason, or committed the offence out of necessity or grave fear or in the heat of passion or, without prejudice to the provision of Cano. 1326 § 1 n. 4, with a mind disturbed by drunkenness or a similar cause, the judge can refrain from inflicting any punishment if he considers that the person’s reform may be better accomplished in some other way; the offender, however, must be punished if there is no other way to provide for the restoration of justice and the repair of any scandal that may have been caused.”

shows that the order of these aims is identical in both canons, which – according to B. Trojanowski – is not accidental [Trojanowski 2024a, 17]. While the version before revision first mentioned the repair of scandal, then the restoration of justice, and finally the correction of the offender, the revised version first mentions the restoration of justice, the reform of the offender, and the repair of scandal. When imposing penal sanctions, care should therefore be taken to achieve all goals together. “None of them can be achieved without the other two” [Krukowski 2022, 28].

Taking into account the content of this paragraph, it is also worth noting that punishment has become one of the pastoral means. The *ratio legis* here is like a system that should be followed in the lives of the faithful. This is nothing new in the Church, as it was pointed out long before. Almost identical wording can be found in the 1917 Code of Canon Law: “Prae oculis autem habeatur monitum Conc. Trid., sess. XIII, de ref., cap. 1: «Meminerint Episcopi alique Ordinarii se pastores non percussores esse, atque ita praeesse sibi subditis oportere, ut non in eis dominantur, sed illos tanquam filios et fratres diligant elaborantque ut hortando et monendo ab illicitis deterreant, ne, ubi deliquerint, debitis eos poenis coercere cogantur; quos tamen si quid per humanam fragilitatem peccare contigerit, illa Apostoli est ab eis servanda praeceptio ut illos arguant, obsecrent, increpent in omni bonitate et patientia, cum saepe plus erga corrigendos agat benevolentia quam austeritas, plus exhortatio quam comminatio, plus caritas quam potestas; sin autem ob delicti gravitatem virga opus erit, tunc cum mansuetudine rigor, cum misericordia iudicium, cum lenitate severitas adhibenda est, ut sine asperitate disciplina, populis salutaris ac necessaria, conservetur et qui correcti fuerint, emendentur aut, si resipiscere noluerint, ceteri, salubri in eos animadversionis exemplo, a vitiis deterreantur»” (Cano. 2214 § 2). However, the content of this canon is not new either, since it was taken from the documents of the Council of Trent. The Council Fathers addressed the bishops in the following words: “The same sacred and holy Synod [...] thinks it meet that the bishops be first of all admonished to bear in mind, that they are pastors and not strikers, and that they ought so to preside over those subject to them, as not to lord it over them, but to love them as sons and brethren; and to strive, by exhortation and admonition, to deter them from what is unlawful, that they may not be obliged, should they transgress, to coerce them by due punishments.”³² The message contained in this Conciliar Decree is still relevant, as confirmed by the Code of Canon Law now in force. Its reintegration into the Code is therefore both appropriate and timely.

³² Concilium Tridentinum (1545-1563), *Sessio XIII. Decretum super reformatione* [Prooemium], in: *Dokumenty Soborów Powszechnych. Tekst łacińsko-polski*, vol. IV (1511-1870): *Lateran V, Trydent, Watykan I*, edited by A. Baron, H. Pietras, Kraków 2004, p. 459, 461.

This combination of mercy and constraint in the added paragraph of Cano. 1311 is confirmed in the Apostolic Constitution *Pascite gregem Dei*, where we read: “The observance of penal law is binding on the whole People of God, but responsibility for its correct application – as stated above – lies specifically with the bishops and the superiors of individual communities. It is a task that cannot be separated in any way from the *munus pastorale* entrusted to them, and is to be carried out as a concrete and essential requirement of charity, not only towards the Church, the Christian community and potential injured parties, but also towards those who commit crimes and are themselves in need of the Church’s mercy and correction.” This is the main idea behind the revision of Book VI of the 1983 Code (PGD, p. 24).

FINAL REMARKS

In conclusion, it should be reiterated that in the revised Book VI of the 1983 Code of Canon Law, Cano. 1311 has been amended to include a new paragraph. The first paragraph, both in the original Latin version and in the Polish translation, has not undergone any significant changes in content, although certain expressions have been translated differently in the new Polish version. The legislator of the Code reaffirms that the Church has the inherent right to constrain with penal sanctions Christ’s faithful who commit offences. Canonists explain that, in this legal context, the term “faithful” refers specifically to members of the Catholic Church, rather than to all baptised persons. Another significant issue concerns the *ratio legis*, i.e. the underlying rationale, of the Church’s penal law. In this context, emphasis is placed on achieving the aims of ecclesiastical penalties, rather than on applying them automatically as a consequence of criminal offences. Cano. 1311 presents penal sanctions as a pastoral instrument intended to uphold ecclesiastical discipline. However, these sanctions are to be employed only when other means (such as pastoral charity, example of life, counsel, and encouragement) fail.

REFERENCES

- Arrieta, Juan I. 2023. “De sanctionibus poenalibus in Ecclesia. Sankcje karne w Kościele.” In *Codex Iuris Canonici. Kodeks Prawa Kanonicznego. Komentarz. Powszechne i partykularne ustawodawstwo Kościoła katolickiego. Podstawowe akty polskiego prawa wyznaniowego. Edycja polska na podstawie wydania hiszpańskiego*, edited by Piotr Majer, 795-859. Kraków: Wolters Kluwer.
- Kaleta, Paweł. 2022. “Poszczególne przestępstwa i ustanowione za nie kary.” In *Komentarz do Kodeksu Prawa Kanonicznego*. Vol. IV/2: *Księga VI: Sankcje karne w Kościele*, edited by Józef Krukowski, 197-342. Poznań: Pallottinum.

- Kiełpiński, Krzysztof. 2023. *Kary latae sententiae. Studium historyczno-prawne*. Warszawa: Jedność.
- Krukowski, Józef. 2005. "Kanony wstępne." In *Komentarz do Kodeksu Prawa Kanonicznego*. Vol. II/1: *Lud Boży. Część I: Wierni chrześcijanie. Część II: Ustrój hierarchiczny Kościoła*, edited by Józef Krukowski, 15-22. Poznań: Pallottinum.
- Krukowski, Józef. 2022. "Przestępstwa i kary w ogólności." In *Komentarz do Kodeksu Prawa Kanonicznego*. Vol. IV/2: *Księga VI: Sankcje karne w Kościele*, edited by Józef Krukowski, 15-196. Poznań: Pallottinum.
- Maj, Zuzanna. 2016. "Grzech a przestępstwo. Refleksje teologiczno-kanoniczne." In *Salus animarum suprema lex w świetle kanonicznego prawa karnego*, edited by Marek Saj, 39-65. Warszawa: Wydawnictwo Scriptum.
- Myrcha, Marian A. 1986. "Problem grzechu w karnym ustawodawstwie kanonicznym." *Prawo Kanoniczne* 29, no. 1-2:43-80.
- Pawluk, Tadeusz. 1990. *Prawo kanoniczne według Kodeksu Jana Pawła II*. Vol. IV: *Doczesne dobra Kościoła. Sankcje w Kościele. Procesy*. Olsztyn: Warmińskie Wydawnictwo Diecezjalne.
- Pighin, Bruno F. 2022. *Il nuovo sistema penale della Chiesa*. Venezia: Marcianum Press.
- Sitarz, Mirosław. 2019. "Osoba." In *Leksykon prawa kanonicznego*, edited by Mirosław Sitarz, 2003-2004. Lublin: Stowarzyszenie Absolwentów i Przyjaciół Wydziału Prawa Katolickiego Uniwersytetu Lubelskiego.
- Sitarz, Mirosław. 2003. *Słownik prawa kanonicznego*. Warszawa: Pax.
- Sobański, Remigiusz. 2003. "Normy ogólne (kan. 1-34)." In *Komentarz do Kodeksu Prawa kanonicznego*. Vol. I/1: *Księga I: Normy ogólne*, edited by Józef Krukowski, 45-47. Poznań: Pallottinum.
- Syryjczyk, Jerzy. 2008. *Sankcje w Kościele. Część ogólna. Komentarz*. Warszawa: Wydawnictwo UKSW.
- Trojanowski, Bartosz. 2024a. *Komentarz praktyczno-teologiczny do Kodeksu Prawa Kanonicznego. Zeszyt 4A: Księga VI – Sankcje karne w Kościele. Część I – Przestępstwa i kary w ogólności. Kanony 1311-1330*. Wrocław: Papieski Wydział Teologiczny we Wrocławiu.
- Trojanowski, Bartosz. 2024b. *Komentarz praktyczno-teologiczny do Kodeksu Prawa Kanonicznego. Zeszyt 4B: Księga VI – Sankcje karne w Kościele. Część I – Przestępstwa i kary w ogólności. Kanony 1331-1363*. Wrocław: Papieski Wydział Teologiczny we Wrocławiu.
- Trojanowski, Bartosz. 2024c. *Komentarz praktyczno-teologiczny do Kodeksu Prawa Kanonicznego. Zeszyt 5A: Księga VI – Sankcje karne w Kościele. Część II – Poszczególne przestępstwa i ustanowione za nie kary. Kanony 1364-1378*. Wrocław: Papieski Wydział Teologiczny we Wrocławiu.
- Trojanowski, Bartosz. 2024d. *Komentarz praktyczno-teologiczny do Kodeksu Prawa Kanonicznego. Zeszyt 5B: Księga VI – Sankcje karne w Kościele. Część II – Poszczególne przestępstwa i ustanowione za nie kary. Kanony 1379-1399*. Wrocław: Papieski Wydział Teologiczny we Wrocławiu.
- Zawacki, Mariusz. 2016. "Pismo Święte źródłem kanonicznego prawa karnego." *Salus animarum suprema lex w świetle kanonicznego prawa karnego*, edited by Marek Saj, 9-38. Warszawa: Wydawnictwo Scriptum.