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PROTECTION AND DEFENSE OF THE RIGHT TO DECENT SUPPORT OF CLERGY

The right to decent remuneration should undoubtedly be recognized as one of the most basic human rights [Lewandowski 2019a, 155]. Pope Leo XIII in the encyclical *Rerum novarum* emphasizes that fair payment is a requirement of natural justice.¹ Also the next popes, dealing with social issues, repeatedly return to the problem of fair payment, such as Pius XI² or John XXIII.³ According to John Paul II, “In every system, regardless of the fundamental relationships within it between capital and labour, wages, that is to say *remuneration for work*, are still a *practical means* whereby the vast majority of people can have access to those goods which are intended for common use: both the goods of nature and manufactured goods. Both kinds of goods become accessible to the worker through the wage which he receives as remuneration for his work. Hence, in every case, a just wage is the concrete means of *verifying the justice* of the whole socioeconomic

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¹ “Justice, therefore, demands that the interests of the working classes should be carefully watched over by the administration, so that they who contribute so largely to the advantage of the community may themselves share in the benefits which they create—that being housed, clothed, and bodily fit, they may find their life less hard and more enduring. It follows that whatever shall appear to prove conducive to the well-being of those who work should obtain favorable consideration.” Leo PP. XIII, *Litterae encyclicae de conditione opificum Rerum novarum* (15.05.1891), ASS 23 (1890/91), p. 641-70, no. 34.

² Pius PP. XI, *Litterae encyclicae de ordine sociali instaurando et ad Evangelicae legis normam perficiendo*, in annum XL post editas Leonis XIII litteras encyclicas «*Rerum novarum*» *Quadragesimo anno* (15.05.1931), AAS 23 (1931), p. 177-228, nos. 66, 76.

³ Ioannes PP. XXIII, *Litterae encyclicae de rectionibus rerum socialium processibus ad Christiana praecepta componendis Mater et Magistra* (15.05.1961), AAS 53 (1961), p. 401-64, nos. 33, 71; Idem, *Litterae encyclicae de pace omnium gentium in veritate, iustitia, caritate, libertate constituenda Pacem in terris* (11.04.1963), AAS 55 (1963), p. 257-304, no. 20.

system and, in any case, of checking that it is functioning justly. It is not the only means of checking, but it is a particularly important one and, in a sense, the key means.”⁴ The payment should provide the employee with the necessary means of subsistence. However, this does not only denote the minimum of these means, but above all ensuring a standard of ‘truly human’ life that corresponds to human dignity.

There can be no doubt that the right is also vested in clergy.⁵ The church legislator confirms this in the 1983 Code of Canon Law,⁶ and in the post-conciliar normative acts: *Ecclesiae Sanctae*,⁷ *Ecclesiae imago*,⁸ *Apostolorum successores*,⁹ or in the *Directory for the Ministry and Life of Priests*.¹⁰

The purpose of this article will be to indicate the legal bases for the protection and defence of the right to decent support of clergy. The concept of protection should be combined with prevention and protection against something potential. In addition to protection, protective action may consist in caring for or looking after something. Defense, however, occurs when there has already been a real violation of a matter and an injustice has occurred in this respect, which results in the need to defend a fair legal state, and even restore it [Sitarz 2017, 64; Romanko 2018, 364-65].

⁴ Ioannes Paulus PP. II, Litterae encyclicae de labore humano, LXXXX expleto anno ab editis litteris encyclicis «Rerum novarum» *Laborem exercens* (14.09.1981), AAS 73 (1981), p. 577-647, no. 19.

⁵ About this issue, cf. Rozkrut 2002, 104-109; Kantor 2008, 251-65; Lewandowski 2016, 53-76; Idem 2017, 131-47; Idem 2018, 95-113; Idem 2019b, 119-34; Idem 2019c, 171-86.

⁶ *Codex Iuris Canonici auctoritate Ioannis Pauli PP. II promulgatus* (25.01.1983), AAS 75 (1983), pars II, p. 1-317.

⁷ Paulus PP. VI, Litterae apostolicae motu proprio datae *Ecclesiae Sanctae*. Normae de quaedam exsequenda SS. Concilii Vaticani II decreta statuuntur (6.08.1966), AAS 58 (1966), p. 757-87.

⁸ Sacra Congregatio pro Episcopis, Directorium de pastoralis ministerio Episcoporum *Ecclesiae imago* (22.03.1973), Romae 1973.

⁹ Congregazione per i Vescovi, Direttorio per il ministero pastorale dei vescovi *Apostolorum successores* (22.02.2004), Città del Vaticano 2004 [henceforth cited as: AS].

¹⁰ Congregazione per il Clero, *Direttorio per il ministero e la vita dei presbiteri* (11.02.2013), Città del Vaticano 2013.

1. Protection of the right to decent support

Preventive action taken to protect clergy' right to decent support in a special way is associated with the problem of the loss of an ecclesiastical office (*officium ecclesiasticum*). According to the disposition of the Codex legislator contained in can. 184 § 1, an ecclesiastical office is lost by the lapse of a predetermined time, by reaching the age determined by law, by resignation, by transfer, by removal, and by privation. As emphasized by J.I. Arrieta, except in the case of resignation, which does not require acceptance, in other cases – for the loss of office to be legally effective – it is necessary for the ecclesiastical authorities to formal act based on an adequate cause (*causae*) or motive. Depending on the case, the act may be implemented either by an administrative or declarative nature, or it may be judicial in character. Motives for legal acts may take a different nature – taking into account the requirement of a just, proportional or grave reason – depending on the juridical effects desired and according to the attitude of the incumbent [Arrieta 2004, 150-51]. Defining the clergy's legal position in this respect determines the duties and rights of the clergy, including the protection of the right to decent support.

In the event of the loss of office after a predetermined period, the clergyman has the right to receive another ecclesiastical office, in accordance with the provisions of can. 146-183, which in this way will properly secure the exercise of the right to decent support.

In the event of reaching the age limit defined by law or accepted resignation, the clergyman may be granted the title of 'retired' or 'emeritus' (can. 185). The legal effect of such action is the transfer of the right referred to in can. 281 § 1, in favor of the right resulting from the instruction contained in can. 281 § 2: "Provision must also be made so that they possess that social assistance which provides for their needs suitably if they suffer from illness, incapacity, or old age." (cf. can. 1274 § 2) In this matter, the instruction contained in can. 538 § 3, according to which the diocesan bishop is obliged to provide the parish priest resigning his office after completing the seventy-fifth year of appropriate maintenance and

residence, while maintaining detailed standards promulgated by the bishop's conference (cf. CD 31; ES I, 20 § 2; EI 206e; can. 402 § 2).¹¹

In the event of a transfer, the right to decent support is secured by the instruction contained in can. 191 § 2, according to which the person transferred receives the remuneration assigned to the prior office until the moment of obtaining canonical possession of the other office (cf. can. 418 § 2, no. 2). J.H Provost and M. Cortés Diéguez allow the possibility of normalizing this problem differently by way of particular legislation or singular decree [Provost 2000, 225-26; Cortés Diéguez 2014, 134]. However, this interpretation is opposed by R. Sobański [Sobański 2003, 281]. Regardless of the solution adopted, there is no doubt as to the protection of the right to decent support.

The situation of clergyman removal should be considered in two ways. According to can. 192, a person is removed from office either by a decree issued legitimately by competent authority, without prejudice to rights possibly acquired by contract, or *ipso iure* according to the norm of can. 194. In the event of the first possibility, that is, if the cleric by a decree of the competent authority is removed from the office, which is the basis for his maintenance, then the same authority should ensure its maintenance for an appropriate time (*auctoritas curet ut ipsius subsistentiae per congruum tempus prospiciatur*), unless this has been provided for in some other way (can. 195). In the issues raised, it is very difficult to interpret whether the obligation referred to in can. 195 is of a legal or merely moral nature [Erdö 1987, 22-23; Pinto 2001, 106; Gafaell 2002, 1085; De Paolis, and D'Auria

¹¹ "The *resignation* of a pastor does not need to be accepted automatically, even when it is presented at seventy-five years of age. First, careful consideration should be given to the good of the community and the personal situation of the pastor in question. Depending on the circumstances, the Bishop may entrust a smaller and less demanding parish to a pastor who has resigned. If a pastor refuses to submit his resignation on time, despite ill health and consequent incapacity verified by objective and documented evidence, the Bishop should insistently try to make him understand the necessity of submitting to the judgement of the Church's Pastors. The invitation to resign at seventy-five years of age could become a moral imperative if the good of the community so requires, even in the absence of other grounds. Only for grave reasons can a pastor be removed or transferred by force, and in such cases the procedures established by canonical discipline must be observed" (AS 212).

2014, 522-23; García Martín 2015, 825]. Regardless of the views of canonists, it should be taken into account that the right to decent support was guaranteed by the legislator not only in the analyzed can. 195, but above all in can. 281 § 1 (cf. can. 231 § 2), which confirms that the indicated obligation of competent ecclesiastical authority must be considered serious. It does not have an absolute character, however, because according to the instruction contained in can. 195, the obligation rests with the competent authority only if dismissed from office is not provided with decent support in any other way.¹² It is also not unlimited in time, since the will of the legislature, the ecclesiastical authorities should take care of securing the removed maintenance only ‘for an appropriate time’. G. Dzierżon states that this period should depend on the prudence of the competent authority, which has the right to strictly define it. In addition, if a cleric removed from office behaves passively, i.e. because of bad faith or culpable negligence, he does not take any initiative to organize sufficient funds for support, the ecclesiastical authorities should refrain from providing assistance [Dzierżon 2008, 86]. Completing the legislator’s instructions contained in can. 195 is a provision of can. 1746, according to which after the pastor has been removed, the bishop is to make provision either for an assignment to some other office, if he is suitable for this, or for a pension as the case warrants and circumstances permit [cf. Mendonça 2001, 5-40].

In addition to the situation of the removal from the ecclesiastical office analyzed above by a decree of a competent authority, in accordance with the disposition of the Code legislator, the following are removed from an ecclesiastical office by the law itself (*ipso iure*): 1) a person who has lost the clerical state; 2) a person who has publicly defected from the Catholic faith or from the communion of the Church; 3) a cleric who has attempted marriage even if only civilly (can. 194 § 1).¹³ The protection of the right to

¹² A clergyman who has been removed from office may, for example, receive a disability or retirement benefit, pursue a ‘secular’ profession or have sufficient personal property, which releases ecclesiastical authority from the obligation referred to in can. 195 [Sobański 2003, 285; Provost 2000, 227].

¹³ It should be noted that the institution of dismissal from the clerical state *ipso iure* was also introduced in: Segreteria di Stato, *Regolamento Generale della Curia Romana* (30.04.1999), AAS 91 (1999), p. 630-99. In Art. 79 § 1 such a procedure was applied in

decent support in such a situation and in cases related to the deprivation of office constituting a penalty for an offense (can. 196 § 1) should be referred to the disposition of can. 1350 § 1, according to which unless it concerns dismissal from the clerical state, when penalties are imposed on a cleric, provision must always be made so that he does not lack those things necessary for his decent support. Securing the necessary life needs of a cleric who, through punishment, could find himself in need, should be strictly determined by the superior or the judge when the punishment is imposed. Can. 1350 § 1 therefore protects the right to decent support of a cleric-criminal. Canonical punishment is an impediment because it deprives him not only of spiritual but also of material goods.¹⁴ However, the legislator maintains and exposes, also in relation to punished clergy, the requirement of natural law, according to which every person has the right to decent life and due maintenance [Syryjczyk 2008, 283]. *Ratio legis* of the obligation arising from can. 1350 § 1, J. Krukowski refers to the juridical relation that was established between the clergyman and the particular Church to which he was incardinated.¹⁵

In relation to those dismissed from the clerical state because of the crime they committed, the legislator in can. 1350 § 2 is a separate rule of conduct, ordering the ordinary “to take care to provide for a person dismissed from the clerical state who is truly in need because of the penalty in the best manner possible.” In this case, *ratio legis* of normalization should be seen in the fact that by ordaining the diaconate and entering the

relation to crimes committed in a crafty manner. It was further established that this consistency applies to both those who, while holding offices in the Roman Curia, would undertake actions of this nature, as well as those who committed the offenses before taking up their duties in the Roman Curia [Dzierżon 2008, 87; Idem 2009, 40].

¹⁴ Cf. can. 1331 § 2, no. 5; 1333 § 4; 1336 § 1, no. 2; 1377; 1380; 1381; 1385. It should be remembered, however, that the suspense never affects a right of residence which the offender may have by virtue of office (can. 1333 § 3, no. 2).

¹⁵ “Through incardination, a clergyman is obliged to work for the good of a particular Church, which is a diocese, prelature, etc. On the side of the ordinary who represents a particular Church, the obligation arises for the clergyman to provide both adequate work and decent support. So if the ordinary punished the clergyman with a suspension from the office that was the source of his support, the ordinary has the obligation *ex iustitia* to provide him with other means of decent support so that he does not become a beggar” [Krukowski 1987, 201-202].

clergy, a special relationship is established, through which the Church extends far-reaching care for every clergyman. It exceeds not only the loss of a ecclesiastical office, but even deprivation of a clergy [Rakoczy 2010, 52; Rudzińska 2010, 26; Aznar Gil 1986, 557; cf. Stokłosa 2015]. Even after being dismissed from the clerical state, the clergyman remains in a certain relation to the particular Church to which he was incardinated [Green 2000, 1564; Donlon 2005, 101; Zalbidea 2011, 669]. The source of this duty, however, is no longer justice, because the punished has no title for decent support on the part of the Church, which was based on the sacrament of Holy Orders and incardination. Despite this, if he was in real poverty, the ordinary should come to him with material help. This does not mean, however, that the ordinary is obliged to provide such assistance as seems necessary to achieve the level of decent support. The method of coming with this help also depends on the economic possibilities of the particular Church as well as the social situation in which he found himself dismissed from the clerical state [Syryjczyk 2008, 283; Gajda 2008, 59; cf. Opalalic 2002, 191-200]. The principle expressed in can. 1350 § 2 is therefore a manifestation of the humanitarian and charitable attitude of the Church towards the clergy who suffered the most severe punishment, which is dismissal from the clerical state [Krukowski 1987, 202; Diraviam 2008, 192].

2. Defense of the right to decent support

The legal basis for the defense of the right to decent support is the legislator's instruction contained in can. 221 § 1, according to which the Christian faithful can legitimately vindicate and defend the rights which they possess in the Church in the competent ecclesiastical forum according to the norm of law [cf. Grocholewski 2006, 339-60; Ustinov 2007, 269-304; Busso 2011, 77-99; Żurawski 2017, 271-92].

The defense of the right of clerics to decent support is implemented through the contentious trial in accordance with the provisions of can. 1501-1670, or through administrative proceedings, in accordance with the

provisions of can. 1732-1739.¹⁶

In relation to the administrative procedure, F.R. Aznar Gil, followed by R. Kantor, point to three solutions leading to an effective defense of the analyzed right [Aznar Gil 1986, 578-79; Kantor 2011, 220]: 1) coming to an agreement that should be interpreted as the basic way of defense due to the fact that it is desirable that whenever the clergyman believes that he has been injured by a decree – avoid conflict between him and the author of the decree and care to reach an equitable solution between them, using serious persons, if necessary, to mediate and study the matter so as to avoid or resolve the dispute on the right path (can. 1733 § 1); 2) seeking help with mediation bodies established in each diocese permanently, whose task should be to seek and suggest equitable solutions (can. 1733 § 2);¹⁷ 3) reference to the superior or administrative tribunal by means of a hierarchical recourse (can. 1734-1739).¹⁸

Conclusions

The analysis of sources of law and literature carried out in this article leads to the following conclusions:

1) The clergy have legal protection and defense of the right to decent support.

2) Preventive action taken in the area of protection of the analyzed right of clergy is particularly related to the problem of the loss of an ecclesiastical office after a predetermined time, after reaching the age defined by law, as a result of resignation, transfer, removal and deprivation.

¹⁶ The object of a trial is: 1) the pursuit or vindication of the rights of physical or juridic persons, or the declaration of juridic facts; 2) the imposition or declaration of a penalty for delicts (can. 1400 § 1-2).

¹⁷ About this issue, cf. Romanko 2012, 85-103; Eadem 2013, 185-94; Eadem 2015, 53-72; Eadem 2016, 71-136; Eadem 2017, 93-106.

¹⁸ In this matter, the Second Section of the Supreme Tribunal of the Apostolic Signature, which according to can. 1445 § 2 considers disputes arising from the action of the ecclesiastical administrative authority, transferred to it in accordance with the law, other administrative disputes referred by the Roman Pontiff or the diocese of the Roman Curia, as well as conflicts of jurisdiction between these dicasteries.

3) The defense of the right of clerics to decent support shall be implemented through the contentious trial or administrative proceedings.

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Protection and Defense of the Right to Decent Support of Clergy

Summary

The right to decent remuneration is one of the most basic rights for every human being. The ecclesiastical legislator proclaims it not only in the 1983 Code of Canon Law, but also in numerous post-conciliar normative acts. The article provides legal bases for the protection and defense of the right to decent support of clergy. The concept of protection should be combined with prevention, i.e. protection against something potential. In addition to protection, protective action may include caring for or looking after something. Defense is necessary, however, when a matter has actually been violated and injustice has arisen in this respect, which requires the defense of a fair legal state and even its restoration.

Key words: cleric, remuneration, loss of an ecclesiastical office, contentious trial, hierarchical recourse

Ochrona i obrona prawa do godziwego utrzymania duchownych

Streszczenie

Prawo do godziwego wynagrodzenia stanowi jedno z najbardziej podstawowych praw przysługujących każdemu człowiekowi. Ustawodawca kościelny proklamuje je nie tylko w Kodeksie Prawa Kanonicznego z 1983 r., ale także w licznych posoborowych aktach normatywnych. W artykule zostały wskazane podstawy prawne dla ochrony i obrony prawa do godziwego utrzymania duchownych. Pojęcie ochrony należy łączyć z prewencją, a więc zabezpieczeniem przed czymś potencjalnym.

Poza zabezpieczeniem, działanie ochronne może polegać na opiece lub doglądaniu czegoś. Obrona jest konieczna natomiast wtedy, gdy faktycznie została naruszona jakaś materia i pojawiła się w tym zakresie niesprawiedliwość, co wymaga obrony sprawiedliwego stanu prawnego, a nawet jego przywrócenia.

Słowa kluczowe: duchowny, wynagrodzenie, utrata urzędu kościelnego, postępowanie sądowe, rekurs hierarchiczny

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