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ARE PRIESTS UNDER THE DUTY TO REPORT A CONFESSED CRIME?

INTRODUCTION

Every citizen who wants to live in a safe country is required to report any irregularities that they may have witnessed. A person with knowledge of a committed crime subject to public prosecution should immediately report it to the appropriate authorities. The Act Code of Criminal Procedure¹ in its Article 304 provides for a civic and legal duty to report a crime subject to public prosecution. The civic duty applies to every person, while the legal duty rests with state and local government institutions upon becoming aware of a crime as part of their activities. The Act Criminal Code² in its Article 240 penalizes failure to report the prohibited acts listed therein.

These considerations set out to answer the following questions: Does each of the above duties rest with a priest to the same extent as an average citizen? How to consider this duty in the context of the seal of confession and other contacts between lay people and clergy, such as pastoral conversation or spiritual guidance? Does the seal of confession apply only to the confessor or also to another priest who accidentally or intentionally overheard the content of the confession? Does secular law provide for

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¹ Act of 6 June 1997, the Code of Criminal Procedure, Journal of Laws of 2022, item 1375 [“CCP”]

² Act of 6 June 1997, the Criminal Code, Journal of Laws of 2022, item 1138 [“CC”].

sanctions for a priest who has failed to meet the obligation under the seal of confession, and can a priest who has left the clerical state be brought to account for its violation? These issues are of great importance from the point of view of those going to confession, as while making a priest the confidant of secrets, they expect him to guarantee confidentiality. It is now a truism to say that nowadays it is not money but information that is the most valuable asset; therefore, maintaining secrecy is crucial.

1. CIVIC DUTY TO REPORT A CRIME (ARTICLE 304 § 1 OF THE CODE OF CRIMINAL PROCEDURE)

Law enforcement authorities obtain their knowledge about criminal events from various sources, among which the largest group are undoubtedly personal sources of evidence, which include, among others, victims and witnesses. The information they provide often contributes to the identification of the offender, after a prohibited act has been revealed. Therefore, it seems reasonable that every member of society should strive to disclose to law enforcement authorities the information they have in connection with a crime, because it is in their interest to live in a country that is safe and free from those who trespass the norms of the law. However, the situation is not always clear or unequivocal because of a conflict of interests, as in the case of a priest who becomes aware of a crime during confession, or a defence lawyer who learns about the details of an incident when handling a case. Legislation had to cover such instances in an appropriate way so as not to undermine society's trust in these professions, while ensuring constitutional guarantees.

In the Code of Criminal Procedure, the legislator classifies two categories of the obligation to report a crime, namely civic and legal.³ The former is described in Article 304 § 1 CCP, which reads as follows: "Any person, who learns that an offence subject to public prosecution has been committed, shall be under civic duty to inform the prosecutor or the Police." This duty rests with everyone who has knowledge of an unlawful act subject to

³ The legal duty to report a committed crime (Article 304 § 2 CCP) will not be discussed in this article, as it applies only to state and local government institutions, and a priest, being part of the structure of a church/religious association, does not belong to this category.

public prosecution. However, the form of the report or the personal characteristics of the reporter are irrelevant, so age, gender, nationality, mental and physical condition, etc. will not be assessed [Jasińska 2016, 54-55]. For example, in accordance with the judgment of the Supreme Court of 5 March 1998,⁴ an intoxicated person is under the civic duty to report a crime and no law enforcement agency can ignore it due to the condition of the person reporting it.

Failure to fulfil the civic duty to report a crime does not result in any sanctions against the person failing to do so. The legislator did not provide for a penalty for such failure. The only sanction there may be is social stigmatization if it is discovered that a person with knowledge of the crime has not informed the relevant services about it. Currently, in the digital era of universal access to information, the possibilities offered by social networks are enormous, so information is disseminated rapidly. The fear of being stigmatized on social media or, more broadly, online, may be a greater pain for a person who fails to report a crime when it comes to light than a criminal sanction.

The above considerations should be now applied to a priest, but before any attempt is made to answer the question whether a priest is bound by this duty, the concept of the priest itself should be defined. The legislator did not provide a legal definition [Pachnik 2011, 52], so it is necessary to refer to the views of the doctrine. The literature indicates that a priest is any person performing religious rites, who holds the power to hear confessions of the faithful in any church or religious association, regardless of its recognition under law in Poland [Kurowski 2023]. By another definition “priests are people with a special status resulting from the internal rules of a religious organization, established in any form, binding on its members. Such people should perform or have the powers to perform such activities related to religious worship which, in view of the rules mentioned above, cannot be performed by every member of the community” [Huchla 2001]. Jurisprudence indicates that a priest is “a person being a member of a church or a religious association with a regulated legal status (under the statutory form or through registration by the government minister),

⁴ Case ref. II KKN 328/96, *Prokuratura i Prawo* 1998, no. 10, item 13.

who is usually identified in the internal regulations of religious associations as the person to permanently organize and perform religious rites.”⁵

A priest, in accordance with the directive establishing the civic duty to report a crime, is covered in the catalogue of reporters bound by this duty, while it can be argued from the perspective of moral responsibility that he should fulfil the duty to set an example for the faithful as a spiritual/life guide. Is this really the case, though? It all depends on the circumstances. For example, if a priest walks down the street and witnesses a battery, he is undoubtedly obliged to report it. The situation changes dramatically when a priest who has the powers to administer the sacrament of penance and confession finds out during it that the person confessing has committed battery. In this case, the priest is bound by the seal of confession, which is described in Article 178 § 2 CCP. There is no doubt in the former case that the priest is under the civic duty to report the crime of battery, as there is no legal provision that would release him from it, while the moral values he preaches should oblige him to report it. The law does not specify how long after an incident the report should be filed, though in view of the consequences and outcomes of the offence, one should conclude it should be done without delay. In the latter case, where the priest did not witness the offence, which was only described to him by the offender during confession, he is released from the duty to report the battery. The situation may change dramatically again when the priest was an eyewitness to the battery and then confessor to the offender. The question then arises as to which duty should be given primacy, as there is an overlap between the duty to testify and the prohibition of interviewing over confession [Romańczuk-Grącka 2020, 257]. There is a dualism in the literature, which both allows [Sowiński 2004, 29] and prohibits interviewing [Kwiatkowski 2005, 174].

As a side note, it should be noted that a priest may be interviewed as a witness and should appear when summoned by the procedural authority, as he may be able to give testimony for information not covered by the seal of confession. As for the scope of such disclosure, he makes the decision himself and, in this respect, the procedural authority should “give credence to the confessor’s statement invoking the seal of confession, rely-

⁵ Resolution of the Supreme Court of 6 May 1992, case ref. I KZP 1/92, OSNK 1992, no. 7-8, item 46.

ing in this case on his authority as a priest and the authority of the sacrament of penance” [Wielec 2012, 250-51]. Sometimes, the mere indication by a priest that a person went to confession on a specific date and time will be important information for the ongoing criminal proceedings. This will allow the authority to determine whether the person could have committed a prohibited act at a given time and place, which is why it is so important for the priest to appear at the request of the procedural authority and testify about circumstances not covered by the seal of confession.

At this point it is necessary to clarify the concept of “confession.” Unfortunately, the legislator does not make this task easier because it does not define this concept. One should refer then to the internal regulations of the Catholic Church or the Evangelical Church of the Augsburg Confession, where it is laid down in detail. Generally speaking, confession should be defined as an act of revealing sins with the intention of obtaining absolution [Tomkiewicz 2012, 57-59]. However, the seal of confession covers everything related to it, both on the part of the penitent and the priest, including all statements, reactions [Kwiatkowski 2005, 174] and notes [Stefański 1998, 113]. The seal of confession applies to private confession, not general confession. “This type of confession [private – M.J.] is found in the Catholic Church (Latin and Ukrainian-Greek rites), as well as in other Churches operating in the territory of the Republic of Poland, including in the Polish Autocephalous Orthodox Church, in the Old Catholic Mariavite Church or in the Polish Catholic Church. Private confession is also allowed by the Evangelical Church of the Augsburg Confession (Lutheran) and by the Anglican Church (in Poland it is the Warsaw chaplaincy which is part of the diocese of Gibraltar in Europe)” [Romańczuk-Grącka 2020, 248].

The institution of the seal of confession is regulated in Can. 983 § 1 of the Code of Canon Law,⁶ which reads as follows, “The sacramental seal is inviolable; therefore, it is absolutely forbidden for a confessor to betray in any way a penitent in words or in any manner and for any reason.” Moreover, Can. 1388 § 1 establishes the sanction of excommunication for a confessor who has broken the seal of confession.

The confessor’s obligation within the confines of the seal of confession is to maintain confidentiality and refrain from using information obtained

⁶ *Codex Iuris Canonici auctoritate Ioannis Pauli PP. II promulgatus* (25.01.1983), AAS 75 (1983), pars II, pp. 1-317 [“CIC/83”].

from the penitent during confession. The scope of the seal of confession, as emphasized by the doctrine of canon law, covers not only confessed sins, but also the information and circumstances provided by the penitent during confession [Adamczewski 2016, 12]. Whether disclosing these was necessary, useful or perhaps redundant is irrelevant [Syryjczyk 2001, 113]. Universal law, unlike canon law, respects the seal of confession in a less explicit and direct way. Still, there are guarantees ensuring the protection of this institution [Wielec 2012, 144].

In view of the above, it should be assumed that a priest, when he learns about a committed crime during confession, benefits from the seal of confession; otherwise, when he witnesses the act, the civic duty to report the crime is realized. However, a question arises in this context if a priest, who is not a confessor himself but happens to be in a place where another priest hears a penitent's confession and overhears its content, is also bound by the seal of confession? A reference to CIC/83 makes it clear that the seal extends to such a person. According to Can. 983 § 2 CIC/83, "The interpreter, if there is one, and all others who in any way have knowledge of sins from confession are also obliged to observe secrecy." Breaking the seal by a priest who is not a confessor gives rise to the consequences described in CIC/83.

In terms of the civic duty which does not entail sanctions on a person failing to report a crime, the matter is to be decided in the confessor's conscience. In relation to another person, who is not a priest and who overhears someone else's confession, "the [Polish legislator – M.J.] also did not provide for protection of the seal of confession, because it did not limit the possibility of testimony to be given in the proceedings by third parties having information heard from someone else's confession" [Wielec 2012, 333-34].

2. LEGAL DUTY TO REPORT A CRIME UNDER ARTICLE 240 OF THE CRIMINAL CODE

The non-punitive civic duty to report a committed crime turns into a punitive duty upon failure to report one of the prohibited acts enumerated in Article 240 CC. The article lays down a punishable offence of failure to report a crime. When analysing this provision, it should be assumed that Article 240 § 1 CC expresses one sanctionable norm as follows: "Every

person in a situation in which he or she has obtained credible information about the fact of committing a prohibited act (as listed in the catalogue of Article 240 § 1 CC), is under the duty to report the commission of that prohibited act to the authorized law enforcement authority without delay” / “Every person in a situation in which he or she has obtained credible information about the fact of committing a prohibited act (as listed in the catalogue of Article 240 § 1 CC), is forbidden to refrain from reporting the commission of that prohibited act to the authorized law enforcement authority without delay” [Burdziak 2022, 69].

In the provision of Article 240 CC, the legislator does not indicate the scope of information to be included in the report, nor the form in which such a report is to be delivered to law enforcement authorities for the reporter to release themselves from criminal liability for failure to fulfil the duty. It should be recognized that any effective method of reporting a crime should be considered as fulfilling the duty [Jasińska 2016, 111]. Therefore, anonymous information also meets these criteria. The duty to denounce is realized when one has credible information about a crime, i.e., information that is substantiated, where the objective and subjective condition must be met [Stachowiak 2005, 35]. The reporter is not obliged to thoroughly verify the facts constituting the basis for their report, and will not be held liable where it ultimately turns out that no crime was committed, even though the circumstances suggested it [Marek 2010, 526-27].

The provision of Article 240 § 2 CC lists circumstances excluding the criminality of a prohibited act. One of these is having sufficient grounds to believe that the authority responsible for prosecuting crimes knows of a planned, attempted or committed prohibited act, or having prevented the commission of a planned or attempted prohibited act specified in Article 240 § 1 CC. These circumstances annul both the duty to report and any unlawfulness of the report. The third paragraph introduces a non-punishment clause for a person who refrains from reporting a crime for fear of criminal liability for themselves or their next of kin. In 2017,⁷ a new § 2a was added, which introduced a non-punishment clause also for the victim of an act under Article 240 § 1 CC, who failed to report it. The need to

⁷ Act of 23 March 2017 amending the Act Criminal Code, the Act on Juvenile Delinquency Proceedings and the Act Code of Criminal Procedure, Journal of Laws item 773.

avoid double victimization was given as the justification for this construction [Mierzwa 2019, 88].

Referring the above to a priest, it is again necessary to distinguish the circumstances in which the priest may have come into possession of information about a crime. If he witnessed a prohibited act listed in the catalogue of Article 240 § 1 CC, e.g., he saw or heard from someone while doing he shopping, or watched a surveillance video from a church or rectory and thus became aware of the crime, then failure to report the crime to law enforcement authorities will result in criminal sanction for the priest. Since the criminal process is intended to protect society as a whole, it should not only focus on respecting the interests of the accused, but especially the interests of the victim. Therefore, it is unquestionable that a priest is under the duty to report a crime committed if it falls under the catalogue of Article 240 CC, though only if he has information regarding the punishable planning, attempt or commission of a criminal act, which he obtained other than by acting as a confessor [Abramek 2019, 275-76], as in the latter case he is bound by the seal of confession. This solution should be considered reasonable, as what is at hand is the countertype of acting within the limits of rights and obligations, which is a consequence of the principle that the law cannot punish for what it orders or permits [Jasińska 2016, 113-14].

According to M. Romańczuk-Grącka, “Otherwise, there would be a conflict of legally protected interests, between the interests of the criminal justice and the seal of confession, which is a guarantee of religious freedom as a subjective right. In such a case, substantive criminal law usually refers to the necessity defence under Article 26 CC; therefore, also in such a situation it would be reasonable to test this conflict for proportionality and necessity” [Romańczuk-Grącka 2020, 258]. There is no doubt that this task would be difficult in view of the constitutional guarantees of freedom of conscience and religion. Moreover, if we venture into considering the option to lift the seal of confession, arguing that when it comes to weighing freedom of conscience and religion, and the protection of human life and health, then the latter should take precedence and we would face axiological dilemmas. Going further, this could lend ground to attempts at challenging the legal professional privilege, which would be in violation of not only code and constitutional rules, but also of international regulations.

From the perspective of a priest, it seems to be a morally difficult issue, because a priest, upon finding out during confession about a crime committed by the penitent, cannot do anything about it because he is bound by the seal. The only question is whether he will always be able to keep secrecy. The decision to serve as a priest is not an easy one and the person who makes it knows what it involves. However, sometimes there are cases when people resign from this role because the responsibility and sacrifice are beyond them. The seal of confession under Article 178(2) CCP survives a priest's leaving the clerical state [Stefański and Zabłocki 2019].

The question arises whether a priest who knowingly violates the seal of confession may be held liable under secular law, apart from the sanction under CIC/83. According to K. Adamczewski, it can be considered that a priest is bound by professional secrecy and therefore, in the event of its violation, he may be held to account for its violation pursuant to Article 266 § 1 CC. Liability for this crime realizes upon the offender's disclosing the information provided to him in connection with his function, public, social, economic or scientific activity. This also applies to holding functions in churches and religious associations, so a priest can be an offender. "Therefore, the possibility to hold a priest criminally liable pursuant to Article 266 § 1 CC, in the event of a breach of the seal of confession, must therefore be considered a specific expression of its protection on the part of the legislator. It also seems possible that intentional eavesdropping of confessions by third parties constitutes an act specified in Article 267 CC, i.e., the crime of illegally acquiring information" [Adamczewski 2016, 16].

An important aspect is the activity of priests outside confession, because they often play the role of spiritual guides of people, they hold various types of conversations during which they may come into possession of unfavourable information about a person, which qualifies for reporting to law enforcement authorities. In this case, the seal of confession will not apply, as such a conversation is not to give penance while the definition first adopted above provides for it as a constituting element of confession. The case is suitable to examine whether a priest is bound by professional secrecy.

In many professions, where trust plays a key role, the ability and need to maintain professional secrecy correspond to the protection of fundamental, constitutionally protected individual rights; thus, the protection of professional secrecy is well-established in the legal system, but is not ab-

solute. [Świto and Tomkiewicz 2018, 153]. According to E. Plebanek and M. Rusinek, the overall design of procedural regulation indicates that the legislator gives priority to professional secrecy [Plebanek and Rusinek 2007, 73] and not to the legal duty to report a crime. L. Świto and M. Tomkiewicz see it differently, pointing out that pastoral secrecy cannot be considered a professional secrecy; therefore, if a priest receives information as part of a pastoral conversation, he is under the duty to report it to the relevant services, regardless of the choices the person entrusting him with the information may make [Świto and Tomkiewicz 2018, 161]. This is of great importance for victims of sexual crimes, where the victim is often not interested in reporting to the police but wants to relieve themselves of the burden of the entire incident, making a priest the confidant of their secret; if such information is provided during confession, then the priest is obliged to keep secret, but if it is revealed during a pastoral conversation, he is under the duty to denounce [Więcek-Durańska 2020, 57].

CONCLUSIONS

The requirement of reporting a committed crime *prima facie* seems to be an uncomplicated issue, since if one has credible information about a crime, it must be reported to the relevant services to commence and conduct criminal proceedings. However, as the above considerations show, it is not always so obvious. When answering the questions included in the introduction, it should be made clear that if a priest receives information about committing a prohibited act outside of confession, he is obliged to report both under Article 304 § 1 CCP, which applies to crimes subject to public prosecution, and Article 240 § 1 CC, which applies to the prohibited acts enumerated there. The difference is, of course, that if a priest fails to fulfil this obligation as part of his civic duty, he will not expose himself to criminal liability, unlike in the other case, where Article 240 CC provides for a penalty of imprisonment of up to 3 years for failure to comply with the duty to report. On the other hand, if a priest becomes aware of a crime/prohibited act during confession, he is bound with neither of these duties. It is also crucial that the seal of confession extends to the confessor's entire life, surviving his leaving the clerical state. The release of the seal of confession by the penitent themselves is not binding on a priest. Even if

it were otherwise beneficial,⁸ the priest would be held to account for breaking the seal of confession.

A distinction must be made between the seal of confession, which guarantees full confidentiality, from pastoral secrecy, which, unlike in foreign legal orders, is not protected in the Polish legal system. For example, § 53(1)(1) of the German Code of Criminal Procedure provides that “The following persons may also refuse to testify: clergy, concerning that information which was confided to them or which became known to them in their capacity as spiritual advisers”, while § 155(1) of the Austrian Code of Criminal Procedure stipulates that “under pain of nullity, the following persons may not be heard as witnesses: 1. clergy, concerning that information which was confided to them during confession or as part of professional secrecy of clergy” [Łukańko 2020, 357]. If one assumes that any other individual contact with a priest, whether a pastoral conversation or spiritual guidance, is covered by professional secrecy, one may be tempted to say that a priest who reports a prohibited act of which he has become aware may be held criminally liable under Article 266 § 1 CC.

The seal of confession related to the prohibition described in Article 178 § 2 CCP is limited to a priest, which may lead to a violation of the fundamental constitutional principle regarding freedom of conscience and religion. The limitation of the seal of confession only to a priest in a situation where the confession could be overheard by third parties means that the above-mentioned guarantees are only illusory. Obtaining testimony from a person who overheard a confession, regardless of whether he or she did it on purpose or by accident, violates the religious feelings and privacy of the person confessing [Tomkiewicz 2012, 56-57]. Perhaps an extension of the seal of confession to all persons who may hear it, with a view to ensuring a full guarantee of the constitutional principle for believers, is worth considering. Especially since in today’s world information is of great value from the economic, technological, political point of view, etc. “For this reason, especially in relation to information confessed as part of the sacrament of penance, there is a need for special confidentiality and respect for it.” [Adamczewski 2016, 8].

⁸ Judgment of the Court of Appeal in Szczecin of 18 February 2015, case ref. II Aka 270/14, Lex no. 1668674.

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Are Priests under the Duty to Report a Confessed Crime?

Abstract

The proper operation of justice requires cooperation of society as the entity jointly responsible for the security of the state. The perfect expression of this is the duty to report a committed crime, which rests with anyone who has credible information about a prohibited act. We distinguish civic and legal duties as well as punishable failure to report a crime. The considerations undertaken are aimed at answering the question: in what situations a clergyman is bound by the above duties, and when he can evade them? Further, what are the consequences of violating these duties with regard to the seal of confession by which the priest is bound. Confession is not the only form of contact between the faithful and the clergyman, but it is the only one that enjoys protection, so the question is whether pastoral conversation and spiritual guidance can benefit from the protection related to professional secrecy. It is crucial to have these questions answered from the perspective of a believer who entrusts his secrets to a clergyman, in confidence that they will always be protected.

Keywords: priest; reporting a crime; denunciation; seal of confession; professional secret

Czy na duchownym ciąży obowiązek zawiadomienia o popełnieniu przestępstwa?

Abstrakt

Prawidłowe działanie wymiaru sprawiedliwości wymaga współdziałania społeczeństwa, które jest współodpowiedzialne za bezpieczeństwo państwa. Doskonałym wyrazem tego jest obowiązek zawiadomienia o popełnionym przestępstwie, który spoczywa na każdym, kto ma wiarygodną wiadomość o czynie zabronionym. Wyróżniamy obowiązek społeczny, prawny oraz karalne niezawiadomienie o przestępstwie. Rozważania podjęte mają na celu udzielenie odpowiedzi na pytanie: w jakich sytuacjach duchowny związany jest powyższymi obowiązkami, a kiedy może się od nich uchylić? Jak też, jakie konsekwencje powoduje naruszenie tych obowiązków w odniesieniu do tajemnicy spowiedzi, którą duchowny jest związany. Spowiedź to nie jedyna forma

kontakty wiernego z duchownym, ale tylko ta korzysta z ochrony, pytanie zatem, czy rozmowa duszpasterska, przewodnictwo duchowne mogą korzystać z ochrony związanej z tajemnicą zawodową. Udzielenie odpowiedzi na te pytania ma kluczowe znaczenie z perspektywy wiernego, który powierza swoje tajemnice duchownemu sądząc, że zawsze będą one chronione.

Słowa kluczowe: duchowny; zawiadomienie o przestępstwie; denuncjacja; tajemnica spowiedzi; tajemnica zawodowa

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