ROCZNIKI NAUK PRAWNYCH
Tom XXXIV, numer 2 – 2024
DOI: https://doi.org/10.18290/rnp24342.4

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THE OBLIGATION OF REPAIRING THE HARM FOR A PROPERTY OFFENCE IN THE 1983 CODE OF CANON LAW

Abstract. The obligation of repairing the harm is a new requirement of canon law, added to the expiatory penalty for financial offences. The study aims at clarifying the nature of the obligation of reparation of the harm, in particular whether it is an additional penalty besides the expiatory one, whether reparation of the harm replaces the expiatory penalty for financial offences in the canonical legal order. It is worth noting that the previous Book VI of the 1983 Code did not impose an obligation to repair harm arising from property offences.

Keywords: canonical penal law; reparation of the harm; financial malfeasance

INTRODUCTION

The Church, in the Catechism of the Catholic Church, affirms that any offence against justice and truth entails the obligation of repairing the harm, even if its author has been forgiven (CCC 2487). It is also unsurprising that Pope Francis, in promulgating the revised Book VI of the 1983 Code of Canon Law, introduced the "obligation of repairing the harm" into the canonical legal order. It should be noted that the reparation of the harm is not a form of additional penalty imposed on the offender to the obligatory expiatory penalties. Rather, it is a penal precept as defined in can. 1319 § 2. It constitutes one of the preliminary measures (pre-trial) designed to ensure compliance with the law, with the threat of criminal sanctions.

It is worth noting that, prior to 2021,[1] the obligation to repair the harm was only applicable in cases of damage caused by an illegal act, whether a decree or a recourse.[2] At that time, the perpetrator was obliged to repair the damage inflicted under can. 128.[3] In the case of property offences, in particular illegal alienation, the offender was subject only to the just penalty *ferendae sententiae* (see can. 1377). It is worthy of note that the previous Book VI of the 1983 Code did not impose an obligation to repair harm resulting from property offences. In contrast, the 1917 codification explicitly provided for reparation of damage for, among other things, attempts to bribe or give gifts to curial officials or administrators of any ecclesiastical sort, [or] judges, advocates, or procurators (cf. can. 2407 CIC/17).[4] In the case of an attempted illegal alienation, the possessor of the alienated thing was bound by law to restore the thing if convicted, and not only the thing itself, but also the proceeds of the thing, during the time since the joinder of issues, [and] he is required to restore and he must make up for any damage that has also followed (can. 1731, 3° CIC/1917).

Regarding the lack of obligation to repair the harm, it was a significant challenge for judges seeking to impose not only a just penalty that is commensurate with the gravity of the crime, but also to restore justice, which is contingent upon the redress of damage.[5]

The purpose of this study is to offer a systemic interpretation of the "obligation of repairing the harm" that the legislator provides for the deliberate commission of property crimes stipulated in canon law. These include: misappropriation and obstruction of the use of property (can. 1376 § 1, 1°), negligence in the acts of administration and alienation (can. 1376 § 1, 2°), bribery of a person exercising an office or a function (can. 1377 § 1), bribery in the

[1] That is, until the entry into force of the Apostolic Constitution *Pascite gregem Dei, qua liber VI Codicis Iuris Canonici reformatur* (May 23, 2021), promulgated in "L'Osservatore Romano. Edizione quotidiana" 161 (June 1, 2021), no. 122, p. 2-4.

[2] See P. MAJER, *Rekurs o naprawienie szkody z tytułu nielegalności aktu administracyjnego*, "Teka Komisji Prawnej – OL PAN" (2011), p. 74-91.

[3] For more consideration on this see: F. CACIOPPO, *La disciplina della riparazione del danno nel diritto canonico del secolo XX*, Roma 1996; F. SALERNO, *La responsabilità per l'atto giuridico illegittimo (can. 128 c.j.c). Obbligo della riparazione del danno nel Codex '83*, [in:] "L'atto giuridico nel diritto canonico," ed. V. de Paolis, Città del Vaticano 2002, pp. 330-332, 337-338.

[4] See can. 1832 CIC/17.

[5] See the address of the Benedict XVI to participants in the Plenary Assembly of the Supreme Tribunal of the Apostolic Signatura (February 4, 2011). The full text is available on the Vatican website.

exercise of office or function (can. 1377 § 2), and abuse of power, office, or ecclesiastical function (can. 1378 § 1).

1. EXPLANATION OF TERMS

In order to understand what is meant by "repairing the harm" in the context of the canonical legal order, it is first necessary to clarify the concepts of "harm" and "repair". The provisions of the current Code of Canon Law do not provide a legal definition of the term "harm". However, the text of the Code makes numerous references to the term.[6] The Latin term *damnum* has been used to describe the concept of harm, which is accurately defined as "property damage", "deprivation of property", and, in a broader sense, even "deprivation of future benefits" or "loss of profits". In other words, it is any damage to property that is legally protected. In the context of the canonical legal order, the term is employed to signify both material damage and non-material damage.[7] The latter implies damage, for example, moral damage or scandal. In the latter case, the legislator makes reference to the necessity of repairing the scandal (see, e.g., can. 1311 § 2, 1324 § 3, 1335 § 1, or 1341). It is important to distinguish between the obligation to repair harm and the obligation to repair scandal.

In the context of canon law, property damage can be classified into two distinct categories: lost profits that the ecclesiastical juridical person could have obtained but did not by reason of the offence committed; and loss of property or money.[8] In any case, the harm caused to ecclesiastical goods is of a material and physical nature, and therefore of a kind that can be quantified. Such actions may include the infringement of rights pertaining to the possession or use of legally protected property.[9]

The second term to be clarified is that of repair, which is equivalent to the Latin term *reparare*. In the first sense, the verb means "to repair", while in

[6] See can. 57 § 3; 87 § 2; 128; 326 § 1; 540 § 2; 1201 § 2; 1209; 1281 § 3; 1284 § 2, 3°; 1289; 1293 § 2; 1323, 4°; 1324 § 1, 5°; 1328 § 2; 1344, 2°; 1347 § 2; 1349; 1357 § 2; 1361 § 4; 1376 § 1-2; 1377 § 1-2; 1378 § 1-2; 1393 § 2; 1448 § 1; 1457 § 1; 1496 § 1; 1498; 1515; 1546 § 1; 1645 § 2, 3°; 1650 § 3; 1741, 5°.

[7] For further considerations on this, see F. CACIOPPO, *La disciplina della riparazione del danno nel diritto canonico del secolo* XX, Roma 1996, p. 170-181.

[8] MAJER, *Rekurs o naprawienie szkody*, 80.

[9] The legally protected goods stem from the Church's supernatural mission and are associated with the objectives set forth in the can. 1254.

the second it means "to restore to its original state", i.e., to the state before the harm occurred. It is worth noting that in Roman law, the term *damnum reparatio* was used to describe the process of compensating the injured party for the economic value of the damaged goods.[10] In the canonical legal order, repairing the harm can take two forms, as expressed by the Latin terms *restitutio* and *reparatio.* The aforementioned terms were included by the legislator in the recently introduced can. 1361 § 4, which states: "The offender may be urged to make such reparation or restitution by one of the penalties mentioned in can. 1336 §§ 2-4." Józef Krukowski notes that provision of this canon points out that the ordinary cannot grant exemption from punishment as long as the offender does not repair the damage caused or restore the previous state of affairs.[11] Of course, according to the prudent judgment of the ordinary.[12]

The thesis is also confirmed by the Code of Canons of the Eastern Churches, which, according to can. 1424 § 1, states that "penalty may be remitted only if the offender has adequately repaired the damage."

2. PRACTICE TO DATE

As we have already mentioned, in the previous Book VI of the 1983 Code, the legislator did not provide for an obligation to repair the harm caused by property offences. Nevertheless, the judge could accept the action to repair the harm caused by the delict (can. 1729 § 1). However, such an action was contentious in nature and could be combined with criminal proceedings through third-party intervention (can. 1596) and was considered together with the criminal case. Although the action was, in a sense, independent of the penal case, the resolution of one case did not prejudice the outcome of the other.[13] Furthermore, a conviction in a criminal trial did not necessarily entitle the injured party to compensation for the harm caused (can. 1731).

[10] I. ZUANAZZI, *La responsabilità giuridica dell'ufficio di governo nell'ordinamento canonico*, "Ius Canonicum" 59 (2019), p. 521.

[11] J. KRUKOWSKI, *Przestępstwa i kary w ogólności*, [in:] *Komentarz do Kodeksu Prawa Kanonicznego*, ed. J. Krukowski, vol. IV/2, *Księga VI. Sankcje Karne w Kościele zreformowane przez papieża Franciszka*, Poznań 2022, p. 68.

[12] M.J. ARROBA CONDE, *Editorial. The Reform of Penal Canon Law*, "Revista Scientia Canonica" 4 (2021), p. 14.

[13] MAJER, *Rekurs o naprawienie szkody*, 81.

The ordinary was not, in fact, in a position to impose an obligation to repair the harm on the offender, apart from the aforementioned situation. An alternative course of action would be for him to apply can. 1399 granting him the authority to impose a penalty in instances of external violations of divine or canon law, excluding those addressed in the 1983 Code or other laws. It should be noted, however, that this provision cannot be applied to every offence. Rather, it can be invoked only in respect of those offences for which the gravity of the violation of divine or canon law is in favour and there is a need to prevent and repair the scandal. In order for this norm to be applicable, the two requirements set forth in can. 1399 must be fulfilled.

3. A CRITICAL ANALYSIS OF THE LEGAL OBLIGATION OF REPAIRING THE HARM

The obligation of repairing the harm lies with the one who has committed the property crime expressed in can. 1376-1378. The placement of these provisions within Title II, Part II, Book VI of the Code of Canon Law suggests that we are dealing with offenses committed in the context of exercising ecclesiastical authority, office, or a function.

The fundamental premise that gives rise to the obligation to repair the harm is the perpetration of a criminal act with deliberate intent (*dolus*),[14] in external violation of a law or precept (can. 1321 § 2). For an offence to be committed, it is not sufficient that the act creates the potential possibility that the property of an ecclesiastical juridical person may deteriorate, but through a specific criminal act material damage has been inflicted on it.[15]

The perpetrator of the offence is an individual who holds ecclesiastical authority, an office or a function, e.g. a parish priest, finance officer, or the director of a retreat house or educational institution, as well as a diocesan bishop, eparch, or one on whom – even temporarily – responsibility for the particular Church has been placed. Pope Francis, in the motu proprio *Come una madre amorevole* of 4 June 2016,[16] explicitly points to a diocesan bishop who would make not only an omission in reporting sexual abuse, but also a serious patrimony harm (no. 1). In other words, it is a person holding an office,

[14] It is an action taken with the consciousness and intention to violate the law.

[15] Cf. P. MAJER, *Odpowiedzialność za szkody wynikłe z nielegalnych aktów administracyjnych*, [in:] *Organizacja i funkcjonowanie administracji w Kościele*, ed. J. Krukowski, W. Kraiński, M. Sitarz, Toruń 2011, p. 225-226.

[16] AAS 108 (2016), p. 715-717.

authority or task to whom ecclesiastical goods have been entrusted in order to manage them as a good father of the family (*boni pater familias*).

It should be noted that this is the first obligation imposed on all administrators of ecclesiastical goods by can. 1284 § 1. Paragraph 2 lists the various duties imposed on administrators.

It does not matter whether the damage was caused by acting validly or not. The constitutive element of the obligation to repair the harm is the commission of an offence defined by law. There must therefore be a causal link between the act and the harm: the act and the harm are linked in such a way that one is the cause of the other. The harm that must be remedied includes the following offences:

a) The misappropriation of ecclesiastical goods or preventing their proceeds from being received (for example, a bishop or religious superior entrusts ecclesiastical goods in good faith to a steward with the expectation that they will be used for the mission of the Church and not the private purposes of the steward).

b) The alienation of ecclesiastical goods or the undertaking of acts of administration without the prescribed consultation, consent, or permission, or without another requirement imposed by law for validity or for lawfulness (e.g., the act of alienation or administration with grave personal culpability or grave negligence or the taking out of loans and credits without the prescribed consultation and permission).

c) The grave personal culpability in the administration of ecclesiastical goods (e.g. failure to observe elementary principles of both ordinary and extraordinary administration).[17]

d) Giving or promising a financial benefit to induce a person holding an ecclesiastical office or function to do or omit to do something unlawfully (applies to both active and passive corruption in the exercise of an ecclesiastical office or function).

[17] In can. 1284 § 2 CIC/83, the legislator enumerates the duties of the administrator of ecclesiastical property. Among these, the administrator is obliged to secure the ownership of ecclesiastical property by means that are valid in terms of state law and to observe the provisions of secular law in the administration of the property. This is done in order to prevent the Church from suffering damage as a result of non-compliance with state laws. Furthermore, administrators of estate are obliged to adhere strictly to the provisions of state labour law (can. 1286, 1°). Accordingly, in such instances, any contravention of state legislation may constitute a canonical offence in accordance with can. 1376 § 2, 2°.

e) Requesting an offering beyond that which has been established, or additional sums, or something for his or her own benefit. This is a new legal provision that applies to offerings made by virtue of the celebration of sacraments and sacramentals.

f) Committing any other abuse in connection with the exercise of power, office and function already foreseen by the law (including legislative, executive, and judicial power), both ordinary and delegated, in its external and internal scope).

g) Neglecting, undertaking, or omitting unlawfully to someone's harm an act of ecclesiastical authority or an act relating to an office or task (e.g., negligence in carrying out the tasks of a pastor as referred to in can. 530).

4. THE PROCEDURE FOR REPAIRING THE HARM

When analysing the procedure for the obligation to repair the harm, the legislator first points to the application of the penal percept in accordance with can. 1319 § 2. Then the ordinary, after careful consideration of the case, should issue a penalty percept in writing, with the reasons at least summarily expressed if it is a decision (can. 51), so that the perpetrator repairs the damage caused. To this end, all the requirements for administrative acts must be observed,[18] in particular the singular decrees and precepts referred to in can. 48-58.

Where a penal precept has failed to restore justice,[19] and thus repair the harm, the ordinary should initiate judicial or administrative proceedings in accordance with can. 1341.

The Dicastery for Legislative Texts, in its guide on the application of penal sanctions in the Church[20] explains that if the ordinary, after prudent judgment, has found that the offender has not repaired the harm caused, he should urge him to make such a reparation or restitution by applying one of the expiatory penalties mentioned in can. 1336 §§ 2-4.

[18] W.H. WOESTMAN, *Ecclesiastical Sanctions and the Penal Process. A Commentary on the Code of Canon Law*, Ottawa 2000, p. 21.

[19] In the *Compendium of the Social Doctrine of the Church*, Pontifical Council for Justice and Peace stated that justice consists in the constant and firm willingness to give their due to God and neighbour, no. 201.

[20] Dicastery for Legislative Texts, *Le sanzioni penali nella Chiesa. Sussido applicativo del Libro VI del Codice di Diritto Canonico*, Città del Vaticano 2023.

The Dicastery, with reference to can. 1361 § 4, indicates that reparation of the harm can take two forms:

1) *Reparatio:* effective redress of the material harm caused.

2) *Restitutio:* restoration of property to its state before the harm.

The use of the disjunctive 'or' between *restitutio* and *reparatio* indicates the choice of type of repair. However, neither the legislator nor the aforementioned dicastery clarifies who is responsible for choosing the type of repair: whether the ordinary prescribes the type of damage repair or whether this is left to the perpetrator of the offence. The construction of the further wording of the canon indicates that the choice of the type of reparation for the harm lies with the ordinary, and not with the offender. This is evidenced by the fact that the wording of the canon allows for the offender to be urged to make such a reparation.

The mention of an effective reparation of damage means that not every reparation of harm restores the previous state of affairs. In contrast to *restitutio*, *reparatio* allows for an evaluation of whether the harm has been sufficiently repaired, thus allowing for the continued use of the item in question.

The Dicastery further emphasises that the sole criterion enabling the ordinary to remit the imposition of a penal sanction is the full reparation of the harm or restitution of the property in question. In the event that the offender delays the repair of the harm caused or is unwilling to restore the previous state of affairs, the ordinary proceeds to impose the obligatory penal sanction prescribed by law. This is expressed in the form of an expiatory penalty, which is defined in can. 1336 §§ 2-4, not excluding deprivation of office.

It is pertinent to note that the recently introduced expiatory penalties include an order to pay a fine or a sum of money for the Church's purposes, according to the rates determined by the bishops' conference, as well as the deprivation of all or part of the Church's salary, as determined by the bishops' conference. However, the Polish Bishops' Conference did not provide specifications regarding the rates of the fine or the amount of the remuneration.

CONCLUSIONS

In conclusion, it is important to recall the canonical doctrine that the use of ecclesiastical goods is subordinate to the missionary purposes of the Church. This doctrine states that the use of these goods is related to the Church's mission, which includes: to order divine worship, to care for the

decent support of the clergy and other ministers, and to exercise works of the sacred apostolate and of charity, especially toward the needy (can. 1254). The infliction of harm as a consequence of a patrimonial offence constitutes a complete negation of the expressed purposes of ecclesiastical goods. It thus follows that the canonical legislation has to adopt appropriate instruments to ensure the effective protection of ecclesiastical goods, without prejudice the obligation of repairing the harm.

In light of the aforementioned considerations, it is imperative to underscore the obligation to repair the harm, which should not only enhance the protection of ecclesiastical goods but also enable the Church to fulfill its mission. It thus falls upon the perpetrator to repair the harm done, so that the Church may continue to make use of these goods without hindrance.

Additionally, can. 1729 remains in effect, stipulating that the injured party, within the penal trial, can bring a contentious action to repair damages incurred personally from the delict.

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OBOWIĄZEK NAPRAWIENIA SZKODY ZA PRZESTĘPSTWA MAJĄTKOWE W KODEKSIE PRAWA KANONICZNEGO Z 1983 ROKU

Streszczenie

Obowiązek naprawienia szkody jest nowym wymogiem prawa kanonicznego, dodanym do dotychczasowej kary ekspiacyjnej za przestępstwa finansowe. Problemem naukowym opracowania jest próba odpowiedzi na pytanie czy obowiązek naprawienia szkody jest dodatkową karą ustanowioną przez ustawodawcę, czy ewentualne naprawienie szkody zastępuje obowiązkową karę ekspiacyjną? Warto zauważyć, że poprzednia księga VI Kodeksu z 1983 r. nie nakładała obowiązku naprawienia szkody wynikającej z przestępstw przeciwko mieniu. Celem niniejszego opracowania jest przedstawienie systemowej interpretacji „obowiązku naprawienia szkody", jaki ustawodawca przewiduje w przypadku umyślnego popełnienia przestępstw majątkowych przewidzianych w prawie kanonicznym. Należą do nich: przywłaszczenie i utrudnianie korzystania z dóbr (kan. 1376 § 1, 1°), zaniedbanie w czynnościach zarządu i alienacji (kan. 1376 § 1, 2°), przekupstwo osoby sprawującej urząd lub funkcję (kan. 1377 § 1), przekupstwo w sprawowaniu urzędu lub funkcji (kan. 1377 § 2) oraz nadużycie władzy, urzędu lub funkcji kościelnej (kan. 1378 § 1).

Słowa kluczowe: kanoniczne prawo karne; naprawienie szkody; nadużycie finansowe