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## **Violation of the Obligation of Residence According to the 1983 Code of Canon Law**

### **Abstract**

The obligation of residence is the obligation to reside in a specific territory on a permanent basis in connection with holding an ecclesiastical office. The delict of violation of the obligation of residence is penalized under can. 1396 of the 1983 Code of Canon Law and is strictly linked to the entrusted ecclesiastical office such as: cardinals holding specific offices in the Roman Curia, diocesan bishop, coadjutor bishop, auxiliary bishop, diocesan administrator, pastor, parochial administrator and a group of clerics administering the parish in solidum, parochial vicar. Violation of the obligation of residence is subject to a mandatory penalty. The gravest penalty provided for by the ecclesiastical legislator is the privation of ecclesiastical office.

### **Keywords**

Offences against special obligations, diocesan bishop, pastor, sanctions.

## Introduction

The 1983 Code of Canon Law<sup>1</sup> regulates cases of violation of the obligation of residence in its Book VI Sanctions in the Church, Part II Penalties for Individual Delicts, Title V Delicts against Special Obligations. In can. 1396, the ecclesiastical legislator provides, “A person who gravely violates the obligation of residence which binds by reason of ecclesiastical office is to be punished by a just penalty, not excluding, after a warning, even privation from office.”

The article seeks to answer the following questions: Where does the obligation of residence come from? Who is bound by the law of residence according to CIC/83? Is every violation of the obligation of permanent residence in a specific place subject to a penalty?

### 1. The idea of the obligation of residence

The obligation of residence is the obligation to reside in a specific territory (or in a specific place) on a permanent basis in connection with holding an ecclesiastical office.<sup>2</sup> The delict penalized under can. 1396 CIC/83 covers such a neglect of the obligation to reside in a specific territory that is strictly linked to the entrusted ecclesiastical office,<sup>3</sup> which, in turn, involves certain obligations that cannot be performed outside the place of domicile. Consequently, the penalty provided for in can. 1396 CIC/83 will not be *ex lege* applied to the violation of the obligation of residence which does not arise from the nature of the occupied ecclesiastical office, as provided, for example, in can. 283 § 1.<sup>4</sup>

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<sup>1</sup> *Codex Iuris Canonici auctoritate Ioannis Pauli PP. II promulgatus* (25.01.1983), AAS 75 (1983), part II, pp. 1–317 [hereinafter: CIC/83].

<sup>2</sup> See more M. Sitarz, *Obowiązek rezydencji*, in: M. Sitarz (ed.), *Leksykon Prawa Kanonicznego*, Lublin 2019, ed. Stowarzyszenie Absolwentów i Przyjaciół Wydziału Prawa Katolickiego Uniwersytetu Lubelskiego, col. 1901.

<sup>3</sup> According to can. 145 CIC/83, “§ 1. An ecclesiastical office is any function constituted in a stable manner by divine or ecclesiastical ordinance to be exercised for a spiritual purpose. § 2. The obligations and rights proper to individual ecclesiastical offices are defined either in the law by which the office is constituted or in the decree of the competent authority by which the office is at the same time constituted and conferred.”

<sup>4</sup> “Even if clerics do not have a residential office, they nevertheless are not to be absent from their diocese for a notable period of time, to be determined by particular law, without at least the presumed permission of their proper ordinary.” See also J. Bernal Pascual, *Przestępstwa przeciwko*

The purpose of the legal protection and penalty under can. 1396 is the stable and proper operation of ecclesiastical offices.<sup>5</sup> On the other hand, the subjects of this protection are the faithful, and more specifically the spiritual goods of the faithful, such as the right to receive assistance “from the sacred pastors” out of the spiritual goods of the Church, especially the word of God and the sacraments (can. 213)<sup>6</sup> or the right to receive a Christian education (can. 217).<sup>7</sup> The rights of the faithful correspond to specific obligations to be fulfilled by those holding ecclesiastical offices; therefore, in order for such ecclesiastical individuals to exercise them, the legislator directly lists entities that are bound to permanently reside in locations in which they hold their office.

## 2. Entities bound by the law of residence due to entrusted office

In accordance with the legal norm contained in can. 1396 CIC/83, the penalty referred to therein applies only to holders of those ecclesiastical offices that involve the obligation of residence in a specific place. Below, the author will discuss entities, following the sequence of their appearance in CIC/83, that are bound by the obligation of residence based on the entrusted church office. Superiors of religious institutes (cf. can. 629) and holders of church offices not covered by CIC/83 will not be discussed.

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*specjalnym obowiązkom*, in: P. Majer (ed.), *Codex Iuris Canonici. Kodeks Prawa Kanonicznego. Komentarz. Powszechne i partykularne ustawodawstwo Kościoła katolickiego. Podstawowe akty polskiego prawa wyznaniowego. Edycja polska na podstawie wydania hiszpańskiego*, Kraków 2011, ed. Wolters Kluwer Polska, p. 1044. Cf. P. Skonieczny, *Pojęcie zamieszkania w obowiązującym prawie kanonicznym*, “*Annales Canonici*” 15 (2019), no. 1, p. 60.

<sup>5</sup> J. Syryjczyk, *Kanoniczne prawo karne. Część szczególna*, Warszawa 2003, ed. Wydawnictwo UKSW, p. 168.

<sup>6</sup> “The Christian faithful have the right to receive assistance from the sacred pastors out of the spiritual goods of the Church, especially the word of God and the sacraments.”

<sup>7</sup> “Since they are called by baptism to lead a life in keeping with the teaching of the gospel, the Christian faithful have the right to a Christian education by which they are to be instructed properly to strive for the maturity of the human person and at the same time to know and live the mystery of salvation.”

### 2.1. Cardinals holding specific offices in the Roman Curia

In can. 356 CIC/83, the ecclesiastical legislator provides, “Cardinals are obliged to cooperate assiduously with the Roman Pontiff; therefore, cardinals who exercise any office in the curia and who are not diocesan bishops are obliged to reside in Rome. Cardinals who have the care of some diocese as the diocesan bishop are to go to Rome whenever the Roman Pontiff calls them,” and in can. 352 § 4 the same legislator adds, “If the dean and assistant dean do not have a domicile in Rome, they are to acquire one there.” Given the foregoing, the dean and assistant dean of the College of Cardinals are obliged to reside in Rome, so are the cardinals who are not diocesan bishops and who have been appointed to a specific office at the Roman Curia. Retired cardinals (emeritus) who used to hold offices at the Roman Curia are not bound by the obligation of residence.<sup>8</sup>

### 2.2. Diocesan bishop

In the Directory for the Pastoral Ministry of Bishops *Apostolorum successores*,<sup>9</sup> the Congregation for Bishops provides, “His loving service and his responsibility towards the particular Church require the Bishop to observe the ancient law of residence, which is still both relevant and necessary for good pastoral governance. This is a fundamental obligation of a Bishop: his first duty is to his diocese, and he cannot adequately fulfil that duty unless he is resident there” (AS 161). In accordance with the binding law, a diocesan bishop is bound by the law of “personal residence in the diocese,” even if he appointed a coadjutor or auxiliary (can. 395 § 1 CIC/83). Still, he can be absent from his diocese “for a reasonable cause but not beyond a month,” on a continuous or interrupted basis (can. 395 § 2), either for vacation or some other reasonable cause (AS 161). Whatever the case, before leaving the diocese, the bishop should make sure that his absence causes no detriment, and he should make arrangements for someone else to administer the diocese (can. 395 § 2; AS 161).<sup>10</sup>

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<sup>8</sup> T.J. Green, *Chapter III. The Cardinals of the Holy Roman Church [cc. 349–359]*, in: J.P. Beal, J.A. Coriden, T.J. Green (eds.), *New Commentary on the Code of Canon Law*, New York, N.Y./Mahwah, N.J. 2000, ed. Paulist Press, p. 473.

<sup>9</sup> Congregazione per i Vescovi, *Direttorio per il ministero pastorale dei vescovi Apostolorum successores* (22.02.2004), Città del Vaticano 2004, ed. Libreria Editrice Vaticana [hereinafter: AS].

<sup>10</sup> More see M. Wieczorek, *Obowiązek rezydencji biskupa diecezjalnego w aktualnym prawodawstwie Kościoła*, “Veritati et Caritati” 6 (2016), pp. 107–119.

The ecclesiastical legislator further provides that bishop's absences that do not count towards the aforesaid month's leave are *ad limina Apostolorum* visits, obligatory participation in a council or synod, participation in the Synod of Bishops, meetings of the Episcopal Conference, as well as absences due to some other duty legitimately entrusted to him (can. 395 § 2), or to make a retreat (AS 161).<sup>11</sup> The Congregation for Bishops also point out that if a bishop wishes to be absent from the diocese for other reasons, he "should request the permission of the Holy See" (AS 161). However, "except for a grave and urgent cause," the bishop should reside in his diocese on Christmas, during Holy Week, on Easter, Pentecost, and the Feast of the Body and Blood of Christ (can. 395 § 3).

If a bishop is to be absent from the diocese for more than six months, the metropolitan<sup>12</sup> is to inform the Apostolic See of his absence. If the same concerns the metropolitan, the senior suffragan is to do so (can. 395 § 4).

### 2.3. Coadjutor bishop and auxiliary bishop

A coadjutor bishop and auxiliary bishop are bound by the duty of residence in the diocese. They must not be absent from it, except for a brief time, for reasons other than to fulfil some duty outside the diocese or for vacation, which should not last more than one month (can. 410). In the opinion of J. Krukowski, for the best interest of the diocese, the times of absence should be agreed with the diocesan bishop. Moreover, the ecclesiastical legislator does not impose on a coadjutor bishop and an auxiliary obligation to stay in the diocese on the days named in can. 395 § 3 unless they are bound by the diocesan bishop to do so.<sup>13</sup>

### 2.4. Diocesan administrator

As provided in can. 427 § 1 CIC/83, a diocesan administrator "is bound by the obligations and possesses the power of a diocesan bishop, excluding those matters which are excepted by their nature or by the law itself." As evidently

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<sup>11</sup> J.A. Renken, *Chapter II. Bishops [cc. 375–411]*, in: J.P. Beal, J.A. Coriden, T.J. Green (eds.), *New Commentary ...*, p. 531. Cf. can. 276 § 2, 4°: clerics "[...] are equally bound to make time for spiritual retreats according to the prescripts of particular law."

<sup>12</sup> See can. 435 CIC/83.

<sup>13</sup> J. Krukowski, *Biskupi koadiutorzy i pomocniczy*, in: J. Krukowski (ed.), *Komentarz do Kodeksu Prawa Kanonicznego*. Vol. II/1: *Księga II. Lud Boży. Część I. Wierni chrześcijanie. Część II. Ustrój hierarchiczny Kościoła*, Poznań 2005, ed. Pallottinum, p. 272.

follows from this legal norm, a diocesan administrator is also obliged to reside in their diocese. Still, in order to stress the importance of the obligation of the diocesan bishop in question, and who administers the diocese on a temporary basis, the ecclesiastical legislator additionally covered the aforesaid duty in can. 429 CIC/83. On the other hand, the Congregation for Bishops points, among the many duties of the diocesan administrator, to the obligation of residence in the first place, “From the moment when he assumes governance of the diocese, the Administrator is bound by all the obligations of a diocesan Bishop; in particular he must observe the law of residence in the diocese [...]” (AS 241).

## 2.5. Pastor

As regards the obligation of residence of a pastor, the ecclesiastical legislator provides the relevant requirements in can. 533. As the general rule contained in § 1 says, “A pastor is obliged to reside in a rectory near the church.” However, for a justified reason, “the local ordinary can permit him to reside elsewhere, especially in a house shared by several presbyters, provided that the performance of parochial functions is properly and suitably provided for.” Notably, the ecclesiastical legislator specifically highlights that the place of the pastor’s residence should be, first of all, the rectory. Moreover, the local ordinary should take care that the pastor and the vicars pursue, as far as possible, “some manner of common life in the rectory” (can. 550 § 2).<sup>14</sup> The Congregation for Bishops in their *Apostolorum successores* explains that such a solution will enable them “to become better acquainted, to foster harmony and communion with one another and to bear witness to priestly fraternity” (AS 211).

If there are no “grave reasons to the contrary,” a pastor may be absent from the parish each year for vacation (of to one month counted on a continuous or interrupted basis)<sup>15</sup> and spiritual retreat once a year (cf. can. 276 § 2, 4°), however the period of retreat is not included in the vacation period. In the event of absence from the parish for more than a week, a pastor is obliged to inform the local ordinary (can. 533 § 2).

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<sup>14</sup> Cf. can. 280: “Some practice of common life is highly recommended to clerics; where it exists, it must be preserved as far as possible.”

<sup>15</sup> Cf. can. 283 § 2: Clerics “[...] are entitled, however, to a fitting and sufficient time of vacation each year as determined by universal or particular law.”

The ecclesiastical legislator delegated the issue of regulating the provision of pastoral care during the pastor's absence to the local legislator by resolving that this obligation will rest with "a priest endowed with the necessary faculties" (can. 533 § 3). In accordance with can. 549 in conjunction with can. 541 § 1, if the parish has a vicar, the vicar will replace the pastor and will be endowed with his rights and obligations, except for the obligation of applying Mass for the people.<sup>16</sup>

## 2.6. Parochial administrator and a group of clerics administering the parish in solidum

A parochial administrator is a priest who takes the place of the pastor in extraordinary circumstances, i.e. *sede vacante* or *sede impedita* (can. 539). He is designated by the diocesan bishop. The codex legislator provides that a parochial administrator is bound by the same duties and possesses the same rights as a pastor unless the diocesan bishop establishes otherwise (can. 540). Therefore, unless the letter of designation says otherwise, he is obliged to reside "in a rectory near the church" (cf. can. 533 § 1).

The obligation of residence *expressis verbis* bounds clerics who were entrusted to manage the parish in solidum. In accordance with can. 543 § 2, 1<sup>o</sup>, all priests who belong to this group "are bound by the obligation of residence."

## 2.7. Parochial vicar

A parochial vicar is obliged to reside in the parish (can. 550 § 1). The ecclesiastical legislator does not provide that vicars should domicile "in a rectory near the church," unlike the pastor (cf. can. 533 § 1). If a parochial vicar he has been appointed for different parishes jointly, he should reside in one of them (can. 550 § 1). The place of residence should be named in a letter of designation or should be left to the discretion of the pastors of the parishes in which the vicar is to perform his ministry, or may be specified by the relevant dean.<sup>17</sup> However, the local ordinary may, "for a just cause," allow a parochial vicar to reside elsewhere,

<sup>16</sup> J. Krukowski, *Parafie, proboszczowie i wikariusze parafialni*, in: *Komentarz do Kodeksu Prawa Kanonicznego*. Vol. II/1, p. 439.

<sup>17</sup> J. Krukowski, *Parafie, proboszczowie i wikariusze parafialni*, in: *Komentarz do Kodeksu Prawa Kanonicznego*. Vol. II/1, p. 461.

especially “in a house shared by several presbyters, provided that this is not detrimental to the performance of his pastoral functions” (can. 550 § 1).

### 3. Penalty for the violation of the obligation of residence

In accordance with can. 1396 CIC/83, a breach of the obligation of residence is penalized when it is “grave” (“A person who gravely violates the obligation of residence [...]”), and the violating person is obligated to reside in a specific place because of their ecclesiastical office (“[...] which binds by reason of ecclesiastical office [...]”) and, consequently, fulfil certain duties inherent in that office. When measuring the gravity of the violation, the following factors should be taken into account, but not only, duration, frequency, detrimental pastoral consequences, *scandalum*, the nature of the office, as well as the degree of guilt of the violating person and the subjective drivers of their unlawful absence.<sup>18</sup>

The ecclesiastical legislator provides for a mandatory penalty for the delict of violating the residence obligation, however, they do not define any specific penalty, saying that the violating individual, “[...] is to be punished by a just penalty, not excluding, after a warning, even privation from office” (can. 1396). Judging by the quoted canon, the most severe penalty that can be imposed on the holder of an ecclesiastical office for violating the obligation of residence is an expiatory penalty in the form of privation from office (can. 1336 § 4, 1°). First, however, the perpetrator should be given a warning (can. 1339 § 1). Only after the warning has proven ineffective, the penalty of deprivation of office should be imposed.

## Conclusions

The following conclusions can be drawn from the analysis of the delict of violation of the obligation of residence according to CIC/83:

1. The obligation of residence is the obligation to reside in a specific place on a permanent basis in connection with holding an ecclesiastical office.

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<sup>18</sup> T.J. Green, *Title V. Delicts against Special Obligations*, in: J.P. Beal, J.A. Coriden, T.J. Green (eds.), *New Commentary ...*, p. 1601; J. Stryjczyk, *Kanoniczne prawo karne...*, pp. 167–168.



2. The ecclesiastical legislator provides *expressis verbis* that the following persons are bound by the law of permanent residence in a specific place on account of their entrusted office: cardinals appointed to hold a specific office in the Roman Curia; diocesan bishop; coadjutor and auxiliary bishop; diocesan administrator; pastor; parochial administrator and clerics who are part of a group that administer the parish in *solidum*; parochial vicar.
3. Under can. 1396 CIC/83, a person commits the delict related to the obligation of residence who gravely (Lat. *graviter*) violates this duty after being bound to reside in a specific place of territory in connection with an ecclesiastical office entrusted to him. The violation takes place when the person unlawfully leaves his place of residence or unlawfully prolongs his otherwise lawful absence.
4. Violation of the duty of residence is subject to a mandatory penalty. The gravest penalty provided for by the ecclesiastical legislator is the privation of ecclesiastical office. Before that, however, the competent ecclesiastical authority should resort to a remedy in the form of a warning.

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